

**WSR 17-19-098**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed September 19, 2017, 11:37 a.m., effective October 20, 2017]

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

Purpose: The department is creating WAC 388-71-0701 and 388-71-0723 and amending WAC 388-71-0702, 388-71-0718, and 388-71-0722 to define the terms used throughout the chapter, update existing language as it pertains to the center's responsibility in developing a negotiated care plan, and define clients rights in regards to restraints including physical restraints, chemical restraints, involuntary seclusion, and the use of medical devices.

Citation of Rules Affected by this Order: New WAC 388-71-0701 and 388-71-0723; and amending WAC 388-71-0702, 388-71-0718, and 388-71-0722.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 17-12-104 on June 6, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-71-0723(4), added "for discipline or staff convenience." WAC 388-71-0701 and 388-71-0723 (5)(a)(b) [(5)(b)], changed "exploitation" to "personal exploitation."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 3, Repealed 0.

Date Adopted: September 13, 2017.

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Rules Coordinator

**NEW SECTION**

**WAC 388-71-0701 What definitions apply to WAC 388-71-0702 through 388-71-0776?** The following definitions apply to WAC 388-71-0702 through 388-71-0776:

(1) "**Abuse**" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult.

(a) 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.

(b) Abuse includes sexual abuse, mental abuse, physical abuse, personal exploitation of a vulnerable adult, and improper use of a restraint against a vulnerable adult, which have the following meanings:

(i) "**Sexual abuse**" means any form of nonconsensual sexual conduct, 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 client sexually explicit messages, or cuing or encouraging a client to perform sexual acts. Sexual abuse also includes any sexual conduct between a staff person, who is not also a client, with a client, of a center.

(ii) "**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, shoving, prodding, or use of chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(iii) "**Mental abuse**" means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling or swearing.

(iv) "**Personal 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.

(2) "**Adult day care**" or "**ADC**" means a supervised daytime program that provides services under WAC 388-71-0704 for clients who meet the eligibility requirements in WAC 388-71-0708.

(3) "**Adult day center**" means an adult day care or adult day health center.

(4) "**Adult day health**" or "**ADH**" means a supervised daytime program that provides ADC services under WAC 388-71-0704 and skilled services under WAC 388-71-0706 for clients who meet the eligibility requirements in WAC 388-71-0710.

(5) "**Adult day services**" is a generic term that refers to adult day care and adult day health services.

(6) "**Authorizing practitioner**" means a physician, osteopath, nurse practitioner, or physician assistant who has the licensed ability to write medical orders for skilled care and interventions that require a practitioner order.

(7) "**Chemical restraint**" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

(8) "**Chronic-care management**" means regular monitoring of the client's chronic health condition, training the client and caregiver, providing treatments or interventions when warranted and regular communication with primary care practitioners and caregivers to help implement and keep cur-

rent the clinical care plan while ensuring the treatments have the intended effect of improving health, maintaining health, or slowing declining health when the diagnosis is a nonreversible condition.

(9) "**Client**" or "**participant**" means a person who receives services at an adult day center.

(10) "**Department service plan**" means a client's comprehensive assessment reporting evaluation (CARE) assessment including personal care and skilled care needs.

(11) "**Direct care staff**" are staff in an adult day center that interact with participants by providing care, services, and guidance.

(12) "**The discharge plan**" is a plan that outlines specific measurable goals expected to occur due to individualized treatments provided to a participant, indicating discharge is appropriate. This plan is developed and addressed on the participant's ADC and ADH negotiated care plan and is updated with each significant change of condition or when the client partially or completely meets the expected measurable goal(s). Planned discharge outcomes reflect the end of treatment because the client meets the measurable outcomes or he or she is unable to participate in or benefit from treatment.

(13) "**Involuntary seclusion**" means the involuntary confinement of a client to a room or area where the client is physically prevented from leaving.

(14) "**Medical device**" means any piece of medical equipment used to treat a client's assessed need. A medical device is not always a restraint and should not be used as a restraint, unless assessed and approved by a physician or primary care provider. Some medical devices have considerable safety risks associated with use. Examples of medical devices with known safety risks may be, but are not limited to transfer poles, posey or lap belts, and side rails.

(15) "**Maintenance**" is continuing clinically appropriate skilled services that are justified as reasonable, necessary, and appropriate to sustain minimal loss of function. Maintenance interventions have discharge measurable goals that outline when maintenance skilled services are no longer beneficial.

(16) "**Medically necessary**" means the service is reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent worsening of conditions in the client that endangers life, causes suffering or pain, results in an illness or infirmity, threatens to cause or aggravate a disability, or causes physical deformity or malfunction.

(17) "**Negotiated care plan**" means a client centered, goal specific service plan that outlines the specific needs of the client, contains measurable, achievable, and realistic goals for the client, states how the adult day center will meet the assessed and agreed upon needs, when the assessed and agreed upon needs will be met, and by what discipline the assessed and agreed upon needs will be met.

(18) "**Physical restraint**" means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding, without undue force, a vulnerable adult in order to calm or comfort him or her, or holding a vulnerable adults hand to safely escort him or her from one area to another.

(19) "**Preliminary service plan**" means the initial intake, evaluation, and preliminary care plan including the client's strengths, deficits, and potential needs. The adult day center must determine based on the preliminary service plan whether they can meet those needs and accept the client into the adult day program.

(20) "**Rehabilitative service**" means a service provided using applicable physical therapy, occupational therapy, or speech therapy standards of practice and is considered medically necessary if the type, amount, and duration of service outlined in the plan of care increases the likelihood of meeting one or more of the following goals: Improve function, minimize loss of function, improve cognition or minimize loss of cognition, or decrease risk of injury and disease.

(21) "**Significant change**" means:

(a) A lasting change, decline, or improvement in the client's baseline physical, mental, or psychosocial status;

(b) The change is significant enough so that the current assessment or negotiated care plan does not reflect the client's current status; and

(c) A new assessment may be needed when the client's condition does not return to baseline within a two week period of time.

(22) "**Skilled nursing services**" means services that are reasonable and necessary for the treatment of a client's illness or injury and are consistent with the unique nature and severity of the client's illness or injury, his or her particular medical needs, and accepted standards of medical and nursing practices, including WAC 246-840-700, without regard to whether the illness or injury is acute, chronic, terminal, or expected to last for a significant amount of time.

(23) "**Specific goals**" mean expected outcomes individualized to the client's need(s) that stipulate the measurable, detailed, and expected progress the client may make while receiving the service. The specific goals address the who, what, when, why, and how of the expected final outcome. If a client's specific goal is to prevent a decline in his or her condition, the goal must have measurable outcomes that identify the intervention to prevent the decline and how to measure this prevention. If you cannot measure the expected outcome of the clinical intervention then you are not preventing a decline.

AMENDATORY SECTION (Amending WSR 15-01-174, filed 12/23/14, effective 1/23/15)

**WAC 388-71-0702 What is the purpose of adult day services?** (1) WAC 388-71-0702 through 388-71-0776 contains the eligibility requirements for ~~((COPES))~~ community options program entry system (COPES) waiver ~~((and))~~, roads to community living (RCL) ~~((demonstration funded))~~, or other agency approved funding for adult day care and adult day health services.

(2) These rules also contain the requirements that apply to adult day care ~~((or))~~ and adult day health centers that contract with the department, ~~((an))~~ area agency on aging, ~~((or))~~ other department designee to provide ~~((COPES waiver and RCL))~~ COPES waiver and RCL services to department clients, and adult day centers who are owned and operate on a private pay basis. Nothing in these rules may be construed as

requiring the department, an area agency on aging, or other designee to contract with an adult day care or adult day health center.

~~((2))~~ (3) An adult day ~~((services program))~~ center is a community-based program designed to meet the needs of adults with impairments through ~~((individual plans))~~ individualized goal specific plans of care. This type of structured, comprehensive, nonresidential program provides a variety of health, social, and related support services in a protective setting. ~~((By supporting))~~ Adult day centers support families and caregivers ~~((, the goals are))~~ with the following goals:

~~((i) To)~~ (a) Provide ~~((the))~~ an opportunity for the ~~((participant))~~ client to live in ~~((their))~~ his or her community;

~~((ii) To)~~ (b) Provide the ~~((participant))~~ client with ~~((services,))~~ clinical and non((-)clinical services to meet ~~((their))~~ unmet ((skilled)) needs;

~~((iii) To)~~ (c) Assist the ~~((participant))~~ client to maintain ~~((maximal))~~ maximum independence in ~~((their))~~ his or her activities of daily living (ADL); and

~~((iv) To)~~ (d) Measure ~~((their))~~ the client's progress through ~~((the))~~ individualized interventions, as outlined in his or her negotiated care plan.

(4) An adult day ~~((services program))~~ center evaluates the client's needs ~~((of the participant served))~~ and offers services with goal specific interventions to meet those needs and enhance ~~((their))~~ his or her quality of life. The ~~((participants served attend))~~ client attends on a scheduled and planned basis. The ~~((centers evaluate the))~~ adult day center evaluates potential ~~((participants))~~ clients to determine if ~~((they are))~~ center is able to ~~((communicate with each participant in order to))~~ meet their identified ~~((need(s)))~~ needs. Nothing in this generic description may be construed to modify the specific services or eligibility requirements referenced in ~~((the definition))~~ this chapter of adult day care and adult day health.

~~((3))~~ The following definitions apply under ~~WAC 388-71-0702 through 388-71-0774:~~

(a) "Adult day care" (ADC) means the services under WAC 388-71-0704 that are provided to clients who meet the eligibility requirement under WAC 388-71-0708.

(b) "Adult day center" means an adult day care or adult day health center. A day care or day health center for purposes of these rules is a center operating in a specific location, whether or not the center's owner also operates adult day centers in other locations.

(c) "Adult day health" (ADH) means the ADC services and the skilled care services listed under WAC 388-71-0706 that are provided to clients who meet the eligibility requirements under WAC 388-71-0710.

(d) "Adult day services" is a generic term referring to adult day care and adult day health services.

(e) "Authorizing practitioner" means a physician, osteopath, nurse practitioner and physician assistant who has the licensed ability to write medical orders for skilled care interventions requiring a practitioner order.

(f) "Chronic care management" means regular monitoring of the client's chronic health condition, training the client and caregiver, providing treatments or interventions when warranted and regular communication with primary care practitioner and caregivers to help implement and keep current the clinical care plan while ensuring the treatments are

having the intended effect of improving health, maintaining health or slowing declining health when the diagnosis is a nonreversible condition.

(g) "Client" means an applicant for or recipient of COPES waiver or RCL reimbursed adult day services.

(h) "Direct care staff" are the staff in an adult day center that is interacting with participants by providing care, services, and guidance.

(i) "The discharge plan" (DC) outlines specific measurable goals expected to occur due to the skilled individualized treatments provided to the participants indicating discharge is appropriate. This plan is developed and addressed on the client's ADC and/or ADH negotiated care plan and updated with each significant change of condition or when the client partially or completely meets the expected measurable goal(s). Discharge planning outcomes reflect the end of the treatment due to the client meeting the measurable outcomes or stipulating that a client has declined to the point of inability to participate in skilled treatment or is no longer able to benefit from skilled treatment.

(j) "Maintenance" is continuing clinically appropriate skilled service(s) which is justified as reasonable, necessary, and/or appropriate to sustain minimal loss of function. Maintenance interventions have discharge measurable goals that outline when maintenance skilled services are no longer beneficial.

(k) "Medically necessary" means the service is reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent worsening of conditions in the client that endangers life, or causes suffering or pain, or results in an illness or infirmity, or threatens to cause or aggravate a disability, or causes physical deformity or malfunction.

(l) "Negotiated care plan" the adult day center must use the participant state assessment, center's evaluation and preliminary service plan to develop a written negotiated care plan. The center must ensure each participant's negotiated care plan includes:

- (1) A list of the care and services to be provided;
- (2) Identification of who will provide the care and services;
- (3) When and how the care and services will be provided;
- (4) How medications will be managed, including how the participant will receive their medications when attending the adult day center;
- (5) The participant's activities preferences and how the preferences will be met;
- (6) Other preferences and choices about issues important to the resident, including, but not limited to:
  - (a) Food;
  - (b) Daily routine;
  - (c) Grooming; and
  - (d) How the center will accommodate the preferences and choices.
- (7) If needed, a plan to:
  - (a) Follow in case of a foreseeable crisis due to a participant's assessed needs;
  - (b) Reduce tension, agitation and problem behaviors;
  - (c) Respond to participant's special needs, including, but not limited to medical devices and related safety plans;

(d) Respond to a participant's refusal of care or treatment, including when the participant's physician or practitioner should be notified of the refusal; and

(8) Identification of any communication barriers the participant may have and how the center will use behaviors and nonverbal gestures to communicate with the resident.

(m) **"Participant"** means clients and other persons receiving adult day services at an adult day center.

(n) The adult day center must ensure that each participant has a preliminary service plan that includes:

(1) The participant's specific problems and needs identified in the assessment;

(2) The needs for which the participant chooses not to accept or refuses care or services;

(3) What the center will do to ensure the participant's health and safety related to the refusal of any care or service;

(4) Participant defined goals and preferences; and

(5) How the center will meet the participant's needs.

(o) **"Rehabilitative service"** is provided using applicable physical therapy or occupational therapy or speech therapy standards of practice and is considered medically necessary if the type, amount, and duration of services outlined in the plan of care increase the likelihood of meeting one or more of these stated goals: To improve function, minimize loss of function, improve cognition or minimize loss of cognition, or decrease risk of injury and disease.

(p) **"Significant change"** means:

(i) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(ii) The change is significant enough so the current assessment and/or negotiated care plan does not reflect the resident's current status; and

(iii) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

(q) **"Skilled nursing services"** must be reasonable and necessary for the treatment of the illness or injury, that is the services must be consistent with the unique nature and severity of the participant's illness or injury, his or her particular medical needs, and accepted standards of medical and nursing practice, without regard to whether the illness or injury is acute, chronic, terminal, or expected to last a long time. The standards of nursing conduct or practice must follow WAC 246-840-700.

(r) **"Specific goals"** mean those expected outcomes, individualized to the client's skilled need, that stipulate the measurable, detailed and expected progress the client may make while receiving the skilled service. They address the how, who, what and when of the expected final outcome. If a client's goal is to prevent a decline in their condition(s) the goal(s) must have measurable outcomes which identify the intervention to prevent the decline and how to measure this prevention. If you cannot measure the expected outcome of the clinical intervention then you are not preventing a decline.)

AMENDATORY SECTION (Amending WSR 15-01-174, filed 12/23/14, effective 1/23/15)

**WAC 388-71-0718 What is the adult day care center's responsibility in developing the client's negotiated care plan?** (1) Upon the department's or authorized case manager's referral of a ((COPEs or RCL eligible)) community options program entry system (COPEs), roads to community living (RCL), or other agency approved client ((by the department or authorized case manager)) to an ADC center, the ADC center ((will)) must respond in writing to the department or authorized case manager within two working days ((of)), acknowledging receipt of the referral and ((its)) the center's ability to process and evaluate the referred client. ((The ADC center must conduct an intake evaluation based on an interview with the client and/or the client's representative to assess the center's ability to meet the client's needs as identified in the department service plan.))

(2) The case manager will provide the client's department service plan to the ((adult day care provider)) ADC center within five working days after the client or client's representative has signed it.

(3) The ADC center ((will)) must schedule and conduct an intake ((evaluations visits)) and evaluation visit with the ((referral)) referred client ((and/or their)) or the client and his or her authorized representative to determine the client's willingness to attend the ADC center and evaluate the ADC center's ability to meet the ((needs of the client)) client's assessed needs and specific goals as defined in the client's department service plan. The intake and evaluation must be based on an interview with the client or the client and his or her authorized representative.

(4) Within ten ((working)) paid service days from the ((initial)) date ((of)) the client ((attendance at)) started attending the ((day care)) ADC center, the ADC center must complete and provide a preliminary service plan to the client or the client and his or her representative and the client's case manager that outlines the client's strengths, deficits, and potential needs. The ADC center must determine whether it can meet the client's needs, how ((those)) it will meet the client's needs ((will be met)), and whether ((to)) it will accept the client ((to)) into the program. The ADC center must not accept a client whose needs the center cannot meet. The ADC center ((with)) must document in the client's file the date ((he/she was)) it accepted the client into the ADC program. If the client is not accepted into the ADC program, the preliminary service plan must include the reason(s) why the client was not accepted.

(5) Within thirty calendar days of ((acceptance)) the date the client was accepted into the ADC program, the ((day care)) ADC center must work with the client ((and/or their)) or the client and his or her authorized representative to develop and complete a negotiated care plan signed by the client or the client's authorized representative and the ((day care)) ADC center.

(6) ((This care plan must be updated)) The negotiated care plan must limit the frequency of services to the number of days authorized in the department authorized service plan. The negotiated care plan must include:

(a) A list of the care and services the ADC center will provide the client;

(b) Identification of who will provide the client's care and services;

(c) When and how the ADC center will provide the care and services;

(d) How the ADC center will manage the client's medications and how the client will receive his or her medications when attending the ADC center;

(e) The client's activity preferences and how the ADC center will meet these preferences;

(f) Other preferences and choices about issues important to the client, including, but not limited to:

(i) Food;

(ii) Daily routine;

(iii) Grooming;

(iv) How the ADC center will accommodate the client's preferences and choices; and

(g) If needed, a plan to:

(i) Follow in case of a foreseeable crisis due to the client's assessed needs;

(ii) Reduce tension, agitation, and problem behaviors;

(iii) Respond to the client's special needs, including, but not limited to medical devices and related safety plans, and if medical devices are used, ADC center staff must ensure the medical device will not be used as a physical restraint for discipline or staff convenience while attending the ADC center;

(iv) Respond to the client's refusal of care or treatment, including when the ADC center should notify the client's physician or practitioner of the client's refusal; and

(v) Identify any communication barriers the client may have and how the ADC center will use the client's behaviors and nonverbal gestures to communicate with him or her.

(7) The ADC center must:

(a) Ensure medical devices will never be used as a physical restraint for discipline or staff convenience;

(b) Update the negotiated care plan annually and ((when their)) whenever there is a significant change in the client's condition and needs((-The care plan when));

(c) Share the negotiated care plan with the client's case manager whenever it is updated, annually ((or)), and after a significant change((-must be shared with the client's case manager. The care plan must:));

(d) Ensure the client's case manager reviews the negotiated care plan to ensure all services are appropriate and all authorized care needs have been included;

(e) Keep the current negotiated care plan in the client's file; and

(f) Offer a copy of the negotiated care plan to the client or the client and his or her authorized representative.

((a) Be consistent with the department authorized service plan and include all day care services authorized in the service plan;

(b) Document the client's needs as identified in the service plan, the adult day care services that will be provided to meet those needs, and when, how, and by whom the services will be provided;

(c) Document the client's choices and preferences concerning the provision of care and services, and how those preferences will be accommodated;

(d) Document potential behavioral issues identified in the assessment, service plan, or through the intake evaluation, and how those issues will be managed;

(e) Document contingency plans for responding to a client's emergent care needs or other crises; and

(f) Be approved by the client's case manager.

(7) The adult day care center must keep at least the current negotiated care plan in the client's file, must offer a copy of the plan to the client or client representative, and must provide a copy to the client's case manager. The case manager must review the negotiated care plan for inclusion of services that are appropriate and authorized for the client's care needs.))

(8) ((The negotiated care plan must limit the frequency of services to the number of days authorized in the department authorized service plan)) The ADC center must report changes in the client's condition or unanticipated absences more than three consecutive scheduled days of service to the client's case manager within one week.

(a) Unanticipated absences may include but are not limited to absences due to client illness or change in transportation access.

(b) The case manager may follow up with the client or the client and his or her representative and determine if any updates to the assessment, client's department service plan, or service authorizations are needed.

((9) The day care center must review each service in the negotiated care plan if the client's condition changes, and determine if the care plan continues to meet the client's needs. Changes in the client's condition or unanticipated absences of more than three consecutive days of scheduled service must be reported to the client's case manager within one week. Unanticipated absences by way of example may include absences due to client illness or injury, or a change in transportation access. The case manager may follow up with the client and determines if any updates to the assessment, service plan, and service authorization are needed.))

AMENDATORY SECTION (Amending WSR 15-01-174, filed 12/23/14, effective 1/23/15)

**WAC 388-71-0722 What is the adult day health center's responsibility in developing the client's negotiated care plan?** (1) Upon the department's or authorized case manager's referral of a ((COPES or RCL eligible)) community options program entry system (COPES), roads to community living (RCL), or other agency approved client ((by the department or an authorized case manager)) to an ADH center, the ADH center ((will)) must respond in writing to the department or authorized case manager within two working days ((of)), acknowledging receipt of the referral ((regarding its)) and the center's ability to process and evaluate the referred client.

(2) The ((department)) case manager ((will send)) must provide the client's ((signed)) department service plan to the ADH center within five working days after ((signature)) obtaining the client or client's authorized representative's signature on the service plan.

(3) The ADH center ((will)) must schedule and conduct an intake and evaluation ((visits)) visit with the referred cli-

ent ~~((and/or their))~~ or the client and his or her authorized representative to ~~((assess))~~ determine the client's willingness to attend the ADH center and evaluate the ADH center's ability to meet the ~~((needs of the client))~~ client's needs as defined in the client's department service plan.

(4) Within ten paid ~~((days of service, the day health center must determine if it can meet the client's needs, whether to accept the client to the program, and how those needs will be met. The center must document in the client's file the date of acceptance into their program. The center must not accept a client whose needs the center cannot meet. The center will be reimbursed under WAC 388-71-0724 for any service days provided from the start of the intake evaluation if the case manager has authorized services. The written intake evaluation includes acceptance of the client to the center or reason(s) why not accepted, the development of the evaluation, and the preliminary service plan))~~ service days from the date the client started attending the ADH center, the center must complete an intake and evaluation and provide a preliminary service plan to the client or the client and his or her authorized representative and the client's case manager.

(a) The ADH center's intake and evaluation must include multidisciplinary assessments based on interviews and evaluations of the client's strengths and limitations with the client or the client and his or her authorized representative.

(b) If the department service plan indicates a nursing or rehabilitative need during the intake and evaluation period, licensed professionals must conduct evaluations and assessments of the client's clinical or rehabilitative needs.

(c) The preliminary service plan must include:

(i) Client specific problems or needs as identified in the intake and evaluation;

(ii) The needs for which the client chooses not to accept services or refuse care or services;

(iii) What the center will do to ensure health and safety of the client related to the refusal of any care or service;

(iv) Client specific and agreed upon goals;

(v) Client preferences; and

(vi) How the center will meet the client's needs and preferences.

(d) Based on the ADH center intake and evaluation, the ADH center must determine whether it can meet the client's needs, how it will meet the client's needs, and whether it will accept the client into the ADH program.

(i) The ADH center must not accept a client whose needs the center cannot meet.

(ii) If the client is accepted into the ADH program, the ADH center must document the date of acceptance in the client file.

(iii) If the client is not accepted into the ADH program, the preliminary service plan must include the reason(s) why the client was not accepted.

(e) The ADH center must provide the client, or the client's authorized representative, and the client's case manager, a copy of the evaluation and preliminary service plan within ten paid days of service.

(5) ~~((When the ADH center conducts the intake evaluation visits there must be a multidisciplinary assessment conducted based on an interview and evaluation of the client's strengths and deficits with the client or the client's represen-~~

~~tative to determine the center's ability to meet the client's adult day care service needs and potential adult day health needs as identified in the department service plan. If the department service plan indicates a nursing and/or rehabilitative need then during the intake evaluation period these professionals will conduct evaluations and assessment of the client's clinical/rehabilitative needs to determine if they can be met at the center))~~ The ADH center will be reimbursed under WAC 388-71-0724 for any service days provided from the state of the intake and evaluation, if the case manager has authorized services.

(6) ~~((The ADH center may provide up to ten days of paid service to the client to complete the evaluation with the development of a preliminary service plan to be provided to the client and the case manager.~~

(7)) Upon the department's or authorized case manager's approval ~~((by the case manager))~~ of the ~~((adult day health))~~ ADH center's preliminary service plan, the ~~((day health))~~ ADH center ~~((multidisciplinary team))~~ must obtain and provide to the case manager any required practitioner's orders for skilled nursing ~~((and)),~~ rehabilitative therapy ~~((along with a copy of the preliminary service plan, according to department documentation requirements. Orders must indicate))~~ services, and medical devices that pertain to those services and interventions the ADH center is providing to the client under WAC 388-71-0712 through 388-71-0714. Orders from authorizing practitioners are not necessary for medical devices that are within the professional scope of practice of occupational or physical therapists working within the day center.

(a) The authorizing practitioner orders must:

(i) Include the frequency of authorized service;

(ii) Include use of and parameters for the authorized medical devices;

(iii) Include how often the client is to be seen by the ~~((authorized))~~ authorizing practitioner~~((-))~~;

(iv) Include the client's consent to follow up with the authorizing practitioner; and

(v) Be reviewed, updated, or revised when a significant change occurs, at least annually, or sooner if required by the prescriber.

(b) The case manager or nursing services staff may follow up with the practitioner, or other pertinent collateral contacts, concerning the client's need for skilled services.

(c) Services ~~((may))~~ must not be authorized for payment without current practitioner orders ~~((and the client's consent to follow up with the practitioner))~~.

(d) The authorizing practitioner must only authorize services, supports, and interventions that are within the practitioner's professional scope of practice.

~~((§))~~ (7) Within thirty calendar days of ~~((the client's))~~ acceptance into the program, the ~~((day health))~~ ADH center's multidisciplinary team must work with either the client or the client ~~((and/or their))~~ and his or her authorized representative to develop and complete a negotiated care plan signed by the client or the client's authorized representative and the ~~((day health))~~ ADH center. The negotiated care plan ~~((can))~~ may be developed ~~((initially [initially] in lieu of developing a))~~ initially in lieu of the preliminary service plan. ~~((The care plan must:~~

~~(a) Be~~) (8) The negotiated care plan must be consistent with the department-authorized service plan (and), include all (day health services) authorized ADC and ADH services, limit the frequency of services to the number of days in the (service plan;

~~(b) Include an~~) department authorized (practitioner's order(s) for skilled nursing and/or skilled rehabilitative therapy according to applicable state practice laws for licensed nurses or therapists. These authorizing practitioner orders must be reviewed, updated or revised when a significant change occurs or at least annually, or sooner if required by the prescriber;

~~(c) Document that the client or the client's representative has consented to follow up with the primary authorizing practitioner;~~

~~(d) Document the client's needs as identified in the) service plan, (the authorized services that will be provided to meet those needs, and when, how, and by whom the services will be provided;) and must include:~~

~~((e) Establish time)) (a) A list of the care and services the ADH center will provide the client;~~

~~(b) Time specific, measurable, and individualized client goals(, not to exceed ninety days from);~~

~~(c) Who will provide the (date of signature of the negotiated) client's care (plan, for accomplishing the goals of adult day health skilled) and services (and/or);~~

~~(d) When and how the ADH center will provide the care and services;~~

~~(e) How the ADH center will manage the client's medications, including how the client will receive his or her medications when attending the ADH center;~~

~~(f) The client's activity preferences and how the ADH center will meet these preferences;~~

~~(g) Other preferences and choices about issues important to the client including, but not limited to:~~

~~(i) Food;~~

~~(ii) Daily routine;~~

~~(iii) Grooming; and~~

~~(iv) How the ADH center will accommodate the preferences and choices;~~

~~(h) Individualized discharging or ((transitioning the client to other appropriate settings or services)) transition goals;~~

~~((f) Document the client's choices and preferences concerning the provision of care and services, and how those preferences will be accommodated;~~

~~(g) Document)~~

~~(i) If needed, a plan to:~~

~~(i) Address potential behavioral issues identified in the assessment, service plan, or through the intake and evaluation(, and how those issues will be managed);~~

~~((h) Document contingency plans for responding)) (ii) Follow in case of a foreseeable crisis due to a client's (emergent care) assessed needs (or other crises; and);~~

~~(iii) Reduce tension, agitation, and problem behaviors;~~

~~((i) Be approved by the case manager.~~

~~(9) The adult day health center must keep the negotiated care plan in the client's file, provide a copy to the client or client representative, and a copy to the client's case manager, including any required authorizing practitioner orders.) (iv) Respond to the client's special needs, including, but not lim-~~

~~ited to medical devices and related safety plans, and if medical devices are used, ADH center staff must ensure the medical device will not be used as a physical restraint for discipline or staff convenience, while attending the ADH center;~~

~~(v) Respond to the client's refusal of care or treatment, including when the ADH center should notify the client's physician or practitioner of the client's refusal; and~~

~~(vi) Identify any communication barriers the client may have and how the ADH center will use the client's behaviors and nonverbal gestures to communicate with him or her.~~

~~(9) The ADH center must:~~

~~(a) Ensure medical devices will never be used as a physical restraint for discipline or staff convenience;~~

~~(b) Review and update each service in the negotiated care plan every ninety days or more often if the client's condition changes;~~

~~(c) Share the negotiated care plan with the client's case manager whenever it is updated, annually, or after significant change;~~

~~(d) Ensure the client's case manager reviews the negotiated care plan to ensure all services are appropriate and all authorized care needs have been included;~~

~~(e) Obtain the case manager's approval whenever it is updated, annually, or after a significant change;~~

~~(f) Keep the current negotiated care plan in the client's file, provide; and~~

~~(g) Offer a copy of the negotiated care plan to the client or the client and his or her authorized representative.~~

~~(10) The (department) client's case manager must review the negotiated care plan ((for inclusion of)) to ensure all services ((that)) are appropriate and all authorized ((for the client's)) care needs have been included.~~

~~((10) The negotiated care plan must limit the frequency of department-funded services to the number of days in the department-authorized service plan.)~~

~~(11) The (day health center must review each service in the negotiated care plan every ninety days or more often if the client's condition changes, or if the client is reassessed for eligibility after a break in service of more than thirty days. Changes in the client's) ADH center must report changes in the client's condition or unanticipated absences of more than three consecutive ((days of)) scheduled days of service ((must be reported)) to the client's case manager within one week.~~

~~(a) Unanticipated absences ((by way of example)) may include, but are limited to absences due to client illness or ((injury)) a change in transportation access.~~

~~(b) The case manager may ((follow up)) follow up with the client or the client and ((determines)) his or her authorized representative and determine if any updates to the assessment, client's department service plan, or service ((plan, and service authorization)) authorizations are needed.~~

## NEW SECTION

**WAC 388-71-0723 What is the adult day center's responsibility in the use of medical devices, restraints, and prevention of abuse? (1) Medical devices.** When the adult day center staff use a medical device, it must not be

used as a physical restraint for discipline or staff convenience.

(2) **Physical restraints.** When the adult day center staff provide services for a client, which may include but are not limited to transportation, outings, and services at the facility, the adult day center must ensure the client has a right to be free from physical restraints used for discipline or staff convenience.

(3) **Chemical restraints.** When the adult day center staff provide services for a client, which may include but are not limited to transportation, outings, and services at the facility, the adult day center must ensure the client is free from chemical restraints used for discipline or staff convenience.

(4) **Involuntary seclusion.** When the adult day center staff provides services for a client, which may include but are not limited to transportation, outings, and services at the facility, the adult day center must ensure the client's right to be free from involuntary seclusion or isolation used for discipline or staff convenience.

(5) **Prevention of abuse.** When the adult day center staff provides services for a client, which may include but are not limited to transportation, outings, and services at the facility, the adult day center must:

(a) Ensure the client's right to be free from abandonment, verbal, sexual, physical, and mental abuse, personal exploitation, financial exploitation, neglect, and involuntary seclusion;

(b) Protect the client who is an alleged victim of abandonment, verbal, sexual, physical, and mental abuse, personal exploitation, financial exploitation, neglect, and involuntary seclusion; and

(c) Meet the requirements of chapter 74.34 RCW regarding mandatory reporting.

#### WSR 17-20-006

#### PERMANENT RULES DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Behavioral Health Administration)

[Filed September 21, 2017, 3:57 p.m., effective October 22, 2017]

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

Purpose: The department is amending rules about grievances, appeals, and hearings in chapter 388-877 WAC to align with the Centers for Medicare and Medicaid Services (CMS) amended federal rules in 42 C.F.R. 438 Subpart F that govern the grievance and appeals system for medicaid managed care. States must comply with these federal rule amendments by July 1, 2017. The new definitions, time frames, and alignment of certain processes for appeals and grievances will provide individuals with a more streamlined and manageable grievance and appeals process, and will allow behavioral health agencies and behavioral health organizations to further align rules applicable to private health insurance and group health plans that apply across the market. The department is limiting amendments to bringing the rules into compliance with federal rules and making necessary edits to change names and terms and clarify language without chang-

ing the rule's effect. When these rules become effective, they will supersede emergency rules filed as WSR 17-14-094 that went into effect July 1, 2017.

Citation of Rules Affected by this Order: Amending WAC 388-877-0654, 388-877-0655, 388-877-0660, 388-877-0665, 388-877-0670, 388-877-0675, and 388-877-0680.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035 (5)(c), 71.24.520, and 71.34.380.

Other Authority: 42 C.F.R. 438 Subpart F, as amended in 81 Fed. Reg. 27498, May 6, 2016.

Adopted under notice filed as WSR 17-11-068 on May 17, 2017.

Changes Other than Editing from Proposed to Adopted Version:

WAC 388-877-0654(4) ... behavioral health ombuds services described in ~~under~~ ... lowest possible level before and during ...

WAC 388-877-0654 new (5) In handling grievances and appeals, each BHO and behavioral health agency must give individuals any reasonable assistance in completing forms and taking other procedural steps related to a grievance or appeal. This includes, but is not limited to, auxiliary aids and services, upon request, such as providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.

WAC 388-877-0655(2) new (f) For a resident of a rural area with only one BHO, the denial of an individual's request to exercise their right to obtain services outside the network;

WAC 388-877-0655(2) new (g) The denial of an individual's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.

WAC 388-877-0660(2) ... ~~grievances or expressions of dissatisfaction.~~

WAC 388-877-0660 (5) and (6) ... The grievance ~~cannot~~ does not progress to a hearing ...

WAC 388-877-0660 (7)(f) ... decision as expeditiously as the individual's health condition requires, and no longer than ...

WAC 388-877-0660 (8)(c)(i) ... Neither were ~~not~~ involved ... nor are subordinates a subordinate of any ...

WAC 388-877-0660 (8)(d) ... the individual's interest. The BHO must:

(i) Make reasonable efforts to give the individual prompt oral notice of the delay; and

(ii) Within two calendar days, give the individual written notice of the reason for the decision to extend the time frame and inform the individual of the right to file a grievance if the individual disagrees with that decision;

WAC 388-877-0660 (8)(e) and 388-877-0665 (1)(a) ... which includes requirements ~~requires~~ that each notice: (i) Is ~~Be~~ written ...

WAC 388-877-0665(3) ... timely manner, ~~or when the BHO does not act within the grievance and appeal system time frames as identified within this chapter,~~ it is considered an adverse benefit determination. In these cases, the BHO sends a formal notice of adverse benefit determination, which includes the individual's right to request an administrative hearing. When the BHO does not act within the grievance and appeal system time frames as identified within this chap-



ter, it is considered exhaustion of the appeals process and the individual has a right to request an administrative hearing.

WAC 388-877-0670(2) ... ~~must file an appeal and receive a notice of the resolution from the BHO exhaust the appeals process before ...~~

WAC 388-877-0670 (4)(a) ... evidence and testimony and make legal ...

WAC 388-877-0670 (4)(b) ... Provide the individual opportunity, ... to examine the individual's clinical record, including examining new or ...

WAC 388-877-0670 (5)(a) ... Neither were ~~not~~ involved ... nor are subordinates a subordinate of any ...

WAC 388-877-0670(6) ... An oral filing of a standard an appeal ...

WAC 388-877-0670 (6)(c) ... resolution as expeditiously as the individual's health requires, and no longer ...  
The BHO must:

(i) Make reasonable efforts to give the individual prompt oral notice of the delay; and

(ii) Within two calendar days, give the individual written notice of the reason for the decision to extend the time frame and inform the individual of the right to file a grievance if the individual disagrees with that decision.

WAC 388-877-0670(7) ... An oral filing of a standard an appeal ...

WAC 388-877-0670(8) ... health provider believes feels that ...

WAC 388-877-0670 (8)(b)(ii) ... resolution as expeditiously as the individual's health condition requires, and no longer ...

WAC 388-877-0670 (9)(b)(i) ... of the hearing ~~or if the individual is asking for an expedited hearing.~~

WAC 388-877-0670 (9)(c) ... which includes require-ments requires that each notice: (i) Be Is written ...

WAC 388-877-0675(4) If an individual ~~requests an expedited administrative hearing, the expedited hearing must be requested within ten calendar days from the date on the notice of the resolution or notice of determination or the individual's behavioral health provider believes that the time taken for a standard administrative hearing could seriously jeopardize the individual's life, physical or mental health, or ability to attain, maintain, or regain maximum function, an expedited hearing may be requested ...~~

WAC 388-877-0675(7) ... of this section. Recovery of the cost of medicaid services is limited to the first sixty days of services after the department or the office of administrative hearings (OAH) receives an administrative hearing request. See RCW 74.09.741.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 7, Repealed 0.

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

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

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

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

Date Adopted: September 19, 2017.

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 17-21 issue of the Register.

**WSR 17-20-009  
PERMANENT RULES  
BOARD OF**

**PILOTAGE COMMISSIONERS**

[Filed September 22, 2017, 7:44 a.m., effective October 23, 2017]

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

Purpose: To establish new WAC 363-116-301 New revenue collection, in order to define ESB 5096 conditions and directives.

Citation of Rules Affected by this Order: Amending chapter 363-116 WAC.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Adopted under notice filed as WSR 17-16-140 on August 1, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 1, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: September 21, 2017.

Jaimie C. Bever  
Executive Director (Interim)

NEW SECTION

**WAC 363-116-301 New revenue collection.** With respect to the passage of Engrossed Senate Bill No. 5096 Section 108, the board of pilotage commissioners is appropriated one million one hundred thousand dollars from the multimodal transportation account solely for self-insurance liability premium expenditures. This appropriation is contingent upon three stipulated conditions:

(1) The Puget Sound pilots shall pay to the board, from its tariffs, one hundred fifty thousand dollars annually on July

1, 2017, and July 1, 2018. These amounts shall be deposited by the board into the pilotage account and used solely for the expenditure of self-insurance premiums;

(2) The board shall maintain the Puget Sound pilotage district pilotage tariff at the rate which became effective on January 1, 2017; and

(3) A self-insurance premium surcharge of sixteen dollars shall be added to each Puget Sound pilotage assignment on all vessels requiring pilotage in the Puget Sound pilotage district. The Puget Sound pilots shall remit the total amount of such surcharges generated to the board by the tenth of each month. The surcharge shall be in effect from July 1, 2017, through June 30, 2019. These amounts shall be in addition to those fees to be paid to the board pursuant to subsection (1) of this section and shall be deposited by the board into the pilotage account solely for the expenditure of self-insurance premiums.

These three directives are in effect beginning May 18, 2017, through June 30, 2019.

### WSR 17-20-019

#### PERMANENT RULES

#### DEPARTMENT OF LICENSING

[Filed September 26, 2017, 3:25 p.m., effective October 27, 2017]

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

Purpose: Amend rules to simplify chauffeur [chauffeur] training requirements and to provide updates for consistency within industry and regulatory environments.

Citation of Rules Affected by this Order: Repealing WAC 308-83-300, 308-83-310 and 308-83-320; and amending chapter 308-83 WAC, Limousine services.

Statutory Authority for Adoption: Chapters 46.72A, 43.24, and 46.04 RCW.

Adopted under notice filed as WSR 17-12-040 on June 1, 2017.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 3.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 3.

Date Adopted: September 25, 2017.

Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-08-093, filed 4/5/16, effective 5/6/16)

**WAC 308-83-010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter and chapter 46.72A RCW.

(1) "Amenities" means equipment or features added to a vehicle for the comfort or convenience of the occupants:

(a) "Standard amenities" means standard factory amenities normally found in passenger cars;

(b) "Nonstandard amenities" means amenities not normally found in passenger cars. These amenities may include, but are not limited to, a television, musical sound system, telephone, ice storage, refrigerator, power-operated dividers, or additional interior lighting.

(2) "Business license" or "limousine carrier business license" means a license issued under chapter 19.02 RCW, which contains an endorsement indicating the business to which the license is issued is authorized to provide limousine carrier services.

(3) "Business licensing service" means the program within the Washington state department of revenue authorized by chapter 19.02 RCW to issue the business license.

(4) "Business office" refers to the physical location where a limousine carrier business maintains its business records, as defined in WAC 308-83-130. The business office is the physical address on file with the business licensing service. The business office is the place where the business license is posted.

(5) "Business owner" means an individual, partnership, corporation, association, or other person(s), or group that holds a substantial interest in a limousine carrier business.

(6) "Chauffeur" means a person who operates a limousine.

(7) "Decal" means a sticker issued by the department to indicate the vehicle displaying the decal has a valid limousine vehicle certificate.

(8) "Department" means the Washington state department of licensing.

(9) "Dispatch log" refers to a paper or electronic record of assignments made to chauffeurs, and includes all information from the passenger manifest(s) for a given period, as well as the time each ride was arranged, ~~((passenger and carrier phone numbers used to make the arrangement,))~~ the limousine, and the chauffeur assigned to the customer. The dispatch log also documents passengers referred by or to other drivers or businesses.

(10) "Disqualification" means a prohibition against driving a limousine.

(11) "Drugs" are those substances as defined by RCW 69.04.009 including, but not limited to, those substances defined by 49 C.F.R. 40.3.

(12) "Limousine" has the same meaning as in RCW 46.04.274 and includes vehicles that meet one of the following definitions:

(a) "Stretch limousine" means an automobile with a seating capacity behind the driver of not less than four passengers and not more than fourteen passengers, and a maximum wheelbase of two hundred eighty-five inches. The wheelbase has been factory or otherwise altered beyond the original manufacturer's specifications and meets standards of the

United States Department of Transportation. A stretch limousine must be equipped with nonstandard amenities in the rear seating area.

(b) "Executive sedan" means a four-door sedan or cross-over automobile having a seating capacity behind the driver of not more than three passengers, and a minimum wheelbase of one hundred fourteen and one-half inches or is designated as a large car under 40 C.F.R. 600.315-08, and has a manufacturer's suggested retail price when new of no less than thirty-five thousand dollars. The department may provide guidelines for qualified vehicles on our web site. An executive sedan must at a minimum be equipped with standard amenities, and the wheelbase may not be altered.

(c) "Executive van" means a van or minivan, having a seating capacity behind the driver of not less than seven passengers and not more than fourteen passengers.

(d) "Classic car" means a fine or distinctive, American or foreign automobile that is thirty years old or older.

(e) "Executive sport utility vehicle" means a sport utility vehicle with a seating capacity behind the driver of not less than three passengers and not more than six passengers, and a minimum wheelbase of one hundred sixteen inches that has not been altered.

(f) "Stretch sport utility vehicle" means a sport utility vehicle with a seating capacity behind the driver of not less than four and not more than fourteen passengers, and a maximum wheelbase of three hundred twenty-five inches that has been factory or otherwise altered beyond the original manufacturer's specifications and meets standards of the United States Department of Transportation. A stretch sport utility vehicle must be equipped with nonstandard amenities in the rear seating area.

(13) "Limousine carrier" or "carrier" is a business licensed, or required to be licensed by the department to provide limousine services, in accordance with RCW 46.04.276 and department regulations.

(14) "Nonresident limousine carrier" refers to a limousine carrier or vehicle owner whose place of business is not in Washington state (~~and does not have a valid Washington state limousine carrier license~~).

(15) "Operate" refers to a person engaging in the business of a limousine and includes driving, occupying, or otherwise using a limousine to wait for, pick up, transport, or drop off a passenger for compensation. Specific activities included in the definition of operating a limousine are contained in WAC 308-83-210.

(16) "Passenger capacity" means the maximum number of passengers that may be carried in a vehicle as determined by using the information found on the label that is required by the United States Department of Transportation to be affixed to the vehicle under 49 C.F.R., Parts 567 and 568. This label must be affixed to the vehicle in accordance to 49 C.F.R., Parts 567 and 568. In absence of the label, a member of the Washington state patrol or the department may determine the passenger capacity upon visual inspection of the vehicle.

(17) "Passenger manifest" refers to a daily record that verifies prearranged trips. Specific requirements for the passenger manifest are contained in WAC 308-83-200.

(18) "Person" or "persons" means an individual, a corporation, association, sole proprietorship, joint stock associa-

tion, partnership, limited liability partnership, limited liability company, or other association of people organized to conduct business. It also includes their lessees, trustees, or receivers.

(19) "Prearranged" refers to a customer or customer's agent having secured and agreed to the services and fare. Prearranged means the agreement was made prior to the time of departure and at a place different than the place of departure.

(20) "Public highway" includes every public street, road, or highway in this state.

(21) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. 40.281.

(22) "Unified business identifier" or "UBI" is a nine digit number that registers a business with several state agencies and allows an entity to do business in Washington state. It is sometimes called a tax registration number, a business registration number, or a business license number.

(23) "Vehicle certificate" is a document issued by the department, indicating that the vehicle is registered as a limousine. The vehicle certificate must be carried in the limousine at all times. The vehicle certificate is not the vehicle registration document.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

**WAC 308-83-020 Fees.** (1) The limousine fees authorized in chapter 46.72A RCW are:

Limousine carrier business license application	\$350.00
Limousine carrier business license renewal	350.00
Vehicle certificate	75.00
Vehicle certificate renewal	75.00
Change of vehicle certificate	20.00
Duplicate vehicle certificate	20.00
<del>((Training course application))</del> <u>Vehicle inspection</u>	25.00

(2) Applications and renewals submitted to the business licensing service must also include the fees authorized in RCW 19.02.075 and 19.02.085.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

**WAC 308-83-100 License.** (1) Applicants for a limousine carrier business license must apply through business licensing service. The department will issue a limousine carrier license only to a person who meets the requirements established in chapter 46.72A RCW and this chapter.

(2) All applications for a limousine carrier business license must be on a form approved by the business license service, and include the appropriate addendum form, chauffeur certification addendum, vehicle registration, vehicle inspection report and insurance documents. The application

must be accompanied by the appropriate filing fee, as listed in WAC 308-83-020 and RCW 19.02.075.

(3) A limousine carrier business license may not be leased, assigned, or otherwise transferred.

(4) A limousine carrier business license expires annually. The department will charge additional fees when a limousine carrier business license is renewed after the expiration date, as provided under RCW 19.02.085.

(5) A limousine carrier must have a valid limousine license before it can advertise, sell, or provide limousine services.

~~(6) ((A limousine carrier conducting business under a name other than the business owner's full legal name must register its business name as a trade name with business licensing service and pay the fees as required under WAC 308-300-230 and 308-300-280.~~

~~(7))~~ The limousine carrier business license must be posted in a conspicuous place at the business office.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

**WAC 308-83-105 Nonresident limousine carrier.**

Nonresident limousine carrier business owners are subject to the same requirements and restrictions that apply to resident limousine carriers. Nonresident owners may not pick up passengers in Washington state without a valid Washington state limousine carrier business license and Washington state vehicle certificate. The department will accept nonresident vehicle registrations and insurance certificates, provided the insurance company is approved by the Washington state office of the insurance commissioner. The coverage must be valid in the state of Washington and meet, at least, the levels established in WAC 308-83-115.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

**WAC 308-83-125 Leased vehicles.** (1) Prior to using a

leased or rented vehicle as a limousine, the lessee must provide the department with a release-of-interest letter from the lessor.

(2) A leased or rented limousine must meet all of the requirements for a limousine vehicle certificate, as described in this chapter. ~~((The department will issue a short term, or special needs vehicle certificate that the business may use for a consecutive thirty day period during the following consecutive four months or upon expiration of the business' limousine carrier license, whichever end date occurs sooner. The department may approve a rental or lease of less than thirty calendar days. The department may waive the required vehicle inspection for these short term rentals or leases. However, these vehicles must be in such a condition, regarding safety, legality and appearance, as to be able to pass a WSP limousine vehicle inspection.))~~

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

**WAC 308-83-130 Records.** (1) Each limousine carrier business must maintain business records, which must include, at a minimum:

- (a) Vehicle inspection reports;
- (b) Vehicle ownership registration records, including copies of records required for rental or leased vehicles;
- (c) The certificate of vehicle insurance;
- (d) Chauffeur records, as identified in WAC 308-83-140;
- ~~(e) ((Records of advertising activities including, but not limited to, any contracts entered into with companies that provide advertising services;~~
- ~~(f))~~ Passenger manifests;
- ~~((g))~~ (f) Dispatch logs;
- ~~((h))~~ (g) Contracts for related services; and
- ~~((i))~~ (h) Customer payment records(;
- ~~(j) Vehicle maintenance records;~~
- ~~(k) Collision and injury reports; and~~
- ~~(l) Written customer comments or complaints received by the business, and responses to the complaints)).~~

(2) A limousine carrier ~~((business))~~ must maintain records required under this section for at least three years from the date they are created or from the date they become obsolete, whichever date is later, with the exception of records required by subsection (1)~~((f))~~ (e) and ~~((g))~~ (f) of this section. Records required under subsection (1)~~((f))~~ (e) and ~~((g))~~ (f) of this section must be maintained for at least one year from the date they are created.

(3) Upon the sale or transfer of a limousine carrier business, the business records must be transferred to the new owner and become the property and responsibility of the new owner. The new owner must retain these records for at least one year after sale or transfer.

(4) All business records must be available for inspection by department representatives or enforcement officers at the limousine ~~((carrier's))~~ carriers business office.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

**WAC 308-83-135 Audit of carrier records.** (1) The department may request a carrier to provide records required by chapter 46.72A RCW and this chapter for department inspection for the purpose of determining compliance with this chapter.

(a) The department may request the business owner send copies of records to the department within fourteen calendar days of the request; or

(b) A department representative may examine the records at the carrier's business office on record with the department, or at a mutually agreed upon location. The records will be examined at a mutually agreed upon place, date and time that is within three business days of the department's request.

(2) Failure to provide requested records to the department shall be subject to administrative action under chapter 18.235 RCW.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

**WAC 308-83-140 Verifying chauffeur qualifications.**

(1) A limousine carrier must obtain the information listed below and required under RCW 46.72A.090 for each of its chauffeurs. As provided under subsection (2)(e), (g), and (h) of this section, additional documentation will be required for all chauffeurs six months after the effective date of these rules.

(2) The documentation for each chauffeur must include:

(a) A clear photocopy of both front and back of the chauffeur's valid Washington state driver license;

(b) ~~((A certificate of completed chauffeur training signed by a training provider approved by the department;~~

~~(c) Test scores for both the written and driving portions of the chauffeur training certified by the training provider;~~

~~(d)) Documentation verifying that the chauffeur has passed a four (or more) hour National Safety Council Defensive Driving (NSCDD) course;~~

~~(c) The results of a criminal background check obtained through the Washington state patrol;~~

~~((e) A medical certificate, from a licensed physician, validating the chauffeur's fitness to drive a limousine, using department examination criteria on a two-year renewal cycle. Six months after the effective date of this rule, the medical certificate must be a)~~

~~(d) A U.S. Department of Transportation Medical Examiner's Certificate completed within ((the previous)) ninety ((calendar)) days prior to hire by an examiner meeting the U.S. Department of Transportation standards under 49 C.F.R. 391.41-391.49. ((For chauffeurs with an approved medical examination on file, this requirement will be effective at the time of renewal))~~ Validating the chauffeur's fitness to operate a limousine, in accordance with a two-year renewal cycle;

~~((f)) (e) An employment record driving abstract issued by the department which is not more than sixty days old at the time of hire. If the chauffeur has resided in another state within the past five years, the chauffeur must also provide a complete driving record from the previous state(s) of residence;~~

~~((g) Six months after the effective date of this rule,)) (f) Documentation must include a drug test report obtained within the previous ninety days from a facility meeting the U.S. Department of Transportation standards under 49 C.F.R. 40;~~

~~((h)) (g) Six months after the effective date of this rule, documentation must include a report or certificate from a drug testing facility meeting the U.S. Department of Transportation standards under 49 C.F.R. 382.305 stating that the chauffeur is participating in a random testing program. The carrier must obtain an updated report each year before recertifying the chauffeur with the annual license renewal application under WAC 308-83-145(2).~~

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

**WAC 308-83-145 Certifying chauffeur qualifications.** (1) Any person who is hired, assumes the duties of, or acts as a chauffeur either full-time, part-time, or in an inter-

mittent hire capacity in Washington state, including a business owner, must meet the criteria listed in RCW 46.72A.-090.

(2) Before a chauffeur operates a limousine, the limousine carrier must submit to the business licensing service a signed statement on a form provided by the department certifying that the carrier possesses the required documentation under WAC 308-83-140. ~~((The carrier must also submit a copy of both the front and back of the chauffeur's valid Washington state driver license.))~~ With each annual ~~((carrier business))~~ renewal application, the limousine carrier must submit to the business licensing service an updated chauffeur certification statement listing each chauffeur employed by or driving for the carrier.

(3) Failure to submit a chauffeur's name and required identification on the certification statement form will result in the removal of a chauffeur from the carrier's limousine license record.

(4) No limousine carrier may allow, permit, or authorize a driver to drive a limousine motor vehicle during any period:

(a) In which the carrier does not have the required proof of all items under WAC 308-83-140; or

(b) In which the chauffeur has a driver license suspended, revoked, or canceled by the state, has lost the privilege to drive a limousine in this state, or has been disqualified from driving a limousine(~~(or~~

~~(c) In which the chauffeur has more than one driver license)).~~

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

**WAC 308-83-150 Disqualification of chauffeurs.** As provided under RCW 46.72A.100, a person may be disqualified from driving as a chauffeur and the director may impose any of the sanctions specified in RCW 18.235.110 on the limousine carrier if the carrier employs someone whose documentation indicates that person is not qualified. Disqualification by the limousine carrier or the department is warranted if any of the following is true:

(1) A chauffeur fails to provide proof of meeting all of the criteria in RCW 46.72A.090 in the form and format described in WAC 308-83-140;

(2) A chauffeur is convicted of, or is found to have committed in the previous two years, two or more serious traffic violations, as defined under RCW 46.25.010~~((++))~~ and WAC 308-100-130, while driving a motor vehicle of any kind;

(3) The chauffeur has had, within the previous five years, a conviction of a crime pertaining to:

(a) Prostitution;

(b) Gambling;

(c) Physical violence;

(d) Use of a machine gun in a felony (RCW 9A.1.225);

(e) Felonies not defined by Title 9A RCW, if the maximum sentence of imprisonment authorized by law upon the first conviction of such felony is twenty years or more (RCW 9.94A.035);

(f) Criminal attempt when the crime attempted is murder in the first, murder in the second, or arson in the first (RCW 9A.28.020);

- (g) Criminal conspiracy when the object of the conspiratorial agreement is murder in the first (RCW 9A.28.040);
- (h) Murder in the first (RCW 9A.32.030);
- (i) Murder in the second (RCW 9A.32.050);
- (j) Homicide by abuse (RCW 9A.32.055);
- (k) Manslaughter in the first (RCW 9A.32.060);
- (l) Assault in the first (RCW 9A.36.011);
- (m) Assault of a child in the first (RCW 9A.36.120);
- (n) Kidnapping in the first (RCW 9A.40.020);
- (o) Rape in the first (RCW 9A.44.040);
- (p) Rape in the second (RCW 9A.44.050);
- (q) Rape of a child in the first (RCW 9A.44.073);
- (r) Rape of a child in the second (RCW 9A.44.076);
- (s) Child molestation in the first (RCW 9A.44.083);
- (t) Arson in the first (RCW 9A.48.020);
- (u) Burglary in the first (RCW 9A.52.020);
- (v) Robbery in the first (RCW 9A.56.200);
- (w) Rendering criminal assistance in the first if to a person who has committed or is being sought for murder in the first or any class A felony or equivalent juvenile offense (RCW 9A.76.070);
- (x) Bail jumping if the person was held for, charged with, or convicted of murder in the first (RCW 9A.76.170);
- (y) Leading organized crime as defined under RCW 9A.82.060 (1)(a);
- (z) Malicious placement of an explosive in the first (RCW 70.74.270);
- (aa) Malicious explosion of a substance in the first (RCW 70.74.280);
- (bb) Malicious explosion of a substance in the second (RCW 70.74.280);
- (cc) Homicide by watercraft (RCW 79A.60.050); or
- (dd) Any crime directly related to the occupation of chauffeur, including: Crimes concerning honesty and integrity including, but not limited to, fraud, larceny, burglary, and extortion;
- (4) A chauffeur is a registered sex offender;
- (5) A chauffeur has been found to have exhibited past conduct in driving or operating a (~~limousine~~) vehicle that would lead the director to reasonably conclude that the applicant will not comply with the provisions of the chapter related to driver and operator conduct and the safe operation of the vehicle;
- (6) The medical examiner's certificate is expired or is incomplete or the chauffeur's physical fitness has been called into question; or
- (7) A report has been received by the department under RCW 46.72A.090 that the chauffeur has received a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under 49 C.F.R. 40. A report that a chauffeur has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this section.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

**WAC 308-83-200 Prearrangement.** (1) Chauffeurs must have a passenger manifest in their possession to operate a limousine:

(a) The passenger manifest must be available for immediate examination upon request from an enforcement officer. If the chauffeur is inside the limousine, the manifest must be inside the limousine. If the chauffeur is outside the limousine, the manifest must be carried by the chauffeur;

(b) The chauffeur must document with the limousine carrier business office, and note on the passenger manifest the times, to the hour and minute, when the chauffeur is on duty;

(c) Trips must be prearranged at least fifteen minutes before the passenger is scheduled to be picked up unless dispatched from a limousine carrier's business office.

(2) The passenger manifest may be a paper or electronic record and must contain information to verify prearrangement of limousine services. The records must be in English. The manifest must contain:

(a) The full name and daytime telephone number for the person who prearranged the limousine service;

(b) The time, date, and location where the passenger requested to be picked up;

(c) The destination point; and

(d) If payment was due or was prepaid.

(3) The manifest is to cover all rides that have been scheduled up to that point for that day.

(4) A limousine carrier must ensure that chauffeurs operating limousines do not:

(a) Pick up persons who have not prearranged services;

(b) Load passengers or their luggage into their vehicle without having a passenger manifest that includes the customer information for that passenger;

(c) Ask persons on the street if they want to hire the limousine or try to attract customers for immediate services;

(d) Use a third-party to provide passengers for them as a substitute for prearranging the service. This section does not preclude hotels from contracting with limousine carriers to prearrange rides for guests;

(e) Stand near doors or walkways to businesses or transportation centers in a manner so that persons must walk around them to enter or exit;

(f) Touch members of the public or touch their luggage or packages without consent; or

(g) (~~(Park and leave the limousine in a designated passenger load zone or)~~) Overstay the time limit within a passenger load zone.

**((PART 4**

**TRAINING PROVIDERS))**

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-83-300 Training course.

WAC 308-83-310 Training course approval withdrawn.

WAC 308-83-320 Training records.

**WSR 17-20-030**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 17-254—Filed September 27, 2017, 3:02 p.m., effective October 28, 2017]

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

Purpose: The proposal will reclassify loggerhead sea turtle from the state's threatened subcategory (WAC 220-200-100) to [the] state's endangered subcategory (WAC 220-610-010).

In addition, the proposal will classify the yellow-billed cuckoo under the state's endangered subcategory (WAC 220-610-010).

Citation of Rules Affected by this Order: Amending WAC 220-200-100 and 220-610-010.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.020, 77.12.047.

Adopted under notice filed as WSR 17-13-131 on June 21, 2017.

Changes Other than Editing from Proposed to Adopted Version: **WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished.**

Proposed corrections to common and scientific names include the following:

Common Name	Scientific Name
sage grouse	<i>Centrocercus urophasianus</i>
sharp-tailed grouse	<i>Phasianus columbianus</i>
gray whale	<i>Eschrichtius gibbosus</i>
least chipmunk	<i>Tamias minimus</i>
yellow-pine chipmunk	<i>Tamias amoenus</i>
Townsend's chipmunk	<i>Tamias townsendii</i>
red-tailed chipmunk	<i>Tamias ruficaudus</i>
Cascade golden-mantled ground squirrel	<i>Spermophilus saturatus</i>
golden mantled ground squirrel	<i>Spermophilus lateralis</i>
Washington ground squirrel	<i>Spermophilus washingtoni</i>

Change to the following respectively:

Common Name	Scientific Name
Greater sage grouse	<i>Centrocercus urophasianus</i>
sharp-tailed grouse	<i>Tympanuchus phasianellus</i>
gray whale	<i>Eschrichtius robustus</i>
least chipmunk	<i>Tamias minimus</i>
yellow-pine chipmunk	<i>Tamias amoenus</i>
Townsend's chipmunk	<i>Tamias townsendii</i>
red-tailed chipmunk	<i>Tamias ruficaudus</i>
cascade golden-mantled ground squirrel	<i>Callospermophilus saturatus</i>

Common Name	Scientific Name
golden-mantled ground squirrel	<i>Callospermophilus lateralis</i>
Washington ground squirrel	<i>Urocitellus washingtoni</i>

After northern flying squirrel, *Glaucomys sabrinus*, add the following:

Common Name	Scientific Name
Humboldt's flying squirrel	<i>Glaucomys oregonensis</i>

Rationale: The changes in taxonomy to sage-grouse, gray whale, golden-mantled ground squirrel, and Washington ground squirrel, have been accepted by the scientific community. Additionally, these authorities have recently split the northern flying squirrel into the northern flying squirrel and the Humboldt's flying squirrel. The scientific names for sharp-tailed grouse and the chipmunks were incorrect.

**WAC 220-610-010 Wildlife classified as endangered species.**

Proposed corrections to common and scientific names include the following:

Common Name	Scientific Name
Fisher	<i>Martes pennanti</i>
Black right whale	<i>Balaena glacialis</i>
Snowy plover	<i>Charadrius alexandrinus</i>

Change to the following respectively:

Common Name	Scientific Name
Fisher	<i>Pekania pennanti</i>
North Pacific right whale	<i>Eubalaena japonica</i>
Snowy plover	<i>Charadrius nivosus</i>

Rationale: These are changes in taxonomy by recognized scientific organizations/authorities that have been accepted by the scientific community.

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

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

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

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

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

Date Adopted: September 8, 2017.

Brad Smith, Chair  
 Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished.** Protected wildlife are designated into three subcategories: Threatened, sensitive, and other.

(1) Threatened species are any wildlife species native to the state of Washington that are likely to become endangered within the foreseeable future throughout a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as threatened include:

Common Name	Scientific Name
western gray squirrel	<i>Sciurus griseus</i>
ferruginous hawk	<i>Buteo regalis</i>
green sea turtle	<i>Chelonia mydas</i>
<del>(loggerhead sea turtle)</del>	<del><i>Caretta caretta</i></del>
greater sage grouse	<i>Centrocercus urophasianus</i>
sharp-tailed grouse	<del><i>(Phasianus columbianus)</i></del> <i>Tympanuchus phasianellus</i>
Mazama pocket gopher	<i>Thomomys mazama</i>
American white pelican	<i>Pelecanus erythrorhynchos</i>

(2) Sensitive species are any wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as sensitive include:

Common Name	Scientific Name
Gray whale	<i>Eschrichtius</i> <del><i>(gibbosus)</i></del> <i>robustus</i>
Common Loon	<i>Gavia immer</i>
Larch Mountain salamander	<i>Plethodon larselli</i>
Pygmy whitefish	<i>Prosopium coulteri</i>
Margined sculpin	<i>Cottus marginatus</i>
Olympic mudminnow	<i>Novumbra hubbsi</i>

(3) Other protected wildlife include:

Common Name	Scientific Name
cony or pika	<i>Ochotona princeps</i>
least chipmunk	<del><i>(Tamias)</i></del> <i>Tamias minimus</i>
yellow-pine chipmunk	<del><i>(Tamias)</i></del> <i>Tamias amoenus</i>
Townsend's chipmunk	<del><i>(Tamias)</i></del> <i>Tamias townsendii</i>
red-tailed chipmunk	<del><i>(Tamias)</i></del> <i>Tamias ruficaudus</i>
hoary marmot	<i>Marmota caligata</i>
Olympic marmot	<i>Marmota olympus</i>

Common Name	Scientific Name
Cascade golden-mantled ground squirrel	<del><i>(Spermophilus)</i></del> <i>Callospermophilus saturatus</i>
golden-mantled ground squirrel	<del><i>(Spermophilus)</i></del> <i>Callospermophilus lateralis</i>
Washington ground squirrel	<del><i>(Spermophilus)</i></del> <i>Urocitellus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</i>
<u>Humboldt's flying squirrel</u>	<i>Glaucomys oregonensis</i>
wolverine	<i>Gulo gulo</i>
painted turtle	<i>Chrysemys picta</i>
California mountain kingsnake	<i>Lampropeltis zonata</i>

All birds not classified as game birds, predatory birds or endangered species, or designated as threatened species or sensitive species; all bats, except when found in or immediately adjacent to a dwelling or other occupied building; mammals of the order *Cetacea*, including whales, porpoises, and mammals of the order *Pinnipedia* not otherwise classified as endangered species, or designated as threatened species or sensitive species. This section shall not apply to hair seals and sea lions which are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-610-010 Wildlife classified as endangered species.** Endangered species include:

Common Name	Scientific Name
pygmy rabbit	<i>Brachylagus idahoensis</i>
fisher	<del><i>(Martes)</i></del> <i>Pekania pennanti</i>
gray wolf	<i>Canis lupus</i>
grizzly bear	<i>Ursus arctos</i>
sea otter	<i>Enhydra lutris</i>
killer whale	<i>Orcinus orca</i>
sei whale	<i>Balaenoptera borealis</i>
fin whale	<i>Balaenoptera physalus</i>
blue whale	<i>Balaenoptera musculus</i>
humpback whale	<i>Megaptera novaeangliae</i>
<del>(black)</del> <u>North Pacific right whale</u>	<del><i>(Balaena glacialis)</i></del> <i>Eubalaena japonica</i>
sperm whale	<i>Physeter macrocephalus</i>



Common Name	Scientific Name
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</i>
woodland caribou	<i>Rangifer tarandus caribou</i>
sandhill crane	<i>Grus canadensis</i>
snowy plover	<i>Charadrius ((alexandri-<del>mus</del>)) nivosus</i>
upland sandpiper	<i>Bartramia longicauda</i>
spotted owl	<i>Strix occidentalis</i>
western pond turtle	<i>Clemmys marmorata</i>
leatherback sea turtle	<i>Dermochelys coriacea</i>
mardon skipper	<i>Polites mardon</i>
Oregon silverspot butterfly	<i>Speyeria zerene hippolyta</i>
Oregon spotted frog	<i>Rana pretiosa</i>
northern leopard frog	<i>Rana pipiens</i>
Taylor's checkerspot	<i>Euphydryas editha taylori</i>
Streaked horned lark	<i>Eremophila alpestris strigata</i>
Tufted puffin	<i>Fratercula cirrhata</i>
North American lynx	<i>Lynx canadensis</i>
marbled murrelet	<i>Brachyramphus marmoratus</i>
<u>Loggerhead sea turtle</u>	<u><i>Caretta caretta</i></u>
<u>Yellow-billed cuckoo</u>	<u><i>Coccyzus americanus</i></u>

**WSR 17-20-036  
PERMANENT RULES  
DEPARTMENT OF  
RETIREMENT SYSTEMS**

[Filed September 28, 2017, 10:42 a.m., effective October 29, 2017]

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

Purpose: Washington state patrol retirement system (WSPRS) overtime: Implementing chapter 181, Laws of 2017 (SB 5274) which amends the definition of "salary" for WSPRS, to include up to seventy hours per year of overtime related to RCW 47.46.040 or voluntary overtime, earned on or after July 1, 2017.

Citation of Rules Affected by this Order: Amending WAC 415-103-100.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 17-17-118 on August 21, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: September 27, 2017.

Tracy Guerin  
Director

AMENDATORY SECTION (Amending WSR 02-23-037, filed 11/13/02, effective 1/1/03)

**WAC 415-103-100 Are payments I receive reportable compensation?** The following table will help you determine whether certain types of payments are reportable compensation. The department determines reportable compensation based upon the nature of the payment, not the name applied. See "salary" as defined in RCW 43.43.120(~~((23))~~).

Type of Payment	Commission Date: Prior to <del>((7/1/01))</del> <u>7/1/2001</u>	Commission Date: On or after <del>((7/1/01))</del> <u>7/1/2001</u>
Overtime related to RCW 47.46.040( <del>((4))</del> ) or voluntary overtime, earned prior to <del>((7/1/01))</del> <u>7/1/2001</u>	Yes	No
Overtime related to RCW 47.46.040( <del>((4))</del> ) or voluntary overtime, earned on or after <del>((7/1/01))</del> <u>7/1/2001</u> and before <u>7/1/2017</u>	No	No
<del>((Voluntary overtime earned prior to 7/1/01</del>	Yes	No
<del>Voluntary overtime earned on or after 7/1/01</del>	No	No))
<u>Overtime up to 70 hours per year<sup>1</sup> in total related to either RCW 47.46.040 or voluntary overtime, earned on or after 7/1/2017<sup>2</sup></u>	Yes	Yes
<u>Overtime in excess of 70 hours per year<sup>1</sup> in total related to either RCW 47.46.040 or voluntary overtime, earned on or after 7/1/2017</u>	No	No

Type of Payment	Commission Date: Prior to ( <del>7/1/01</del> ) <u>7/1/2001</u>	Commission Date: On or after ( <del>7/1/01</del> ) <u>7/1/2001</u>
Fringe benefits( <del>(z)</del> ) including, but not limited to, any type of insurance, or contributions for insurance, such as medical, dental, or life insurance, for members and/or their dependents	No	No
Lump sum payments for:		
Deferred annual sick leave( <del>(+)</del> ) <sup>3</sup>	No	No
Unused accumulated annual leave - 240 hour maximum( <del>(z)</del> ) <sup>4</sup>	Yes	No
Holiday pay - 80 hour maximum	Yes	No

<sup>1</sup>"Year" means "state fiscal year," which is the twelve-month period that begins on July 1st and ends on June 30th of the next calendar year.

<sup>2</sup>The combined total of overtime included in the average final salary, related to either RCW 47.46.040 or voluntary overtime, may not exceed one hundred forty hours for WSPRS Plan 1, or three hundred fifty hours for WSPRS Plan 2.

<sup>3</sup>See also RCW 41.04.340(4).

(~~(z)~~) <sup>4</sup>See also RCW 43.43.263, 43.01.040 and 43.01.044.

**WSR 17-20-039  
PERMANENT RULES  
PUGET SOUND  
CLEAN AIR AGENCY**

[Filed September 28, 2017, 2:57 p.m., effective November 1, 2017]

Effective Date of Rule: November 1, 2017.

Purpose: **Section 3.11** - The agency's practice for many years has been to annually adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts for inflation, as authorized by RCW 70.94.431 and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. The CPI for the Seattle/Tacoma/Bremerton area increased by 2.49 percent for the 2016 calendar year, which amounts to an increase of \$459.00 in the maximum civil penalty amount.

The proposed amendment does not affect the way the agency determines actual civil penalty amounts in individual cases. This continues to be done following civil penalty worksheets previously approved by the board.

**Section 3.25** - This section currently provides that whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2016. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the proposed amendments would change the reference date to July 1, 2017.

Citation of Rules Affected by this Order: Amending Regulation I, Sections 3.11 and 3.25.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 17-17-176 on August 23, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 28, 2017.

Craig Kenworthy  
Executive Director

**AMENDATORY SECTION**

**REGULATION I, SECTION 3.11 CIVIL PENALTIES**

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed \$((~~18,388.00~~)) 18,847.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than \$((~~18,388.00~~)) 18,847.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a

Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in

violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

### AMENDATORY SECTION

#### REGULATION I, SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, (~~2016~~) 2017.

### WSR 17-20-047 PERMANENT RULES CLOVER PARK TECHNICAL COLLEGE

[Filed September 29, 2017, 7:36 a.m., effective October 30, 2017]

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

Purpose: Update of statutes with current information.

Citation of Rules Affected by this Order: New WAC 495C-108-110, 495C-108-130 and 495C-108-140; and amending WAC 495C-108-050, 495C-108-070, 495C-108-080, 495C-134-010, 495C-104-010, 495C-104-020, and 495C-133-020.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 17-11-085 on May 19, 2017.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 7, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 3, Amended 7, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 29, 2017.

Lisa R. Beach  
Director of Compliance

AMENDATORY SECTION (Amending WSR 00-12-019, filed 5/26/00, effective 6/26/00)

**WAC 495C-104-010 Time and place of board meetings.** The board of trustees shall generally hold one regular meeting on the second Wednesday of each month at the (~~F.V. Miner Resource Center~~) Rotunda, Building (~~(45)~~) 3, on the main college campus and such special meetings as may be requested by the chairman of the board or by a majority of the members of the board and announced in accordance with law.

All regular and special meetings of the board of trustees shall be held at 4500 Steilacoom Boulevard Southwest, Lakewood, WA 98499-4098, unless scheduled elsewhere, and are open to the general public, except for lawful executive sessions.

No official business may be conducted by the board of trustees except during a regular or special meeting.

AMENDATORY SECTION (Amending WSR 92-19-091, filed 9/16/92, effective 10/17/92)

**WAC 495C-104-020 Request for items to be placed on board agenda.** Anyone, other than a board member or a representative of the president's office, wishing an item placed on the agenda of a board meeting, must have a written request in the office of the board secretary no later than twelve o'clock noon fourteen business days before the next scheduled meeting of the board. The secretary will relate the request to the chair of the board as soon as feasible. The chair will determine whether the item is to be placed on the agenda. The chair or designee will notify the individual initiating the request as to whether or not the item will be placed on the agenda.

AMENDATORY SECTION (Amending WSR 92-19-091, filed 9/16/92, effective 10/17/92)

**WAC 495C-108-050 Brief adjudicative procedures.** This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are adopted by reference. Brief adjudicative procedures shall be used in all matters related to:

- (1) Residency determinations;
- (2) Challenges to contents of education records;
- (3) ~~((Student conduct proceedings;))~~ Use of college facilities;
- (4) Parking violations;
- (5) Outstanding debts owed by students or employees;
- (6) Loss of eligibility for participation in college-sponsored events;
- (7) Use of library - Fines;
- (8) Student conduct appeals involving minor disciplinary actions imposing probation or suspensions of ten instructional days or less and any conditions or terms placed on the student;
- (9) Appeals of decision regarding mandatory tuition and fee waivers.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

AMENDATORY SECTION (Amending WSR 92-19-091, filed 9/16/92, effective 10/17/92)

**WAC 495C-108-070 Procedure for closing parts of the hearings.** Adjudicative proceedings shall be open to the public, except as may be provided otherwise by law or legal requirement. Any party may apply for a protective order to close part of a hearing. The party making the request shall 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 working 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 in writing within twenty working days of receiving the request.

AMENDATORY SECTION (Amending WSR 92-19-091, filed 9/16/92, effective 10/17/92)

**WAC 495C-108-080 Recording devices.** No cameras or recording devices are allowed in those parts of proceedings that the presiding officer has determined shall be closed under WAC 495C-108-070, except for the method of official recording selected by the ~~((college))~~ presiding officer.

#### NEW SECTION

**WAC 495C-108-110 Reconsideration.** (1) The affected individual may file a petition for reconsideration of a final order. Such petition must be filed upon the office of the president within ten days of the service of a final order and must state the specific grounds upon which relief is requested.

(2) No petition for reconsideration may stay the effectiveness of an order.

(3) The petition shall be disposed of by the presiding officer who issued the final order.

#### NEW SECTION

**WAC 495C-108-130 Appearance and practice before agency.** Persons appearing before the presiding officer in brief adjudicative proceedings may be accompanied by an attorney or other person, but that individual must serve in an advisory capacity only and may not serve in a representative capacity. In formal adjudicative proceedings, no person may appear in a representative capacity before the agency other than the following:

(1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington.

(2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law.

(3) Persons otherwise qualified as possessing the requisite skill to appear and expertly represent others who have applied to the agency and have been duly authorized by the agency to appear in a representative capacity before the agency.

(4) A bona fide officer, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership or corporation.

#### NEW SECTION

**WAC 495C-108-140 Definition of issues before hearing.** In all proceedings the issues to be adjudicated shall be identified initially as precisely as possible, to ensure that the

agency may proceed promptly to conduct the hearings on relevant and material matters only.

AMENDATORY SECTION (Amending WSR 00-12-019, filed 5/26/00, effective 6/26/00)

**WAC 495C-133-020 Organization—Operation—Information.** (1) Organization. Clover Park Technical College is established in Title 28B RCW as a public institution of higher education. The college 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 college. The president establishes the structure of the administration.

(2) Operation. The administrative office is located at the following address:

4500 Steilacoom Boulevard S.W.  
Lakewood, WA 98499-4098

The office hours as prescribed in the college policy and procedure manual are 8:00 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. Educational operations are also located at the following addresses:

~~((Fort Lewis Campus  
14800 Murray Road S.W.  
Fort Lewis, WA 98439-1197~~

~~Rainier School  
2120 Ryan Road  
Buckley, WA 98321-9115~~

~~Marine Mechanics Facility  
3423 Chapel Street S.W., Building No. 7  
Lakewood, WA 98444-1539))~~

South Hill Campus  
17214 110th Avenue E.  
Puyallup, WA 98374-9509

Washington Corrections Center for Women  
9601 Bujacich Rd. N.W.  
Gig Harbor, WA 98335-0017

Clover Park Technical College  
Natural Resources Laboratory & Research Park  
4500 Block of Steilacoom Boulevard S.W.  
Lakewood, WA 98499-4098

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

4500 Steilacoom Boulevard S.W.  
Lakewood, WA 98499-4098

AMENDATORY SECTION (Amending WSR 00-11-108, filed 5/19/00, effective 6/19/00)

**WAC 495C-134-010 Rules coordinator.** The rules coordinator for Clover Park Technical College shall have an office located at the ~~((president's))~~ compliance office, with the following mailing address:

Rules Coordinator  
Clover Park Technical College  
4500 Steilacoom Boulevard S.W.  
Lakewood, WA 98499-4098

**WSR 17-20-050**  
**PERMANENT RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 16-08—Filed September 29, 2017, 10:25 a.m., effective October 30, 2017]

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

Purpose: Ecology is amending chapter 173-334 WAC, Children's safe products reporting rule. The 2016 Washington state legislature's amendment of chapter 70.240 RCW identified six flame retardants to be considered for inclusion on the list of chemicals of high concern to children (CHCC) in chapter 173-334 WAC. Ecology and the Washington department of health evaluated recent scientific data for the six flame retardants and other chemicals. The rule amendment adds twenty chemicals, removes three chemicals, and splits one chemical listing into three individual listings on the list of CHCCs. The amendment also streamlines the rule: Removes the phase-in reporting schedule, defines terms, and clarifies the reporting process.

Citation of Rules Affected by this Order: Repealing WAC 173-334-110; and amending WAC 173-334-010, 173-334-020, 173-334-040, 173-334-050, 173-334-070, 173-334-080, 173-334-090, 173-334-100, 173-334-120, and 173-334-130.

Statutory Authority for Adoption: RCW 70.240.060 and 70.240.035.

Adopted under notice filed as WSR 17-07-131 on March 22, 2017.

Changes Other than Editing from Proposed to Adopted Version: Ecology made the following changes:

- In WAC 173-334-080 [(2)](e), ecology revised the text to state "The total concentration of the CHCC contained in each product component within each product category. The total concentration may be reported in ranges, rather than the exact concentration. If there are multiple CHCC concentrations for a given component in a particular product category, the manufacturer must use the highest concentration for reporting."
- In WAC 173-334-130, ecology removed two chemicals: Chemical Abstracts Service (CAS) number 78-33-1; Tris(4-tert-butyl) phosphate (TBPP) and CAS 220352-35-2; Butylated triphenyl phosphate.
- In WAC 173-334-130, ecology added: CAS 117-82-8; Di-(2-methoxyethyl) phthalate (DMEP).

A final cost-benefit analysis is available by contacting Kara Steward, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6250, fax 360-407-6715, TTY 877-833-6341, email kara.steward@ecy.wa.gov, web site [http://www.ecy.wa.gov/programs/hwtr/laws\\_rules/CSP\\_ReportingRule/1608ov.html](http://www.ecy.wa.gov/programs/hwtr/laws_rules/CSP_ReportingRule/1608ov.html).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 10, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 1.

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

Date Adopted: September 29, 2017.

Maia D. Bellon  
Director

**AMENDATORY SECTION** (Amending WSR 11-16-008, filed 7/21/11, effective 8/21/11)

**WAC 173-334-010 Introduction.** Under the Children's Safe Product Act (CSPA), chapter 70.240 RCW, manufacturers of children's products are required to notify the department of ecology when a chemical of high concern to children (CHCC) is present in their products or, if the product contains more than one component, each product component.

The presence of a CHCC in a children's product does not necessarily mean that the product is harmful to human health or that there is any violation of existing safety standards or laws. The reported information will help fill a data gap that exists for both consumers and agencies.

The CSPA requires the department of ecology in consultation with the department of health to identify a list of chemicals for which manufacturers of children's products are required to ~~((provide notice))~~ report. The CSPA specifies both the characteristics of these chemicals and the ~~((notice))~~ reporting requirements.

**AMENDATORY SECTION** (Amending WSR 11-16-008, filed 7/21/11, effective 8/21/11)

**WAC 173-334-020 What is the purpose of this chapter?** The purpose of this chapter is to:

(1) Establish the list of chemicals for which manufacturer ~~((notice))~~ reporting is required;

(2) Establish what manufacturers of children's products must do to comply with the ~~((notice))~~ reporting requirements created by the CSPA; and

(3) Clarify the enforcement processes the department of ecology will use if manufacturers fail to ~~((provide notice))~~ report as required.

**AMENDATORY SECTION** (Amending WSR 11-16-008, filed 7/21/11, effective 8/21/11)

**WAC 173-334-040 What definitions apply to terms used in this chapter?** "Chemical Abstracts Service number" or "CAS" means the number assigned for identification of a particular chemical by the Chemical Abstracts Service, a ser-

vice of the American Chemical Society that indexes and compiles abstracts of worldwide chemical literature called *Chemical Abstracts*.

"CHCC list" means the reporting list of chemicals that the department has identified as high priority chemicals of high concern for children.

"Child" means an individual under twelve.

"Children's product" has the same meaning as defined in RCW 70.240.010.

(a) For the purposes of this rule, children's products only include products that are sold, or are to be offered for sale, to consumers in the state of Washington.

(b) In addition to the exemptions specified in RCW 70.240.010, for the purposes of this rule, "children's product" does not include over the counter drugs, prescription drugs, food, dietary supplements, packaging, medical devices, or products that are both a cosmetic and a drug regulated by the Food and Drug Administration.

(c) A product label that includes usage instructions for use of a product that apply to children does not in and of itself establish that the product is a children's product.

"Contaminant" means trace amounts of chemicals that are incidental to manufacturing. They serve no intended function in the product component. They can include, but are not limited to, unintended by-products of chemical reactions during the manufacture of the product component, trace impurities in feed-stock, incompletely reacted chemical mixtures, and degradation products.

"De minimis level" means for a chemical that is an intentionally added chemical, a concentration below the practical quantification limit; or for a chemical that is a contaminant, a concentration below 100 parts per million.

"Department of health" means the Washington state department of health.

"Intentionally added chemical" means a chemical in a product that serves an intended function in the product component.

"Internal component" means a children's product component that during reasonably foreseeable use and abuse of the product would not come into direct contact with the child's skin or mouth.

"Manufacturer" means the producer, importer, or wholesale domestic distributor of a children's product and is more specifically defined in RCW 70.240.010. For the purposes of this rule, a retailer of a children's product is not a manufacturer unless it is also the producer, manufacturer, importer, or domestic distributor of the product.

"Mouthable" means able to be brought to the mouth and kept in the mouth by a child so that it can be sucked and chewed. If the product can only be licked, it is not able to be placed in the mouth. If a product or part of a product in one dimension is smaller than five centimeters, it can be placed in the mouth.

"Practical ~~((quantification))~~ quantitation limit" or "(PQL)" means the lowest concentration that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness, and comparability during routine laboratory operating conditions. This value is based on scientifically defensible, standard analytical methods. The

value for a given chemical could be different depending on the matrix and the analytical method used.

"Product category" means the "brick" level of the GS1 Global Product Classification (GPC) standard, which identifies products that serve a common purpose, are of a similar form and material, and share the same set of category attributes.

"Product component" means a uniquely identifiable material or coating (including ink or dye) that is intended to be included as a part of a finished children's product.

**AMENDATORY SECTION** (Amending WSR 11-16-008, filed 7/21/11, effective 8/21/11)

**WAC 173-334-050 What is the purpose of the CHCC list?** The CHCC list identifies the chemicals to which the ~~((notice))~~ reporting requirements apply. A manufacturer must notify the department in accordance with WAC 173-334-080 if a chemical on the CHCC list is present in a children's product component. The current CHCC list is set forth in WAC 173-334-130.

**AMENDATORY SECTION** (Amending WSR 11-16-008, filed 7/21/11, effective 8/21/11)

**WAC 173-334-070 How will the department identify chemicals for inclusion in the CHCC list?** (1) The department will consult with the department of health during the modification of the CHCC list.

(2) A chemical that the department determines to meet all of the following criteria may be included on the CHCC list:

(a) The toxicity, persistence, or bioaccumulativity criteria specified in RCW 70.240.010(~~((6))~~) (9); and

(b) The exposure criteria specified in RCW 70.240.030 (1).

(3) The department will consider both the parent chemical and its degradation products when deciding whether a chemical meets the criteria of this section. If a parent chemical does not meet the criteria in this section but degrades into chemicals that do, the parent chemical may be included on the CHCC list.

(4) A person may submit a petition for consideration by the department to add a chemical to or remove a chemical from the CHCC list. The petition must provide the following information:

(a) Chemical Abstracts Service registry number;

(b) Chemical prime name; and

(c) Credible peer-reviewed scientific information documenting why the chemical meets or fails to meet the criteria required for inclusion on the list.

(5) The department shall review petitions in accordance with RCW 34.05.330, the Administrative Procedure Act.

**AMENDATORY SECTION** (Amending WSR 11-16-008, filed 7/21/11, effective 8/21/11)

**WAC 173-334-080 What must the manufacturer include in its ~~((notice))~~ report to the department?** (1) The ~~((notice))~~ report required by RCW 70.240.040 must be filed

annually with the department in accordance with the following:

(a) Each chemical on the CHCC list that is an intentionally added chemical present in a product component must be reported at any concentration above the PQL.

(b) Each chemical on the CHCC list that is a contaminant present in a product component must be reported at any concentration above 100 ppm. A manufacturer need not file a ~~((notice))~~ report with respect to any CHCC that occurs in a product component only as a contaminant if the manufacturer had in place a manufacturing control program and exercised due diligence to minimize the presence of the contaminant in the component.

(2) The ~~((notice))~~ report must include all of the following information:

(a) The name of the CHCC and its Chemical Abstracts Service registry number.

(b) The product category or categories in which it occurs.

(c) The product component or components within each product category in which it occurs.

(d) A brief description of the function, if any, of the CHCC in each product component within each product category.

(e) The total ~~((amount))~~ concentration of the CHCC (~~((by weight))~~) contained in each product component within each product category. The ~~((amount))~~ total concentration may be reported in ranges, rather than the exact ~~((amount))~~ concentration. If there are multiple CHCC ~~((values))~~ concentrations for a given component in a particular product category, the manufacturer must use the ~~((largest value))~~ highest concentration for reporting.

For the purpose of this rule, the reporting ranges are as follows:

(i) Equal to or more than the PQL but less than 100 ppm (0.01%);

(ii) Equal to or more than 100 ppm (0.01%) but less than 500 ppm (0.05%);

(iii) Equal to or more than 500 ppm (0.05%) but less than 1,000 ppm (0.10%);

(iv) Equal to or more than 1,000 ppm (0.10%) but less than 5,000 ppm (0.5%); or

(v) Equal to or more than 5,000 ppm (0.5%) but less than 10,000 ppm (1.0%); or

(vi) Equal to or more than 10,000 ppm (1.0%).

(f) The name and address of the reporting manufacturer or trade organization and the name, address and phone number of the contact person for the reporting manufacturer or trade organization. When a trade organization is the reporting party, the report must include a list of the manufacturers on whose behalf the trade organization is reporting, and all of the information that would otherwise be required of the individual manufacturers.

(g) Any other information the manufacturer deems relevant to the appropriate use of the product.

(3) Reporting parties are not required to include either:

(a) Any specific formula information; or

(b) The specific name and address of the facility which is responsible for the introduction of a CHCC into a children's product or product component.

(4) If a reporting party believes the information being provided is confidential business information (CBI), in whole or in part, it may request that the department treat the information as confidential business information as provided in RCW 43.21A.160. The department will use its established procedures to determine how it will handle the information.

(5) The department will ~~((make available the current version of the web form))~~ maintain an online reporting database to be used for reporting on CHCCs. This same ((form)) database may be used by the reporting party to flag the submitted information it thinks should be treated as CBI. ((The web form must be used when providing notification.))

(6) Any information that is not determined to be confidential business information will be available to the public. As resources allow, the department will post this information on the department's web site.

AMENDATORY SECTION (Amending WSR 11-16-008, filed 7/21/11, effective 8/21/11)

**WAC 173-334-090 Who is required to ((provide notice)) report to the department?** (1) The manufacturer of a children's product, or a trade organization on behalf of its member manufacturers, must ~~((provide notice))~~ report to the department that the manufacturer's children's product component contains a chemical on the CHCC list.

(2) The definition of manufacturer in RCW 70.240.010 includes any person or entity that produces a children's product, any importer that assumes ownership of a children's product, and any domestic distributor of a children's product. However, it is only necessary for one person or entity to ~~((provide notice))~~ report with respect to a particular children's product.

The following hierarchy will determine which person or entity the department will hold primarily responsible for ensuring that the department receives a complete, accurate, and timely ~~((notice))~~ report for the children's product:

(a) The person or entity that had the children's product manufactured, unless it has no presence in the United States.

(b) The person or entity that marketed the children's product under its name or trademark, unless it has no presence in the United States.

(c) The first person or entity, whether an importer or a distributor, that owned the children's product in the United States.

AMENDATORY SECTION (Amending WSR 11-16-008, filed 7/21/11, effective 8/21/11)

**WAC 173-334-100 ~~((What time period is covered by the notice?))~~ When must manufacturers report and for what time period?** ~~((Manufacturers must provide notice as required by WAC 173-334-110 on an annual basis for children's products that have been manufactured for sale in Washington during the twelve month period that precedes the applicable due date for first notices set out in WAC 173-334-110(2).))~~ (1) On January 31, 2019, and annually thereafter, a manufacturer of a children's product sold or offered for sale in Washington that contains a CHCC listed in WAC 173-334-130 in an amount above a de minimis level must submit

the information detailed in WAC 173-334-080 to the department.

(a) The report submitted on January 31, 2019, applies to children's products sold or offered for sale in Washington between September 1, 2017, and December 31, 2018.

(b) A manufacturer of a children's product containing a CHCC above the de minimis level may request an extension for submission of the report required on January 31, 2019, if this would be the first report required by the manufacturer and the manufacturer will be reporting more than one product or chemical.

(c) Reports submitted on January 31, 2020, and annually thereafter, apply to children's products sold or offered for sale during the prior calendar year.

(2) If the reporting party determines that there has been no change in the information required to be reported since the prior annual ((notice)) report, the party ((may submit a written statement indicating that the previous reported data is still valid, in lieu of a new duplicate complete notice)) must copy the prior year's report and resubmit the same data into the online reporting database.

(3) If a CHCC is subsequently removed from the children's product component for which ((notice)) a report was given, the manufacturer may ((provide notice)) report to the department. Such updated ((notices)) reports will be documented in the department's records.

(4) Annual reporting for internal components will not be required, except by amendment of this rule.

AMENDATORY SECTION (Amending WSR 11-16-008, filed 7/21/11, effective 8/21/11)

**WAC 173-334-120 How will this chapter be enforced?** (1) The department may collect children's products subject to possible reporting, and analyze their components for the presence of CHCCs. If the department finds that a children's product component contains a chemical on the CHCC list that the manufacturer either has not reported, or has reported at a lesser amount, the department will notify the manufacturer in writing. The department will then afford the manufacturer forty-five days from receipt of the department's notification to respond to the findings before the department takes further enforcement action.

In determining whether a violation of the CSPA or these rules has occurred, the department will consider the manufacturer's timely explanation as to why it did not report the presence or accurate amount of the CHCC in the product component. If the manufacturer asserts that the CHCC is present in the component only as a contaminant, and that the manufacturer did not report the CHCC's presence based on WAC 173-334-080 (1)(b), then the manufacturer must present evidence that it conducted a reasonable manufacturing control program for the CHCC contaminant and exercised due diligence as described in subsections (2) and (3) of this section.

If the manufacturer contests the department's findings regarding the presence or amount of the CHCC in the product component, the manufacturer may further analyze the component in question for presence of CHCC and provide the department with a copy of its own laboratory findings for the component.



(2) Manufacturing control program. A reasonable manufacturing control program must include industry best manufacturing practices for the minimization of the CHCC in the children's product. Those practices may include, but are not limited to, methods and procedures for meeting relevant federal regulations, International Standards Organization (ISO) requirements, American Society for Testing and Materials (ASTM) standards, and other widely established certification or standards programs.

(3) Due diligence. Actions demonstrating due diligence in ensuring the effectiveness of a manufacturing control program may include the use and enforcement of contract specifications, procedures to ensure the quality/purity of feedstock (whether raw or recycled), the use and enforcement of contract specifications for manufacturing process parameters (e.g., drying and curing times when relevant to the presence of high priority chemicals in the finished children's product components), periodic testing for the presence and amount of CHCCs, auditing of contractor or supplier manufacturing processes, and other practices reasonably designed to ensure the manufacturer's knowledge of the presence, use, and amount of CHCCs in its children's product components.

(4) If the department determines based on the process described in subsection (1) of this section, or on other grounds, that a manufacturer has violated a requirement of the CSPA or these rules, it may require the manufacturer to pay a civil penalty. A manufacturer of children's products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070.

(5) A single violation consists of a manufacturer failing to provide the required ~~(notice)~~ report for the presence and accurate amount of each CHCC, in each applicable product category, in each applicable product component.

**AMENDATORY SECTION** (Amending WSR 13-21-123, filed 10/22/13, effective 11/22/13)

**WAC 173-334-130 The reporting list of chemicals of high concern to children (CHCC list).** (1) The current list of CHCCs identifies the chemicals that must be reported to the department in accordance with WAC 173-334-080 if a chemical on the CHCC list is present in a children's product component.

(2) Changes to the list of CHCCs occurs only by amendment of this rule as required by WAC 173-334-060. The year a CHCC was added to the list by rule amendment is provided in the third column. Chemicals removed by rule amendment are identified at the end of this list.

CAS	Chemical	Year Added
50-00-0	Formaldehyde	2011
62-53-3	Aniline	2011
62-75-9	N-Nitrosodimethylamine	2011

CAS	Chemical	Year Added
71-43-2	Benzene	2011
75-01-4	Vinyl chloride	2011
75-07-0	Acetaldehyde	2011
75-09-2	Methylene chloride	2011
75-15-0	Carbon disulfide	2011
78-93-3	Methyl ethyl ketone	2011
79-34-5	1,1,2,2-Tetrachloroethane	2011
79-94-7	Tetrabromobisphenol A (TBBPA)	2011
80-05-7	Bisphenol A (BPA)	2011
80-09-1	Bisphenol S (BPS)	2017
84-61-7	Dicyclohexyl phthalate (DCHP)	2017
84-66-2	Diethyl phthalate (DEP)	2011
84-69-5	Diisobutyl phthalate (DIBP)	2017
84-74-2	<del>((Di-butyl))</del> Di-n-butyl phthalate (DBP)	2011
84-75-3	<del>((Di-n-Hexyl))</del> Di-n-hexyl phthalate (DnHP)	2011
<del>((85-44-9</del> Phthalic anhydride))		
85-68-7	Butyl benzyl phthalate (BBP)	2011
86-30-6	N-Nitrosodiphenylamine	2011
87-68-3	Hexachlorobutadiene	2011
94-13-3	Propyl paraben	2011
94-26-8	Butyl paraben	2011
95-53-4	2-Aminotoluene	2011
95-80-7	2,4-Diaminotoluene	2011
99-76-3	Methyl paraben	2011
99-96-7	<del>((p-Hydroxybenzoic))</del> 4-Hydroxybenzoic acid	2011
100-41-4	Ethylbenzene	2011
100-42-5	Styrene	2011
104-40-5	4-Nonylphenol( <del>(; 4-NP and its isomer mixtures including CAS 84852-15-3 and CAS 25154-52-3))</del> )	2011
106-47-8	<del>((para-Chloroaniline))</del> 4-Chloroaniline	2011
107-13-1	Acrylonitrile	2011
107-21-1	Ethylene glycol	2011
108-88-3	Toluene	2011
108-95-2	Phenol	2011
109-86-4	2-Methoxyethanol	2011

CAS	Chemical	<u>Year Added</u>
110-80-5	Ethylene glycol monoethyl (( <del>ester</del> ) ether)	<u>2011</u>
<u>115-86-6</u>	<u>Triphenyl phosphate (TPP)</u>	<u>2017</u>
115-96-8	Tris(2-chloroethyl) phosphate ( <u>TCEP</u> )	<u>2011</u>
117-81-7	(( <del>Di-2-ethylhexyl</del> ) <u>Di-(2-ethylhexyl) phthalate (DEHP)</u> )	<u>2011</u>
<u>117-82-8</u>	<u>Di-(2-methoxyethyl) phthalate (DMEP)</u>	<u>2017</u>
117-84-0	Di-n-octyl phthalate (DnOP)	<u>2011</u>
118-74-1	Hexachlorobenzene	<u>2011</u>
119-93-7	3,3'-Dimethylbenzidine and Dyes Metabolized to 3,3'-Dimethylbenzidine	<u>2011</u>
120-47-8	Ethyl paraben	<u>2011</u>
123-91-1	1,4-Dioxane	<u>2011</u>
<u>126-72-7</u>	<u>Tris (2,3-dibromopropyl) phosphate (TDBPP)</u>	<u>2017</u>
<u>126-73-8</u>	<u>Tri-n-butyl phosphate (TNBP)</u>	<u>2017</u>
127-18-4	(( <del>Perchloroethylene</del> ) <u>Tetrachloroethene</u> )	<u>2011</u>
<u>131-18-0</u>	<u>Dipentyl phthalate (DPP)</u>	<u>2017</u>
131-55-5	Benzophenone-2 (Bp-2)(( <del>-2,2',4,4'-Tetrahydroxybenzophenone</del> ))	<u>2011</u>
140-66-9	(( <del>4 tert-Octylphenol; 1,1,3,3-Tetramethyl-4-butylphenol</del> ) <u>4-Octylphenol</u> )	<u>2011</u>
140-67-0	Estragole	<u>2011</u>
149-57-5	2-Ethylhexanoic acid	<u>2011</u>
(( <del>556-67-2</del> )	<u>Octamethylcyclotetrasiloxane</u> )	
<u>335-67-1</u>	<u>Perfluorooctanoic acid (PFOA) and related substances</u>	<u>2017</u>
608-93-5	(( <del>Benzene, pentachloro</del> ) <u>Pentachlorobenzene</u> )	<u>2011</u>
<u>620-92-8</u>	<u>Bisphenol F (BPF)</u>	<u>2017</u>
842-07-9	C.I. solvent yellow 14	<u>2011</u>
872-50-4	N-Methylpyrrolidone	<u>2011</u>
1163-19-5	(( <del>2,2',3,3',4,4',5,5',6,6'</del> ) <u>Decabromodiphenyl ether(⊖) (BDE-209)</u> )	<u>2011</u>

CAS	Chemical	<u>Year Added</u>
<u>1241-94-7</u>	<u>Ethylhexyl diphenyl phosphate (EHDPP)</u>	<u>2017</u>
<u>1330-78-5</u>	<u>Tricresyl phosphate (TCP)</u>	<u>2017</u>
1763-23-1	(( <del>Perfluorooctanyl sulfonic</del> ) <u>Perfluorooctane sulfonic acid ((and its salts;)) (PFOS) and its salts</u> )	<u>2011</u>
1806-26-4	(( <del>Phenol, 4-octyl-</del> ) <u>4-Octylphenol</u> )	<u>2011</u>
5466-77-3	2-Ethyl-hexyl-4-methoxycinnamate	<u>2011</u>
7439-97-6	Mercury & mercury compounds including methyl mercury (22967-92-6)	<u>2011</u>
(( <del>7439-98-7</del> )	<u>Molybdenum &amp; molybdenum compounds</u> )	
7440-36-0	Antimony & Antimony compounds	<u>2011</u>
7440-38-2	Arsenic & Arsenic compounds including arsenic trioxide (1327-53-3) & dimethyl arsenic acid (75-60-5)	<u>2011</u>
7440-43-9	Cadmium & cadmium compounds	<u>2011</u>
7440-48-4	Cobalt & cobalt compounds	<u>2011</u>
<u>13674-84-5</u>	<u>Tris (1-chloro-2-propyl) phosphate (TCPP)</u>	<u>2017</u>
(( <del>⊖</del> )13674-87-8	<u>Tris(1,3-dichloro-2-propyl)phosphate (TDCPP)</u>	<u>2013</u>
25013-16-5	Butylated hydroxyanisole(( <del>⊖</del> )) (BHA)	<u>2011</u>
<u>25154-52-3</u>	<u>Nonyl phenol</u>	<u>2011</u>
25637-99-4	Hexabromocyclododecane ( <u>HBCD</u> )	<u>2011</u>
<u>26040-51-7</u>	<u>Bis (2-ethylhexyl) tetrabromophthalate (TBPH)</u>	<u>2017</u>
26761-40-0	Diisodecyl phthalate (DIDP)	<u>2011</u>
28553-12-0	Diisononyl phthalate ( <u>unbranched</u> ) (DINP)	<u>2011</u>
<u>38051-10-4</u>	<u>Bis(chloromethyl)propane-1,3-diyl tetrakis-(2-chloroethyl) bis(phosphate)(V6)</u>	<u>2017</u>
<u>68937-41-7</u>	<u>Isopropylated triphenyl phosphate (IPTPP)</u>	<u>2017</u>
<u>84852-15-3</u>	<u>4-Nonyl phenol branched</u>	<u>2011</u>

CAS	Chemical	Year Added
<u>84852-53-9</u>	<u>Decabromodiphenyl ethane (DBDPE)</u>	<u>2017</u>
<u>85535-84-8</u>	<u>Short-chain chlorinated paraffins (SCCP)</u>	<u>2017</u>
<u>108171-26-2</u>	<u>Chlorinated paraffins</u>	<u>2017</u>
<u>183658-27-7</u>	<u>2-ethylhexyl-2,3,4,5-tetra-bromobenzoate (TBB)</u>	<u>2017</u>

List of CHCCs removed by Rule Amendment		
CAS	Chemical	Year Removed
<u>71-36-3</u>	<u>1-Butanol</u>	<u>2013</u>
<u>85-44-9</u>	<u>Phthalic anhydride</u>	<u>2017</u>
<u>556-67-2</u>	<u>Octamethylcyclotetrasiloxane (D4)</u>	<u>2017</u>
<u>7439-98-7</u>	<u>Molybdenum &amp; molybdenum compounds</u>	<u>2017</u>

(\*The presence of Tris(1,3-dichloro-2-propyl)phosphate must be reported in all notices required to be filed after August 31, 2014, according to the phase in schedule in WAC 173-334-110(2).\*)

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-334-110 When must manufacturers begin to provide notice?

**WSR 17-20-052**  
**PERMANENT RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed September 29, 2017, 11:31 a.m., effective October 31, 2017]

Effective Date of Rule: October 31, 2017.

Purpose: To align Title 357 WAC with the changes funded in the 2017-2019 operating budget which was effective on July 1, 2017. The operating budget that was passed by the senate and the house, and signed by the governor, provides funding for increased vacation leave accrual rates for general government state employees. WAC 357-31-165 is amended to reflect the increased vacation leave accrual rates. WAC 357-31-166 is created for higher education employers so they may establish accrual rates that exceed rates prior to July 1, 2017.

Citation of Rules Affected by this Order: New WAC 357-31-166; and amending WAC 357-31-165.

Statutory Authority for Adoption: Chapter 43.01 RCW.

Adopted under notice filed as WSR 17-15-109 on July 18, 2017.

Changes Other than Editing from Proposed to Adopted Version: "General government" was added to the title of WAC 357-31-165 to emphasize the difference between general government and higher education. WAC 357-31-165 pertains to general government employees and WAC 357-31-166 pertains to higher education employees.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 1, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: September 28, 2017.

Roselyn Marcus  
Assistant Director of  
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 09-03-012, filed 1/9/09, effective 2/13/09)

**WAC 357-31-165 At what rate do general government employees accrue vacation leave?** (1) Full-time general government employees accrue vacation leave at the following rates:

(a) During the first and second years of current continuous state employment - (~~Twelve days (eight)~~) Nine hours, twenty minutes per month(~~());~~);

(b) During the (~~second~~) third year of current continuous state employment - (~~Thirteen days (eight)~~) Ten hours(~~(; forty minutes)~~) per month(~~());~~);

(c) During the (~~third and~~) fourth(~~(s)~~) of current continuous state employment - (~~Fourteen days (nine)~~) Ten hours, (~~(twenty)~~) forty minutes per month(~~());~~);

(d) During the fifth(~~;~~) and sixth(~~(, and seventh)~~) years of total state employment - (~~Fifteen days (ten)~~) Eleven hours, twenty minutes per month(~~());~~);

(e) During the seventh, eighth(~~;~~) and ninth(~~(, and tenth)~~) years of total state employment - (~~Sixteen days (ten)~~) Twelve hours(~~(, forty minutes)~~) per month(~~());~~);

(f) During the tenth, eleventh, twelfth, thirteenth and fourteenth years of total state employment - (~~Seventeen days (eleven)~~) Thirteen hours, twenty minutes per month(~~(+);~~);

(g) During the (~~twelfth~~) fifteenth, sixteenth, seventeenth, eighteenth and nineteenth years of total state employment - (~~Eighteen days (twelve)~~) Fourteen hours, forty minutes per month(~~(+);~~);

(h) During the (~~thirteenth~~) twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth years of total

state employment - ~~((Nineteen days (twelve)) Sixteen hours ((- forty minutes)) per month((-); and~~

~~(i) During the ((fourteenth year of total state employment - Twenty days (thirteen hours, twenty minutes per month).~~

~~(j) During the fifteenth year of total state employment - Twenty-one days (fourteen hours per month).~~

~~(k) During the sixteenth)) twenty-fifth and succeeding years of total state employment - ((Twenty-two days (fourteen)) Sixteen hours, forty minutes per month((;)).~~

~~(2) ((Higher education employers may establish accrual rates that exceed the rates listed in subsection (1) of this section. This does not apply to individual positions.~~

~~(3))~~ As provided in WAC 357-58-175, an employer may authorize a lump-sum accrual of vacation leave or accelerate the vacation leave accrual rate to support the recruitment and/or retention of a candidate or incumbent for a WMS position. Vacation leave accrual rates may only be accelerated using the rates established in subsection (1) of this section and must not exceed the maximum listed in subsection (1)(k) of this section.

~~((4))~~ (3) The following applies for purposes of computing the rate of vacation leave accrual:

(a) Employment in the legislative and/or the judicial branch except for time spent as an elected official or in a judicial appointment is credited.

(b) Employment exempt by the provisions of WAC 357-04-040, 357-04-045, 357-04-050, 357-04-055 is not credited.

~~(c) ((Each contract year, or equivalent, of full-time faculty and/or administrative exempt employment with a higher education employer is credited as one year of qualifying service.~~

~~(d))~~ Exempt employment with a general government employer is credited, other than that specified in WAC 357-04-055 which is excluded.

#### NEW SECTION

**WAC 357-31-166 At what rate do higher education employees accrue vacation leave?** (1) Full-time higher education employees accrue vacation leave at the following rates:

(a) During the first year of continuous state employment - Twelve days (eight hours per month);

(b) During the second year of continuous state employment - Thirteen days (eight hours, forty minutes per month);

(c) During the third and fourth years of continuous state employment - Fourteen days (nine hours, twenty minutes per month);

(d) During the fifth, sixth, and seventh years of total state employment - Fifteen days (ten hours per month);

(e) During the eighth, ninth, and tenth years of total state employment - Sixteen days (ten hours, forty minutes per month);

(f) During the eleventh year of total state employment - Seventeen days (eleven hours, twenty minutes per month);

(g) During the twelfth year of total state employment - Eighteen days (twelve hours per month);

(h) During the thirteenth year of total state employment - Nineteen days (twelve hours, forty minutes per month);

(i) During the fourteenth year of total state employment - Twenty days (thirteen hours, twenty minutes per month);

(j) During the fifteenth year of total state employment - Twenty-one days (fourteen hours per month);

(k) During the sixteenth and succeeding years of total state employment - Twenty-two days (fourteen hours, forty minutes per month).

(2) Higher education employers may establish accrual rates that exceed the rates listed in subsection (1) of this section. This does not apply to individual positions.

(3) The following applies for purposes of computing the rate of vacation leave accrual: Each contract year, or equivalent, of full-time faculty and/or administrative exempt employment with a higher education employer is credited as one year of qualifying service.

#### **WSR 17-20-063**

#### **PERMANENT RULES**

#### **DEPARTMENT OF HEALTH**

[Filed October 2, 2017, 9:02 a.m., effective February 1, 2018]

Effective Date of Rule: February 1, 2018.

Purpose: WAC 246-812-990 Denturist fees and renewal cycle, the amended rule reduces application and renewal fees to bring denturist licensing fee revenues into closer alignment with the actual costs of regulating the profession, while allowing reserves, used to cover unanticipated events such as increased disciplinary costs, to decrease to a more desirable level. The license verification fee is also adjusted to provide consistency throughout the regulated health care professions. The department anticipates that the fee reductions could result in increased credential growth in this profession.

Citation of Rules Affected by this Order: Amending WAC 246-812-990.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Adopted under notice filed as WSR 17-15-126 on July 19, 2017.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: September 29, 2017.

John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 15-07-004, filed 3/6/15, effective 4/6/15)

**WAC 246-812-990 Denturist fees and renewal cycle.**

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

<b>Title of Fee</b>	<b>Fee <u>Amount</u></b>
<b>Original application</b>	
Application	\$ <del>(1,500.00)</del> <u>350.00</u>
Examination	1,500.00
Reexamination, written	500.00
Reexamination, practical	500.00
<b>Active license renewal</b>	
Renewal	<del>(1,855.00)</del> <u>1,700.00</u>
Late renewal penalty	300.00
Expired license reissuance	300.00
<b>Inactive license renewal</b>	
Renewal	750.00
Expired license reissuance	300.00
<b>Retired active license renewal</b>	
Renewal	<del>(930.00)</del> <u>850.00</u>
Late renewal penalty	150.00
<b>Duplicate license</b>	
	<del>(15.00)</del> <u>10.00</u>
<del>(Certification)</del> <b>Verification of license</b>	25.00
<b>Multiple location licenses</b>	50.00

particularly since cell phone technology has appeared and evolved. Therefore, this rule making is a very important rule-making effort. See below for adopted changes:

**AMENDED SECTIONS:**

**WAC 296-32-200 Scope and application.**

- Added clarifying language in subsection (1).
- Added subsection (2) relating to the minimum requirements set forth in this chapter for employers to protect employees from the hazards associated with working in the telecommunications industry.
- Added subsection (3) which explains how this chapter is laid out. The three primary parts of this chapter are:
  - Part A: General requirements - This part is intended to convey the areas of responsibility to employers when working on telecommunications facilities or locations of any type.
  - Part B: Requirements that apply to wireline.
  - Part C: Requirements that apply to wireless.
- Subsection (4) is existing WAC.
- Added clarifying language to subsection (5).
- Added clarifying language to subsection (6).
- Added subsection (7) relating to additional requirements located in national consensus standards.
- Added clarifying language to subsection (8).
- Added subsection (9) relating to enforcement.

**WAC 296-32-210 Definitions.**

- Added definitions for acceptable conditions for access, accessible radiation, adverse weather, anchorage, anti-two block, articulating boom lift/crane, assisted rescue, authorized climber, automatic descent control device, boatswain chair, brakes, cage, capstans, carabiner, carrier, climber attachment anchorage, climbing facilities, communication tower, competent climber, competent rescuer, competent rigger, construction work, contract employer, crew, crew chief/supervisor/foreman, crown block (top block or load block), deceleration distance, direct communications, elevated (high angle) rescue, emergency washing facilities, engineer of record (EOR), engineered hoist system, exit, exit route, exposed live parts, exposed wiring methods, fall arrest, fall arrest system, fall protection equipment, fall protection work plan, fall restraint, fiber-optic cable - communication, fiber-optic cable - supply, field work, first aid, flemish eyes (molly hogan), floor hole, floor opening, foot block, full body harness, gin pole, gross load, grounded, ground-fault circuit-interrupter, guardrails, handrail, hazard, high wind, hoist mechanism or hoist, hoisting, horizontal lifeline, host employer, individual-rung/step ladder, job hazard assessment, ladder, ladder safety device, landing, laser safety officer, length of climb, line clearance tree trimming, lineman's body belt, listed, load chart, load line, locking snap hook, lockout, lockout device, manual descent control device with automatic lockoff, maximum intended personnel load/gross load, maximum permissible exposure (MPE), may, mobile crew, multi-use site for towers and antennas, must, nearby facility, NEMA, nonionizing radiation, normally unattended work location, oil sample analysis, one-hundred percent fall protection, operator (equipment), permissible expo-

**WSR 17-20-069**

**PERMANENT RULES**

**DEPARTMENT OF**

**LABOR AND INDUSTRIES**

[Filed October 2, 2017, 3:22 p.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Purpose: This rule making is a result of the department receiving a petition formally requesting the department to update and modify the current chapter 296-32 WAC, Safety standards for telecommunications. This chapter was originally created in 1975. Although there have been partial rule changes over the years (1976 through 2002), a full review of this chapter, in its entirety, has not taken place. Since inception of chapter 296-32 WAC over forty years ago, wireless technology in the area of telecommunications has rapidly advanced. Our telecommunication rules have not kept pace with that advancement.

There has been a significant increase in injuries including fatalities since the rule was adopted over forty years ago,

sure limits (PELs), personal eyewash units, platform, portable ladder, positioning system, positive locking system, potable water, powered lowering, prime mover, proficient, proof test, pulley, qualified climber, qualified engineer, radio frequency radiation (RFR), rated capacity, record, registered professional engineer (RPE), remote site/worksites, rescue, rescue plan, rescue procedure, rescue system, rescue system - one person, rescue system - two persons, retraining, rigging, rigging plan, rise, riser, rung, safety climb system, safety sleeve, safety watch system, self-retracting lanyard (SRL), shall, should, side plates, side-step ladder, similar structures, single ladder, site/worksites, slings, special-purpose ladder, special tools and equipment, specular reflection, stair railing, stairs or stairway, standard safeguard, static brakes, step, step bolt, structure owner, sub-contractor, tag line and/or trolley line, tagout, tagout device, tear-down inspection, through ladder, tie-off anchorage points, time weighted average (TWA), toeboard, tower and tower site, tower construction, tower inspection, tower maintenance work, training program, tread, tread run, tread width, trial lift, two blocking, UL (Underwriters' Laboratories), vertical lifeline, voltage - nominal, watertight, weatherproof, well, winch/hoist, wire rope (cable), and working length.

- Modified the definitions for aerial lifts, aerial splicing platform, aerial tent, alive or live (energized), barricade, barriers, bond, cable, cable sheath, circuit, clearance, climbing space, communication lines, communication plant, competent person, conductor, crewleader or person-in-charge, effectively grounded, emergency, energized, equipment, ground, grounding, ground tent, grounded conductor, grounded systems, grounding electrode conductor (grounding conductor), guard or guarded, insulated, insulation (as applied to cable), joint use, ladder platform, ladder seat, manhole, manhole platform, manlift equipment, microwave transmission, nominal voltage, pole balcony or seat, pole platform, protection from hazardous voltage, protective devices, public highway, qualified employee (person), qualified line-clearance tree trimmer, qualified line-clearance tree trimmer trainee, sheath, system operator/owner, telecommunications center (facility), telecommunications (digger) derricks, telecommunication line truck, telecommunication service, unvented vault, vault, vented vault, voltage communications, voltage electric supply, voltage of an effectively grounded circuit, and voltage of a circuit not effectively grounded.

#### NEW SECTIONS:

##### **WAC 296-32-195 Foreword.**

- Added this section explaining the purpose of this chapter.

##### **WAC 296-32-22505 Incorporation of standards of national organizations.**

- Added this section using language from chapters 296-155 and 296-800 WAC.

##### **WAC 296-32-22510 Safe place standard.**

- Moved requirements from WAC 296-32-215 to this section.

##### **WAC 296-32-22511 Host employer/contractor responsibilities.**

- Added this section using language from chapter 296-45 WAC. Also, added language referencing the applicable national consensus standards.

##### **WAC 296-32-22512 Accident prevention program and safety meetings.**

- Added this section using language from chapters 296-45, 296-155 and 296-800 WAC.
- Moved requirement relating to hazard communication from WAC 296-32-230.

##### **WAC 296-32-22515 First aid.**

- Added this section using language from chapters 296-45, 296-54, 296-800 WAC and WAC 296-32-230.

##### **WAC 296-32-22520 Remote communication sites.**

- Added this section to address work being done at remote communication sites.

##### **WAC 296-32-22525 Training.**

- Added this section using language from chapters 296-45, 296-155, 296-863 WAC and WAC 296-32-230.
- Added a requirement relating to tasks being performed less often than once per year will necessitate retraining.

##### **WAC 296-32-22530 Employee protection in public work areas.**

- Moved requirements from WAC 296-32-240 to this section.

##### **WAC 296-32-22535 Facilities requirements.**

- Moved requirements from WAC 296-32-220 to this section.
- Added "face shields" to subsection (5), this came from WAC 296-800-16050.

##### **WAC 296-32-22540 Tools and personal protective equipment—General.**

- Moved requirements from WAC 296-32-250 and 296-32-330 to this section.
- Added personal protective equipment - hazard assessment to this section using language from chapters 296-45 and 296-800 WAC.
- Added language relating to the use of any machinery, tool, material, or equipment not in compliance is prohibited using language from chapter 296-155 WAC.
- Added requirements relating to head and foot protection, using language from chapter 296-155 WAC.
- Additional language relating to vehicle-mounted utility generators was added, using language from chapter 296-155 WAC.
- Added fire extinguisher inspection requirements, using language from chapter 296-800 WAC.

##### **WAC 296-32-22545 Capstan and cathead hoists.**

- Added this section relating to capstan and cathead hoists.

**WAC 296-32-22550 Rubber insulating equipment.**

- Moved requirements from WAC 296-32-260 to this section.
- Added an exception relating to protector gloves, using language from chapter 296-45 WAC.
- Added a requirement relating to rubber gloves when not in use shall be carried in an approved bag, using language from chapter 296-45 WAC.

**WAC 296-32-22555 General fall protection.**

- Added requirements relating to fall protection, using language from chapter 296-155 WAC.
- Added language relating to working in the hour's darkness.

**WAC 296-32-22560 Ladders.**

- Moved requirements from WAC 296-32-280 to this section.
- Added a requirement relating to aluminum or conductive ladders, using language from chapter 296-876 WAC.
- Added a requirement relating to portable ladders being equipped with locking levelers.

**WAC 296-32-22565 Vehicle-mounted material handling devices and other mechanical equipment.**

- Moved requirements from WAC 296-32-290 to this section.
- Added language relating to the operator's instructional manual being kept on the vehicle, using language from chapter 296-45 WAC.

**WAC 296-32-22570 Communication, roof tops, water towers and other elevated locations.**

- Added this section to refer employers to the fall protection requirements located in WAC 296-32-22555.

**WAC 296-32-22572 Microwave transmission/radio frequency radiation (RFR) and laser communication—General requirements.**

- Added this section relating to potential RFR hazards and laser hazards.

**WAC 296-32-22574 Hazardous areas.**

- Added this section relating to protection from radiation exposure, using language from chapter 296-62 WAC.
- Added a table relating to the limits for maximum permissible exposures.

**WAC 296-32-22576 Optical communications systems (laser).**

- Added language relating to lasers, using language from ANSI Z136.

**WAC 296-32-22578 Control of hazardous energy.**

- Added language relating to the control of hazardous energy, using language from chapter 296-803 WAC.

**WAC 296-32-23505 Pole climbing equipment.**

- Moved requirements from WAC 296-32-270 to this section.
- Changed "safety belts" to [""]lineman's belts" to be consistent with current industry practice, using language from chapter 296-45 WAC.

- Added language relating to one hundred percent fall protection, using language consistent with chapter 296-45 WAC.
- Added language relating to snaphooks, using language from chapters 296-45 and 296-155 WAC.
- Wire rope requirements came from manufacturer's specifications.
- Pulling equipment requirements came from manufacturer's specifications.

**WAC 296-32-23510 Materials handling and storage.**

- Moved requirements from WAC 296-32-300 to this section.

**WAC 296-32-23512 Cable fault locating and testing.**

- Moved requirements from WAC 296-32-310 to this section.

**WAC 296-32-23514 Grounding for employee protection—Pole lines.**

- Moved requirements from WAC 296-32-320 to this section.

**WAC 296-32-23516 Overhead lines.**

- Moved requirements from WAC 296-32-330 to this section.
- Added language relating to handling suspension strand, using language from chapter 296-45 WAC.

**WAC 296-32-23518 Wood or other types of poles.**

- Added language relating to testing of wood poles, using language from chapter 296-45 WAC.
- Added language relating to when a pole is not safe to perform the work without taking additional precautions.
- Added language relating to handling poles near energized power conductors, using language from chapter 296-45 WAC.
- Updated the minimum approach distances in Table 6.

**WAC 296-32-23520 Telecommunications line tree trimming and emergency work.**

- Moved requirements from WAC 296-32-360 to this section.
- Updated the minimum approach distances in Table 7.

**WAC 296-32-23522 Line patrol and work on aerial plants.**

- Added language relating to line patrol and work on aerial plants from chapter 296-45 WAC.

**WAC 296-32-23523 Storm work and emergency conditions.**

- Moved requirements from WAC 296-32-360 to this section.
- Added language relating to when storm damage work can begin.
- Added language relating to the use of insulated gloves.

**WAC 296-32-23524 Underground lines and cable vaults. Underground/buried communication lines.**

- Added language relating to underground lines and cable vaults, using language from chapter 296-155 WAC.

**WAC 296-32-23526 Directional boring machines.**

- Added language relating to directional boring machines, using language from manufacturer's specifications.

**WAC 296-32-23528 Manholes, street openings and vaults.**

- Moved requirements from WAC 296-32-340 to this section.

**WAC 296-32-23530 Joint power and telecommunication manholes and vaults.**

- Moved requirements from WAC 296-32-340 to this section.

**WAC 296-32-23532 Ladders for underground access.**

- Moved requirements from WAC 296-32-340 to this section.

**WAC 296-32-23534 Tent heater, torches and open flames.**

- Moved requirements from WAC 296-32-250 and 296-32-340 to this section.

**WAC 296-32-23536 Lead work.**

- Moved requirements from WAC 296-32-250 to this section.

**WAC 296-32-24005 Wireless communications—General requirements.**

- Added general requirements relating to the wireless part of the telecommunications industry such as:
  - Training and training program documentation.
  - Telecommunications work on high voltage transmission towers.
  - Site specific safety plan.
  - Hazard assessment.
  - Climbing facilities.
  - Communication tower/structure evaluation.
- Added requirements from ANSI/TIA 222G.

**WAC 296-32-24010 Antenna work-radio transmitting stations 3-30 MHZ.**

- Moved requirements from WAC 296-32-320 to this section.

**WAC 296-32-24012 Fall protection.**

- Added requirements relating to fall protection using language from chapters 296-155 and 296-878 WAC.

**WAC 296-32-24014 Work during hours of darkness.**

- Added requirements when climbing towers in the hours of darkness.

**WAC 296-32-24018 Emergency response/rescue requirements.**

- Added requirements relating to emergency response/rescue.

**WAC 296-32-24020 Rigging plan.**

- Added rigging plan requirements from ANSI/ASSE A10.48.

**WAC 296-32-24022 Gin poles—Installation.**

- Added gin pole installation requirements from ANSI/ASSE A10.48.

**WAC 296-32-24024 Gin poles—Use.**

- Added gin pole use requirements from ANSI/ASSE A10.48.

**WAC 296-32-24026 Gin poles—Inspections.**

- Added gin pole inspection requirements from ANSI/ASSE A10.48.

**WAC 296-32-24028 Base mounted hoists used for overhead material lifting and personnel lifting.**

- Added requirements relating to base mounted hoists used for overhead material lifting and personnel lifting from ANSI/ASSE A10.48.

**WAC 296-32-24032 Personnel lifting—General requirements.**

- Added requirements relating to personnel lifting from ASME B30.23.

**WAC 296-32-24034 Helicopters used for lifting loads.**

- Added requirements relating to using helicopters for lifting loads from ANSI/ASSE A10.48.

**REPEALED SECTIONS:****WAC 296-32-215 Safe place standard.**

- Repealed this section and moved the requirements to WAC 296-32-22510.

**WAC 296-32-220 General.**

- Repealed this section and moved the requirements to WAC 296-32-22535.

**WAC 296-32-230 Training.**

- Repealed this section and moved the requirements to WAC 296-32-22525.

**WAC 296-32-240 Employee protection in public work areas.**

- Repealed this section and moved the requirements to WAC 296-32-22530.

**WAC 296-32-250 Tools and personal protective equipment—General.**

- Repealed this section and moved the requirements to WAC 296-32-22540.

**WAC 296-32-260 Rubber insulating equipment.**

- Repealed this section and moved the requirements to WAC 296-32-22550.

**WAC 296-32-270 Personal climbing equipment.**

- Repealed this section and moved the requirements to WAC 296-32-23505.

**WAC 296-32-280 Ladders.**

- Repealed this section and moved the requirements to WAC 296-32-22560.

**WAC 296-32-290 Vehicle-mounted material handling devices and other mechanical equipment.**

- Repealed this section and moved the requirements to WAC 296-32-22565.

**WAC 296-32-300 Materials handling and storage.**

- Repealed this section and moved the requirements to WAC 296-32-23510.



**WAC 296-32-310 Cable fault locating and testing.**

- Repealed this section and moved the requirements to WAC 296-32-23512.

**WAC 296-32-320 Grounding for employee protection—Pole lines.**

- Repealed this section and moved the requirements to WAC 296-32-23514.

**WAC 296-32-330 Overhead lines.**

- Repealed this section and moved the requirements to WAC 296-32-23516.

**WAC 296-32-340 Underground lines and cable vaults.**

- Repealed this section and moved the requirements to WAC 296-32-23524.

**WAC 296-32-350 Microwave transmission.**

- Repealed this section and moved the requirements to WAC 296-32-22572.

**WAC 296-32-360 Tree trimming—Electrical hazards.**

- Repealed this section and moved the requirements to WAC 296-32-23520.

**WAC 296-32-370 Buried facilities—Communications lines and power lines in the same trench.**

- Repealed this section, the requirements relating to buried facilities are located in WAC 296-32-23524.

Citation of Rules Affected by this Order: See purpose above.

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

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 17-07-105 on March 21, 2017.

Changes Other than Editing from Proposed to Adopted Version:

**WAC 296-32-210 Definitions.**

- Modified the definition of "aerial lifts" by updating the ANSI reference to 2015.
- Removed the definition of "alive or live (energized)" for clarity.
- Removed the definition of "authorized climber" for clarity.
- Modified the definition of "cable" for clarity.
- Modified the definition of "clearance" by removing the last phrase "the cleared distance between two objects measured surface to surface" for clarity.
- Modified the definition of "climber attachment anchorage" for clarity.
- Modified the definition of "competent climber" for clarity by removing the last sentence. "A competent climber is responsible for the authorized climbers when working at height."
- Modified the definition of "crown block (top block or load block)" for clarity.
- Modified the definition of "energized" for clarity.
- Added the words "heel or base block" to the definition of "foot block" for clarity.
- Removed the definition of "ground-fault circuit-interrupter" for clarity.

- Modified the definition of "hoist mechanism or hoist" for clarity.
- Added a definition for "ladder safety system" from 29 C.F.R. 1910 for clarity.
- Added a definition for "line patrol" for clarity.
- Modified the definition for "manlift equipment" by adding the words "or suspended" for clarity.
- Deleted the last sentence in the definition of "manual descent control device with automatic lockoff" for clarity.
- Modified the definition of "protective devices" by adding the words "or equipment" and "electrical" for clarity.
- Removed the definition of "qualified climber" for clarity.
- Added a definition for "rooster head" for clarity.
- Added a definition of "strand" for clarity.
- Added a definition for "TIA maintenance and condition assessment" for clarity.
- Removed the definition of "tie-off anchorage points" for clarity.
- Removed the definition of "tower inspection" for clarity.

**WAC 296-32-22515 First aid.**

- Removed subsection (3) relating to first aid and CPR training for employees at remote sites for clarity. Renumbered subsections following this subsection.
- Added a note relating to valid first-aid certificates can be in an electronic form for clarity.

**WAC 296-32-22535 Facilities requirements.**

- Added language from chapter 296-24 WAC to subsection (2)(a) for clarity that reads, "The width of the working space in front of the equipment must be the width of the equipment or thirty inches, whichever is greater."

**WAC 296-32-22540 Tools and personal protective equipment—General.**

- In subsection (2)(a), added a reference to Table X (Employer responsibility for providing PPE), located in Chapter 296-800 WAC, Safety and health core rules.

**WAC 296-32-22555 General fall protection.**

- In subsection (5)(h), added a reference to the safety watch system and directed the employer to follow the requirements in subsection (10) of this section.
- In subsection (6)(b), changed the fall hazard from four feet to ten feet relating to employees standing in or working in the affected area of a trench or excavation for clarity.

**WAC 296-32-22578 Control of hazardous energy.**

- In subsection (3), added "or the FCC license holder" for clarity.

**WAC 296-32-23505 Pole climbing equipment.**

- In subsection (10), last sentence, changed the word "ladder" to "pole" for clarity.

**WAC 296-32-23528 Manholes, street openings and vaults.**

- In subsection (1)(b), changed "complete evaluation" to "complete job hazard assessment" for clarity.

**WAC 296-32-23532 Ladders for underground access.**

- In subsection (2), added the words "and fiberglass" for clarity.

**WAC 296-32-24005 Wireless communications—General requirements.**

- In subsection (4)(e), added the words "or in-house training" for clarity.
- In subsection (9)(a), this section now reads, "If climbing pegs are missing and/or the safety climb's condition is outside the manufacturer's specifications, an alternate means to access the structure must be used." Removed the language relating to the climbing facility shall be deemed unsafe and not climbed.

**WAC 296-32-24010 Antenna work-radio transmitting stations 3-30 MHZ.**

- In subsection (1)(d), this section now reads, "Tags the antenna ground switch and verifies with the transmitting technician after the antenna has been grounded." Removed the language relating to being in the presence of the transmitting technician.

**WAC 296-32-24024 Gin poles—Use.**

- In subsection (1)(c), this section now reads, "Modifications or repairs to the gin pole shall be designed and approved by a professional engineer or a qualified gin pole design professional and the repairs inspected by a qualified person prior to returning to service." This was changed for clarity.

A final cost-benefit analysis is available by contacting Cynthia Ireland, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-5522, fax 360-902-5619, email cynthia.ireland@lni.wa.gov, web site lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 49, Amended 2, Repealed 17; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 49, Amended 2, Repealed 17.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 49, Amended 2, Repealed 17.

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

Date Adopted: October 2, 2017.

Joel Sacks  
Director

**NEW SECTION**

**WAC 296-32-195 Foreword.** The purpose of this chapter is to ensure the workplace for telecommunications employees is free from recognized safety and health hazards. The rules contained herein require that worker safety receive a higher degree of priority than production, speed and profit.

Worker safety is paramount and employers must ensure that employees are trained and are authorized and/or competent in the provision(s) of this chapter. Employees are expected to follow the provisions of this chapter in accordance with their experience and training. This chapter is not intended to be a complete job description of telecommunications personnel nor is it expected that this chapter will cover every potential hazard that an employer or their employees may encounter. When a hazard exists beyond what is conveyed in this chapter employers and employees are expected, in good faith, to mutually discuss the hazards and agree as to how to perform the work in the safest manner.

To achieve the greatest degree of safety it is critical to understand that the telecommunications industry is ever changing and therefore has many different disciplines and training requirements. There will be definitions that apply to the chapter as a whole and each specific application. It is important to remember that it is the employers' responsibility to ensure that their employees have the competency and necessary training for the work being performed and understand how sections of this chapter apply and afford the greatest possible protection for their employees.

The department of labor and industries (LNI) is the sole administrative agency responsible for the administration and interpretation of this chapter in accordance with the Washington Industrial Safety and Health Act of 1973. If there are questions concerning meaning or interpretation about any provision contained within this chapter, please direct them to the department and its authorized representatives.

Evidence has shown that the majority of injuries and deaths in the workplace are preventable. Evidence also indicates that the majority of injuries and deaths are due to the failure of the employer and/or employee to comply with and utilize safe work practices. Information contained in this chapter was a collaborative effort and derived from existing telecommunication industry standards, experience in the field and training. Telecommunication safety requires engineering design, environmental, operational and administrative controls, training policies, personal protective equipment (PPE) and appropriate employee behavior while adhering to safety rules and industry standards. With these components in place and adhered to, work must be appropriately scheduled, properly planned and safely performed.

**AMENDATORY SECTION** (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

**WAC 296-32-200 Scope and application.** (1) This chapter sets forth safety and health standards that apply to the work conditions, practices, means, methods, operations, installations and processes performed at telecommunications (~~centers~~) facilities and at telecommunications field installations, which are located outdoors or in building spaces used for such field installations. "~~Center~~) Facility" work includes the installation, operation, maintenance, rearrangement, and removal of communications equipment and other associated equipment in telecommunications (~~switching centers~~) facilities. "Field" work includes the construction, installation, operation, maintenance, rearrangement, and removal of conductors, antenna systems and other equipment

used for signal or communication service, and of their supporting or containing structures ~~(7)~~ for landline or wireless communications. This could include overhead or underground, on public or private rights of way, ~~(including)~~ or other lands, buildings or other structures ~~(8)~~,

~~(2))~~, including those locations that may fall under the scope of chapter 296-45 WAC.

**Note:** Work that falls under the scope of chapter 296-45 WAC may include, but is not limited to, transmission towers, poles, substations, and substation equipment.

(2) These rules set forth the minimum requirements for employers to protect employees from the hazards associated with working on communication towers, structures, and poles. This includes antenna and antenna supporting structures, broadcast and other similar structures that support communication related equipment, during construction, alteration, repair, operation, inspection, maintenance, demolition activities and any other activities connected to accomplishing work associated with this chapter.

(3) The three primary parts of this chapter are as follows:

• Part A: General requirements - This part is intended to convey the areas of responsibility to employers when working on telecommunications facilities or locations of any type.

• Part B: Requirements that apply to wireline - This part is intended to convey to the employer the responsibilities for the training and protection of their employees working with or in telecommunications wireline facilities and field installations. Areas of Part B may also apply to the wireless Part C.

• Part C: Requirements that apply to wireless - This part is intended to convey to the employer the responsibilities for the training and protection of their employees working with or upon telecommunications wireless facilities and field installations. Areas of Part C may also apply to the wireline Part B.

(4) These standards do not apply ~~(5)~~

~~(a) To construction work, as defined in chapter 296-155 WAC, nor~~

~~(b))~~ to installations under the exclusive control of electric utilities used for the purpose of communications or metering, or for generation, control, transformation, transmission, and distribution of electric energy, which are located in buildings used exclusively by the electric utilities for such purposes, or located outdoors on property owned or leased by the electric utilities or on public highways, streets, roads, etc., or outdoors by established rights on private property.

~~(3))~~ (5) Operations or conditions not specifically covered by this chapter are subject to all ~~(the)~~ other applicable ~~(standards contained in)~~ Washington Administrative Code to include, but not limited to, chapter 296-24 WAC, general safety and health standards, ~~(and)~~ chapter 296-27 WAC, Recordkeeping and reporting, chapter 296-800 WAC, ~~(the)~~ Safety and health core rules, and chapter 296-62 WAC, General occupational health standards. Operations which involve construction work not covered by this chapter, as defined in chapter 296-155 WAC, are subject to ~~(all)~~ the applicable standards contained in chapter 296-155 WAC, safety standards for construction work and other recognized industry standards that may be applicable to hazards or exposures not covered by this chapter.

~~(4))~~ (6) This standard ~~(shall)~~ will augment the Washington state general safety and health standards chapter 296-24 WAC, General occupational health standards, ~~(electrical workers safety)~~ chapter 296-62 WAC, electric power generation, transmission, and distribution rules, chapter 296-45 WAC, and any other standards which are applicable to all industries governed by ~~(chapter 80, Laws of 1973,)~~ the Washington Industrial Safety and Health Act. In the event of ~~(any)~~ a conflict arising between any portion of this chapter and any portion of ~~(any of the general application)~~ the aforementioned standards, the provisions of this chapter 296-32 WAC, ~~(shall apply)~~ will apply. 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.

(7) All communication companies and entities operating communication facilities, networks or systems within the state of Washington must design, construct, operate, and repair their lines and equipment according to the requirements of the following:

• Wireline facilities shall meet the requirements of 2016 National Electric Code (NEC)(ANSI-C2).

• Structures which have the primary purpose to serve as antenna supporting structures shall meet the design requirements of ANSI/TIA 222-G-2005.

• Telecommunication construction standards, ANSI/TIA-322, 2016 and ANSI/ASSE A10.48, 2016.

~~(5))~~ (8) In exceptional cases where compliance with specific provisions of this chapter can only be accomplished to the serious detriment and disadvantage of an operation, variance from the standards or requirements may be permitted by the director of the department of labor and industries after receipt of application and approval for a variance which meets the requirements of WAC 296-900-11005.

(9) The provisions of this chapter will be enforced through inspections or consultation activities conducted by properly trained, qualified and authorized safety and health officers designated by the department.

**AMENDATORY SECTION** (Amending WSR 94-15-096, filed 7/20/94, effective 9/20/94)

**WAC 296-32-210 Definitions.** ~~(4))~~ The terms used in these standards ~~(shall)~~ will be interpreted in the most commonly accepted sense consistent with the communications industry. The words "shall" and "must," are used to indicate the provisions which are mandatory.

~~(2) "Aerial lifts.")~~ **Acceptable conditions for access** are the conditions that must exist before the employer authorizes and grants permission for construction, alteration, repair or maintenance work. These conditions include the following:

• Work under the control of a work safety program meeting the requirements of the rules in this chapter;

• Notwithstanding the prohibitions outlined in this rule, if emergency maintenance work must be performed where there is an accumulation of snow, ice or other slippery material, the employer shall implement safe work practices (equipment, practices and procedures) that address the haz-

ards known to be associated with work to minimize the associated risk to employees while working.

**Accessible radiation** means laser radiation to which human access is possible.

**Adverse weather** does not abdicate the responsibility of the employer to provide for a safe work environment. Proper clothing and safety equipment must be suitable for the work intended. When adverse weather (such as high winds, heat, cold, lightning, rain, snow or sleet) creates a hazardous condition, operations shall be suspended until the hazardous condition no longer exists.

**Aerial lifts** include, but are not limited to, the following types of vehicle-mounted aerial devices used to elevate personnel to ((jobsites)) job sites above ground:

((a)) Extensible boom platforms((:));

((b)) Aerial ladders((:));

((c)) Articulating boom platforms((:));

((d)) Vertical towers((:));

((e)) A combination of any of the above defined in ANSI ((A92.2-1969)) A92.2-2015. These devices are made of metal, wood, fiberglass, reinforced plastic (FRP), or other material; are powered or manually operated and are deemed to be aerial lifts whether or not they are capable of rotating above a substantially vertical axis.

((3)) **Aerial splicing platform.**((=)) This usually or commonly consists of a platform, approximately 3 feet x 4 feet, used to perform aerial cable work. It is furnished with fiber or synthetic ropes for supporting the platform from aerial strand, detachable guy ropes for anchoring it, and a device for raising and lowering it with a handline.

((4)) **Aerial tent**((=)) is a small tent usually constructed of vinyl coated canvas which is usually supported by light metal or plastic tubing. It is designed to protect employees in inclement weather while working on ladders, aerial splicing platforms, or aerial devices.

((5)) "Alive or live (energized)." Electrically connected to a source of potential difference, or electrically charged so as to have a potential significantly different from that of the earth in the vicinity. The term "live" is sometimes used in the place of the term "current-carrying," where the intent is clear, to avoid repetition of the longer term.

((6)) **Anchorage** means a secure connecting point or a terminating component of a fall protection system or rescue system capable of safely supporting the impact forces applied by a fall protection system or anchorage subsystem.

**Anti-two block device** is a positive acting device that prevents contact between the load block or overhaul ball and the top block (two-blocking) or a system that deactivates the hoisting action before damage occurs in the event of a two-block situation.

**Articulating boom lift/crane** is a crane or boom lift whose boom consists of a series of folding, pin connected structural members, typically manipulated to extend or retract by power from hydraulic cylinders.

**Assisted rescue** is a rescue requiring the assistance of others.

**Automatic descent control device** is a load lowering device or mechanism that automatically controls pay-out speed of line or descent speed under load once it has been engaged.

**Barricade**((=)) is a physical obstruction such as tapes, cones, or "A" frame type wood and/or metal structure intended to warn and limit access to a work area.

((7)) **Barrier**((=)) is a physical obstruction which is intended to prevent contact with energized lines or equipment, or to prevent unauthorized access to a work area.

((8)) **Boatswain chair** means a single-point adjustable suspension scaffold consisting of a seat or sling (which may be incorporated into a full body harness) designed to support one employee in a sitting position.

**Bond**((=)) is an electrical connection from one conductive element to another for the purpose of minimizing potential differences or providing suitable conductivity for fault current or for mitigation of leakage current and electrolytic action.

((9)) "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).

((10)) **Brakes** are a mechanical or hydraulic system that can decelerate or stop a load.

**Cable** is an insulated or uninsulated electrical conductor, often in strands or any combination of electrical conductors that may be insulated from one another.

**Cable sheath**((=)) is a protective covering applied to cables.

**Note:** A cable sheath may consist of multiple layers of which one or more is conductive.

((11)) **Cage** is a barrier, which may be referred to as a cage guard or basket guard, that is an enclosure mounted on the side rails of the fixed ladder or fastened to the structure to enclose the climbing space of the ladder.

**Capstans** are a spool-shaped mechanical device mounted on the end of a shaft around which a rope is wrapped; sometimes called a cathead when used in a horizontal position; can be pole mounted, tower mounted, or truck mounted.

**Carabiner** is a connector generally comprised of a trap-ezoidal or oval shaped body with a closed gate or similar arrangement that may be opened to attach another object and, when released, automatically closes to retain the object.

**Carrier** is the track of a ladder safety device consisting of a flexible cable or rigid rail.

**Circuit**((=)) is a conductor or system of conductors through which an electric current is intended to flow((-

(12)) "Clearance."

(a) The certification by the proper authority that a specified line or piece of equipment is deenergized; that the proper precautionary measures have been taken and that the line or equipment is being turned over to the workers.

(b) Separation or protection by the use of protective devices to prevent accidental contact by persons or objects on approach to a point of danger.

((13))); or an electrical device that provides a path for an electrical current to flow.

**Clearance** is the distance from a specified reference point or protection by the use of protective devices to prevent accidental contact by persons or objects on approach to a point of danger.

**Climber attachment anchorage** is an anchorage point for attaching a lanyard or similar fall protection device. See also "anchorage."

**Climbing facilities** are a series of attachments installed on a support structure, or antenna, on which a climber may step while ascending or descending, and which may incorporate or employ:

- Steps, rungs, cleats and/or structural members which form an integral part of the structure;
- Rungs, cleats or step bolts which are attached to the structure;
- Fixed ladders, safety devices, platforms and cages used for climbing or working on communication structures; or
- Climber attachment anchorages.

**Climbing space** ("The vertical") is the space reserved (along the side of) on poles or structures (to) that permits ready access for (lineworkers) workers to gain access to equipment and conductors located on poles or structures.

((14-)) **Communication lines** (") are the conductors and their supporting or containing structures for telephone, telegraph, railroad signal, data, clock, fire, police-alarm, community television ((antenna)), fiber optic, and other systems which are used for public or private signal or communication services, 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. When communications lines operate at less than 150 volts to ground, no limit is placed on the capacity of the system. Specifically designed communications cables may include communication circuits not complying with the preceding limitations, where such circuits are also used incidentally to supply power to communication equipment.

((15-)) **Communication plant** ("The") are the lines and conductors and their associated equipment required to provide public or private signals ((or)) for communicative service.

((16) "Competent or qualified person." A person who is familiar with the construction of, or operation of, such lines and/or equipment that concerns their position and who is fully aware of the hazards connected therewith OR one who has passed a journeyman's examination for the particular branch of the trades with which they may be connected. In case of dispute, competency shall be established by a committee appointed by the director or assistant director of the department of labor and industries consisting of representatives of all interested parties.

(17-)) **Communication tower** is any structure that is used primarily as an antenna or to provide attachment points for one or more antennas or signaling devices. Where the communication tower is affixed to another structure, such as an electrical transmission tower, church steeple, building rooftop, or water tower, the applicable part of any controlling regulation for protection of employees shall apply up to the point of access to the communication tower.

**Competent climber** is an individual with the physical capabilities to climb; has actual tower climbing experience; is trained in fall protection regulations including the equipment that applies to tower work; is capable of identifying existing and potential fall hazards; and has the employer's authority to take prompt corrective action to eliminate those hazards.

**Competent person** is a person who has been trained pertaining to their job assignment and can identify existing and predictable hazards in their surroundings that are either unsanitary, hazardous, or dangerous to employees and has the authority by the nature of their position to take prompt corrective measures to eliminate them. The person must also be knowledgeable in the requirements of this chapter to be competent.

**Competent rescuer** is an individual designated by the employer who by training, knowledge and experience is capable of the implementation, supervision and monitoring of a rescue at height in the event of an emergency. This person shall have the employer's authority to write the individual site rescue plan, and may be designated to manage the employer's fall protection rescue program.

**Competent rigger** is a person knowledgeable and experienced with the procedures and equipment common to the communication structures industry and trained to identify hazards with authorization to take prompt corrective measures.

**Conductor** (") is a material, usually in the form of a wire, cable, or bus bar, suitable for carrying an electric current.

((18-)) **Construction work** shall mean and include all or any part of excavation, construction, erection, alteration, repair, demolition, and dismantling, of buildings and other structures and all operations in connection therewith; the excavation, construction, alteration and repair of sewers, trenches, caissons, conduits, pipe lines, roads and all operations pertaining thereto; the moving of buildings and other structures, and to the construction, alteration, repair, or removal of wharfs, docks, bridges, culverts, trestles, piers, abutments or any other construction, alteration, repair or removal work related thereto.

**Construction work** for purposes of Part C of this chapter also means field activities related to the installation, alteration, maintenance or demolition/decommission of antenna supporting structures and antennas.

**Contract employer** is an employer, other than a host employer, that performs work covered by this chapter under contract.

**Crew** means a group of two or more employees of one employer sent to a worksite to work on the same project.

**Crew chief/supervisor/foreman** is one who is authorized and designated as competent and qualified by the employer.

**Crewleader or person-in-charge** is that person directly in charge of employees doing the work regardless of title.

**Crown block (top block)** is the upper sheave assembly attached to a structure used to change the direction of a load or jump line coming from a hoist.

**Deceleration distance** is the vertical distance between the user's fall arrest attachment at the onset of fall arrest forces during a fall, and after the fall arrest attachment comes to a complete stop.

**Direct communications** is the effective and reliable two-way communication, being able to send and receive communications, between crew members or crews using normal voice communication, visual, radio, or cellular means.

**Effectively grounded** means intentionally connecting equipment to earth through a ground connection or connections of sufficiently low impedance and having sufficient current-carrying capacity to prevent the transmission of fault current or voltages which may result in undue hazard to employees or connected equipment.

(19) "Emergency." When an unusual condition exists that endangers life and/or property.

(20).

**Elevated (high angle) rescue** is the process by which emergency methods and equipment are utilized in order to gain access to and egress from the location of an injured employee(s) on a tower structure, or other elevated structures and lower both the injured employee(s) and the rescuer(s) to the ground safely.

**Emergency** is an unforeseen occurrence endangering life, limb, or property which requires immediate action.

**Emergency washing facilities** typically consist of emergency showers, eyewashes, eye/face washes, hand-held drench hoses, or other similar units.

**Energized** means electrically connected to a source of potential difference or electrically charged so as to have a potential different from that of the earth or different from that of adjacent conductors or equipment. For the purpose of these rules, potential differences less than 100 volts shall not apply. This definition does not include communication lines of less than 300 volts.

**Engineer of record (EOR)** is a registered professional engineer with expertise in the discipline applicable to the scope of work and responsible for the structural adequacy of the design of the structure in the completed project.

**Engineered hoist system** is a hoist system that is the complete system for hoisting, including: The frame, mounts and/or anchorages, prime mover (winch assembly), motors, drums, truck chassis (if used as the base for the hoist), wheel chocks, wire rope, hour meter, foot blocks, gin pole (if used), and rooster head or cat head, as applicable.

**Equipment** is a general term which includes materials, fittings, devices, appliances, fixtures, apparatus, and similar items used as part of, or in connection with, a supply or communications installation.

(22) "Crewleader or person in charge." That person directly in charge of workers doing the work regardless of title.

(23) "Ground (reference)." That); to include all machinery used in the performance of constructing and maintaining communication systems.

**Exit** provides a way of travel out of the workplace.

**Exit route** is a continuous and unobstructed path of exit or travel from any point within a communications workplace, structure, or site to provide a safe means of withdrawal.

**Exposed live parts** are electrical parts that are not suitably covered, guarded, isolated, or insulated and are capable of being accidentally accessed, touched or approached closer than a safe distance.

**Exposed wiring methods** are those methods working with electrical wires that are attached to surfaces or behind panels designed to allow access to the wires.

**Fall arrest** is the action or event of stopping a free fall or the instant where the downward free fall has been stopped.

**Fall arrest system** is the collection of equipment components that are configured to arrest a free fall.

**Fall protection equipment** is the personal equipment that employees utilize in conjunction with fall protection systems, including connectors, body belts or body harnesses, lanyards, ropes, deceleration devices, and anchorage points to ensure 100 percent fall protection for the employees.

**Fall protection work plan** is a written planning document in which the employer identifies all areas on the job site where fall hazards may exist. Detailed requirements relating to a fall protection work plan are covered in WAC 296-32-22555 and 296-32-24012 of this chapter.

**Fall restraint** is a system in which all necessary components function together to restrain or prevent an employee from falling to a lower level. Types of fall restraint systems include guardrail systems and personal fall restraint system(s) that prevents the user from falling any distance. The system is comprised of either a lineman's belt or full body harness, along with an anchorage, connectors and other necessary equipment. The other components typically include a lanyard, and may also include a lifeline and other devices.

**Fiber-optic cable - Communication** is a fiber-optic cable meeting the requirements for a communication line and located in the communication space of overhead or underground facilities.

**Fiber-optic cable - Supply** is a fiber-optic cable located in the supply space of overhead or underground facilities.

**Field work** is the construction, installation, operation, maintenance, rearrangement, and removal of conductors, antenna systems, and other equipment used for signal or communication service, and of their supporting or containing structures for landline or wireless communications.

**First aid** is the extent of treatment you would expect from a person trained in basic first aid, using supplies from a first-aid kit. Tests, such as X rays, must not be confused with treatment.

**Flemish eyes (Molly Hogan)** is an eye splice made by using stranded cable and weaving them together to make an eye.

**Floor hole** means an opening measuring less than twelve inches but more than one inch in its least dimension in any floor, roof, platform, or surface through which materials but not persons may fall, such as a belt hole, pipe opening, or slot opening.

**Floor opening** means an opening measuring twelve inches or more in its least dimension in any floor, roof, platform, or surface through which persons may fall.

**Foot block (heel or base block)** is a block stationed or positioned at the base of a structure or pole that allows a line, rope or wire rope to change direction 90 degrees to go up the structure.

**Full body harness** is a body support that is designed to contain the torso in such a manner that fall arrest forces are distributed over at least the upper thighs, pelvis, chest, and shoulders, with provisions for attaching a lanyard, lifeline, or deceleration devices. These specifications must meet the requirements specified in ANSI Z359.1-2007.

**Gin pole** is a device unique to the telecommunications industry and is used to raise successive sections of tower steel, antennas, personnel or equipment into position. This temporary device allows headroom above the highest fixed point of the tower or structure.

**Gross load** means the total load to be lifted. This includes the weight of the lifted object, headache ball, the load line, tag line, and any other attachments.

**Ground** is a conductive body, usually earth, to which an electric potential is referenced((-

(24) "Ground (as a noun)." A conductive connection, whether intentional or accidental, by which an electric circuit or equipment is connected to reference ground.

(25) "Ground (as a verb)." The connecting or establishment of a connection, whether by intention or accident, of an electric circuit or equipment to reference ground.

(26) "Ground (as a verb)." The connecting or establishment of a connection, whether by intention or by accident; a conducting connection, between an electric circuit and equipment and earth or to some other conducting body that serves in place of the earth.

**Grounded** means to be positively connected to or in contact with earth or connected to an extended conduction body that serves instead of earth. A conducting object such as, but not limited to, a wire that is connected to such a position as zero potential. A connection has been made between an electrical circuit or equipment and the earth or another conducting body besides the earth, used as an arbitrary zero of potential.

**Grounding((-)) (for employee protection)** is the act of placing shorts and grounds on conductors and equipment for the purpose of protecting ((workers)) employees from dangerous voltages while working on such lines or equipment.

((27) "Ground tent((-))" is a small tent usually constructed of vinyl coated canvas supported by a metal or plastic frame. Its purpose is to protect employees and the equipment from inclement weather while working at buried cable pedestal sites or similar locations.

((28) "Grounded conductor((-))" is a system or circuit conductor which is intentionally grounded.

((29) "Grounded systems((-))" is a system of conductors/equipment in which at least one conductor or point ((usually the middle wire, or the neutral point of transformer or generator windings)) is intentionally grounded, either solidly or through a current-limiting device (not a current-interrupting device).

((30) "Grounding electrode conductor (grounding conductor)((-))" is a conductor used to connect equipment or the grounded ((circuit)) components of a wiring system to a grounding electrode.

((31) "Guard or guarded((-))" means covered, shielded, fenced, enclosed, or otherwise protected by means of suitable covers, casings, barriers, rails, screens, mats, platforms, or warning signs or devices to remove the possibility of dangerous contact ((to)) to lines, equipment or devices, limiting or preventing approach by other persons or objects to a point of danger.

((32) "Guardrails" means a type of fall restraint system that is a horizontal barrier consisting of a top rail and mid rail, and toe board when used as falling object protection for persons who may work or pass below, that is erected along all

open sides or edges of a walking/working surface, a floor opening, a floor hole, wall opening, ramp, platform, or runway.

**Handrail** is a single bar or pipe supported on brackets from a wall or partition to provide a continuous handhold for persons using a stair.

**Hazard** is any condition, potential or inherent, which can cause injury, death, or occupational disease.

**High wind** is a wind condition that is determined to be at such velocity as to create a hazard to the employees performing aerial tasks as an employee would be exposed to being blown from elevated locations, lose footing and control; that wind speed which has been determined to be unsafe by the manufacturer of the particular equipment being used (cranes, lifts, booms, etc.) and/or equipment being installed. Winds exceeding 25-30 miles per hour (48.3 kilometers per hour) if material handling is involved, winds exceeding 40 miles per hour (64.4 kilometers per hour) are normally considered as meeting this criteria.

**Hoist mechanism or hoist** is the complete unit including frame, prime mover (winch assembly), pumps, motors, drums, and any associated equipment that is necessary to make the complete unit work and is used to lift a load.

**Hoisting** is the act of lifting and/or lowering loads or personnel.

**Horizontal lifeline** means a rail, rope, wire, or synthetic cable that is installed in a horizontal plane between two anchorages and used for attachment of an employee's lanyard or lifeline device while moving horizontally.

**Host employer** means an employer who operates or maintains telecommunications facilities covered by this chapter and who authorizes a contract employer to perform work on that installation.

**Note to the definition of "host employer":**

The Division of Safety and Health (DOSH) will treat the telecommunication company or the owner of the installation as the host employer if it operates or controls operating procedures for the installation. If the telecommunication company or installation owner neither operates nor controls operating procedures for the installation, DOSH will treat the employer that the telecommunication 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.

**Individual-rung/step ladder** is a fixed ladder consisting of individual steps, rungs or climbing pegs mounted directly to the surface, side or wall of the pole, structure, building, equipment, or vault.

**Insulated((-))** means separated from other conducting surfaces by a dielectric substance for the intended applied voltage or may be subject to (including air space) offering a high resistance to the passage of current.

**Note:** When any object is said to be insulated, it is understood to be insulated in suitable manner for the conditions to which it is subjected. Otherwise, it is, within the purpose of these standards, uninsulated. Insulating coverings of conductors is one means of making the conductor insulated.

((33) "Insulation (as applied to cable)((-))" means that which is relied upon to insulate the conductor from other conductors or conducting parts or from ground.

~~((34)-)~~ **Job hazard assessment** is a process used to identify hazards and the methods to eliminate or control those hazards.

~~Joint use((-))~~ is the sharing of a common facility, such as a manhole, trench or pole, by two or more (~~(different kinds of)~~) **entities or utilities((-(-g-)) such as, but not limited to, power, alarm systems, signal lighting and telecommunications(~~(t)~~).**

~~((35)-)~~ **Ladder** is a device incorporating or employing steps, rungs, or cleats.

~~Ladder platform((-))~~ is a device designed to facilitate working aloft from an extension ladder. A typical device consists of a platform (approximately 9" x 18") hinged to a welded pipe frame. The rear edge of the platform and the bottom crossmember of the frame are equipped with latches to lock the platform to ladder rungs.

~~((36)-)~~ **Ladder safety device** is any device, other than a cage or well, designed to arrest the fall of a person using a fixed ladder.

~~Ladder safety system~~ means a system designed to eliminate or reduce the possibility of falling from a ladder. A ladder safety system usually consists of a carrier, safety sleeve, lanyard, connectors, and body harness. Cages and wells are not ladder safety systems.

~~Ladder seat((-))~~ is a removable seat used to facilitate work at an elevated position on rolling ladders in telecommunication centers.

~~((37)-)~~ **Landing** is an area such as the ground, roof, or platform that provides access/egress for a fixed ladder.

~~Laser safety officer~~ means one who has authority and responsibility to monitor and enforce the control of laser hazards and effect the knowledgeable evaluation and control of lasers.

~~Length of climb~~ is the total vertical distance a person could climb in traveling between the extreme points of access/egress for a fixed ladder, whether the ladder is of an unbroken length or consists of multiple sections. This total vertical distance is determined by including all spaces between all ladder steps or rungs and all other vertical intervening spaces between the extreme points of access/egress.

~~Line clearance tree trimming~~ is the pruning, trimming, repairing, maintaining, removing or clearing of trees or the cutting of brush that is within 10 feet (305 cm) of electric supply lines or equipment.

~~Lineman's body belt~~ is a body support comprised of a strap, at least four inches in width, designed to be compatible with an approved fall restraint system.

~~Line patrol~~ is looking at aerial plants after storm damage for damaged lines.

~~Line truck~~ is a truck used to transport employees, tools, and material, and to serve as a traveling workshop for telecommunication installation and maintenance work. It is sometimes equipped with a boom and auxiliary equipment for setting poles, digging holes, and elevating material or employees.

~~Listed~~ means equipment that is listed in a publication by a nationally recognized laboratory (such as, but not limited to, UL (Underwriters' Laboratories, Inc.)) that inspects and approves that type of equipment. Listed equipment must also state that the equipment meets nationally recognized stan-

dards or has been tested and found safe to use in a specific manner.

~~Load chart~~ is a chart used that is affixed to and specific to the equipment to determine the lifting capacities under specified parameters and an understanding of the working parameters within which the capacities are to be used.

~~Load line~~ means a synthetic or wire rope of sufficient size, durability and strength to raise and lower the intended gross load safely.

~~Locking snap hook~~ is a connecting snap hook that requires two separate forces to open the gate; one to deactivate the gatekeeper and a second to depress and open the gate which automatically closes when released; used to minimize roll out or accidental disengagement.

~~Lockout~~ is placing a lockout device on an energy-isolating device using an established procedure to make sure the machine or equipment cannot be operated until the lockout device is removed.

~~Lockout device~~ is a device that uses a positive means, such as a key or combination lock, to hold an energy-isolating device in the "safe" or "off" position. This includes blank flanges and bolted slip blinds.

~~Manhole((-))~~ is a subsurface enclosure which personnel may enter and which is used for the purpose of installing, operating, and maintaining underground and submersible equipment and/or cable.

~~((38)-)~~ **Manhole platform((-))** is a platform consisting of separate planks which are laid across (~~(steel)~~) platform supports. The ends of the supports are engaged in the manhole cable racks or approved support points designed for human support.

~~((39)-)~~ **Manlift equipment((-))** are such types of portable (~~(truck-mounted)~~) truck-, trailer-, crane-mounted equipment, such as mechanical, electric or hydraulic ladders and boom-mounted or suspended buckets, platforms or cages.

~~((40)-)~~ **Manual descent control device with automatic lockoff** means a manual descent control device with automatic lockoff features having provision for both "hands-free" and "panic" locking capabilities.

~~Maximum intended personnel load/gross load~~ is the total load and weight of all employees; their tools, materials, load lines, and other loads reasonably anticipated to be applied to the hoist apparatus when an employee is hoisted.

~~Maximum permissible exposure (MPE)~~ means the rms and peak electric and magnetic field strength, their squares, or the plane-wave equivalent power densities associated with these fields to which a person may be exposed without harmful effect and with an acceptable safety factor.

~~May~~ (and "should") or "it is recommended" are used to indicate the provisions are not mandatory but are recommended.

~~Microwave transmission((-))~~ is the act of communicating, sending, receiving or signaling utilizing a frequency between 1 GHz (gigahertz) and 300 GHz inclusively.

~~((41)-)~~ **Mobile crew** is a work crew that routinely moves to a different work location periodically. Normally a mobile crew is not at the same location all day.

~~Multi-use site for towers and antennas~~ means any site where more than one subscriber has antennas for the use of communication purposes.



**Must** (and "shall") as used in this chapter make the provisions mandatory.

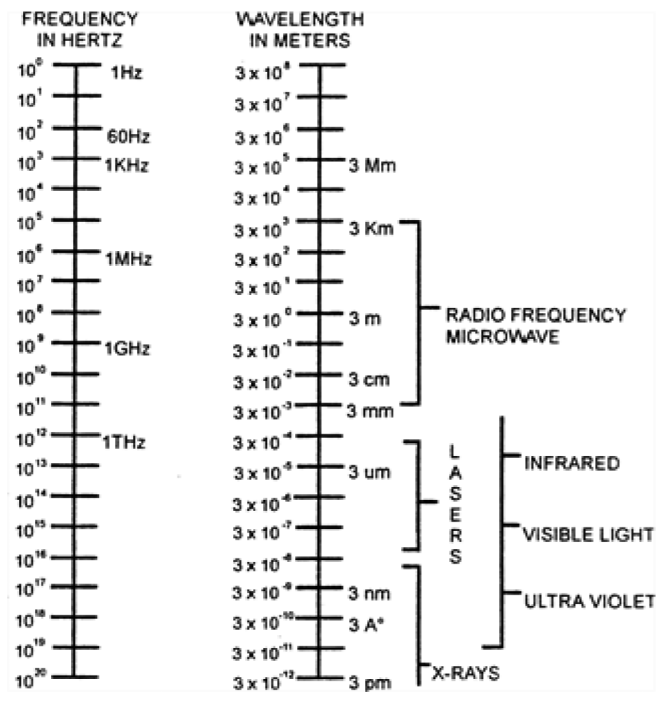
**Nearby facility** is a sanitary facility that is within three minutes travel by the transportation provided.

**NEMA** means these initials stand for National Electrical Manufacturing Association.

**Nominal voltage.**((<sup>2</sup>)) 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 actual voltage may vary above or below this value.

((42)-")**Nonionizing radiation (RFR) as related to industrial sources** means electromagnetic radiation within the spectral range of approximately 200 nanometers to 3 kilometers including ultraviolet, visible, infrared and radiofrequency/microwave radiation.

Electromagnetic Spectrum  
Figure 1



**Normally unattended work location** is an unattended site that is visited occasionally by one or more employees.

**Oil sample analysis** is a method used to evaluate oil, which may not necessarily mean a laboratory analysis, but one that could be effectively accomplished in the field by a qualified person; usually done to evaluate/ascertain the PCB levels or insulative qualities of the oil.

**One hundred percent (100 percent) fall protection** means each employee exposed to fall hazards above 4 feet while ascending or descending, moving point to point, or working from a platform, crane basket, lift or bucket truck; must be protected by fall protection 100 percent of the time.

**Operator (equipment)** is a person who runs or operates equipment used in the construction and maintenance of communication systems.

**Permissible exposure limits (PELs)** refer to a time-weighted average (TWA) of exposure for an eight-hour work day within a forty-hour workweek. Exceptions are those limits which are given a ceiling value.

**Personal eyewash units** are portable, supplementary units that support plumbed units or self-contained units, or both, by delivering immediate flushing for less than fifteen minutes.

**Platform** means a work surface elevated above the surrounding floor or ground level.

**Pole balcony or seat**((<sup>2</sup>)) means a balcony or seat used as a support for ((workers)) employees at pole-mounted equipment or terminal boxes. A typical device consists of a bolted assembly of composite or steel details and a wooden platform. Composite or steel braces run from the pole to the underside of the balcony((-A guard rail (approximately 30" high) may be provided)).

((43)-")**Pole platform**((<sup>2</sup>)) means a platform intended for use by ((a worker)) an employee in splicing and maintenance operations in an elevated position adjacent to a pole. It consists of a platform equipped at one end with a hinged chain binder for securing the platform to a pole. A brace from the pole to the underside of the platform is also provided.

((44)-")**Portable ladder** is a ladder that can be readily moved or carried.

**Positioning system** is a body belt or full body harness system configured to allow an employee to be supported on an elevated vertical or inclined surface, such as a wall, and work with both hands free from body support.

**Positive locking system** is a system that creates a mechanical means of ensuring that the connection or interface between two components will not slip.

**Potable water** is water that you can safely drink that meets specific safety standards prescribed by the United States Environmental Protection Agency's *National Interim Primary Drinking Water Regulations*, published in 40 C.F.R. Part 141 and 40 C.F.R. 147.2400.

**Powered lowering** is the act of controlled lowering of a load by the use of a system or device in the power train, which can control the lowering speed of the winch assembly.

**Prime mover** is the system that provides the energy to rotate the winch assembly.

**Proficient** means a thorough competence derived from training and practice.

**Proof test** means the act of testing the rigging and hoist mechanism whenever newly rigged or after any changes are made to the hoist mechanism or rigging.

**Protection from hazardous voltage**((<sup>2</sup>)) means the isolation from or deenergizing of equipment to prevent accidental contact by persons or objects on approach to point of danger.

((45)-")**Protective devices**((<sup>2</sup>)) or equipment means those devices such as rubber gloves, rubber boots, rubber blankets, line hose, rubber hoods or other insulating devices or equipment, which are specially designed and appropriate for the electrical protection of ((workers)) employees.

((46)-")**Public highway**((<sup>2</sup>)) means every way, land, road, street, boulevard, and every way or place in the state open as matter of right to public vehicular travel, both inside and outside the limit of cities and towns.

~~((47))~~ **Qualified employee.** Any worker who by reason of their training and experience has demonstrated an ability to safely perform their duties.

~~(48)~~ **Qualified line-clearance tree trimmer.** A tree worker who through related training and on-the-job experience is familiar with the special techniques and hazards involved in line-clearance.

~~(49)~~ **Qualified line-clearance tree trimmer trainee.** Any worker regularly assigned to a line-clearance tree-trimming crew and undergoing on-the-job training who, in the course of such training, has demonstrated their ability to perform duties safely at their level of training.

~~(50)~~ **Pulley** is a sheave wheel that is grooved on the outer circumference to hold a wire or synthetic rope in place while turning and allows a mechanical advantage for lifting or a change in direction.

**Qualified engineer** is a professional engineer knowledgeable and experienced in engineering related practices for communication structures and/or lifting systems and rigging components commonly used in the communication industry.

**Qualified line-clearance tree trimmer** is a tree worker who through related training and on-the-job experience is familiar with the special techniques and hazards involved in line clearance.

**Qualified line-clearance tree trimmer trainee** means any employee regularly assigned to a line-clearance tree-trimming crew and undergoing on-the-job training who, in the course of such training, has demonstrated their ability to perform duties safely at their level of training.

**Qualified person** is one who is familiar with the construction, maintenance, and operation of the equipment and hazards involved, or who has passed a journeyman's examination for the particular branch of the trades with which they may be connected, and trained in the methods necessary to identify and eliminate those hazards. An employee considered to be a qualified person depends on various circumstances in the workplace and on the level of training they have received and demonstrated competency with the tasks required of the job.

**Radio frequency radiation (RFR).** See nonionizing radiation.

**Rated capacity** is the load that a winch assembly may handle under given operating conditions and at a known design factor.

**Record** is any item, documentation, collection, or grouping of information.

**Registered professional engineer (RPE)** is a registered professional engineer licensed under RCW 18.43.040(1).

**Remote site/worksites** is a site/worksites that is over thirty minutes from emergency medical services or does not have reliable communications.

**Rescue** is the process of removing a person from danger, harm, or confinement to a safe location.

**Rescue plan** is a written process that describes in a general manner how rescue is to be approached under the specified parameters, such as location or circumstances.

**Rescue procedure** is a written series of logical steps that describes the specific manner in which rescue is to be accomplished.

**Rescue system** is an assembly of components and sub-systems used for rescue.

**Rescue system, one person** is a rescue system intended to bear only the weight of a single person at one time.

**Rescue system, two persons** is a rescue system intended to bear the weight of up to two persons simultaneously.

**Retraining** means classroom and/or on-the-job instruction required for continued retention of previously learned materials or skills.

**Rigging** means, but is not limited to, chains, slings, ropes, pulleys, hooks, and all accompanying hardware for lifting, lowering, suspending, and fastening loads.

**Rigging plan** is a systematic and detailed presentation showing the equipment and procedures required for a construction process that will provide for the safety of personnel and for the stability of the structure and lifted components.

**Rise** is the vertical distance from the top of a tread to the top of the next higher tread.

**Riser** is the vertical part of the step at the back of a tread that rises to the front of the tread above.

**Rooster head** is a sheave assembly located at the top of a gin pole capable of rotating 360 degrees or fixed that allows a load line to pass through and return to a vertical position.

**Rung** means a ladder crosspiece used in climbing or descending. Also called a cleat or step.

**Safety climb system** is an assembly of components whose function is to arrest the fall of a user, including the carrier and its associated attachment elements (e.g., brackets, fasteners), the safety sleeve, and the body support and connectors, wherein the carrier is permanently attached to the climbing face of the ladder or immediately adjacent to the structure.

**Safety sleeve** is the part of a ladder safety system consisting of the moving component with locking mechanism that travels on the carrier and makes the connection between the carrier and the full body harness.

**Safety watch system** is a fall protection system as described in WAC 296-32-22555(10), in which a competent person monitors one worker who is engaged in repair work or servicing equipment on low pitch roofs only.

**Self-retracting lanyard (SRL)** is a self-retracting device suitable for applications in which the device is mounted or anchored so a possible free fall is limited to 2 feet (.6 m) or less.

**Shall** (and "must") as used in this chapter make the provisions mandatory.

**Sheath**(-s) means as applied to sharp tools that effectively covers the tool.

~~((51))~~ **Should** (and "may") or "it is recommended" are used to indicate the provisions are not mandatory but are recommended.

**Side plates** means the side plates of sheaves or double plate attachment points that support the sheave.

**Side-step ladder** is a rail ladder that requires stepping from the ladder in order to reach a landing.

**Similar structures** is any structure that holds equipment relevant to the communication industry.

**Single ladder** is a nonself-supporting portable ladder, nonadjustable in length, consisting of one section. The size is designated by the overall length of the side rail.

**Site/worksite** is any location where communications work is performed or equipment is located to include communications tower or antenna and the surrounding land or property where the tower or antenna work is being performed.

**Slings** are an assembly to be used for lifting when connected to a lifting mechanism. The upper portion of the sling is connected to the lifting mechanism and the lower support the load, such as looped wire rope, synthetic strap, or chain for supporting, cradling, or lifting an object.

**Special-purpose ladder** is a portable ladder that is made by modifying or combining design or construction features of the general-purpose types of ladders in order to adapt the ladder to special or specific uses.

**Special tools and equipment** includes, but is not limited to, high voltage detector and RFR monitor.

**Specular reflection** means a mirror-like reflection.

**Stair railing** is a vertical barrier attached to a stairway with an open side to prevent falls. The top surface of the stair railing is used as a handrail.

**Stairs or stairway** are a series of steps and landings that lead from: One level or floor to another; to platforms, pits, boiler rooms, crossovers, or around machinery, tanks, and other equipment; and are used more or less continuously or routinely by employees, or only occasionally by specific individuals. A stair or stairway may also be defined as having three or more risers.

**Standard safeguard** means safety devices that prevent hazards by their attachment to machinery, appliances, tools, buildings, and equipment. These safeguards must be constructed of metal, wood, or other suitable materials. The department makes the final determination about whether a safeguard is sufficient for its use.

**Static brakes** means brakes used once the motion of the drum has come to a complete stop to prevent creeping or slippage. Static brakes are not necessarily separate from the primary braking system or may be redundant in application. A locking device on a primary braking system may be used.

**Step** is a ladder crosspiece used in climbing or descending. Also called a cleat or rung.

**Step bolt** is a round or flat member affixed to the structure on one end with the other end having a means to prevent the foot from sliding off.

**Strand** is a stranded wire used to support a conductor, pole or other structures, such as "guys," etc.

**Structure owner** is the employer responsible for controlling, operating and maintaining the structure.

**Subcontractor** is the employer engaged by the owner or general contractor responsible for completing specific portions of a project in accordance with all applicable specifications.

**System operator/owner** is the person or organization that operates or controls the electrical conductors involved.

~~((52) "Telecommunications center." A(n))~~ **Tag line and/or trolley line** is a method or system of applying a force to control a load and having the ability to create a space between the load and structure or gin pole.

**Tagout** is placing a tagout device on an energy-isolating device using an established procedure to indicate that the

energy-isolating device and the machine or equipment being controlled may not be operated until the tagout device is removed.

**Tagout device** is a prominent warning device, such as a tag and a means of attachment. It can be securely fastened to an energy-isolating device to indicate that the energy-isolating device and the machine or equipment being controlled may not be operated until the tagout device is removed.

**Teardown inspection** is the complete disassembly, cleaning, inspection, and replacement of all worn, cracked, corroded or distorted parts such as pins, bearings, shafts, gears, brake rotors, brake plates, drum, and base that may affect the operation of the winch assembly.

**Telecommunications facility** means a site or installation of communication equipment under the exclusive control of an organization providing telecommunications service, that is located outdoors or in a vault, chamber, or a building space used primarily for such installations.

**Note:** Telecommunication ~~((enters are))~~ facilities are established, equipped and arranged in accordance with engineered plans for the purpose of providing telecommunications service. They may be located on premises owned or leased by the organization providing telecommunication service, or on the premises owned or leased by others. This definition includes switch rooms (whether electromechanical, electronic, or computer controlled), terminal rooms, power rooms, repeater rooms, transmitter and receiver rooms, switchboard operating rooms, cable vaults, and miscellaneous communications equipment rooms. Simulation rooms of telecommunication ~~((enters))~~ facilities for training or developmental purposes are also included.

~~((53) —))~~ **Telecommunications digger derricks**~~((—))~~ means rotating or nonrotating derrick structures permanently mounted on vehicles for the purpose of lifting, lowering, or positioning hardware and materials used in telecommunications work.

~~((54) "Telecommunication line truck." A truck used to transport workers, tools, and material, and to serve as a traveling workshop for telecommunication installation and maintenance work. It is sometimes equipped with a boom and auxiliary equipment for setting poles, digging holes, and elevating material or workers.~~

~~((55) —))~~ **Telecommunication service**~~((—))~~ is the furnishing of a capability to signal or communicate at a distance by means such as telephone, telegraph, police and fire-alarm, community antenna television, or similar system, using wire, conventional cable, coaxial cable, wave guides, microwave transmission, or other similar means.

~~((56) —))~~ **Through ladder** is a rail ladder that requires stepping through the ladder in order to reach a landing.

**TIA maintenance and condition assessment** is a comprehensive assessment that addresses the following items - Structure condition, finish, lighting, grounding, antennas and lines, appurtenances, insulator condition (if applicable), guy wires condition and tensions, concrete foundations, guyed mast anchors and structure alignment (plumb). Once the assessment occurs, a maintenance plan is adopted, if not corrected during the assessment, to bring the structure within recommended TIA, manufacturer or engineer of record guidelines.

**Time-weighted average (TWA)** is an exposure limit, averaged over eight hours that must not be exceeded during an employee's work shift.

**Toeboard** is a horizontal barrier at floor level erected along all open sides or edges of a floor opening, platform, runway, ramp, or other walking/working surface to prevent materials, tools, or debris from falling onto persons passing through or working in the area below.

**Tower and tower site** see "site."

**Tower construction** is the building of a new tower or structure, or the installation of new equipment on an existing tower or structure.

**Tower maintenance work** means the replacement or work on any device on an existing tower, the repair of existing equipment, and painting.

**Training program** is a program designed to provide education through an established system of designing, developing, delivering, monitoring, evaluating, documenting and managing, safety, health and environmental training.

**Tread** as used in stairs and stair railings summary (see WAC 296-800-250), means the horizontal part of the stair step.

**Tread run** as used in stairs and stair railings summary (see WAC 296-800-250), means the distance from the front of one stair tread to the front of an adjacent tread.

**Tread width** is the distance from front to rear of the same tread including the nose, if used.

**Trial lift** means testing a specified load weight from ground level to the location of where personnel or equipment are to be hoisted.

**Two blocking** means an unsafe condition that occurs on a system when the overhaul ball, hook block, or headache ball on the load line comes in contact with the main load sheave.

**UL (Underwriters' Laboratories, Inc.)** means you will find these initials on electrical cords and equipment. The initials mean the cord or equipment meets the standards set by the Underwriters' Laboratories, Inc.

**Unvented vault** is an enclosed vault in which the only openings are access openings.

**Vault** is an enclosure above or below ground which personnel may enter, and which is used for the purpose of installing, operating, and/or maintaining equipment and/or cable which need not be of submersible design.

**Vented vault** is an enclosure, with provision for air changes using exhaust flue stack(s) and low level air intake(s), operating on differentials of pressure and temperature providing for air flow.

**Vertical lifeline** is a vertical suspended flexible line used with a fall arrestor system to arrest a fall while a worker is in the act of climbing or stationary. When following the manufacturer's specifications vertical lifelines can be used for other configurations.

**Voltage communications** means voltage used for electronic communications equipment to which employees or protective equipment may be subjected.

(a) *High* means over 600 volts to ground—RMS AC or DC or over 1,000 volts RMS across bare parts.

(b) *Medium high* means 151 to 600 volts to ground—RMS AC or DC or 301 to 1,000 volts RMS AC across any bare parts.

**Voltage electric supply** means the maximum effective line voltage to which the employees or protective equipment may be subjected.

(a) *Low* includes voltages from 100 to 600 volts.

(b) *High* means those voltages 601 volts and above.

**Voltage of an effectively grounded circuit** means the highest nominal voltage available between any conductor and ground unless otherwise indicated.

**Voltage of a circuit not effectively grounded** means the highest nominal voltage available between any two conductors. If one circuit is directly connected to and supplied from another circuit of higher voltage (as in the case of an autotransformer), both are considered as of the higher voltage, unless the circuit of lower voltage is effectively grounded, in which case its voltage is not determined by the circuit of higher voltage. Direct connection implies electric connection as distinguished from connection merely through electromagnetic or electrostatic induction.

**Voltage, nominal** is a value assigned to a circuit or system to designate its voltage class (120/240, 480Y/277, 600, etc.). The actual circuit voltage can vary from the value if it is within a range that permits the equipment to continue operating in a satisfactory manner.

**Watertight** means constructed so that moisture will not enter the enclosure or container.

**Weatherproof** means constructed or protected so that exposure to the weather will not interfere with successful operation. Rainproof, rain tight, or watertight equipment can fulfill the requirements for weatherproof where varying weather conditions other than wetness, such as snow, ice, dust, or temperature extremes, are not a factor.

**Well** is a walled enclosure around a fixed ladder that provides a person climbing the ladder with the same protection as a cage.

**Winch/hoist** means a mechanical device for lifting and lowering loads by winding rope onto or off a drum.

**Wire rope (cable)** is a rope made of strands of metal wire; a cord of metal wire used to operate, suspend or pull a mechanism or wench line.

**Working length** is the length of a nonself-supporting ladder, measured along the rails, from the base support point of the ladder to the point of bearing at the top.

## PART A—GENERAL REQUIREMENTS

**Note:** This part is intended to convey the areas of responsibility for employers when working on telecommunications facilities or locations of any type.

### NEW SECTION

**WAC 296-32-22505 Incorporation of standards of national organizations.** When using standards from national organizations and federal agencies that are referenced in these rules, you must use the edition specified in the rule or any edition published after that specified in the rule in order to be in compliance.

NEW SECTION

**WAC 296-32-22510 Safe place standard.** (1) No employer shall require any employee to go or be in any employment or place of employment which is not safe.

(2) No employer shall fail or neglect:

(a) To provide safe access to the worksite.

(b) To provide and use safety devices and safeguards.

(c) To adopt and use methods and processes to render the employment and place of employment safe.

(d) To do every other thing reasonably necessary to protect the life and safety of employees.

NEW SECTION

**WAC 296-32-22511 Host employer/contractor responsibilities.** (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 of the telecommunication site, facility, structure, lines or equipment that are related to the safety of the work to be performed shall be determined before work on or near the site, facility, structure, lines or equipment is started. Such characteristics and conditions include, but are not limited to:

(a) The recent condition of poles and/or structures;

(b) Environmental conditions relating to safety;

(c) Any abnormalities compromising the integrity of the system;

(d) Current structure analysis and engineering;

(e) The presence of hazardous energy sources;

(f) The nominal voltages of lines and equipment;

(g) The locations of circuits and equipment, including electric supply lines, communication lines, and fire protective signaling circuits; and

(h) The condition of protective grounds and equipment grounding conductors.

(5) All communication companies and entities operating, constructing and maintaining communication facilities within the state of Washington must design, construct, operate, and maintain their lines and equipment according to the requirements of:

(a) The 2017 National Electrical Safety Code (NESC) (ANSI-C2).

(b) ANSI/TIA 222-G-2005 for structures which have the primary purpose to serve as antenna supporting structures.

(c) ANSI/TIA - 322, 2016 and ANSI/ASSE A10.48, 2016, Telecommunications construction standards.

NEW SECTION

**WAC 296-32-22512 Accident prevention program and safety meetings.** (1) Each employer shall develop a written formal accident prevention program as outlined in WAC 296-800-140, tailored to the needs of the particular plant or operation and to the type of hazard involved.

**Note:** The department may be contacted for assistance in developing appropriate programs.

(2) If you employ eleven or more employees on the same shift and at the same location, you must establish a safety committee as required in WAC 296-800-13020.

(3) If you have ten or fewer employees or you have eleven or more employees that work on different shifts with ten or fewer employees on each shift or work in widely sepa-

rate locations with ten or fewer employees at each location, you may have safety meetings.

(a) The employer shall hold safety meetings at least once a month. Meetings shall be held at a reasonable time and place as selected by the employer.

(b) The employer shall require all employees subject to provisions of this chapter to attend said meetings.

**Note:** Provided the 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.

(c) Rosters and topics discussed shall be kept for each safety meeting and kept for a period of one year.

(4) For field work, every employer shall conduct crew leader-crew safety meetings and job briefings as follows:

(a) Crew leader-crew safety meetings shall be held at the beginning of each job, and at least weekly thereafter.

(b) Crew leader-crew meetings should be tailored to the particular operation.

(c) Crew leader-crew safety meetings shall address the following:

- (i) Hazards associated with the job.
- (ii) Work procedures involved.
- (iii) Special precautions.
- (iv) Personal protective equipment requirements.
- (d) Attendance shall be documented.
- (e) Subjects discussed shall be documented.

(f) 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.

(5) It shall be the responsibility of management to develop and maintain a written chemical hazard communication program as required by 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.

#### NEW SECTION

**WAC 296-32-22515 First aid.** This section is designed to assure that all employees in this state are afforded quick and effective first-aid attention in the event of an on-the-job injury.

(1) For fixed locations, the employer must make sure that first-aid trained personnel are available to provide prompt first aid. Designated first-aid trained personnel must have a valid first-aid certificate.

(2) For field work involving two or more employees at a work location, at least two trained persons holding a valid first-aid and CPR certificate shall be available.

(3) Employees working alone must have basic first-aid training and hold a valid first-aid certificate.

(4) The first-aid kits and supplies requirements of the safety and health core rules, WAC 296-800-15020, apply within the scope of this chapter.

(5) When practical, a poster must be fastened and maintained either on or in the cover of each first-aid kit and at or near all phones plainly stating the worksite address or location, and the phone numbers of emergency medical responders for the worksite.

(6) All vehicles used to transport an employee or work crews must be equipped with first-aid supplies.

**Note:** A valid first-aid certificate can be in an electronic form.

#### NEW SECTION

**WAC 296-32-22520 Remote communication sites. (1)** During travel and access to remote locations the employer must ensure employees have emergency survival equipment during adverse weather conditions, i.e., winter/extreme winds, which may include, but not be limited to:

- Potable water and food.
- Reliable communication plan.

(2) The number of first-aid kits and supplies must reflect the degree of isolation, the number of employees, and the hazards reasonably anticipated at the worksite.

**Notes:**

- The following should be considered as first-aid supplies required when working at remote sites:
  - Gauze pads (at least 4 x 4 inches).
  - Two large gauze pads (at least 8 x 10 inches).
  - Box adhesive bandages (band-aids).
  - One package gauze roller bandage at least 2 inches wide.
  - Two triangular bandages.
  - Wound cleaning agent such as sealed moistened towelettes.
  - Scissors.
  - At least one blanket.
  - Tweezers.
  - Adhesive tape.
  - Latex gloves.
  - Resuscitation equipment such as resuscitation bag, airway, or pocket mask.
  - Two elastic wraps.
  - Splint.
  - Stretcher.
- For additional information on first-aid kits and supplies see ANSI/ISEA Z308.1 - 2015.

(3) The employer must maintain the contents of each first-aid kit in a serviceable condition.

**Note:** Site specific rescue plan requirements are located in WAC 296-32-24005(5).

#### NEW SECTION

**WAC 296-32-22525 Training. (1)** Employers shall provide, document, and ensure that employees have received effective training in all of the processes, procedures, precautions, hazards, equipment, personal protective equipment, and safe work practices pertaining to this chapter and job assignments. The employer shall ensure that employees do not engage in any activities related to this chapter and job assignments until the employees have received proper training.

(2) An employer may accept training records or certificates for previous training if the employer:

(a) Confirms the employee has the current training and knowledge applicable to the new employee's job duties, specific procedures, and equipment being used as required by this chapter.

(b) Uses an examination or interview to make an initial determination that the employee understands the relevant safety related work practices before the employee performs any work covered by this chapter.

(c) Supervises the employee closely until that employee has demonstrated proficiency as required by this chapter.

(3) 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 chapter.

(4) The employer shall maintain a training program that includes a list of the subject courses and the types of personnel required to receive such instruction. A written description of the training program and a record of employees who have received such training shall be maintained for five years and shall be made available upon request to the director of the department of labor and industries, or his/her authorized representative. The individual who conducts the training must document and verify completion of training.

(5) Such training shall, where appropriate, include the following subjects:

(a) Detailed training on specific work being performed by employees.

(b) Recognition and avoidance of dangers relating to encounters with harmful substances and related hazards, and animal, insect, or plant life.

(c) Procedures to be followed in emergency situations.

(6) "Retraining." When the employer has reason to believe that any employee who has already been trained does not have the understanding and skill, the employer shall retrain that employee. Circumstances where retraining is required include, but are not limited to, situations where:

(a) Changes in the workplace render previous training obsolete;

(b) If new technology, new types of equipment, changes in procedures or job site necessitate the use of safety-related work practices that are different from those which the employee would normally use;

(c) If the supervision and routine inspections indicate that the employee is not complying with the safety-related work practices required by this chapter;

(d) Inadequacies in an employee's knowledge of safety-related work practices or use of equipment indicate that the employee has not retained the requisite understanding or skill; or

(e) If an employee is involved in an accident or near miss incident.

(f) Tasks that are performed less often than once per year will necessitate retraining before the performance of the work practices involved.

**NEW SECTION**

**WAC 296-32-22530 Employee protection in public work areas.** (1) Before work begins in the vicinity of vehicular or pedestrian traffic that may endanger employees:

(a) Traffic control signs, devices, and barriers must be positioned and used according to the requirements of chapter 296-155 WAC, Part E.

(b) When flaggers are used, employers, responsible contractors and/or project owners must comply with the requirements of WAC 296-155-305.

(2) During hours of darkness, warning lights must be prominently displayed and excavated areas must be enclosed with protective barricades.

(3) When work exposes energized or moving parts that are normally protected, danger signs shall be displayed and barricades erected to warn other personnel in the area.

(4) The employer shall ensure that an employee finding any crossed or fallen wires which create or may create a hazardous situation at the work area:

(a) Remains on guard or adopts other adequate means to warn other employees of the danger; and

(b) Has notified the proper authority or controlling utility at the earliest practical moment.

**NEW SECTION**

**WAC 296-32-22535 Facilities requirements.** (1) Buildings containing telecommunications facilities. See Table 1.

(a) Illumination. Lighting in telecommunication facilities shall be provided in an amount such that continuing work operations, routine observations, and the passage of employees can be carried out in a safe and healthful manner.

(b) For specific tasks in facilities, such as splicing cable and the maintenance and repair of equipment frame lineups, the employer shall install permanent lighting or portable supplemental lighting to attain a higher level of illumination.

(c) Minimum standards of illumination for industrial interiors must comply with WAC 296-800-210.

(d) Illumination of field work. Whenever natural light is insufficient to illuminate the worksite, artificial illumination shall be provided to enable the employee to perform the work safely.

**Table 1**

<b>Lighting Table</b>		
<b>Activity</b>	<b>Minimum acceptable average lighting level in an area:</b>	<b>Any one single measurement used to determine the average lighting level* cannot be less than:</b>
	<b>(Foot-candles)</b>	<b>(Foot-candles)</b>
Indoor task	10	5
Outdoor task	5	2.5
Nontask activities for both indoor and outdoor	3	1.5

\* Lighting levels must be measured at thirty inches above the floor/working surface at the task.

(2) Working spaces.

(a) Space shall be provided for access to all medium high and high voltage equipment. The width of the working space

in front of the equipment must be the width of the equipment or thirty inches, whichever is greater.

(b) Every structure, new or old, designed for human occupancy shall be provided with exits to permit the prompt escape of occupants in case of fire or other emergency. The means of egress shall be a continuous and unobstructed way of exit travel from any point in a building or structure to a public way and consist of three separate and distinct parts; the way of exit access, the exit and the way of exit discharge. A means of egress comprises the vertical and horizontal ways of travel and shall include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, escalators, horizontal exits, courts and yards.

(c) "Maintenance aisles," or "wiring aisles," between equipment frame lineups are working spaces and are not a means of egress for purposes of WAC 296-800-310.

(3) Special doors.

(a) When blastproof or power actuated doors are installed in specially designed hard site security buildings and spaces, they shall be designed and installed so that they can be used as a means of egress in emergencies.

(b) When high voltage apparatus is isolated in a supplementary enclosure, interlocks shall be provided on all access doors.

(c) Warning signs shall be provided, which are visible both when the guard or cover is in place or removed.

(4) Power plant machinery in telecommunications facilities.

(a) When power plant machinery is operated with commutators and couplings uncovered, the adjacent housing shall be clearly marked to alert personnel to the rotating machinery.

(b) "Employee working" signs, or similar wording shall be placed on switches associated with motors or generators under repair.

(c) Before opening any power circuit, the load shall be reduced.

(d) All power switches on power panels and disconnects shall be in an open position and generator starting mechanisms disabled before maintenance or repair.

(e) When working on the brushes of a machine in operation, employees must use care not to break a circuit. When it is necessary to remove a brush from the holder, the machine must be shut down.

(f) Only fuse pullers specifically designed for that purpose shall be used when replacing cartridge type fuses.

(5) Battery handling.

(a) Eye protection devices which provide side as well as frontal eye protection for employees shall be provided when measuring storage battery specific gravity or handling electrolyte and the employer shall ensure that such devices are used by the employees.

(b) The employer must ensure that appropriate acid resistant gloves, face shields, and aprons are worn for protection against spattering.

(c) Facilities for quick drenching or flushing of the eyes and body meeting the requirements of WAC 296-800-15030 shall be provided while servicing or handling batteries, unless the storage batteries are of the enclosed type and equipped

with explosion proof vents, in which case sealed water rinse or neutralizing packs may be substituted for the quick drenching or flushing facilities. Maintenance free batteries do not require an emergency eye wash if no electrolyte or water is added to the battery.

(d) Employees assigned to work with storage batteries shall be instructed in emergency procedures such as dealing with accidental acid spills.

(e) Electrolyte (acid or base, and distilled water) for battery cells shall be mixed in a well-ventilated room. Acid or base shall be poured gradually, while stirring, into the water. Water shall never be poured into concentrated (greater than 75 percent) acid solutions. Electrolyte shall never be placed in metal containers nor stirred with metal objects.

(f) When taking specific gravity readings, the open end of the hydrometer shall be covered with an acid resistant material while moving it from cell to cell to avoid splashing or throwing the electrolyte.

(g) Ventilation shall be provided to ensure diffusion of the gasses from the battery to prevent the accumulation of an explosive type mixture.

(h) Racks and trays shall be substantial and treated to be resistant to the electrolyte.

(i) Floors shall be of acid resistant construction or be protected from acid accumulation.

(6) Transportation and storage of compressed gas cylinders.

(a) Highway mobile vehicles and trailers stored in garages in accordance with WAC 296-24-47513 (4)(b), equipped to carry more than one LP-gas container, but the total capacity of LP-gas containers per work vehicle stored in garages shall not exceed 100 pounds of LP-gas.

(b) All container valves, or other means that positively seals the container, shall be closed when not in use.

(c) Special compartments, racks, or blocking shall be provided and used to prevent cylinder movement when using or transporting nitrogen cylinders.

(d) Regulators shall be removed or guarded before a cylinder is transported.

**Notes:**

- Welding and cutting requirements are located in chapter 296-155 WAC, Part H.
- Compressed gas and compressed gas equipment requirements are located in chapter 296-24 WAC, Parts I and K.

(7) Potable water.

(a) An adequate supply of potable water shall be provided in all places of employment.

(b) Portable containers used to dispense drinking water shall be capable of being tightly closed and equipped with a tap. Water shall not be dipped from containers.

(c) Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose.

(d) A common drinking cup is prohibited.

(e) Where single service cups (to be used but once) are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.

(f) All water containers used to furnish drinking water shall be thoroughly cleaned at least once each week or more often as conditions require.



(g) The requirements of this subsection do not apply to mobile crews or to normally unattended work locations as long as employees working at these locations have transportation immediately available, within the normal course of their duties, to nearby facilities otherwise meeting the requirements of this section.

#### NEW SECTION

**WAC 296-32-22540 Tools and personal protective equipment—General.** (1) Personal protective equipment (PPE) - Hazard assessment. The employer must identify hazards or potential hazards in the workplace and determine if PPE is necessary on the job as required by WAC 296-800-16005 and 296-800-16010.

(2) PPE, protective devices and special tools needed for the work of employees shall be provided and the employer shall ensure that they are used by employees.

(a) PPE must be provided at no cost to the employee. See WAC 296-800-16020, Table-X: Employer responsibility for providing PPE.

(b) Before each day's use the employer shall ensure that these personal protective devices, tools, and equipment are carefully inspected by a competent person to ascertain that they are in good condition.

(c) Tools found to be defective shall be taken out of service.

(d) Metal tapes, ladders and ropes.

(i) Metal measuring tapes, metal ladders, metal measuring ropes, or tapes containing conductive strands shall not be used when working near exposed energized parts.

(ii) Where it is necessary to measure clearances from energized parts, only nonconductive devices shall be used.

(e) The use of any machinery, tool, material, or equipment which is not in compliance with any applicable requirements of this chapter is prohibited. Such machinery, tool, material, or equipment shall either be identified as unsafe by tagging or locking the controls to render them inoperable or shall be physically removed from its place of operation.

(3) Head protection.

(a) Head protection must meet the requirements of ANSI Z89.1-2014 American National Standard for Industrial Head Protection.

(b) Make sure employees wear appropriate protective helmets when exposed to hazards that could cause a head injury.

**Note:** Examples of this type of hazard include:

- Flying or propelled objects.
- Falling objects or materials.
- Electrical hazards, Class E electrically rated.

(c) Tower workers.

(i) Must wear ANSI Z89.1-2014 Type I Class C climbing helmets while climbing and working at elevations.

(ii) Must wear head protection meeting the requirements of ANSI Z89.1-2014 while performing ground work with overhead hazard exposure.

(4) Eye protection. Employees shall use eye and/or face protection where there is a possibility of injury that can be prevented by such personal protective equipment. In such cases, employers shall make conveniently available a type of

protection suitable for the work to be performed, and employees must use such protection.

**Note:** See WAC 296-800-160 for additional personal protective equipment requirements.

(5) Foot protection.

(a) Substantial footwear, made of leather or other equally firm material, shall be worn by employees in any occupation in which there is a danger of injury to the feet through falling or moving objects, or from burning, scalding, cutting, penetration, or like hazard.

(i) The soles and heels of such footwear shall be of a material that will not create a slipping hazard.

(ii) Shoes made of leather or other firm materials that have soft athletic-type soles which would protect employees from foot injuries and at the same time, provide soft and firm footing while working under specialty requirements or with specialty materials are acceptable if meeting safety shoe requirements established by OSHA or ANSI.

(iii) Footwear that has deteriorated to a point where it does not provide the required protection shall not be used.

(b) Traditional tennis shoes, shoes with canvas tops, or thin or soft soled athletic shoes, open toed sandals, slippers, dress shoes or other similar type shoes shall not be worn. Soft or athletic-type soles with uppers of leather or other substantial material may be used where firm footing is desired and where minimal danger of injury to feet from falling or moving objects.

(c) Safety-toe footwear for employees shall meet the requirements and specifications in ASTM, F2413-2011.

(6) Portable power equipment.

(a) All portable power equipment used in the telecommunications industry shall be appropriately grounded.

(b) Nominal 120V, or less, portable generators used for providing power at work locations do not require grounding if the output circuit is completely isolated from the frame of the unit.

(c) Grounding shall be omitted when using soldering irons, guns or wire-wrap tools on telecommunication circuits.

(7) Vehicle-mounted utility generators. Vehicle-mounted utility generators used for providing nominal 240V AC or less for powering portable tools and equipment need not be grounded to earth if all of the following conditions are met:

(a) One side of the voltage source is solidly strapped to the metallic structure of the vehicle;

(b) Grounding-type outlets are used, with a "grounding" conductor between the outlet grounding terminal and the side of the voltage source that is strapped to the vehicle;

(c) All metallic encased tools and equipment that are powered from this system are equipped with 3-wire cords and grounding-type attachment plugs, except as designated in this subsection.

(d) Under the following conditions the frame of a vehicle may serve as the grounding electrode for a system supplied by a generator located on the vehicle:

(i) The frame of the generator is bonded to the vehicle frame;

(ii) The generator supplies only equipment located on the vehicle and/or cord-connected and plug-connected equip-

ment through receptacles mounted on the vehicle or on the generator;

(iii) The noncurrent-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles are bonded to the generator frame; and

(iv) The system complies with all other provisions of this section.

(e) Neutral conductor bonding. A neutral conductor shall be bonded to the generator frame if the generator is a component of a separately derived system. No other conductor need be bonded to the generator frame.

(8) Portable lights, tools and appliances. When operated from commercial power such metal parts of these devices shall be grounded, unless these tools or appliances are protected by a system of double insulation, or its equivalent. Where such a system is employed, the equipment shall be distinctively marked to indicate double insulation.

(9) Fire extinguishers.

(a) Fire extinguishers shall be provided for the protection of both the building structure and the occupancy hazards contained therein conforming to WAC 296-800-300.

(b) All vehicles in the field must have fire extinguishers when performing work that could cause an ignition source.

**Note:** Ignition sources include the following, but are not limited to:

- Welding;
- Cutting;
- Grinding;
- Generator use;
- CAD welding;
- Propane torches; or
- Smoking.

(c) Employees required to use fire extinguishers shall be trained on the location and operation of fire extinguishers.

(d) Any fire extinguishers showing defects shall be removed from service.

(e) Fire extinguishers shall be thoroughly inspected monthly to ensure serviceability.

(f) Fire extinguishers shall be inspected annually, recharged, or repaired to ensure reliability.

(g) Each fire extinguisher shall have a durable tag securely attached to show the maintenance or recharge date and the initials or signature of the person performing this service.

**Note:** For additional requirements relating to portable fire extinguishers see WAC 296-800-300.

## NEW SECTION

**WAC 296-32-22545 Capstan and cathead hoists.** This section is to provide the minimum requirements for using a capstan hoist for overhead lifting or horizontal pulling during the construction and/or maintenance of communication equipment.

(1) All capstan hoist mechanisms shall meet the applicable requirements for design, construction, installation, testing, inspection, maintenance and operations as prescribed by the manufacturer or the qualified person designing the system.

(2) Catheads or capstans shall not be used to raise or lower personnel or to lift loads directly over personnel that are not directly involved with the lift.

(3) Training. Individuals operating a capstan hoist must be qualified through documented training and demonstrated proficiency. Training shall include, but not be limited to, the following elements:

- (a) Anchorage loading;
- (b) Load testing;
- (c) Electrical loading;
- (d) Capstan load rating;
- (e) Types of synthetic rope;
- (f) Synthetic rope breaking strengths and safety factors;
- (g) Synthetic rope inspection;
- (h) Synthetic rope knots;
- (i) Capstan head alignment;
- (j) Inspection and maintenance;
- (k) Tag line force;
- (l) Solving overlap problems.

(4) The operator will be properly trained and proficient on the operation of catheads or capstans.

(a) The operator must not wear loose clothing.

(b) The operator must not stand in the bite of the pull line.

(5) Foot-operated controls must be located or guarded so that unintentional movement to the "ON" position is not possible.

(6) Inspection. The overall system shall be inspected daily before each use. At a minimum, the inspection shall include the drive train, drum and the anchorage.

(7) During operations, the following requirements must be met:

(a) The electrical drive motor has the proper amount of amperage to operate efficiently with the correct size of breaker;

(b) The extension cords used are the proper size and length;

(c) The hydraulic system has proper pressure to ensure all the valves are operating properly and the hydraulic hoses are in good condition;

(d) The gas engine is maintained properly and in good working order.

(8) Anchorage.

(a) There shall be an appropriate anchorage for the size of the unit being used and the maximum expected load to be lifted.

(b) The anchorage shall be load tested before operations start to 1.5 times the maximum anticipated hoist line pull, or the anchorage shall be qualified based on engineering calculations utilizing a minimum safety factor of two.

(9) Rope.

(a) Only manufacturer approved rope or line shall be used;

(b) Natural fiber rope shall not be used;

(c) Polypropylene material shall not be used;

(d) Frozen rope shall not be used; and

(e) All ropes must be maintained and in good condition.

(f) Ropes shall not be used if there is exposure to corrosive substances, chemicals or heat;

(g) A splice shall not be able to contact the cathed friction service (drum);

(h) Flat mule tape or its equivalent shall not be used unless approved by the manufacturer.

(10) Rope replacement on the drum. In all situations the manufacturer's recommendations shall be followed and at a minimum the rope shall be placed as follows:

(a) A minimum of four wraps are required on the drum;

(b) The rope wraps shall be installed on the drum with the load side on the inside of the drum closest to the motor;

(c) The pull side will be on the outside furthest away from the motor;

(d) The load weight lifted is defined by the number of rope wraps on the drum, type of rope material and the diameter of the rope.

(11) Rope replacement during operations.

(a) During operations there must be a plan for excess rope so that it does not get entangled with other objects or your feet.

(b) Before lifting begins, there must be a plan on how to tie off the load to hold it in place.

(12) Load test.

(a) A load test of the gross load shall be performed.

(b) A rigging plan is required when performing vertical lifts per WAC 296-32-24020.

(c) A separate load test must be performed if the system is altered or rearranged.

(13) Communications and hand signals. The means of hand signals and communication will be determined before the job starts. The operator is responsible for the load during operations. The operator shall have a clear view of the load being lifted and/or the hand signals of the person controlling the load. If there is no clear view, then an alternate method of communication shall be used.

**NEW SECTION**

**WAC 296-32-22550 Rubber insulating equipment.**

(1) Rubber insulating equipment designed for the voltage levels to be encountered shall be provided and the employer shall ensure that they are used by employees as required by this section. The requirements of WAC 296-24-980 Safeguards for personnel protection, shall be followed except for Table 2.

(2) The employer is responsible for periodic retesting of all insulating gloves, blankets, and other rubber insulating equipment. This retesting shall be electrical, visual and mechanical. The following maximum retesting intervals shall apply:

**Table 2**

Gloves, Blankets and Other Insulating Equipment	Natural Rubber (Months)	Synthetic Rubber (Months)
New	12	18
Reissued	9	15

(3) Protector for gloves. Approved protectors must be worn at all times over rubber gloves. Inner liners may be worn if desired.

**Exception:** Protector gloves need not be used with Class O gloves, under limited-use conditions less than 250 volts, 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.

(4) Gloves and blankets shall be marked to indicate compliance with the retest schedule and shall be marked with the date the next test date is due. Any rubber gloves found to be defective shall be removed from service and marked as being defective.

(5) Patching rubber goods is prohibited; rubber protective equipment shall not be vulcanized or patched.

(6) A pair of rubber gloves shall be issued and assigned to each employee when required to work on or be exposed to energized parts. Employees shall not use or share gloves issued to another employee.

(7) 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.

**NEW SECTION**

**WAC 296-32-22555 General fall protection.** (1) The employer shall ensure that all surfaces on which employees will be working or walking on are structurally sound and will support them safely prior to allowing employees to work or walk on them.

(2) Inspection criteria.

(a) All components (including hardware, lanyards, and positioning harnesses or full body harnesses depending on which system is used) of personal fall arrest systems, personal fall restraint systems and positioning device systems shall be inspected prior to each use according to manufacturer's specifications for mildew, wear, damage, and other deterioration. Defective components shall be removed from service if their function or strength has been adversely affected.

(b) Safety nets shall be inspected at least once a week according to manufacturer's specifications for wear, damage, and other deterioration. Safety nets shall also be inspected after any occurrence which could affect the integrity of the safety net system. Defective components shall be removed from service. Defective nets shall not be used.

(3) Personal fall arrest systems, personal fall restraint systems, positioning device systems, and their components shall be used only for employee protection and not to hoist materials.

Figure 2

Examples of what personal fall arrest, personal fall restraint and positioning device systems look like:



Fall Arrest

Fall Restraint

Positioning

(4) Fall protection required regardless of height.

(a) Regardless of height, open sided floors, walkways, platforms, or runways above or adjacent to dangerous equipment, such as water towers or roof tops and material handling equipment, and similar hazards shall be guarded with a standard guardrail system.

(b) Floor holes or floor openings, into which persons can accidentally walk, shall be guarded by either a standard railing with standard toe board on all exposed sides, or a cover of standard strength and construction that is secured against accidental displacement. While the cover is not in place, the floor hole opening shall be protected by a standard railing.

**Note:** Requirements for when guarding floor openings at heights of four feet or more are located in subsection (5)(d) of this section.

(c) Regardless of height, employees shall be protected from falling into or onto impalement hazards, such as: Reinforcing steel (rebar), or exposed steel or wood stakes used to set forms.

(5) Fall protection required at four feet or more.

(a) The employer shall ensure that the appropriate fall protection system is provided, installed, and implemented according to the requirements in this part when employees are exposed to fall hazards of four feet or more to the ground or lower level when on a walking/working surface, towers, poles, or communication structures.

(b) Guarding of walking/working surfaces with unprotected sides and edges. Every open sided walking/working surface or platform four feet or more above adjacent floor or ground level shall be guarded by one of the following fall protection systems.

(i) A standard guardrail system, or the equivalent, as specified in subsection (9)(b) of this section, on all open sides, except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a standard toe board wherever, beneath the open sides, persons can pass, there is moving machinery, or there is equipment with which falling materials could create a hazard.

(A) When employees are using stilts, the height of the top rail or equivalent member of the standard guardrail system must be increased (or additional railings may be added) an amount equal to the height of the stilts while maintaining the strength specifications of the guardrail system.

(B) Where employees are working on platforms above the protection of the guardrail system, the employer must either increase the height of the guardrail system as specified in (b)(i)(A) of this subsection, or select and implement another fall protection system as specified in (c), (d), (e), (f), or (g) of this subsection.

(C) When guardrails must be temporarily removed to perform a specific task, the area shall be constantly attended by a monitor until the guardrail is replaced. The only duty the monitor shall perform is to warn persons entering the area of the fall hazard.

(D) Guardrails and toe boards may be omitted on distribution frame mezzanine platforms to permit access to equipment. This exemption applies only on the side or sides of the platform facing the frames and only on those portions of the platform adjacent to equipped frames.

(ii) A fall restraint system;

(iii) A personal fall arrest system;

(iv) A safety net system;

(v) A catch platform; and

(vi) A warning line.

(c) Guarding of ramps, runways, and inclined walkways.

(i) Ramps, runways, and inclined walkways that are four feet or more above the ground or lower level shall be equipped with a standard guardrail system or the equivalent, as specified in subsection (9)(b) of this section, along each open side. Wherever tools, machine parts, or materials are likely to be used on the runway, a toe board shall also be installed on each open side to protect persons working or passing below.

(ii) Runways used exclusively for special purposes may have the railing on one side omitted where operating conditions necessitate such omission, provided the falling hazard is minimized by using a runway not less than eighteen inches wide.

(d) Guarding of floor openings.

(i) Floor openings shall be guarded by one of the following fall restraint systems.

(A) A standard guardrail system, or the equivalent, as specified in subsection (9)(b) of this section, on all open sides, except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a standard toe board wherever, beneath the open sides, persons can pass, or there is moving machinery, or there is equipment with which falling materials could create a hazard.

(B) A cover, as specified in subsection (9)(c) of this section.

(C) A warning line system erected at least fifteen feet from all unprotected sides or edges of the floor opening and meets the requirements of subsection (9)(d) of this section.

(D) If it becomes necessary to remove the cover, the guardrail system, or the warning line system, then an employee shall remain at the opening until the cover, guardrail system, or warning line system is replaced. The only duty the employee shall perform is to prevent exposure to the fall hazard by warning persons entering the area of the fall hazard.

(ii) Ladderway floor openings or platforms shall be guarded by standard guardrail system with standard toe boards on all exposed sides, except at entrance to opening,

with the passage through the railing either provided with a swinging gate or so offset that a person cannot walk directly into the opening.

(iii) Hatchways and chute floor openings shall be guarded by one of the following:

(A) Hinged covers of standard strength and construction and a standard guardrail system with only one exposed side. When the opening is not in use, the cover shall be closed or the exposed side shall be guarded at both top and intermediate positions by removable standard guardrail systems.

(B) A removable standard guardrail system with toe board on not more than two sides of the opening and fixed standard guardrail system with toe boards on all other exposed sides. The removable railing shall be kept in place when the opening is not in use and shall be hinged or otherwise mounted so as to be conveniently replaceable.

(iv) Wherever there is a danger of falling through an unprotected skylight opening, or the skylight has been installed and is not capable of sustaining the weight of a minimum of eight hundred pounds or the maximum potential load with a safety factor of four, standard guardrails shall be provided on all exposed sides in accordance with subsection (9)(b) of this section or the skylight shall be covered in accordance with subsection (9)(c) of this section. Personal fall arrest equipment may be used as an equivalent means of fall protection when worn by all employees exposed to the fall hazard.

(v) Pits and trap door floor openings shall be guarded by floor opening covers of standard strength and construction. While the cover is not in place, the pit or trap openings shall be protected on all exposed sides by removable standard guardrail system.

(vi) Manhole floor openings shall be guarded by standard covers which need not be hinged in place. While the cover is not in place, the manhole opening shall be protected by standard guardrail system.

(e) Guarding of wall openings.

(i) Wall openings, from which there is a fall hazard of four feet or more, and the bottom of the opening is less than thirty-nine inches above the working surface, shall be guarded as follows:

(A) When the height and placement of the opening in relation to the working surface is such that either a standard rail or intermediate rail will effectively reduce the danger of falling, one or both shall be provided;

(B) The bottom of a wall opening, which is less than four inches above the working surface, regardless of width, shall be protected by a standard toe board or an enclosing screen either of solid construction or as specified in subsection (9)(b)(iii) of this section.

(ii) An extension platform, outside a wall opening, onto which materials can be hoisted for handling shall have standard guardrails on all exposed sides or equivalent. One side of an extension platform may have removable railings in order to facilitate handling materials.

(iii) When a chute is attached to an opening, the provisions of (d)(iii) of this subsection shall apply, except that a toe board is not required.

(f) Fall protection during form and rebar work. When exposed to a fall height of four feet or more, employees plac-

ing or tying reinforcing steel on a vertical face are required to be protected by personal fall arrest systems, safety net systems, or positioning device systems.

(g) Fall protection on steep pitched and low pitched roofs.

Steep pitched roofs. Regardless of the work activity, employers shall ensure that employees exposed to fall hazards of four feet or more while working on a roof with a pitch greater than four in twelve use one of the following:

(i) Fall restraint system. Warning line systems are prohibited on steep pitched roofs;

(ii) Fall arrest system; or

(iii) Positioning device system.

(h) Low pitched roofs. Employers shall ensure that employees exposed to fall hazards of four feet or more while engaged in telecommunications work on low pitched roofs use one of the following:

(i) Fall restraint system;

(ii) Fall arrest system;

(iii) Positioning device system;

(iv) Warning line system;

(v) Safety watch system, see subsection (10) of this section for safety watch specifications.

(i) Hazardous slopes. Employees exposed to falls of four feet or more while working on a hazardous slope shall use personal fall restraint systems or positioning device systems.

(j) Working on any surface four feet or more that does not meet the definition of a walking/working surface not already covered in this subsection (5);

(6) Excavation and trenching operations.

(a) Exceptions. Fall protection is not required at excavations four feet or more when employees are:

(i) Directly involved with the excavation process and on the ground at the top edge of the excavation; or

(ii) Working at an excavation site where appropriate sloping of side walls has been implemented as the excavation protective system.

(b) Fall protection is required for employees standing in or working in the affected area of a trench or excavation exposed to a fall hazard of ten feet or more and:

(i) The employees are not directly involved with the excavation process; or

(ii) The employees are on the protective system or any other structure in the excavation.

**Note:** Persons considered directly involved in the excavation process include:

- Foreman of the crew.

- Signal person.

- Employee hooking on pipe or other materials.

- Grade person.

- State, county, or city inspectors inspecting the excavation or trench.

- An engineer or other professional conducting a quality-assurance inspection.

(7) Fall protection work plan. The employer shall develop and implement a written fall protection work plan including each area of the work place where the employees are assigned and where fall hazards of ten feet or more exist.

- (a) The fall protection work plan shall:
- (i) Identify all fall hazards in the work area;
  - (ii) Describe the method of fall arrest or fall restraint to be provided;
  - (iii) Describe the proper procedures for the assembly, maintenance, inspection, and disassembly of the fall protection system to be used;
  - (iv) Describe the proper procedures for the handling, storage, and securing of tools and materials;
  - (v) Describe the method of providing overhead protection for employees who may be in, or pass through the area below the worksite;
  - (vi) Describe the method for prompt, safe removal of injured employees; and
  - (vii) Be available on the job site for inspection by the department.
- (b) Prior to permitting employees into areas where fall hazards exist the employer shall ensure employees are trained and instructed in the items described in (a)(i) through (vii) of this subsection.
- (8) Fall arrest specifications. Fall arrest protection shall conform to the following provisions:
- (a) Personal fall arrest system shall consist of:
    - (i) A full body harness shall be used.
    - (ii) Full body harness systems or components subject to impact loading shall be immediately removed from service and shall not be used again for employee protection unless inspected and determined by a competent person to be undamaged and suitable for reuse.
    - (iii) Anchorages for full body harness systems shall be capable of supporting (per employee):
      - (A) Three thousand pounds when used in conjunction with:
        - (I) A self-retracting lifeline that limits the maximum free fall distances to two feet or less; or
        - (II) A shock absorbing lanyard that restricts the forces on the body to nine hundred pounds or less.
      - (B) Five thousand pounds for all other personal fall arrest system applications, or they shall be designed, installed, and used:
        - (I) As a part of a complete personal fall arrest system which maintains a safety factor of at least two; and
        - (II) Under the supervision of a qualified person.
    - (iv) When stopping a fall, personal fall arrest systems must:
      - (A) Be rigged to allow a maximum free fall distance of six feet so an employee will not contact any lower level;
      - (B) Limit maximum arresting force on an employee to one thousand eight hundred pounds (8 kN);
      - (C) Bring an employee to a complete stop and limit maximum deceleration distance an employee travels to three and one-half feet (1.07 m); and
      - (D) Have sufficient strength to withstand twice the potential impact energy of an employee free falling a maximum distance of six feet (1.8 m).

**Note:** Shock absorbers that meet the requirements of ANSI Z359.13-2013 that are used as a part of a personal fall arrest system in accordance with manufacturer's recommendations and instructions for use and installation will limit the maximum arresting forces on an employee's body to one thousand eight hundred pounds or less.

- (v) All safety lines and lanyards shall be protected against being cut or abraded.
- (vi) The attachment point of the full body harness shall be located in the center of the wearer's back near shoulder level, or above the wearer's head.
- (vii) Hardware shall be drop forged, pressed or formed steel, or made of materials equivalent in strength.
- (viii) Hardware shall have a corrosion resistant finish, and all surfaces and edges shall be smooth to prevent damage to the attached full body harness or lanyard.
- (ix) When vertical lifelines (droplines) are used, not more than one employee shall be attached to any one lifeline.

**Note:** The system strength needs in the following items are based on a total combined weight of employee and tools of no more than three hundred ten pounds. If combined weight is more than three hundred ten pounds, appropriate allowances must be made or the system will not be in compliance. For more information on system testing, see WAC 296-24-88050 Appendix C—Personal fall arrest system (Part I—Mandatory; Parts II and III—Nonmandatory).

(x) Vertical lifelines (droplines) shall have a minimum breaking strength of five thousand pounds (22.2 kN), except that self-retracting lifelines and lanyards which automatically limit free fall distance to two feet (.61 m) or less shall have a minimum breaking strength of three thousand pounds (13.3 kN).

(xi) Horizontal lifelines shall be designed, installed, and used, under the supervision of a qualified person, as part of a complete personal fall arrest system, which maintains a safety factor of at least two.

(xii) Droplines or lifelines used on rock scaling operations, or in areas where the lifeline may be subjected to cutting or abrasion, shall be a minimum of seven-eighths inch wire core manila rope or equivalent. For all other lifeline applications, a minimum of three-fourths inch manila rope or equivalent, with a minimum breaking strength of five thousand pounds, shall be used.

(xiii) Lanyards shall have a minimum breaking strength of five thousand pounds (22.2 kN).

(xiv) All components of full body harness systems whose strength is not otherwise specified in this subsection shall be capable of supporting a minimum fall impact load of five thousand pounds (22.2 kN) applied at the lanyard point of connection.

(xv) D-rings and snap hooks shall be proof-tested to a minimum tensile load of three thousand six hundred pounds (16 kN) without cracking, breaking, or taking permanent deformation.

(xvi) Snap hooks shall be a locking type snap hook designed and used to prevent disengagement of the snap hook by the contact of the snap hook keeper by the connected member.

(xvii) Unless the snap hook is designed for the following connections, snap hooks shall not be engaged:

- (A) Directly to the webbing, rope or wire rope;
- (B) To each other;
- (C) To a D-ring to which another snap hook or other connector is attached;
- (D) To a horizontal lifeline; or
- (E) To any object which is incompatibly shaped or dimensioned in relation to the snap hook such that unintentional disengagement could occur by the connected object being able to depress the snap hook keeper and release itself.

(b) Safety net systems. Safety net systems and their use shall comply with the following provisions:

(i) Safety nets shall be installed as close as practicable under the surface on which employees are working, but in no case more than thirty feet (9.1 m) below such level unless specifically approved in writing by the manufacturer. The potential fall area to the net shall be unobstructed.

(ii) Safety nets shall extend outward from the outermost projection of the work surface as follows in Table 3:

**Table 3**

<b>Vertical distance from working levels to horizontal plane of net</b>	<b>Minimum required horizontal distance of outer edge of net from the edge of the working surface</b>
Up to 5 feet	8 feet
More than 5 feet up to 10 feet	10 feet
More than 10 feet	13 feet

(iii) Safety nets shall be installed with sufficient clearance under them to prevent contact with the surface or structures below when subjected to an impact force equal to the drop test specified in (b)(iv) of this subsection.

(iv) Safety nets and their installations shall be capable of absorbing an impact force equal to that produced by the drop test.

(A) Except as provided in (b)(iv)(B) of this subsection, safety nets and safety net installations shall be drop-tested at the job site after initial installation and before being used as a fall protection system, whenever relocated, after major repair, and at six-month intervals if left in one place. The drop-test shall consist of a four hundred pound (180 kg) bag of sand  $30 \pm 2$  inches ( $76 \pm 5$  cm) in diameter dropped into the net from the highest walking/working surface at which employees are exposed to fall hazards, but not from less than forty-two inches (1.1 m) above that level.

(B) When the employer can demonstrate that it is unreasonable to perform the drop-test required by (b)(iv)(A) of this subsection, the employer (or a designated competent person) shall certify that the net and net installation is in compliance with (b)(iii) and (iv)(A) of this subsection by preparing a certification record prior to the net being used as a fall protection system. The certification record must include an identification of the net and net installation for which the certification record is being prepared; the date that it was determined that the identified net and net installation were in compliance with (b)(iii) of this subsection and the signature of the person mak-

ing the determination and certification. The most recent certification record for each net and net installation shall be available at the job site for inspection.

(v) Materials, scrap pieces, equipment, and tools which have fallen into the safety net shall be removed as soon as possible from the net and at least before the next work shift.

(vi) The maximum size of each safety net mesh opening shall not exceed thirty-six square inches (230 cm<sup>2</sup>) nor be longer than six inches (15 cm) on any side, and the opening, measured center-to-center of mesh ropes or webbing, shall not be longer than six inches (15 cm). All mesh crossings shall be secured to prevent enlargement of the mesh opening.

(vii) Each safety net (or section of it) shall have a border rope or webbing with a minimum breaking strength of five thousand pounds (22.2 kN).

(viii) Connections between safety net panels shall be as strong as integral net components and shall be spaced not more than six inches (15 cm) apart.

(c) Catch platforms.

(i) A catch platform shall be installed within four vertical feet of the work area.

(ii) The catch platform's width shall be a minimum of forty-five inches wide and shall be equipped with standard guardrails and toe boards on all open sides and shall be capable of supporting a minimum of eight hundred pounds or the maximum potential load, with a safety factor of four.

(9) Fall restraint specifications. Fall restraint protection shall conform to the following provisions:

(a) Personal fall restraint systems shall be rigged to allow the movement of employees only as far as the unprotected sides and edges of the walking/working surface, and shall consist of:

(i) A full body harness shall be used.

(ii) The full body harness must be attached to securely rigged restraint lines.

(iii) All hardware assemblies for full body harness shall be capable of withstanding a tension loading of four thousand pounds without cracking, breaking, or taking a permanent deformation.

(iv) The employer shall ensure component compatibility.

(v) Anchorage points used for fall restraint shall be capable of supporting four times the intended load.

(vi) Rope grab devices are prohibited for fall restraint applications unless they are part of a fall restraint system designed specifically for the purpose by the manufacturer, and used in strict accordance with the manufacturer's recommendations and instructions.

(b) Guardrail specifications.

(i) A standard guardrail system shall consist of top rail, intermediate rail, and posts, and shall have a vertical height of thirty-nine to forty-five inches from upper surface of top rail to floor, platform, runway, or ramp level. When conditions warrant, the height of the top edge may exceed the forty-five inch height, provided the guardrail system meets all other criteria of this subsection. The intermediate rail shall be halfway between the top rail and the floor, platform, runway, or ramp. The ends of the rails shall not overhang the terminal posts except where such overhang does not constitute a projection hazard.

(ii) Minimum requirements for standard guardrail systems under various types of construction are specified in the following items:

(A) For wood railings, the posts shall be of at least two-inch by four-inch stock spaced not to exceed eight feet; the top rail shall be of at least two-inch by four-inch stock and each length of lumber shall be smooth surfaced throughout the length of the railing. The intermediate rail shall be of at least one-inch by six-inch stock. Other configurations may be used for the top rail when the configuration meets the requirements of (b)(ii)(G) of this subsection.

(B) For pipe railings, posts and top and intermediate railings shall be at least one and one-half inches nominal OD diameter with posts spaced not more than eight feet on centers. Other configurations may be used for the top rail when the configuration meets the requirements of (b)(ii)(G) of this subsection.

(C) For structural steel railings, posts and top and intermediate rails shall be of two-inch by two-inch by three-eighths inch angles or other metal shapes of equivalent bending strength, with posts spaced not more than eight feet on centers. Other configurations may be used for the top rail when the configuration meets the requirements of (b)(ii)(G) of this subsection.

(D) For wire rope railings, the top and intermediate railings shall meet the strength factor and deflection of (b)(ii)(E) of this subsection. The top railing shall be flagged at not more than six foot intervals with high-visibility material. Posts shall be spaced not more than eight feet on centers. The rope shall be stretched taut and shall be between thirty-nine and forty-five inches in height at all points. Other configurations may be used for the top rail when the configuration meets the requirements of (b)(ii)(G) of this subsection.

(E) The anchoring of posts and framing of members for railings of all types shall be of such construction that the completed structure shall be capable of withstanding a load of at least two hundred pounds applied in any direction at any point on the top rail. The top rail shall be between thirty-nine and forty-five inches in height at all points when this force is applied.

(F) Railings receiving heavy stresses from employees trucking or handling materials shall be provided additional strength by the use of heavier stock, closer spacing of posts, bracing, or by other means.

(G) Other types, sizes, and arrangements of railing construction are acceptable, provided they meet the following conditions:

(I) A smooth surfaced top rail at a height above floor, platform, runway, or ramp level between thirty-nine and forty-five inches;

(II) When the two hundred pound (890 N) load specified in (b)(ii)(E) of this subsection is applied in a downward direction, the top edge of the guardrail shall not deflect to a height less than thirty-nine inches (1.0 m) above the walking/working level. Guardrail system components selected and constructed in accordance with this part will be deemed to meet this requirement;

(III) Protection between top rail and floor, platform, runway, ramp, or stair treads, equivalent at least to that afforded by a standard intermediate rail;

(IV) Elimination of overhang of rail ends unless such overhang does not constitute a hazard.

(iii) Toe board specifications.

(A) A standard toe board shall be a minimum of four inches nominal in vertical height from its top edge to the level of the floor, platform, runway, or ramp. It shall be securely fastened in place with not more than one-quarter inch clearance above floor level. It may be made of any substantial material, either solid, or with openings not over one inch in greatest dimension.

(B) Where material is piled to such height that a standard toe board does not provide protection, paneling, or screening from floor to intermediate rail or to top rail shall be provided.

(c) Cover specifications.

(i) Floor opening or floor hole covers shall be of any material that meets the following strength requirements:

(A) Conduits, trenches, and manhole covers and their supports, when located in roadways, and vehicular aisles shall be designed to carry a truck rear axle load of at least two times the maximum intended load;

(B) All floor opening and floor hole covers shall be capable of supporting, without failure a minimum of eight hundred pounds or the maximum potential load, with a safety factor of four.

(I) All covers shall be secured when installed so as to prevent accidental displacement by the wind, equipment, or employees.

(II) All covers shall be color coded or they shall be marked with the word "hole" or "cover" to provide warning of the hazard.

(ii) Barriers and screens used to cover wall openings shall meet the following requirements:

(A) Barriers shall be of such construction and mounting that, when in place at the opening, the barrier is capable of withstanding a load of at least two hundred pounds applied in any direction (except upward), with a minimum of deflection at any point on the top rail or corresponding member.

(B) Screens shall be of such construction and mounting that they are capable of withstanding a load of at least two hundred pounds applied horizontally at any point on the near side of the screen. They may be of solid construction of either grill work with openings not more than eight inches long, or of slat work with openings not more than four inches wide with length unrestricted.

(d) Warning line system specifications on pitches four in twelve or less for telecommunications work, and on low pitched open sided surfaces for work activities. The employer shall ensure the following:

(i) Warning lines shall be erected around all unprotected sides and edges of the work area during telecommunications work.

(A) When telecommunications work is taking place or when mechanical equipment is not being used, the warning line shall be erected not less than six feet (1.8 m) from the edge of the roof.

(B) When mechanical equipment is being used, the warning line shall be erected not less than six feet (1.8 m) from the roof edge which is parallel to the direction of mechanical equipment operation, and not less than ten feet



(3.1 m) from the roof edge which is perpendicular to the direction of mechanical equipment operation.

(C) The employer shall ensure that warning line systems are not used in adverse weather or in hours of darkness.

(ii) The warning line shall consist of a rope, wire, or chain and supporting stanchions erected as follows:

(A) The rope, wire, or chain shall be flagged at not more than six foot (1.8 m) intervals with high visibility material. Highly visible caution or danger tape as described in (d)(ii)(D) of this subsection, does not need to be flagged.

(B) The rope, wire, or chain shall be rigged and supported in such a way that its lowest point (including sag) is no less than thirty-six inches from the surface and its highest point is no more than forty-five inches from the surface.

(C) After being erected, with the rope, wire or chain attached, stanchions shall be capable of resisting, without tipping over, a force of at least sixteen pounds (71 N) applied horizontally against the stanchion, thirty inches (0.76 m) above the surface, perpendicular to the warning line, and in the direction of the unprotected sides or edges of the surface.

(D) The rope, wire, or chain shall have a minimum tensile strength of five hundred pounds (226 k), and after being attached to the stanchions, shall be capable of supporting, without breaking, the loads applied to the stanchions.

(E) The line shall be attached at each stanchion in such a way that pulling on one section of the line between stanchions will not result in slack being taken up in adjacent sections before the stanchion tips over.

(iii) Access paths shall be erected as follows:

(A) Points of access, materials handling areas, and storage areas shall be connected to the work area by a clear access path formed by two warning lines.

(B) When the path to a point of access is not in use, a rope, wire, or chain, equal in strength and height to the warning line, shall be placed across the path at the point where the path intersects the warning line erected around the work area.

(e) When work is being performed between the warning line and edge of the roof the employee must maintain 100 percent fall protection by fall restraint or fall arrest.

(10) Safety watch system specifications.

(a) When one employee is conducting any testing, servicing of equipment or repair work on a roof that has a pitch no greater than four in twelve, and not within six feet of the roof's edge, employers are allowed to use a safety watch system.

(b) Ensure the safety watch system meets the following requirements:

(i) There can only be two people on the roof while the safety watch system is being used: The one employee acting as the safety watch and the one employee engaged in the repair work or servicing equipment;

(ii) The employee performing the task must comply promptly with fall hazard warnings from the safety watch;

(iii) Mechanical equipment is not used; and

(iv) The safety watch system is not used when weather conditions create additional hazards or in the hours of darkness.

(c) Ensure the employee acting as the safety watch meets all of the following:

(i) Is a competent person as defined in WAC 296-32-210;

(ii) Has full control over the work as it relates to fall protection;

(iii) Has a clear, unobstructed view of the worker;

(iv) Is able to maintain normal voice communication; and

(v) Performs no other duties while acting as the safety watch.

(11) Other specifications.

(a) Ramps, runways and inclined walkways shall:

(i) Be at least eighteen inches wide; and

(ii) Not be inclined more than twenty degrees from horizontal and when inclined, they shall be cleated or otherwise treated to prevent a slipping hazard on the walking surface.

**Note:** See WAC 296-32-22555 (5)(c) for guarding ramps, runways, and inclined walkways that are four feet or more above the ground or lower level.

(b) Self-rescue devices. Self-rescue devices are not a fall protection system. Self-rescue devices used to self-rescue after a fall shall meet the following requirements:

(i) Use self-rescue devices according to the manufacturer's instructions; and

(ii) Self-rescue devices must be addressed by the fall protection work plan.

(c) Canopy. Canopies, when used as falling object protection, shall be strong enough to prevent collapse and to prevent penetration by any objects which may fall onto the canopy.

(d) Roofing bracket specifications. Roofing brackets are not a fall protection system.

(i) Roofing brackets shall be constructed to fit the pitch of the roof.

(ii) In addition to securing brackets using the pointed metal projections, brackets shall also be secured in place by nailing. When it is impractical to nail brackets, rope supports shall be used. When rope supports are used, they shall consist of first grade manila of at least three-quarters inch diameter, or equivalent.

(e) Roof edge materials handling areas and materials storage specifications.

(i) When guardrails are used at hoisting areas, a minimum of four feet of guardrail shall be erected along each side of the access point through which materials are hoisted.

(ii) A chain or gate shall be placed across the opening between the guardrail sections when hoisting operations are not taking place.

(iii) When guardrails are used at bitumen pipe outlet, a minimum of four feet of guardrail shall be erected along each side of the pipe.

(iv) Mechanical equipment shall be used or stored only in areas where employees are protected using a fall arrest system as described in WAC 296-32-22555(8), or a fall restraint system as described in WAC 296-32-22555 (9)(b) or (d). Mechanical equipment may not be used or stored where the only protection is provided by the use of a safety monitor.

(v) The hoist shall not be used as an attachment/anchorage point for fall arrest or fall restraint systems.

(vi) Materials shall not be stored within six feet of the roof edge unless guardrails are erected at the roof edge.

Guardrails shall include a toe board if employees could be working or passing below.

#### NEW SECTION

**WAC 296-32-22560 Ladders.** (1) The employer shall ensure that no employee nor any material or equipment shall be supported or permitted to be supported on any portion of a ladder unless it is first determined, by inspections and checks conducted by a competent person that such ladder is free of defects, in good condition and secured in place.

(2) The spacing between steps or rungs permanently installed on poles and towers shall be no more than eighteen inches (thirty-six inches on any one side). This requirement also applies to fixed ladders on towers, when towers are so equipped. Spacing between steps shall be uniform above the initial unstepped section, except where working, standing, or access steps are required. Fixed ladder rungs and step rungs for poles and towers shall have a minimum diameter of 5/8 inch. Fixed ladder rungs shall have a minimum clear width of twelve inches. Steps for poles and towers shall have a minimum clear width of 4 1/2 inches. The spacing between detachable steps may not exceed thirty inches on any one side, and these steps shall be secured when in use.

(3) Portable wood ladders intended for general use must not be painted, but may be coated with a translucent nonconductive coating. Portable wood ladders must not be longitudinally reinforced with metal.

(4) Portable wood and fiberglass ladders that are not being carried on vehicles and are not in active use shall be stored where they will not be exposed to the elements and where there is good ventilation.

(5) Aluminum or conductive ladders may not be used on a work site that contains potential electrical hazards.

(6) Rolling ladders.

(a) Rolling ladders used in telecommunication facilities shall have a width between the side rails, inside to inside, of at least twelve inches.

(b) Except in working spaces that are not a means of egress, the ladders shall have a minimum inside width, between the side rails, of at least eight inches.

(7) Climbing ladders or stairways on scaffolds used for access and egress shall be affixed or built into the scaffold by proper design and engineering, and shall be so located that their use will not disturb the stability of the scaffold. The rungs of the climbing device shall be equally spaced, but may not be less than twelve inches nominal nor more than sixteen inches nominal apart. Horizontal end rungs used for platform support may also be utilized as a climbing device if such rungs meet the spacing requirement of this subsection, and if clearance between the rung and the edge of the platform is sufficient to afford a secure handhold. If a portable ladder is affixed to the scaffold, it shall be securely attached and shall have rungs meeting the spacing requirements of this subsection. Clearance shall be provided in the back of the ladder of not less than six inches from center of rung to the nearest scaffold structural member.

(8) When using ladder hooks: Employees must secure themselves to the ladder and aerial strand by:

(a) A lineman's belt and strap; or

(b) Ladder safety equipment if provided.

(9) Portable ladders, when in use, shall be:

(a) Equipped with safety shoes; and

(b) Equipped with properly adjusted locking levelers when working on uneven ground.

(10) Ladders shall be inspected by a competent person prior to each use. Ladders which have developed defects shall be withdrawn from service for repair or destruction and tagged or marked as "dangerous do not use."

(11) Persons on ladders. Ladders must not be moved, shifted or adjusted while anyone is on the ladder. Secure the ladder at the top and bottom when working from it.

**Note:** See chapter 296-876 WAC for additional safety requirements on ladders.

#### NEW SECTION

**WAC 296-32-22565 Vehicle-mounted material handling devices and other mechanical equipment.** (1) General. The applicable operator/owner safety manual for vehicle-mounted material handling devices and other mechanical equipment must be followed. The manufacturer's operator's instructional manual shall be kept on the vehicle.

(a) The operation of all motor vehicles and trailers shall be in conformance with the motor vehicle laws, the general safety and health standards of the state of Washington and all local traffic ordinances.

(b) The employer must ensure that prior to use, visual inspections are made of the equipment by a competent person/operator each day the equipment is to be used to ascertain that it is in good condition.

(c) The employer must ensure that tests shall be made at the beginning of each shift by a competent person to ensure the vehicle brakes and all operating systems are in proper working condition.

(2) Scrapers, loaders, dozers, graders and tractors. All mobile, self-propelled scrapers, mobile front end loaders, mobile dozers, agricultural and industrial tractors, crawler tractors, crawler-type loaders, and motor graders used in telecommunication work shall have rollover protective structures that meet the requirements of WAC 296-155-950 through 296-155-965, and the requirements of WAC 296-155-615 (1) through (2)(c).

#### NEW SECTION

**WAC 296-32-22570 Communication, roof tops, water towers and other elevated locations.** For fall protection, guardrails and warning lines follow the requirements in WAC 296-32-22555 of this chapter.

#### NEW SECTION

**WAC 296-32-22572 Microwave transmission/radio frequency radiation (RFR) and laser communication—General requirements.** (1) General. Employers shall ensure that employees performing work on communication sites/facilities are not exposed to radio frequency (RFR) electromagnetic fields in excess of the Federal Communications Commission (FCC) maximum permissible exposure (MPE) limits for exposure as prescribed in 47 C.F.R. 1.1310.

**Note:** See chart in WAC 296-32-210 under the definition of "nonionizing radiation (RFR)."

(2) RF safety program. The employer shall establish and maintain a program for the control and monitoring of nonionizing radiation hazards. This program shall provide employees adequate supervision, training, facilities, equipment, and supplies, for the control and assessment of nonionizing hazards.

(3) Prior to commencing work where there are potential RFR hazards, a competent person shall assess potential RFR hazards of areas which may be accessed by employees in the course of their work, and post temporary signage to indicate areas where the RFR hazard exceeds the general population/uncontrolled MPE limits for exposure set forth in 47 C.F.R. 1.1310. Temporary signage shall remain in place while work is performed and the hazard exists.

**Note:** Temporary signage posting areas may include doorways, gates, or hatches.

**NEW SECTION**

**WAC 296-32-22574 Hazardous areas.** Protection from radiation exposure.

(1) Employees shall not enter areas where radio frequency radiation (RFR) exposure levels are above the general population/uncontrolled MPEs described in 47 C.F.R. 1.1310 unless they understand the potential for exposure and can exercise control over the exposure.

(2) Hazardous area. Accessible areas associated with communication systems where the electromagnetic radiation level exceeds the maximum permissible exposure limits (PELs) given in WAC 296-62-09005 shall be posted as described in that section.

**Note:** ANSI 535.1, 2006, Safety Colors, ANSI C95.2, 1999, IEEE Standard for Radio Frequency Energy and Current Flow Symbols, ANSI Z535.2, 2011, Environmental and Safety Signs contains additional information relating to signage.

(3) Protective measures. When an employee works in an area where the electromagnetic radiation exceeds the radiation protection guide, the employer shall institute measures that ensure that the employee's exposure is not greater than that permitted by the radiation guide. Such measures shall include, but not be limited to, those of an administrative or engineering nature or those involving personal protective equipment. Employers must have monitoring devices on each site while work is being performed.

(4) Radiofrequency radiation exposure limits. The criteria listed in Table 4 shall be used to evaluate the environmental impact of human exposure to radiofrequency (RF) radiation as specified in 47 C.F.R. Sec. 1.1307(b), except in the case of portable devices which shall be evaluated according to the provisions of 47 C.F.R. Sec. 2.1093. Further information on evaluating compliance with these limits can be found in the FCC's OST/OET Bulletin Number 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation." **Note to Introductory Paragraph:** These limits are generally based on recommended exposure guidelines published by the National Council on Radiation Protection and Measurements (NCRP) in "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," NCRP Report No. 86, sections 17.4.1, 17.4.1.1, 17.4.2 and 17.4.3. Copyright NCRP, 1986, Bethesda, Maryland 20814. In the frequency range from 100 MHz to 1500 MHz, exposure limits for field strength and power density are also generally based on guidelines recommended by the American National Standards Institute (ANSI) in section 4.1 of "IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz," ANSI/IEEE C95.1-1992, Copyright 1992 by the Institute of Electrical and Electronics Engineers, Inc., New York, New York 10017.

**Table 4**

Table 4—Limits for Maximum Permissible Exposure (MPE) Frequency range (MHz)	Electric field strength (V/m)	Magnetic field strength (A/m)	Power density (mW/cm <sup>2</sup> )	Averaging time (minutes)
<b>(A) Limits for Occupational/Controlled Exposures</b>				
0.3-3.0	614	1.63	*(100)	6
3.0-30	1842/f	4.89/f	*(900/f <sup>2</sup> )	6
30-300	61.4	0.163	1.0	6
300-1500			f/300	6
1500-100,000			5	6
<b>(B) Limits for General Population/Uncontrolled Exposure</b>				
0.3-1.34	614	1.63	*(100)	30
1.34-30	824/f	2.19/f	*(180/f <sup>2</sup> )	30
30-300	27.5	0.073	0.2	30
300-1500			f/1500	30
1500-100,000			1.0	30

f = frequency in MHz

\* = Plane-wave equivalent power density

**Note 1 to Table 4:** Occupational/controlled limits apply in situations in which persons are exposed as a consequence of their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure. Limits for occupational/controlled exposure also apply in situations when an individual is transient through a location where occupational/controlled limits apply provided he or she is made aware of the potential for exposure.

**Note 2 to Table 4:** General population/uncontrolled exposures apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure.

## NEW SECTION

**WAC 296-32-22576 Optical communications systems (laser).** (1) Laser radiation permissible exposure limits.

(2) All lasers and laser systems shall be classified in accordance with the Federal Laser Product Performance Standards (21 C.F.R. 1040.10) or, in accordance with ANSI Z136.2-2012 and ANSI Z136.1-2014.

(a) Class I laser systems that are considered to be incapable of producing damaging radiation levels during operation and are thereby exempt from control measures or other forms of surveillance.

(b) Class 1M laser systems that are considered to be incapable of producing hazardous exposure conditions during normal operations unless the beam is viewed with an optical instrument such as eye-loupe (diverging beam) or telescope (collimated beam) and are, thereby exempt from other forms of surveillance.

(c) Class II laser systems emit in the visible portion of the spectrum (0.4  $\mu\text{m}$  to 0.7  $\mu\text{m}$ ) and eye protection is normally afforded by aversion responses, including the blink reflex. There is some possibility of injury if stared at.

(d) Class IIM laser systems emit in the visible portion of the spectrum (0.4  $\mu\text{m}$  to 0.7  $\mu\text{m}$ ) and eye protection is normally afforded by aversion responses (blink reflex) for unaided viewing, but are potentially hazardous if viewed with certain optical aids.

(e) Class IIIR laser systems have reduced product safety requirements and represent a transitional zone between safe and hazardous laser products.

(f) Class IIIB laser systems may be hazardous under direct and specular reflection viewing conditions, but the diffuse reflection is usually not a hazard. Class IIIB laser systems are normally not a fire hazard.

(g) Class IV (high power) laser systems are hazardous to the eye and skin from the direct beam, and sometimes from a diffuse reflection, and can also be a fire hazard. Class IV systems require the use of controls that prevent exposure of the eye and skin to specular or diffuse reflections of the beam.

(3) You must have a laser safety officer for installation and maintenance of all Class IIIB or Class IV laser systems.

(4) Warning signs and classification labels shall be prepared in accordance with 21 C.F.R. 1040.10 when classifying lasers and laser systems, and ANSI Z136.1-2014 when using classified lasers and laser systems. All signs and labels shall be conspicuously displayed.

(a) The signal word "CAUTION" shall be used with all signs and labels associated with Class II and Class IIIR lasers and laser systems.

(b) The signal word "DANGER" shall be used with all signs and labels associated with Class IIIB and Class IV lasers and laser systems.

(5) Personal protective equipment shall be provided at no cost to the employee and shall be worn whenever operational conditions or maintenance of lasers may result in a potentially hazardous exposure.

(a) Protective eyewear shall be specifically designed for protection against radiation of the wavelength and radiant energy of the laser or laser system. Ocular exposure shall not exceed the limits in ANSI Z136.1-2014 and ANSI Z136.2-2012.

(b) For Class IV lasers and laser systems protective eyewear shall be worn for all operational conditions or maintenance which may result in exposures to laser radiation.

(6) You must establish control of hazardous laser radiation energy prior to work on Class IIIB or Class IV laser equipment. Controls may include, but are not limited to: Protective housings, interlocks, optical system attenuators, enclosed beam paths, beam stops, and emission delays with audible warnings.

**Note:** See WAC 296-32-22578 Control of hazardous energy for additional requirements.

(7) All employees who may be exposed to laser radiation shall receive laser safety training. The training shall ensure that the employees are knowledgeable of the potential hazards and control measures for the laser equipment in use.

(8) Fiber splicing.

(a) Employees must wear safety glasses with side shields or goggles while splicing fiber.

(b) Food and beverages are prohibited in the work area of fiber splicing operations.

(c) Employees must place all cut fiber pieces in a safe place.

(d) Smoking and open flames are prohibited in the work area of fiber splicing operations when using flammable chemicals.

(e) The work area must be well ventilated when using cleaning chemicals and adhesives during fiber splicing/repair operations or where the potential of other hazardous atmospheres exists. Use air monitoring equipment to ensure the work area is adequately ventilated.

(f) Looking directly into the end of fiber cables is prohibited (especially with a microscope) until you are positive that there is no light source at the other end.

(g) You must have safety data sheets (SDSs) readily available during all fiber splicing operations (see chapter 296-901 WAC).

## NEW SECTION

**WAC 296-32-22578 Control of hazardous energy.**

This section establishes protection for employees who work directly in the hazardous vicinity of telecommunication facilities, sites, or towers having the following energy:

- Radio frequency radiation (RFR);
- Laser, see WAC 296-62-09005(4);

- Microwave;
- AM or FM;
- High intensity electromagnetic fields.

**Note:** Employees exposed to all other types of hazardous energy are required to follow chapter 296-803 WAC.

(1) Employees working in the telecommunication industry that may be exposed to RFR as well as other hazardous energy, the employer must ensure their safety by following this chapter for RFR as well as chapter 296-803 WAC for other hazardous energy.

(2) The employer must effectively control all forms of hazardous energy under this section by:

- (a) Elimination;
- (b) Isolation;

(c) Reduction to permissible exposure limits, otherwise known as alternative effective means (see WAC 296-32-22574 for maximum permissible exposure limits (MPE limits)).

(d) If a source of energy is controlled by alternative effective means, it must be tagged out.

(e) If a source of energy is eliminated or isolated but cannot be locked out, it must be tagged out.

(3) The host employer or the FCC license holder in control of the energy source must establish a control of hazardous energy program that is effective for 30-300 mhz and UHF broadcast bands; see WAC 296-32-22511 for additional requirements relating to host/contractor responsibilities.

(4) The employer must ensure that site specific energy source data and contact information is available and current at each telecommunication site/facility.

(5) The employer must establish and implement a hazardous energy control program to prevent the accidental or purposeful increase or release of energy if employees are to work in the hazardous vicinity of any telecommunication sites/facilities where employees could be exposed to any of the following energies:

- (a) RFR (30-300 mhz) and UHF broadcast bands;
- (b) Laser;
- (c) Microwave;
- (d) AM or FM;
- (e) High intensity electromagnetic fields.

**Note:** Additional information is located in WAC 296-62-09005.

(6) The employer must ensure that undetermined or unknown levels of energy shall be considered hazardous until they are clearly verified.

(7) The employer must ensure the hazardous energy control program consists of all the following elements:

(a) Host/contractor employer responsibilities as described in WAC 296-32-22511 of this chapter;

(b) Energy control procedures as described in subsections (11) through (13) of this section;

(c) Approved test procedures determined by the Federal Communications Commission (FCC) OET65 used to ensure that the area is safe for human presence;

(d) Training as described in subsections (14) through (17) of this section;

(e) Annual reviews as described in subsection (19) of this section;

(f) Tower and worksite evaluations as described in subsection (20) of this section;

(g) Procedures for removing an authorized person(s) lockout or tagout device;

(h) Procedures for alternative effective means and application/removal of tagout devices.

(8) The employer must make sure energy control procedures clearly and specifically outline:

(a) The scope, purpose, authorization, rules, and techniques to shut down or reduce hazardous energy to within the MPE limits before working within a hazardous vicinity; and

(b) How you will ensure employees follow the procedures.

(9) The employer must keep written energy control procedures and records of energy levels, for the elimination, isolation or effectively reducing hazardous energy to within MPE limits for the duration of each job being performed for twelve months.

(10) Employers able to increase amplification of energy must make themselves familiar of this chapter and comply with protections afforded to personnel while work is being completed under the scope of this chapter. Employers able to and responsible for increasing amplification must follow the requirements located in WAC 296-32-22511, and those employers with employees being exposed to hazardous energy.

(11) The employer of the affected and authorized employees must notify the employer of the controlling energy source and employers able to and responsible for increasing amplification when they will be on-site and the need for the controlling energy source to be reduced to a safe level or turned off.

(12) The employer of the controlling energy source must notify the employer of the affected and authorized employees that the controlling energy source has been reduced to within the MPE limits or turned off completely before work begins.

(13) The employer must ensure affected and authorized employees must test to ensure the energy source has been reduced to within the MPE limits or isolated or eliminated by testing and verification through approved methods and equipment.

(14) The employer must ensure that written energy control procedures are in a language comprehensible by each employee working on or around the hazardous vicinity of a telecommunication site/facility.

(15) The employer must make sure energy control procedures specifically identify at least the following: (This includes remote control sites/facilities and remote worksites.)

(a) What personnel are considered affected or authorized, and how to contact;

(b) What location and equipment the procedure is verified for;

(c) When the procedure must be used;

(d) How the procedure is verified to be up-to-date and accurate;

(e) What the specific procedural steps are for:

(i) Notifying employers able to increase amplification;

(ii) Notifying all affected personnel;

(iii) Shutting down or reduction to within the MPE limits;

- (iv) Eliminating or isolating the energy source;
- (v) Securing the energy source;
- (vi) Placing, removing, and transferring lockout/tagout devices and who is responsible for them;
- (vii) How to test the machine or equipment to verify the effectiveness of lockout devices, reduction to MPE limits, and other energy control measures.

(16) The employer must ensure that when reducing hazardous energy to within the MPE limits (alternative effective means) the employees in hazardous areas must be trained to all requirements in this section.

(17) Training.

(a) You must effectively train employees and establish proficiency on this chapter and your site specific hazards to ensure they:

- (i) Understand the purpose and function of the energy control program; and
- (ii) Have the knowledge and skills necessary to carry out their responsibilities safely.

**Note:** Additional and supplemental training for other forms of hazardous energy are covered under chapter 296-803 WAC.

(b) You must establish proficiency for each employee in a language comprehensible in all of the following:

- (i) Identification of the type(s) and magnitude of energy available on a telecommunication site/facility.
- (ii) Recognizing hazardous energy sources that are potential and present.
- (iii) Methods to eliminate, isolate or reduce to within the MPE limits:

(A) Which type of control (elimination, isolation or reducing to within the MPE limits) affords the best protection to the employee; and

(B) What steps must be supplemented with additional safeguards when using alternative effective means under (c) of this subsection.

(iv) The purpose and use of the energy control procedures listed in this chapter;

(v) Lockout, tagout and alternate effective means systems, devices, procedures and processes to be used;

(vi) Control of hazardous energy procedures to be used;

(vii) Prohibition against attempting to restart, reenergize, amplify or touch a machine or equipment that has been locked out or controlled through alternate effective means;

(viii) That lockout is the primary method of energy control, and that other means do not provide equal protection;

(ix) Means and methods of communication with the employers responsible for and able to increase amplification.

(c) Required supplementary training for alternative effective means. You must establish additional proficiency if you use alternate effective means as energy control. This additional preparation must include the following:

(i) When the employer is permitted to reduce the energy to within the MPE limits only if it is infeasible to lockout the energy source;

(ii) The process for contacting all employers who have potential to increase amplification on any equipment, component, transmitter or receiver on the telecommunication site/facility which creates a hazardous vicinity;

(iii) The process for documentation of the methods required for reducing to within the MPE limits;

(iv) That alternate effective means are not as effective as lockout;

(v) That alternate effective means rely upon someone else for your protection;

(vi) That alternate effective means give a false sense of security;

(vii) Authorization for use of alternate effective means must:

(A) Be in a language comprehensible by all affected and authorized employees;

(B) Be documented by authorized employees;

(C) Be documented by employers responsible for and able to increase amplification.

(viii) Selection and use of personnel RFR metering/monitoring devices;

(ix) Emergency procedures and contact requirements in the event of energy control failure;

(x) Personal protective equipment and RFR suits/etc. used for protection:

(A) Donning and doffing procedures;

(B) Specifications/inspection/life expectancy;

(C) Cleaning;

(D) Wear and tear.

(d) You must document that employee training has been completed and kept up to date according to WAC 296-32-22525. It must be supplemented with the additional requirements, including all documents/videos/supporting information used in the training.

**Note:** Training records may be electronic.

(18) Retraining.

(a) Retraining shall be provided for all authorized 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.

(b) 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.

(c) The retraining shall reestablish employee proficiency and shall introduce new or revised control methods and procedures, as necessary.

(d) 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.

(19) Annual inspection/review.

(a) The controlling employer of the energy source must conduct an inspection/review of the equipment shut-down or alternative effective means' procedures at least annually to:

(i) Make sure employees know and have been applying the energy control procedures appropriate for the work and hazards;

(ii) Correct any deviations or inadequacies identified as well as identify unique hazards;

(iii) Inform all contractors, leasees, subcontractors of retraining that needs to occur due to changes, modifications or additions.

(b) The controlling employer of the energy source must perform an annual inspection/review:

(i) The annual inspection/review shall be performed by an authorized employee who is not using the energy control procedures being inspected;

(ii) The employer of the exposed and affected employees conducting work on the communication site/facility must ensure that the annual inspection/review has been performed by the controlling employer of the energy source.

(c) The employer must ensure that the annual inspection/review is documented and that the documentation includes all of the following:

(i) Equipment energy control procedures for the devices and components which possess hazardous energy potential that are to be eliminated, isolated, or reduced to within MPE limits;

(ii) Date of the inspection/review;

(iii) Employees included that have performed the procedures for the previous year;

(iv) Person doing the inspection/review.

(d) The annual inspection/review and any deviations must be kept on-site for one year. All forms of documentation must be kept for life of the equipment or twenty years, whichever comes first.

(20) Site/facility evaluations.

(a) The employer of the controlling energy source must conduct, document and retain telecommunication site/facility location evaluations.

(b) The employer of the controlling energy source must ensure that telecommunication sites/facilities location evaluations required under WAC 296-32-24005 (5), (6), (7) are supplemented with:

(i) A topographic map of the exact field location and any site/facility within a predicted worst-case power density distance as outlined in the FCC Office of Engineering of Technology, Bulletin 65, Edition 97-01;

(ii) A comprehensive cross sectional diagram of the structure, and where antennas, transmitting devices and other apparatuses are located;

(iii) A comprehensive cross sectional diagram of the structure's hazardous energy and hazardous vicinity associated with each of the sources;

(iv) The host employer/contractor responsible (carrier, leasee or renter) party's contact information for each of the antennas, transmitters, and/or apparatus;

(v) Contact information for any employer who is able to increase amplification on the telecommunication site/facility being worked on, or any site/facility within the hazardous vicinity or able to transmit hazardous energy to employees at the job site's location;

(vi) Contact information of the site/facility owner;

(vii) A listing of work completed on the site/facility in the last twelve months.

(c) Information in the telecommunication site/facility location evaluations must be easily comprehensible by any employee conducting work on, or within the hazardous vicinity of the site.

(21) Energy control and devices.

(a) The employer must provide appropriate means to control energy through elimination, isolation, or alternative effective means from energy sources.

(b) The employer must make sure lockout and tagout devices meet all of the following:

(i) Create no additional hazards;

(ii) Have a distinctive design or appearance;

(iii) Are the only devices used for controlling energy;

(iv) Are not used for any other purpose;

(v) Are durable enough to withstand the environment they are used in for the maximum time they are expected to be used;

(vi) Are standardized within the site by color, shape or size;

(vii) Identify the specific person who is protected by the lockout or tagout device.

(c) The employer must make sure lockout devices are strong enough so that removing them by other than the normal unlocking method requires:

(i) Excessive force; or

(ii) Unusual techniques such as the use of bolt cutters or other metal cutting tools.

(d) The employer must make sure tagout devices meet these additional requirements:

(i) Make sure all tags:

(A) Meet the format and design criteria of danger/warning tags located in ANSI Z535.5, 2011;

(B) Use the same print and format within a site/facility;

(C) Are constructed and printed so they will not deteriorate and the message on the tag remains legible when:

(I) Exposed to weather;

(II) Used in wet or damp locations;

(III) Used in a corrosive environment such as areas where acid or alkali chemicals are handled or stored.

(D) Have a warning about not energizing or increasing the power to the machine, equipment or component.

(ii) Make sure tagout devices are strong enough to prevent unintentional or accidental removal.

(iii) Make sure the means used to attach the tag to the energy-isolating device meets all of the following:

(A) Is not reusable;

(B) Is self-locking;

(C) Can be attached by hand;

(D) Cannot be released with a force of less than fifty pounds;

(E) Is similar in design and basic characteristics to a one-piece, all-environment-tolerant, nylon cable tie.

(e) The employer must provide appropriate testing/monitoring equipment to assess the potential types and magnitude of energy available at the telecommunication site/facility.

(22) Use of energy control.

(a) The employer must use energy control procedures in this section to protect employees from potentially hazardous energy.

(b) The employer must use a lockout system if it is feasible and the energy source can be locked out.

(i) If a lockout system is used, it must be applied at each source of energy and only by the authorized employee who may be exposed to the hazardous energy;

(ii) If multiple employers/authorized personnel are to work on a telecommunication site/facility, group energy shall afford the same protection as individual lockout.

(c) The employer must use a tagout system only if an energy source cannot be locked out. If it is infeasible to lock out an energy source, you may be permitted to reduce the energy source exposure to within the MPE limits. If it is feasible to lock out a source of energy, you must do so. If the source cannot be locked, you must use tagout.

(d) You must make sure lockout devices hold the energy-isolating device in a "safe" or "off" position.

(e) You must meet these additional requirements when applying a tagout device:

(i) Make sure a tagout device is put on an energy-isolating device so it clearly shows that moving the energy-isolating device from the "safe" or "off" position is prohibited;

(ii) Make sure a tagout device, when used with an energy-isolating device that can be locked out, is fastened to the device at the same point a lock would have been attached;

(iii) Make sure a tagout device that cannot be attached directly to an energy-isolating device is located:

(A) As close as safely possible to the energy-isolating device; and

(B) In a position that is immediately obvious to anyone attempting to operate the energy-isolating device.

(23) Reducing to within the maximum permissible exposure limits (MPE limits) - Authorization steps.

(a) The employer must meet these additional requirements when applying a tagout device for alternative effective means protection to receive authorization to work:

(i) The authorized employee must coordinate with a qualified transmitter engineer/operator to ensure energy control procedures are being followed;

(ii) The authorized employee must have on-their-person testing devices capable of monitoring all potential energy output and alarming if an increase occurs in any component, device or equipment;

(iii) The qualified transmitter engineer/operator must contact all employers responsible for amplifying power within the hazardous vicinity of the affected and authorized employees on the site and ensure the following:

(A) The individual applying the tag gives their name, title and manager's number to the qualified transmitter engineer/operator;

(B) The individual applying the tag notifies the qualified transmitter engineer/operator that they know and understand their responsibilities and requirements of this section;

(C) The individual applying the tag reduces the energy to the specified amount, as determined by the qualified transmitter engineer/operator, and allowed by the PEL;

(D) This energy reduction is verified by the qualified transmitter engineer/operator on-site;

(E) A tagout device is secured on the dial, knob, terminal, switch or device used to increase or decrease power for each transmitter, component and equipment capable of introducing hazardous energy;

(F) The qualified transmitter engineer/operator documents the name, date, and time of contact as well as what energy was controlled at the time;

(G) The qualified transmitter engineer/operator contacts the authorized persons on-site, and ensures that they verify the power is reduced to acceptable levels according to the MPE limits.

(iv) When the authorized employee has completed their job, and outside of the hazardous vicinity, they will inform the qualified transmitter engineer/operator on-site;

(v) The qualified transmitter engineer/operator on-site will verify no employees are within the hazardous vicinity;

(vi) The qualified transmitter engineer/operator will contact all employers capable of amplifying power and have the tagout devices removed. The qualified transmitter engineer/operator will document the person they spoke to, the time, and the date the tagout was "closed";

(vii) The qualified transmitter engineer/operator will return the equipment back to normal power.

(b) The employer must protect employees from the hazards of potential, stored, residual or active hazardous energy by:

(i) Making sure all potentially hazardous stored and residual energy is relieved, discharged, disconnected, restrained, or otherwise rendered safe after the lockout or tagout devices have been put on the energy-isolating devices;

(ii) Continuous verification of the control of machines, equipment, transmitters, receivers or that could reaccumulate stored energy to a hazardous level until:

(A) Service or maintenance is completed; or

(B) The possibility of accumulating hazardous energy does not exist.

(c) The employer must make sure each authorized employee verifies that the machine, equipment, transmitter, receiver or antenna that has been locked, tagged or reduced to within the MPE limits is safe to work around before starting work.

(d) The employer must ensure that before lockout/tagout devices are removed and the energy is restored to machine or equipment, procedures shall be followed and actions taken by the authorized employees to ensure the following:

(i) The work area shall be inspected to ensure that nonessential items have been removed and that machine or equipment components are operationally intact;

(ii) The work area shall be checked and verified to ensure that all employees have been notified, safely positioned or removed;

(iii) The employer of the affected employees must notify the employer of the controlling energy source that it is safe to restore the energy source;

(iv) After (a) through (c) of this subsection have been completed, locks and/or tags can be removed and energy restored to regular power:

(A) If the type of control was elimination or isolation and was locked or tagged out, the lock or tag must be removed by the authorized person who applied it.

(B) If the type of control was reduction to MPE limits or alternative effective means, the tag can be removed by the individual who applied it.

(v) In the case of elimination or isolation the employer may have the lockout or tagout device removed by someone other than the authorized employee who applied it if all of the following conditions are met:



(A) The energy control program has a documented, specific procedure and training for this situation.

(B) You can show that the specific procedures used are as safe as having the device removed by the authorized employee who applied it.

(C) The specific procedures include at least the following:

(I) Verifying the authorized employee who applied the device is not at the site/facility;

(II) Making all reasonable efforts to contact and inform the authorized employee that the lockout or tagout device is being removed;

(III) Making sure the authorized employee is informed, before resuming work at the site/facility, that the lockout or tagout device has been removed.

(e) The employer must meet these requirements if it is necessary to temporarily energize a machine, equipment or component for testing or positioning:

(i) Ensure all authorized or affected personnel are notified and out of hazardous vicinities where exposure to hazardous energy could injure them;

(ii) Follow the energy control program procedures to:

(A) Have all affected and authorized personnel and employees move outside the hazardous vicinity;

(B) Have the authorized individual remove the lockout or tagout device or alternative effective means device;

(C) Contact the employer able to increase or amplify power and have them remove the lockout or tagout device;

(D) Energize or increase power to the machine, equipment or component;

(E) Conduct testing or positioning;

(F) Isolate, eliminate or reduce the power to within the MPE limits;

(G) Reapply the lockout or tagout device when testing or positioning is completed;

(H) Ensure proper protection is afforded through alternative effective means;

(I) Use metering, monitoring or testing devices to determine levels of energy are safe to reenter the area.

(f) The employer must make sure each authorized employee:

(i) Puts a personal lockout or tagout device on the isolation device, group lockout device, lockbox, or comparable mechanism before beginning work;

(ii) Does not remove it until they have finished work on the machine or equipment; and

(iii) Using an energy control alternative effective means, must have a means to contact the employer who has the ability to increase amplification, and how a tagout device will be applied and removed.

(24) Group lockout/tagout and shift changes.

(a)(i) The employer must protect employees during shift or personnel changes by doing the following:

(ii) Use specific procedures for shift or personnel changes to:

(A) Make sure there is continuous lockout or tagout protection during the change; and

(B) Provide for the orderly transfer of lockout or tagout device protection between employees.

(b) The employer must make sure your group energy control procedures provide each member of a crew, craft, department, or other group with the same level of protection as that provided by an individual lockout or tagout device.

(c) The employer must assign a primary authorized employee during group energy control who:

(i) Has overall responsibility for the service or maintenance;

(ii) Attaches their lockout or tagout device to the energy-isolating device when the equipment is deenergized and before any work begins;

(iii) Ensures all employees have been notified and removed from the hazardous vicinity; and

(iv) Is the last person to remove their lockout or tagout device when the job is completed.

(d) The employer must do all of the following if more than one group works on a machine, equipment, transmitter or receiver that has to be locked, tagged or reduced to within the MPE limits:

(i) Assign an authorized person as the group coordinator with overall responsibility to:

(A) Coordinate the different work groups; and

(B) Maintain continuous lockout, tagout or reduction to within the MPE limits protection.

(ii) Assign a primary authorized employee in each group who has:

(A) Responsibility for the group of employees who are protected by a group lockout or tagout device; and

(B) A way to determine which employees of the group are exposed to the machine or equipment that is locked or tagged out.

## PART B—REQUIREMENTS THAT APPLY TO WIRE-LINE

**Note:** Wireline - This part is intended to convey to the employer the responsibilities for the training and protection of their employees working with or in telecommunications wireline facilities and field installations.

### NEW SECTION

#### **WAC 296-32-23505 Pole climbing equipment. (1)**

Approved lineman's belts and straps shall be provided. The employer shall ensure their use when work is performed at positions more than four feet above ground, on poles. The belt and strap (work-positioning systems) must be rigged so that an employee can free fall no more than two feet (0.6 meters).

(2) The employer shall ensure that all safety belts and straps are inspected by a competent person prior to each day's use to determine that they are in safe working condition.

(3) Telecommunication lineman's body belts, safety straps and lanyards have to meet the following general requirements:

(a) Shall be drop forged or pressed steel.

(b) Shall have a corrosion resistant finish tested to meet the requirements of the American Society for Testing and Materials B117-64 (50-hour test).

(c) Hardware surfaces shall be smooth and free of sharp edges.

(d) Lineman's body belts shall be at least four inches in width.

(e) 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).

(f) "D" rings shall be capable of withstanding a 22-kilonewton (5,000-pound force) tensile test without cracking or breaking.

(g) Snaphooks shall be capable of withstanding a 22-kilonewton (5,000-pound force) tension test without failure. The keeper of the locking snaphooks must have a spring tension that will not allow the keeper to begin to open with a weight of two and one-half pounds or less, but the keeper of snaphooks must begin to open with a weight of four pounds, when the weight is supported on the keeper against the end of the nose. The snaphook must be a locking snaphook.

**Note:** Distortion of the snaphook sufficient to release the keeper is considered to be tensile failure of a snaphook.

(h) 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.

(i) 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.

(j) 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 5.

**Table 5**

Flammability 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. Use a butane or propane burner with a 76 mm (3 inch) frame. Direct the flame to an edge of the strapping at a distance of 25 mm (1 inch).	Any flames on the positioning strap shall self-extinguish. The positioning strap shall continue to support the 100 kg (220.5 lb.) mass.

Flammability Test Method	Criteria For Passing the Test
Remove the flame after five seconds. Wait for any flames on the positioning strap to stop burning.	

(4) Before an employee throws their weight on a belt, the employee shall determine that the snap or fasteners are properly engaged.

(5) When working on single-use telecom poles, safety straps shall not be placed above the cross-arm or top attachment except where it is not possible for the strap to slide or be slipped over the top of the pole.

(6) Neither end of the strap shall be allowed to hang loose or dangle while the employee is ascending or descending poles or other structures.

(7) Lineman's belts and safety straps shall not be stored with sharp-edged tools or near sharp objects. When a lineman's 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 lineman's belt or safety strap with the gaffs or climbers.

(8) Unless the snap hook is designed for the following connections, snap hooks shall not be engaged as follows:

(a) Connected to loops made in webbing-type lanyards.

(b) Connected to each other.

(c) Attached to a D-ring to which another snap hook or other connector is attached.

(9) Pole climbers.

(a) Climbing gaffs shall be kept properly sharpened and shall be at least one and one-quarter inches in length as measured on the underside of the gaff.

(b) The gaffs of pole climbers shall be covered with safety caps when not being used for their intended use.

(c) The employer shall ensure that pole climbers are inspected by a competent person/qualified climber for the following conditions: Fractured or cracked gaffs or leg irons, loose or dull gaffs, broken straps or buckles. If any of these conditions exist, the defect shall be corrected or replaced before the climbers are used.

(d) Pole climbers shall be inspected as required in this subsection before each day's use and a gaff cut-out test performed at least weekly when in use.

(e) 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 periods of time on the ground.

(f) Pole climbers shall not be worn when:

(i) Working in trees (specifically designed tree climbers shall be used for tree climbing);

(ii) Working on ladders;

(iii) Working in an aerial lift;

(iv) Driving a vehicle;

(v) Walking on roadways, sidewalks, rocky, hard, frozen, brushy or hilly terrain.

(10) When a ladder is supported by an aerial strand, and ladder hooks or other supports are not being used, the ladder shall be extended at least two feet above the strand and shall be secured to it (e.g., lashed or held by a safety strap around

the strand and ladder side rail). When a ladder is supported by a pole, it shall be securely lashed to the pole unless the ladder is specifically designed to prevent movement when used in this application. Use a safety belt with a lanyard that is secured to the pole when doing any work.

(11) Aerial manlift equipment.

(a) These devices shall not be operated with any conductive part of the equipment closer to exposed energized power lines than the clearances set forth in Table 6 of WAC 296-32-25518.

(b) Only qualified drivers shall be permitted to operate aerial manlift equipment and shall possess an appropriate and current motor vehicle operator's license, specific to the vehicle and load; such as a commercial driver's license (CDL) Class A, B, C, etc.

(c) When performing work from aerial manlift equipment, the employee shall wear a full body harness and a lanyard attached to the manufacturer's approved attachment point.

(d) When it is necessary for the employee to remain in the bucket at an elevated position while traveling from pole to pole:

(i) There shall be direct communication between the employee and the vehicle operator; and

(ii) The operator's manual must be followed for rate of speed.

(e) When any aerial manlift equipment is parked at the job site, the brakes shall be set. Wheel chocks shall be used to prevent uncontrolled movement. If equipped with outriggers, the outriggers shall be implanted on firm footing.

(f) Manufacturer's recommended maximum load limit shall be posted near each set of controls, kept in legible condition and the maximum load limit shall not be exceeded.

(g) Flashing warning lights shall be installed, maintained, and used on all aerial manlift equipment used on public thoroughfares.

(12) Inspection criteria. The employer shall ensure that aerial lifts and associated equipment are inspected by a competent person at intervals set by the manufacturer but in no case less than once per year. Records shall be maintained including the dates of inspections, and necessary repairs made. Additional requirements are located in chapter 296-869 WAC, Elevating work platforms.

(13) Digger derricks and similar equipment.

(a) This equipment shall not be operated with any conductive part of the equipment closer to exposed energized power lines than the clearances set forth in Table 6 in WAC 296-32-23518.

(b) When digger derricks are used to handle poles near energized power conductors, these operations shall comply with the requirements contained in WAC 296-32-23518(3) of this chapter.

(c) Moving parts of equipment and machinery carried on or mounted on telecommunications line trucks shall be guarded. This may be done with barricades as specified in WAC 296-32-22530 of this chapter.

(d) Digger derricks and their operation shall comply with the following requirements:

(i) Manufacturer's specifications, load ratings and instructions for digger derrick operation shall be strictly observed.

(ii) Rated load capacities and instructions related to digger derrick operation shall be conspicuously posted on a permanent weather-resistant plate or decal in a location on the digger derrick that is plainly visible to the operator.

(iii) Prior to operation the parking brake must be set and the stabilizers extended if the vehicle is so equipped. When the vehicle is situated on a grade, at least two wheels must be chocked on the downgrade side.

(iv) Only trained and qualified persons shall be permitted to operate the digger derrick.

(v) Hand signals to operators shall be those prescribed by ANSI A10.31-2013, Safety Requirements, Definitions and Specifications for Digger Derricks.

(vi) The employer shall ensure that the digger derrick and its associated equipment are inspected by a competent person at intervals set by the manufacturer but in no case less than once per year. Records shall be maintained including the dates of inspections, and necessary repairs made.

(vii) Modifications or additions to the digger derrick and its associated equipment that alter its capacity or affect its safe operation shall be made only with written certification from the manufacturer, or other equivalent entity, such as a nationally recognized testing laboratory, that the modification results in the equipment being safe for its intended use. Such changes shall require the changing and posting of revised capacity and instruction decals or plates. These new ratings or limitations shall be as provided by the manufacturer or other equivalent entity.

(viii) Synthetic rope shall be used in accordance with the manufacturer's specifications and guidelines for the load(s) intended and the equipment being used.

**Note:** Digger derricks are now being supplied with synthetic rope hoist lines and worn out wire rope hoist lines may be replaced with synthetic ropes, depending on the hoist drum's storage capacity, compatibility and manufacturer's guidance.

(ix) The use of rope that shows any signs of aging, chemical contamination or wear must not be used.

**Note:** If you are in doubt of the line's condition, take it out of service and have a competent person inspect it. If it is found to be unserviceable, tag the worn/damaged rope and render it unusable.

(x) When the bulk of a surface strand of the cover has been reduced by 50 percent or more for a distance along the axis of the rope of four or more rope diameters, a two-in-one, double braided rope must be taken out of service or discarded. If the core is visible through the cover in a localized area, discard the damaged area; you may have the eye respliced by a competent/qualified person.

**Note:** If the condition is in more than one area, take the rope out of service and have a competent person inspect it or discard the rope.

(xi) Pulled strands are a potential hazard for snagging on foreign objects. Make every effort to reincorporate a pulled strand back into the rope. If there are four or more consecutive pulled strands that cannot be reincorporated back into the

rope, then the rope must be either respliced above the damaged spot or discarded.

(xii) For ropes with a circumference up to (11.43 cm) 4.5 inches, three or more adjacent cut strands are a sign of severe damage and the rope must be taken out of service, discarded or respliced. For ropes with larger circumferences, cut strands can be increased to four.

(xiii) The rope shall not be allowed to build up on one side of the hoist drum, it can slip off and drop the load until the cable tightens up. This creates a shock load on the rope and boom and produces a loss of control of the load.

**Notes:**

- A very sudden change in load up or down in excess of ten percent of the line's rated working load constitutes a hazardous shock load and would void most manufacturers' normal working load recommendations.
- A typical shock load occurs when an object being lifted vertically by a hoist line gets jerked suddenly or is dropped. Under these conditions, a (2268 kg) 5,000 lb. load may increase to the equivalent of (13,608 kg) 30,000 lb., breaking the hoist line.

(xiv) Any rope suspected of undergoing a shock load must be taken out of service and inspected by a competent person.

(xv) Hoist lines used with derricks shall be rated for the load and usage as specified by the load chart as required by the manufacturer's specifications.

(xvi) Wire rope shall be taken out of service when any of the following conditions exist:

(A) The rope strength has been significantly reduced due to corrosion, pitting, or excessive heat;

(B) The thickness of the outer wires of the rope has been reduced to two-thirds or less of the original thickness;

(C) There are more than six broken wires in any one rope lay, or three in one strand;

(D) There is excessive permanent distortion caused by kinking, crushing, or severe twisting of the rope; or

(E) When the wire rope fails to meet the manufacturer's inspection criteria.

(e) Pulling equipment.

(i) Collapsible power reels shall only be used to string or take up wire, small diameter cable, poly rope, or tape for placing or removing aerial cable, taking down wire, or pulling winch line into conduits.

(ii) When used for pulling in poly rope or tape, the reel shall only be used as a pulling capstan and not as a storage device. A maximum of three wraps is allowed.

**Note:** Excessive wraps of poly rope or tape will cause a reel to fail.

(iii) At all times during pulling operations the employee must stay out of the bite of the line.

(iv) All other manufacturer requirements and recommendations must be followed.

#### NEW SECTION

##### **WAC 296-32-23510 Materials handling and storage.**

(1) Poles.

(a) When working with poles in piles or stacks, work shall be performed from the ends of the poles and precautions shall be taken for the safety of employees at the other end of the pole.

(b) During pole hauling operations, all loads shall be secured to prevent displacement. Lights, reflectors and/or flags shall be displayed on the end and sides of the load as required by the department of transportation.

(c) The requirements for installation, removal, or other handling of poles in pole lines are prescribed in WAC 296-32-23516 and 296-32-23518 which pertains to overhead lines.

(d) The operator shall not leave their position at the controls (while a load is suspended), unless the hoisting machinery is equipped with a positive locking system and for the sole purpose of assisting in positioning the load prior to landing it.

(e) Prior to unloading steel, poles, crossarms, and similar material, the load shall be thoroughly examined to ascertain that the load has not shifted, that binders or stakes have not broken, and that the load is not otherwise hazardous to employees.

(2) Cable reels. Cable reels and poles in storage shall be checked or otherwise restrained to prevent uncontrollable movement.

(3) All tools and materials shall be stored in a safe and orderly manner.

(4) Employees shall not carry loose materials, tools, or equipment on or in vehicles in a manner that would constitute a hazard.

(5) All buildings, storage yards, equipment and other property shall be kept in a clean, sanitary and orderly manner.

#### NEW SECTION

##### **WAC 296-32-23512 Cable fault locating and testing.**

(1) Employees involved in cable fault locating and testing shall be instructed in the precautions necessary for their own safety and the safety of other employees.

(2) Before voltage is applied to equipment not isolated, all possible precautions shall be taken to ensure that no employee can make contact with the energized conductors under test.

(3) Only trained and authorized personnel shall repair and test medium and high voltage equipment.

#### NEW SECTION

##### **WAC 296-32-23514 Grounding for employee protection—Pole lines.**

(1) Power conductors. Electric power conductors and equipment shall be considered energized until the utility or utility representative has verified to the telecommunications employer/employee(s) on-site that the line(s) have been deenergized and grounded as listed in subsection (4) of this section. Guidance on grounding for the protection of employees is found in WAC 296-45-345 and must be followed and verified complete before a line can be considered deenergized.

(2) Nonworking open wire. Nonworking open wire communications lines shall be bonded to one of the grounds listed in subsection (4) of this section.

(3) Vertical power conduit, power ground wires and street light fixtures.

(a) Metal power conduit on joint use poles, exposed vertical power ground wires, and street light fixtures which are

below communications attachments or less than twenty inches above these attachments, shall be considered energized and shall be tested for voltage unless the employee can visually determine that they are bonded to the communications suspension strand or cable sheath.

(b) If no hazardous voltage is shown by the voltage test, a temporary bond shall be placed between such street light fixture, exposed vertical power grounding conductor, or metallic power conduit and the communications cable strand. Temporary bonds used for this purpose shall have sufficient conductivity to carry at least five hundred amperes for a period of one second without fusing.

(4) Protective grounding. Acceptable grounds for protective grounding are as follows:

(a) A vertical ground wire which has been tested, approved for use and found safe, provides for 20 kV voltage protection, and is connected to a power system multi-grounded neutral or the grounded neutral of a power secondary system where there are at least three services connected; a 20 kV voltage detector is required for the test.

(b) Communications cable sheath or shield and its supporting strand where the sheath or shield is:

(i) Bonded to an underground or buried cable which is connected to a central office ground; or

(ii) Bonded to an underground metallic piping system; or

(iii) Bonded to a power system multi-grounded neutral or grounded neutral of a power secondary system which has at least three services connected.

(c) Guys which are bonded to the grounds specified in (a) and (b) of this subsection and which have continuity uninterrupted by an insulator; and

(d) If all of the preceding grounds are not available, arrays of driven ground rods where the resultant resistance to ground will be low enough to eliminate danger to personnel or permit prompt operation of protective devices.

(5) Attaching and removing temporary bonds. When attaching grounds (bonds), the first attachment shall be made to the protective ground. When removing bonds, the connection to the line or equipment shall be removed first. Insulating gloves, suitable for voltage levels that may be encountered, must be worn during these operations.

(6) Temporary grounding of suspension strand.

(a) The suspension strand shall be grounded to the existing grounds listed in subsection (4) of this section when being placed on jointly used poles.

(b) Where power crossings are encountered on nonjoint lines, the strand shall be bonded to an existing ground listed in subsection (4) of this section as close as possible to the crossing. This bonding is not required where crossings are made on a common crossing pole unless there is an upward change in grade at the pole.

(c) Where traveling roller-type bonds are used, they shall be restrained so as to avoid stressing the electrical connections.

(d) Bonds between the suspension strand and the existing ground shall be at least No. 6AWG copper.

(e) Temporary bonds shall be left in place until the strand has been tensioned, dead-ended, and permanently grounded.

(f) Covered strand (insulated) shall be grounded at the reel during stringing operations.

#### NEW SECTION

**WAC 296-32-23516 Overhead lines.** (1) Handling suspension strand.

(a) When pulling strand off a reel trailer more than two spans there must be a reel tender.

(b) There must be reliable communications between the employee pulling strand and the reel tender.

(c) The employer shall ensure that when handling cable suspension strand which is being installed on poles carrying exposed energized power conductors, that all employees that may be exposed, to include the reel tender, shall wear insulating gloves, suitable for voltage levels that may be encountered, and shall avoid body contact with the strand until after it has been tensioned, dead-ended and permanently grounded.

(d) The strand shall be restrained against upward movement during installation:

(i) On joint-use poles, where there is an upward change in grade at the pole; and

(ii) On nonjoint-use poles, where the line crosses under energized power conductors.

(2) Test requirements for cable suspension strand.

(a) Before attaching a splicing platform to a cable suspension strand, the strand shall be tested and determined to have strength sufficient to support the weight of the platform and the employee. Where the strand crosses above power wires or railroad tracks it may not be tested but shall be inspected in accordance with subsection (3) of this section.

(b) The following method or an equivalent method shall be used for testing the strength of the strand: A rope, at least three-eighths inches in diameter, shall be thrown over the strand. On joint lines, the rope shall be passed over the strand using tree pruner handles or a wire raising tool. If two employees are present, both shall grip the double rope and slowly transfer their entire weight to the rope and attempt to raise themselves off the ground. If only one employee is present, one end of the rope which has been passed over the strand shall be tied to the bumper of the truck, or other equally secure anchorage. The employee then shall grasp the other end of the rope and attempt to raise himself off the ground.

(3) Inspection of strand. Where strand passes over electric power wires or railroad tracks, it shall be inspected from an elevated working position at each pole supporting the span in question. The strand may not be used to support any splicing platform, scaffold or cable car, if any of the following conditions exist:

(a) Corrosion so that no galvanizing can be detected;

(b) One or more wires of the strand are broken;

(c) Worn spots; or

(d) Burn marks such as those caused by contact with electric power wires.

#### NEW SECTION

**WAC 296-32-23518 Wood or other types of poles.** (1) Need for testing wood poles. Unless temporary guys or braces are attached, the following poles shall be tested in accordance with subsection (2) of this section and determined to be safe before employees are permitted to climb them:

**Note:** When work is to be performed on a wood pole, it is important to determine the condition of the pole before it is climbed. The weight of the employee, the weight of equipment being installed, and other working stresses (such as the removal or retensioning of conductors) can lead to the failure of a defective pole or one that is not designed to handle the additional stresses. For these reasons, it is essential that an inspection and test of the condition of a wood pole be performed before it is climbed.

(a) Dead-end poles, except properly braced or guyed "Y" or "T" cable junction poles;

(b) Straight line poles which are not storm guyed and where adjacent span lengths exceed one hundred sixty-five feet;

(c) Poles at which there is a downward change in grade and which are not guyed or braced corner poles or cable junction poles;

(d) Poles which support only telephone drop wire; and

(e) Poles which carry less than ten communications line wires. On joint use poles, one power line wire shall be considered as two communication wires.

(2) Testing of wood poles.

(a) The employer shall develop 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.

(b) The employer shall ascertain that the pole can sustain all other forces that will be imposed by the work to be performed.

(c) The following method or an equivalent method shall be used for testing wood poles:

(i) Rap the pole sharply with a lineman's hammer, starting near the ground line and continuing upwards circumferentially around the pole to a height of approximately 6 feet. The hammer will produce a clear sound and rebound sharply when striking sound wood. Decay pockets will be indicated by a dull sound and/or a less pronounced hammer rebound. When decay pockets are indicated, the pole shall be considered unsafe.

(ii) The pole shall be prodded below or as near the ground line as possible using a pole prod or a screwdriver with a single blade at least five inches long, driving it in at a forty-five degree angle towards the center of the pole.

(iii) Apply a horizontal force to the pole and attempt to rock it back and forth in a direction perpendicular to the line. Caution must be exercised to avoid causing power lines to swing together. The force may be applied either by pushing with a pike pole or pulling with a rope. If the pole cracks during the test, it shall be considered unsafe.

(d) The pole should be inspected for cracks. Horizontal cracks perpendicular to the grain of the wood may weaken the pole. Vertical ones, although not considered to be a sign of a defective pole, can pose a hazard to the climber, and the employee must keep his or her gaffs away from them while climbing.

(e) 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.

(f) Unsafe poles or structures.

(i) Poles or structures determined by a qualified employee to be unsafe by test or observation may not be climbed until made safe by guying, bracing or other means.

(ii) Poles determined to be unsafe to climb shall, until they are made safe, be marked in a conspicuous place to alert and warn all employees of the unsafe condition and the owner of the pole must be notified of its condition.

(3) Handling poles near energized power conductors.

(a) Qualified employees permitted to set, remove or handle poles which could inadvertently encroach the minimum approach distance must be trained in:

(i) The proper use of the special precautionary techniques;

(ii) Personal protective equipment;

(iii) Insulating and shielding materials;

(iv) Insulated tools for working near exposed energized parts or overhead electrical lines and equipment;

(v) Skills and techniques necessary to determine the nominal voltage of exposed live lines and parts; and

(vi) The minimum approach distances in Table 6 of this section.

(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 Table 6 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) Where a hazard of a power contact exists, due to use of long handled tools, proper rubber equipment shall be used.

(d) Joint use poles may not be set, moved, or removed where the nominal voltage of open electrical power conductors exceeds 34.5 kV phase to phase or 20 kV phase to ground.

(e) Poles that are to be placed, moved or removed during heavy rains, sleet or wet snow in joint lines carrying more than 8.7 kV phase to phase voltage or 5 kV phase to ground shall be guarded or otherwise prevented from any contact with overhead energized power conductors.

(f)(i) In joint lines where the power voltage is greater than 600 volts but less than 34.5 kV phase to phase or 20 kV phase to ground, wet poles being placed, moved or removed shall be insulated with either a rubber insulating blanket, a fiberglass box guide, or equivalent protective equipment.

(ii) In joint lines where the power voltage is greater than 8.7 kV phase to phase or 5 kV phase to ground but less than 34.5 kV phase to phase or 20 kV phase to ground, dry poles being placed, moved, or removed shall be insulated with either a rubber insulating blanket, a fiberglass box guide, or equivalent protective equipment.

(iii) Where wet or dry poles are being removed, insulation of the pole is not required if the pole is cut off two feet or more below the lowest power wire and also cut off near the ground line.

(g) Insulating gloves shall be worn when handling the pole with either hands or tools, when there exists a possibility that the pole may contact a power conductor. Where the voltage to ground of the power conductor exceeds 15 kV to ground, Class II gloves (as defined in ASTM D 120-09a)

shall be used. For voltages not exceeding 15 kV to ground, insulating gloves shall have a breakdown voltage of at least 17 kV.

(h) The guard or insulating material used to protect the pole shall meet the appropriate three-minute proof test voltage requirements contained in:

- ASTM D 178-01, 2010, Standard Specification for Rubber Insulating Matting;
- ASTM D 1048-12, Standard Specification for Rubber Insulating Blankets;
- ASTM D 1049-98, 2010, Standard Specification for Rubber Insulating Covers; and
- ASTM F 712-06, 2011, Standard Test Methods and Specifications for Electrically Insulating Plastic Guard Equipment.

(i) Reserved.

(j) 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 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 6 of this section.

(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.

(k) When there is a possibility of contact between the pole or the vehicle-mounted equipment used to handle the pole, and an energized power conductor, the following precautions must be observed:

(i) Employ insulating protective equipment or barricades to guard against any hazardous potential differences.

(ii) When on the vehicle which carries the derrick, avoid all contact with the ground, with persons standing on the ground, and with all grounded objects such as guys, tree limbs, or metal sign posts. To the extent feasible, remain on the vehicle as long as the possibility of contact exists.

(iii) When it is necessary to leave the vehicle, step onto an insulating blanket and break all contact with the vehicle before stepping off the blanket and onto the ground. As a last resort, if a blanket is not available, the employee may jump cleanly from the vehicle then take short steps or shuffle away from the vehicle.

(iv) When it is necessary to enter the vehicle, first step onto an insulating blanket and break all contact with the ground, grounded objects and other persons before touching the truck or derrick.

(4) Working position on poles or structures. Climbing and working is prohibited above the level of the lowest electric power conductor on the pole or structure (exclusive of vertical runs and street light wiring), except:

(a) Where communications facilities are attached above the electric power conductors, and a rigid fixed barrier is installed between the electric power facility and the communications facility; or

(b) Where the electric power conductors are cabled secondary service drops carrying less than 300 volts to ground and are attached forty inches or more below the communications conductors or cables.

(5) Neither the employer nor the employees shall throw or permit anything to be thrown from elevated position(s) or poles to the ground or lower level, nor shall anything be thrown from the ground or lower level to an elevated position, whether that elevated position is on a pole, tower, aerial manlift or otherwise. Tools and loose materials shall not be left on poles, towers, ladders or other elevated structures or positions.

(6) Other elevated locations. Approved harnesses and lanyards or lineman's belts and straps shall be worn when working at elevated positions on poles or similar structures, which do not have guarded work areas.

(7) Installing and removing wire and cable. Before installing or removing wire or cable, the pole or structure shall be guyed, braced, or otherwise supported, as necessary, to prevent failure of the pole or structure.

(8) Avoiding contact with energized power conductors or equipment. When cranes, digger derricks, or other mechanized equipment are used for setting, moving, or removing poles, all necessary precautions shall be taken to avoid contact with energized power conductors or equipment by maintaining the minimum approach distance applicable to the voltage located in Table 6 of this section.

(9) Support structures.

(a) No employee, or any material or equipment, shall be supported or permitted to be supported on any portion of a pole structure, platform, ladder, walkway or other elevated structure or aerial device unless the employer ensures that the support structure is first inspected by a competent person and it is determined to be strong, in good working condition and properly secured in place.

(b) Employees shall not throw anything from pole to ground, from pole to pole or from ground to pole.

(10) Power exposures.

(a) The employer shall ensure that no employee approaches or takes any conductive object closer to any electrically energized overhead power lines and parts than prescribed in Table 6 of this section unless:

(i) The energized parts are insulated or guarded from the employee and any other conductive object at a different potential; or

(ii) The power conductors and equipment are deenergized and grounded.

(b) While handling communication wires, metal sheaths, or communication equipment, contact shall be avoided with street lamp brackets, trolley span wires, power guys, and any other power equipment that may be energized. The safest possible working position shall be assumed before starting work.

(c) Communication employees shall never work in the pole space on jointly used poles between normal primary and secondary attachments.

**Table 6**  
**Minimum Approach Distances to Exposed Energized Overhead Powerlines and Parts**

Voltage in Kilovolts Phase-to-Phase or Phase-to-Ground	Distance to Employee Phase-to-Phase or Phase-to-Ground (ft-in)
0 to 0.050	Not Specified
0.051 to 0.300	Avoid Contact
0.301 to 0.750	1-6
0.751 to 15	3-0
15.1 to 36.0	3-6
36.1 to 46.0	4-0
46.1 to 72.5	4-6
Voltage in Kilovolts Phase-to-Phase or Phase-to-Ground	Distance to Employee from Energized Part Without Tools Phase-to-Phase or Phase-to-Ground (ft-in)
72.6 to 121	5-6
121.1 to 145	6-6
145.1 to 169	7-0
169.1 to 242	10-6
242.1 to 362.0	15-6
362.1 to 420.0	18-4
420.1 to 550.0	22-0
550.1 to 800.0	27-9

**NEW SECTION**

**WAC 296-32-23520 Telecommunications line tree trimming and emergency work.** (1) General.

(a) Employees engaged in pruning, trimming, removing, or clearing trees from lines shall be required to consider all overhead and underground electrical power conductors to be energized with potentially fatal voltages, never to be touched (contacted) either directly or indirectly and comply with Table 7 of this section for minimum approach distances.

(b) Line clearance tree trimming operations exposing employees to electrical hazards shall be addressed by qualified line clearance tree trimmers covered under chapter 296-45 WAC.

(c) Employees engaged in line-clearing operations shall be instructed that:

(i) A direct contact is made when any part of the body touches or contacts an energized conductor, or other energized electrical fixture or apparatus.

(ii) An indirect contact is made when any part of the body touches any object in contact with an energized electrical conductor, or other energized fixture or apparatus.

(iii) An indirect contact can be made through conductive tools, tree branches, truck equipment, or other objects, or as a

result of communications wires, cables, fences, or guy wires being accidentally energized.

(iv) Electric shock will occur when an employee, by either direct or indirect contact with an energized conductor, energized tree limb, tool, equipment, or other object, provides a path for the flow of electricity to a grounded object or to the ground itself. Simultaneous contact with two energized conductors will also cause electric shock which may result in serious or fatal injury.

(d) Before any work is performed in proximity to energized conductors, the system operator/owner of the energized conductors shall be contacted to ascertain if they know of any hazards associated with the conductors which may not be readily apparent. This rule does not apply when operations are performed by the system operator/owner.

(2) Working in proximity to potential electrical hazards.

(a) Employers shall ensure that a close inspection is made by the employee and by the crewleader or supervisor in charge before climbing, entering, or working around any tree, to determine whether an electrical power conductor passes through the tree, or passes within reaching distance of an employee working in the tree. If any of these conditions exist either directly or indirectly, an electrical hazard shall be considered to exist unless the system operator/owner has caused the hazard to be removed by deenergizing the lines, or installing protective equipment.

(b) Qualified line clearance tree trimmers or trainees shall comply with Table 7 below:

**Table 7**  
**Minimum Working Distances from Energized Conductors for Line-Clearance Tree Trimmers and Line-Clearance Tree-Trimner Trainees**

Voltage in Kilovolts Phase-to-Phase or Phase-to-Ground	Distance to Employee Phase-to-Phase or Phase-to-Ground (ft-in)
0 to 0.050	Not Specified
0.051 to 0.300	Avoid Contact
0.301 to 0.750	1-6
0.751 to 15	3-0
15.1 to 36.0	3-6
36.1 to 46.0	4-0
46.1 to 72.5	4-6
Voltage in Kilovolts Phase-to-Phase or Phase-to-Ground	Distance to Employee from Energized Part Without Tools Phase-to-Phase or Phase-to-Ground (ft-in)
72.6 to 121	5-6
121.1 to 145	6-6
145.1 to 169	7-0
169.1 to 242	10-6



242.1 to 362	15-6
362.1 to 420.0	18-4
420.1 to 550.0	22-0
550.1 to 800.0	27-9

(c) Rubber footwear, including lineman's overshoes, shall not be considered as providing any measure of safety from electrical hazards.

(d) Ladders, platforms, and aerial devices, including insulated aerial devices, may not be brought in contact with an electrical conductor. Reliance shall not be placed on their dielectric capabilities.

(e) When an aerial lift device contacts an electrical conductor, the truck supporting the aerial lift device shall be considered as energized.

NEW SECTION

**WAC 296-32-23522 Line patrol and work on aerial plants.** A minimum of two persons, one of whom shall be a qualified person, shall be used for line patrol duty at night when observing the overhead line and driving the vehicle must be done simultaneously. If repair to lines or equipment is found to be of such nature as to require two qualified 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. Whenever natural light is insufficient to illuminate the worksite, artificial illumination shall be provided to enable the employee to perform the work safely.

NEW SECTION

**WAC 296-32-23523 Storm work and emergency conditions.** (1) Since storm work and emergency conditions create special hazards, only authorized representatives of the electric utility system operator/owner or a qualified tree trimmer per chapter 296-45 WAC and not telecommunication employees may perform tree work in these situations where energized electrical power conductors are involved.

(2) When an emergency condition develops due to tree operations, work shall be suspended and the electric utility system operator/owner shall be notified immediately.

(3) Telecommunication employers shall not allow their employees to perform any storm damage work until given the all clear that it is safe to enter an area by the electrical utility system operator/owner.

(4) During storm damage recovery operations and after the utility has given the all clear, all employees working on communications suspension strand and conductive cables shall use insulated gloves and an approved voltage detector (20 kV) to test for voltage.

NEW SECTION

**WAC 296-32-23524 Underground lines and cable vaults.** Underground/buried communication lines.

(1) No employer shall permit an employee to work in such proximity to any part of an electric power circuit that the

employee could contact the electric power circuit in the course of work, unless the employee is protected against electric shock by deenergizing the circuit and grounding it or by guarding it effectively by insulation or other means.

(2) No person, firm, corporation, or agent of same, shall require or permit any employee to perform any function in proximity to electrical conductors or to engage in any excavation, construction, demolition, repair, or other operation, unless and until danger from accidental contact with said electrical conductors has been effectively guarded by deenergizing the circuit and grounding it or by guarding it by effective insulation or other effective means.

(3) In work areas where the exact location of underground electric powerlines is unknown, no activity which may bring employees into contact with those powerlines shall begin until the powerlines have been positively and unmistakably deenergized and grounded.

(4) Before work is begun the employer must ascertain by inquiry or direct observation, or by instruments, whether any part of an energized electric power circuit, exposed or concealed, is so located that the performance of the work may bring any person, tool, or machine into physical or electrical contact with the electric power circuit. The employer shall post and maintain proper warning signs where such a circuit exists. The employer shall advise employees of the location of such lines, the hazards involved, and the protective measures to be taken.

NEW SECTION

**WAC 296-32-23526 Directional boring machines.** (1) Surface encumbrances. All surface encumbrances that are located so as to create a hazard to employees shall be removed or supported, as necessary, to safeguard employees.

(2) Underground installations.

(a) The location of utility installations, such as sewer, telephone, fuel, electric, water lines, or any other underground installations that reasonably may be expected to be encountered during excavation work, shall be located prior to opening an excavation.

(b) Utility companies or owners shall be contacted within established or customary local response times, advised of the proposed work, and asked to locate the underground utility installation prior to the start of actual excavation.

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(3) A walk around safety inspection must be conducted to evaluate and address all potential hazards.

(4) Appropriate PPE requirements must be determined prior to commencing work.

(5) Verify utility locations.

(a) When excavation/directional boring operations approach the location of underground installations, the exact location of the installations shall be determined by safe and acceptable means.

(b) While the excavation is open, underground installations shall be protected, supported, or removed as necessary to safeguard employees.

(6) Operator training. Operators of drilling, tracking and support equipment must be trained and the employer shall certify that each employee has received the training needed.

**Note:** Employment records that indicate that an employee has received the needed training are an acceptable means of meeting this requirement. Additional training requirements are located in WAC 296-32-22525.

(7) Field operations.

(a) The drill must not be operated without direct, two-way communication between the drill operator and drill locator and/or exit side personnel.

(b) Mechanical breakout wrenches must be used.

(c) Pipe wrenches must not be used as mechanical breakout wrenches.

(8) Electrical hazards.

(a) You must follow manufacturer's recommendations when operating this machinery. Electrical sensing stakes must be driven into the ground and the strike alert system tested prior to operation. The stake must be located a minimum of six feet from the machine.

(b) Any time you drill where electrical hazards may be present you must use the appropriate PPE, including the rubber insulation equipment listed below. (For more information, see WAC 296-32-22550 Rubber insulation equipment.)

(i) Rubber insulating gloves, including protectors for gloves.

(ii) Rubber insulating blankets.

(iii) Rubber insulating boots.

(iv) Other rubber insulating equipment, when applicable.

(c) The employer must make sure that no one touches the drilling machine when in use.

(9) Lock out/tag out. You must use energy control procedures to protect employees servicing, maintaining or performing procedures on machines and equipment that may have potentially hazardous energy.

**Note:** Additional requirements relating to lock out/tag out are located in chapter 296-803 WAC.

(10) Emergency response. If an existing utility is struck during the boring operation, employees must be trained in emergency procedures to reduce the likelihood of injury.

Types of strikes include:

- Electrical;
- Gas;
- Fiber optic;
- Communication lines;
- Sanitary/storm sewer and water.

(11) The employer must make sure that barricades are used for the protection of employees and the public when the drilling machine is in use.

#### NEW SECTION

**WAC 296-32-23528 Manholes, street openings and vaults.** (1) Guarding manholes and street openings.

(a) When covers of manholes or vaults are removed, the opening shall be promptly guarded by a railing, temporary cover, or other acceptable temporary barrier to prevent an accidental fall through the opening and to protect employees

working in the manhole from foreign objects entering the manhole.

(b) When work is to be performed on underground plant, the immediate foreman in charge and/or the craftsman assigned to do the work shall make a complete job hazard assessment of the work location in regard to the hazards that are created or that could exist prior to beginning the work in underground plant.

(c) The immediate foreman and/or the craftsman responsible for the job completion shall be in agreement of the proper method of eliminating or reducing any hazards that are present or could be caused by the location of the worksite, before the job proceeds.

(2) Requirements prior to entry of manholes and unvented vaults.

(a) The internal atmosphere shall be tested for oxygen deficiency and combustible gas.

(b) Mechanical forced air ventilation shall be in operation at all times when employees are required to be in the manhole.

(c) The mechanical forced air equipment provided shall be of a quantity to replace the exhausted air and shall be tempered when necessary.

(d) Ventilation equipment shall be designed in such a manner that employees will not be subjected to excessive air velocities.

**Note:** For additional requirements relating to confined spaces see chapter 296-809 WAC.

#### NEW SECTION

**WAC 296-32-23530 Joint power and telecommunication manholes and vaults.** (1) While work is being performed in manholes or vaults occupied jointly by an electric utility and a telecommunication utility;

(a) The employer must demonstrate that the employee will be protected from all electrical hazards;

(b) An employee with basic first-aid training shall be available in the immediate vicinity to render emergency assistance as required;

(c) An employee is not to be precluded from occasionally entering a manhole to provide assistance other than in an emergency.

(2) In manholes or vaults where energized cables or equipment are in service, an employee working alone may only enter, for brief periods of time, for the purpose of inspection, housekeeping, taking readings, or similar work.

**Note:** Entry procedures meeting the criteria of WAC 296-809-60002 are deemed acceptable. All other entry requirements fall under the permit entry procedures as defined in chapter 296-809 WAC.

#### NEW SECTION

**WAC 296-32-23532 Ladders for underground access.** (1) Ladders shall be used to enter and exit manholes exceeding four feet in depth.

(2) Metal and fiberglass manhole ladders shall be free of structural defects and free of accident hazards such as sharp edges and burrs. The metal shall be protected against corro-

sion unless inherently corrosion-resistant. These ladders may be designed with parallel side rails, or with side rails varying uniformly in separation along the length (tapered) or with side rails flaring at the base to increase stability.

(3) The spacing of rungs or steps shall be on twelve-inch centers.

(4) Connections between rungs or steps and side rails shall be constructed to ensure rigidity as well as strength.

(5) Rungs and steps shall be corrugated, knurled, dimpled, coated with skid-resistant material, or otherwise treated to minimize the possibility of slipping.

(6) Ladder hardware shall meet the ladder's component parts and shall be of a material that is protected against corrosion unless inherently corrosion-resistant. Metals shall be so selected as to avoid excessive galvanic action.

#### NEW SECTION

**WAC 296-32-23534 Tent heater, torches and open flames.** When open flames must be used in manholes, the following precautions shall be taken to protect against the accumulation of combustible gas:

(1) A test for combustible gas shall be made immediately before using any open flame device.

(2) A fuel tank (e.g., acetylene) may not be in the manhole unless in actual use.

(3) Open flames shall not be used within ground tents or on platforms within aerial tents unless:

(a) The tent covers are constructed of fire resistant materials; and

(b) Ventilation is provided to maintain safe oxygen levels and avoid harmful buildup of combustion products and combustible gases.

#### NEW SECTION

**WAC 296-32-23536 Lead work.** (1) Employer program requirements.

(a) General activities exposing employees to lead hazards the employer must follow the requirements located in WAC 296-62-07521.

(b) Construction activities exposing employees to lead hazards must follow the requirements located in WAC 296-155-176.

(2) When operated from commercial power the metal housing of electric solder pots shall be grounded. Electric solder pots may be used with the power equipment described in WAC 296-32-22540 (6) and (7), without a grounding conductor.

(3) Wiping gloves or cloths and eye protection must be used in lead wiping operations.

(4) A drip pan to catch hot lead drippings must be provided and used.

### **PART C—REQUIREMENTS THAT APPLY TO WIRELESS**

**Note:** Wireless - This part is intended to convey to the employer the responsibilities for the training and protection of their employees working with or upon telecommunications wireless facilities and field installations.

#### NEW SECTION

**WAC 296-32-24005 Wireless communications—General requirements.** (1) In addition to the requirements of WAC 296-32-22515 the employer shall ensure that at least two employees on-site are trained and hold current certifications in basic first aid and cardiopulmonary resuscitation (CPR) issued by the American Red Cross or any other organization whose standards are equivalent to the American Red Cross. Employees working alone must have basic first-aid training and hold a valid first-aid certificate.

(2) Training.

(a) In order for employees to work at heights above four feet, they must be authorized and approved for such work by the employer and/or a competent person.

(b) Training of employees shall be performed by a qualified person able to perform such training.

(c) The employer's written work procedures shall be provided to employees as part of their training.

(d) Pictures and symbols may be used as a means of instruction if employee understanding is improved using this method.

(e) The employer shall ensure that each employee working at heights above four feet has been trained in all of the following areas:

(i) The nature of fall hazards in the work area;

(ii) The correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used;

(iii) The correct procedures for inspecting fall protection equipment for wear, damage, defect, or deterioration;

(iv) Climbing methods and safety procedures;

(v) The use and operation of the fall protection systems used by the employer, as described in WAC 296-32-22555;

(vi) Identify the duties and responsibilities of various roles, as documented in the fall protection work plans;

(vii) The compatibility of fall protection equipment and fall protection systems.

**Note:** For establishing and maintaining a program for the control and monitoring of nonionizing radiation hazards (RFR), see WAC 296-32-22572 for additional requirements.

(3) Telecommunications work on high voltage transmission towers and power/utility poles.

(a) Only high voltage lineman or telecommunications/tower employees with equivalent training for working on transmission towers/utility/power poles as required in WAC 296-45-065 are allowed to work on such structures.

(b) Employees must have the skills and techniques necessary to distinguish exposed live parts from other parts of electric equipment.

(c) Employees must have the skills and techniques to determine the nominal voltage of exposed live parts.

(d) Employees must know the minimum approach distances to the voltages to which the employees will be exposed to and measures must be taken to ensure employees and conductive objects will not enter the minimum approach distance. See Table 6 in WAC 296-32-23518.

(e) Employees must be trained and address inductance hazards.

(4) Training program documentation and records to include in-house.

(a) The employer shall document that each employee has been trained with a record that includes all of the following:

(i) The identity of the person trained;

(ii) The signature of the employer or the qualified person who conducted the training;

(iii) The date that training was completed;

(iv) A detailed description of the training.

(b) The employer shall maintain a copy of the training lesson plan for each topic of instruction.

(c) The employer shall prepare the record at the completion of the training required by these rules and shall be maintained for five years.

(d) The most current record shall be kept available for review by the director of the department of labor and industries or his or her designee, upon request.

(e) The employer may only accept training records for previous training by an accredited institute or school, or in-house training if:

(i) The employer verifies that all training and knowledge is up-to-date and applicable to the new employee's job duties; and

(ii) The employee must also demonstrate proficiency in the duties they are required to perform.

(f) In order to fulfill responsibilities under the provisions of the rules in this section, the employer shall, upon request, provide the department of labor and industries or his or her designee access to the following records:

(i) Training records. All material related to the employer's training and education program, see WAC 296-32-22525;

(ii) Medical records and nonionizing radiation exposure records. All medical records and material related to each analysis using exposure or medical records must comply with chapter 296-802 WAC;

(iii) Equipment inspections and testing records. All material related to the modification, repair, test, calibration or maintenance service of all equipment.

(5) A site specific safety plan shall be located on-site and include the following:

(a) The site address to include the coordinates and directions to the site, and local emergency response agency contact information.

(b) The hazard assessment as required in subsections (6) through (8) of this section.

(c) The fall protection work plan as required in WAC 296-32-24012(11).

(d) Emergency procedures including rescue procedures as required in WAC 296-32-24018.

(6) The employer shall ensure that a structure hazard assessment is performed to identify, assess, and control employee exposure to hazards as required by these rules and any other applicable state or federal statutes, rules, or regulations. Hazard assessments required by this rule shall be documented as follows:

(a) Initially and daily for each site by a competent person prior to permitting employees to climb the structure.

(b) When safety and health information or change in workplace conditions indicates that a new or increased hazard may be present.

(7) The hazard assessments required by this rule shall do the following:

(a) Be performed by a competent person.

(b) Evaluate and approve new equipment, materials, and processes for hazards before they are introduced into the workplace.

(c) The contract employer must verify the structural analysis for construction, demolition, and modification of communication structures, antenna supporting structures, mounts, structural components, guy assemblies, insulators and foundations, when required. Refer to ANSI/TIA 222-G, 2014 and Telecommunication construction standards, ANSI/TIA - 322, 2016 and ANSI/ASSE A10.48, 2016.

(d) Identify meteorological conditions that could affect work at heights above four feet on a tower, such as high winds, heat, cold, lightning, rain, snow, or sleet.

(e) Working on towers shall be prohibited during adverse weather conditions.

**Note:** Thunderstorms in the immediate vicinity, high winds, heat, cold, lightning, rain, snow, or sleet are examples of adverse weather conditions that are presumed to make this work too hazardous to perform, except under emergency conditions.

(8) If hazards are identified, the employer shall assess the severity of identified hazards and implement means to control such hazards, including providing employees with personal protective equipment (PPE) designed to control the identified hazards and ensuring the proper training and use of the PPE by the employees.

(9) Climbing facilities.

(a) If climbing pegs are missing and/or the safety climb's condition is outside the manufacturer's specifications, an alternate means to access the structure must be used.

(b) Climbing space must be kept clear of obstructions or if the climbing space and facility are obstructed, approved climber attachments must be installed to maintain 100 percent fall protection.

(c) These rules shall not require the retrofitting of communication climbing facilities provided that employees who are exposed to fall hazards above four feet while performing work on communication towers are protected from such hazards by means of a 100 percent fall protection system.

(d) If access to the tower is obstructed, the employer shall notify the owner of the antenna/communication system and the tower owner and an alternate means must be utilized to access the tower.

(10) Communication tower/structure evaluation.

(a) The structural integrity, safety systems and loading capacities of the structure must be maintained per the engineered design.

(b) Maintenance and condition assessment must be conducted in accordance with ANSI/TIA 222-G, 2014:

(i) Three-year intervals for guyed towers, and five-year intervals for self-supporting structures and monopoles or in accordance with the schedule established by the engineer of record for the structure owner.

(ii) After severe wind and/or ice storms or other extreme conditions.

(iii) At shorter intervals when the structure has been exposed to corrosive environments or are in areas subject to vandalism.

#### NEW SECTION

**WAC 296-32-24010 Antenna work-radio transmitting stations 3-30 MHZ.** (1) Prior to grounding a radio transmitting station antenna, the employer shall ensure that the rigger in charge:

- (a) Prepares a danger tag signed with their signature;
- (b) Requests the transmitting technician to shutdown the transmitter and to ground the antenna with its grounding switch;
- (c) Is notified by the transmitting technician that the transmitter has been shutdown; and
- (d) Tags the antenna ground switch and verifies with the transmitting technician after the antenna has been grounded.

(2) Power shall not be applied to the antenna, nor shall the grounding switch be opened under any circumstances while the tag is affixed.

(a) Where no grounding switches are provided, grounding sticks shall be used, one on each side of line, and tags shall be placed on the grounding sticks, antenna switch, or plate power switch in a conspicuous place.

(b) To further reduce excessive radio frequency pickup, ground sticks or short circuits shall be placed directly on the transmission lines near the transmitter in addition to the regular grounding switches.

(c) In other cases, the antenna lines may be disconnected from ground and the transmitter to reduce pickup at the point in the field.

(3) All radio frequency line wires shall be tested for pickup with an insulated probe before they are handled either with bare hands or with metal tools.

(4) The employer shall ensure that the transmitting technician warn the riggers about adjacent lines which are, or may become energized.

(5) The employer shall ensure that when antenna work has been completed, the rigger in charge of the job returns to the transmitter, notifies the transmitting technician in charge that work has been completed, and personally removes the tag from the antenna ground switch.

#### NEW SECTION

**WAC 296-32-24012 Fall protection.** In addition to the following requirements also see WAC 296-32-22555.

(1) The employer shall ensure that at least two qualified climbers are on-site at all times when employees are exposed to fall hazards above four feet.

(2) The employer shall require employees to adhere to acceptable conditions for access, prior to climbing the tower at heights above four feet.

(3) Prior to employees being exposed to elevations above four feet, the employer shall ensure that 100 percent fall protection systems compatible with the tasks assigned are provided, used, and maintained as required in this chapter and in accordance with the manufacturer's specifications.

(4) In addition to the requirements of WAC 296-32-24005 (5) through (7), all of the following shall occur prior to employees climbing the tower at heights above four feet:

(a) The planning and inspections shall be performed and documented.

(i) All projects requiring climbing shall be planned by a competent person.

(ii) The documentation shall be maintained on-site while work is being performed.

(iii) The documentation shall include the date of the planning and inspection, the name of the competent person performing the planning and inspection, and the site location.

(b) All climbing facilities shall be visually inspected daily at the tower base by a competent person for rust, corrosion, deterioration, structural, mechanical, or other hazards on the climbing facilities that could lead to death or injury of an employee in the performance of their duties. Additionally, the climbing facilities shall be visually inspected for these items as the employees ascend to the elevation point where work is being performed. If any such hazard is identified during this inspection, employees shall not use the climbing facility until such hazards are abated.

(c) Components of a fall protection system (including anchor points) and the fall protection equipment used by employees shall be compatible with one another.

(d) Employees must use engineered anchor points or anchor points designated by a competent person.

**Note:** Additional requirements relating to cranes and personnel lifting are located in chapter 296-155 WAC, Part L.

(5) An employer shall comply with the requirements of this section in one of the following ways:

(a) Require employees to use the 100 percent fall protection systems.

(b) If the fall protection systems described in this section are not present or do not meet the manufacturer's specifications, the employer shall not permit employees to climb the tower at heights above four feet unless an alternative means of access to the work area is used such as an aerial lift, elevated work platform or other engineered systems.

(6) Positioning device system specifications. Positioning device systems must be used in conjunction with 100 percent fall protection systems and their use shall conform to the following provisions:

(a) Positioning harnesses or full body harnesses shall be used.

(b) Positioning devices shall be rigged to prevent an employee from a free fall greater than two feet.

(c) Positioning devices shall be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall or three thousand pounds (13.3 kN), whichever is greater.

(d) Connectors shall be drop forged, pressed or formed steel, or made of equivalent materials.

(e) Connectors shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to interfacing parts of this system.

(f) Connecting assemblies shall have a minimum breaking strength of five thousand pounds (22.2 kN).

(g) D-rings and snap hooks shall be proof-tested to a minimum tensile load of three thousand six hundred pounds

(16 kN) without cracking, breaking, or taking permanent deformation.

(h) Snap hooks shall be a locking type snap hook designed and used to prevent disengagement of the snap hook by the contact of the snap hook keeper by the connected member.

(i) Reserved.

(j) Unless the snap hook is designed for the following connections, snap hooks shall not be engaged:

(i) Directly to webbing, rope or wire rope;

(ii) To each other;

(iii) To a D-ring to which another snap hook or other connector is attached;

(iv) To a horizontal lifeline; or

(v) To any object which is incompatibly shaped or dimensioned in relation to the snap hook such that unintentional disengagement could occur by the connected object being able to depress the snap hook keeper and release itself.

(7) Vertical lifelines.

(a) All employees suspended from a boatswain's chair or rope descent system must use an independent fall arrest system where the fall arrest anchorage is separate from the suspension system anchorage.

(b) All employees must be connected at all times to the fall arrest system while they are suspended.

(c) All rope used for suspended personnel must have a minimum breaking strength of five thousand pounds for each employee.

(d) Rope used for suspended personnel must not be used for material handling.

(e) The design of a descent control mechanism shall prevent the device from causing an uncontrolled descent.

(f) The design of the manual descent device shall permit operation only when rigged in the correct manner.

(8) Self-rescue devices. Self-rescue devices are not a fall protection system. Self-rescue devices used to self-rescue after a fall shall meet the following requirements:

(a) Use self-rescue devices according to the manufacturer's instructions; and

(b) Self-rescue devices must be addressed by the fall protection work plan.

(9) When working from an aerial lift/crane basket:

(a) Employees must maintain 100 percent fall protection;

(i) When accessing the tower/structure from the aerial lift/crane basket the employee must first tie-off to the tower/structure; and

(ii) After tying-off to the tower/structure the employee must then immediately unhook from the aerial lift/crane basket and access the tower.

**Note:** An approved break away lanyard may be used to maintain 100 percent fall protection.

(b) Employees must maintain 100 percent fall protection:

(i) When accessing the aerial lift/crane basket from the tower/structure the employee must first tie-off to the aerial lift/crane basket; and

(ii) Then immediately access the aerial lift/crane basket; and

(iii) Then immediately unhook from the tower/structure.

**Note:** If all the requirements in subsection (9) of this section are met, the aerial lift guardrails may be used to access the tower and get back into the aerial platform.

(10) Ladder safety systems and related support systems for climbing facilities that are used by employees as a means of 100 percent fall protection shall conform to all of the following criteria:

(a) Prior to climbing the structure, a competent person shall ensure that the ladder safety system has been inspected for proper operation and that all components used with the ladder safety system are compatible.

(b) To perform an inspection, the competent person shall do all of the following:

(i) Approach the ladder at the base and connect to the functional safety climb system.

(ii) Attach to the base of the fall arrest system. If the attachment point is above six feet, then 100 percent fall protection shall be used. The 100 percent fall protection shall be attached to an alternate approved anchorage point.

(iii) Forcibly engage the device without letting go of the ladder.

(iv) If the device does not function properly, employees shall not use the device until it functions properly.

(c) If a climbing facility is obstructed, inhibiting the effective use of the ladder safety system, an alternative means of 100 percent fall protection shall be used that is at least as effective as the types of fall protection described by this chapter.

(11) Fall protection work plan. The employer shall develop and implement a written fall protection work plan including each area of the work place where the employees are assigned and where fall hazards of ten feet or more exist.

(a) The fall protection work plan shall include, but not be limited to:

(i) Identify all fall hazards in the work area;

(ii) Describe the method of fall arrest or fall restraint to be provided;

(iii) Describe the proper procedures for the assembly, maintenance, inspection, and disassembly of the fall protection system to be used;

(iv) Describe the proper procedures for the handling, storage, and securing of tools and materials;

(v) Describe the method of providing overhead protection for employees who may be in, or pass through the area below the worksite;

(vi) Describe the method for prompt, safe removal of injured employees; and

(vii) Be available on the job site for inspection by the department.

(b) Prior to permitting employees into areas where fall hazards exist the employer shall ensure employees are trained and instructed in the items described in this section.

#### NEW SECTION

##### **WAC 296-32-24014 Work during hours of darkness.**

(1) Climbing towers in the hours of darkness shall only be done after the job hazard assessment has addressed any additional hazards.

(2) Precautions must be addressed for high voltage hazards when working adjacent to substations or transmission/distribution lines which could create additional electrical hazards.

- Notes:**
- For the purpose of this rule, **hours of darkness** means one-half hour before sunset to one-half hour after sunrise.
  - Any ground work and working in the facilities is allowed with adequate lighting, see WAC 296-32-22535(1).

#### NEW SECTION

**WAC 296-32-24018 Emergency response/rescue requirements.** (1) Emergency response. The employer shall establish and document site specific procedures for rescue of employees in the event of an emergency. The employer shall designate its own employees to implement the rescue procedures. The documented procedures shall be available for review by the director of the Washington state department of labor and industries, or his or her designee, upon request.

(2) For elevated high angle rescue the following measures shall be taken:

(a) Ensure at least two competent rescue-trained climbing employees are on-site when employees are working at heights over four feet on the structure. When there are only three employees on-site and one of these employees has been employed for less than twelve months, then that new employee must minimally have documented rescue training which includes steps to be taken in an emergency.

(b) Ensure that personal protective equipment (PPE) and high angle rescue equipment needed to conduct elevated rescues are provided, used, and maintained by the rescue-trained employees.

(c) Train competent rescue employees so they are proficient in the use and maintenance of PPE and high angle rescue equipment needed to conduct elevated rescues.

(d) Train competent rescue employees to perform assigned rescue duties to ensure that they maintain the ability to perform and demonstrate such duties by conducting and documenting simulated rescue operations at least once every twelve months.

(e) The rescue equipment must be used only for rescue and must remain on-site anytime climbers are on towers or other elevated work locations.

(f) The design of the control mechanism shall prevent the user of the device from causing an uncontrolled descent.

(g) The design of the manual descent device shall permit operation only when rigged in the correct manner and have an automatic lock off.

#### NEW SECTION

**WAC 296-32-24020 Rigging plan.** (1) A rigging plan is intended to ensure that the proper procedures, equipment and rigging is used for each operation and to ensure that the supporting structure can support the rigging loads. A rigging plan shall consider the following items:

- (a) Operational and nonoperational construction loads;
- (b) Construction equipment;
- (c) Supporting structure;
- (d) Construction sequence and duration;

(e) Required load testing and field monitoring.

(2) Rigging plan criteria. A rigging plan may be very detailed and complex or very simple, depending on the type of job and the type of equipment necessary to complete the job. The following data shall be considered when completing a rigging plan:

- (a) General.
  - (i) Scope of work;
  - (ii) Construction sequence;
  - (iii) Duration of construction;
  - (iv) Monitoring requirements;
  - (v) Rigging plan classification;
  - (vi) Gross loads to be lifted;
  - (vii) Height of lift;
  - (viii) Operational and nonoperational wind loadings;
  - (ix) Load lifting restrictions.
- (b) Gin poles.
  - (i) Vertical or tilted position;
  - (ii) Gin pole identification;
  - (iii) Load chart reference number;
  - (iv) Maximum cantilever required;
  - (v) Forces created by tags;
  - (vi) Load line size and number of parts.
- (c) Basket and bridle attachments. Sling size, type, angle and connection details to the structure and to the gin pole.
- (d) Jumping of a gin pole.
  - (i) Jump line size and number of parts;
  - (ii) Block sizes and connection details;
  - (iii) Gin pole attachment details;
  - (iv) Track details and connections to the structure.
- (e) Hoists.
  - (i) Load chart indicating line pull based on number of layers on the drum;
  - (ii) Hoist line pull required;
  - (iii) Cable sizes and breaking strengths;
  - (iv) Hoist anchorage details;
  - (v) End connection efficiencies;
  - (vi) Distance and orientation from tower base.
- (f) Crown blocks.
  - (i) Block size and capacity;
  - (ii) Sling size and applicable rigging hardware;
  - (iii) Attachment details to the structure, foundation or other support.
- (g) Block size and capacity.
  - (i) Sling size and applicable rigging hardware;
  - (ii) Attachment details to the structure.
- (h) Tag lines.
  - (i) Straight or trolley;
  - (ii) Size and type of tag line;
  - (iii) Tag angle restrictions.
- (i) Reserved.
- (j) Cranes.
  - (i) Main;
  - (ii) Tailing;
  - (iii) Pedestal;
  - (iv) Chicago boom.
- (k) Supporting structure.
  - (i) Condition assessment;
  - (ii) Temporary guys;
  - (iii) Reinforcement to support the rigging loads;

- (iv) Procedures for the removal or reinforcing of structural members;
- (v) Procedures for guy replacement;
- (vi) Procedures for guy tensioning;
- (vii) Guy slippage considerations.
- (l) Miscellaneous.
  - (i) Overhaul ball;
  - (ii) Condition of appurtenances to be removed;
  - (iii) Interference with climbing facilities;
  - (iv) Field welding and cutting procedures.
- (3) Rigging plans. For Class II, III and IV rigging plans where a load is raised, lowered or suspended by rigging shall have a documented rigging plan. All work that requires rigging shall be classified in accordance with the proposed scope of work and classifications as outlined below:

(a) All construction or maintenance activities shall have a rigging plan classification outlining the project and the responsibilities within that project. Class II, III and IV rigging plans shall have a documented rigging plan.

(b) An on-site competent rigger shall be designated for all classes of construction or maintenance to identify hazards, and authorize corrective measures. For Class III and IV activities, a qualified person shall coordinate the involvement of a qualified engineer as required when establishing rigging plans. A qualified engineer shall perform the analysis of structures and/or components for Class IV activities.

(c) Proposed activities shall be outlined in a written rigging plan prior to implementation of a Class I, II, III and IV activities. The minimum level of responsibility for establishing a rigging plan is specified below:

(i) Class I. The minimum level of responsibility is a competent rigger; the scope of work does not affect the integrity of the structure and the proposed rigging loads are minor in comparison to the strength of the structure. Gross lift loads shall not exceed three hundred fifty pounds;

**Note:** This class excludes the use of gin poles or other sophisticated lifting devices.

(ii) Class II. The minimum level of responsibility is a competent rigger and the scope of work involves the removal or the addition of appurtenances, mounts, platforms, etc., that involves minor rigging loads in comparison to the strength of the structure. Gross lift loads shall not exceed five hundred pounds;

(iii) Class III. The minimum level of responsibility is a competent rigger communicating with a qualified person.

(A) The qualified person may communicate with a qualified engineer for clarification or information.

(B) Gross lift loads for lift systems attached to the structure shall not exceed two thousand pounds.

(C) This responsibility includes rigging plans that involve work outside the scope of Class I, II or IV construction.

(D) All new structure and foundation construction shall be classified as a minimum Class III plan. Where structure or foundation strength or stability concerns are present, new construction work shall be classified as Class IV.

(E) Work may be deemed Class III by a qualified person where component modifications are made to connections of structural members where at least one level of redundancy is maintained at all times, the structural member remains secure

and engaged in the bracing system, and the work is completed within a continuous workday (for example, bolt replacements on multi-bolt leg flanges). For component modifications where redundancy is in question, the qualified person shall communicate with a qualified engineer for determining the appropriate plan classification. Such communications must be documented and included in the rigging plan.

(F) A qualified person shall be involved for all construction or maintenance activities utilizing cranes or other lifting devices not attached to the structure to ensure proper planning communications between all employers and to determine the need for involvement of a qualified engineer.

(iv) Class IV. The minimum level of responsibility is a competent rigger communicating with a qualified person who will be communicating with a qualified engineer. The scope of work involves custom or infrequent construction methods, removal of structural members or unique appurtenances, special engineered lifts, and unique situations;

(v) All gross lift loads for lift systems attached to the structure in excess of two thousand pounds shall be considered Class IV;

(vi) Planned lifts for lift systems attached to the structure with load position angles exceeding ten degrees, and/or tag angles exceeding seventy degrees for straight tag applications, should include communication with a qualified engineer to ensure the structure and selected attachment point may safely support the resulting rigging forces;

**Note:** Comprehensive information relating to rigging plans, gin poles, site assessment is contained in the following consensus documents: ANSI/TIA 222-G 2016, ANSI/TIA 322 (Loading Analysis, and Design Criteria Related to the Installation, Alteration and Maintenance of Communications Structures, and in conjunction with ANSI/ASSE A10-48 2016 (Criteria for Safety Practices with the Construction, Demolition, Modification and Maintenance of Communications Structures).

## NEW SECTION

**WAC 296-32-24022 Gin poles—Installation.** When installing gin poles, the employer shall ensure that the following requirements are met:

(1) All applicable requirements for design, construction, installation, modification, testing, inspection, maintenance, and operation of gin poles as prescribed by the manufacturer or a registered professional engineer are met.

(2) The gin pole shall be attached to a structure in an arrangement with its upper portion cantilevering above the tower top.

(3) The employer shall ensure that when the gin pole is designed, consideration shall be given to the possibility of personnel climbing the pole to perform rigging functions and for tie off points to accommodate fall protection equipment.

(4) The rooster head which is located at the top of the gin pole shall meet the following requirements:

(a) The side plates shall have bolts or pins with spacers around the sheave so the load line is held in place and side plate distance is controlled.

(b) Sheave diameter and groove shall be designed for the load line size and type being used.

(c) The distance between the sheave edge and the side plate shall not exceed twenty-five percent of load line diame-



ter unless a mechanical means is provided to contain the load line within the sheave groove.

(5) Tracks used to guide and support gin poles during the jumping process shall not be used as a bridle or mid-level support unless specifically designed for such use.

(6) The load line is used to raise and lower the intended load. The load line shall leave the hoist at ground level, go through a block at the base of the tower, then up through the middle of the pole, through the rooster head and back down to the ground to pick up the intended load.

(7) A gin pole chart shall be provided for each pole. Gin pole charts shall contain all of the following information as a minimum:

(a) Identification number or other reference.

(b) Gin pole description.

(c) Safe lifting capacities (gross load) based on cantilever projection (La), overall gin pole length (L), and type of tag.

**Note:** (La) is the length of the pole that sticks up above and is not supported by the tower.

(d) Reaction forces at gin pole attachment points.

(e) A table to convert degrees to a field measurement.

(f) A warning that the load chart is for lifting loads and to reduce the safe lifting capacity by one half when lifting personnel.

(8) All lifts shall be within the ratings allowed in the "load chart." Any lift or lifting to be allowed on a special basis, which is outside of the "load chart," shall only be allowed at the direction of a registered professional engineer. Special monitoring and measuring conditions, as specified by the engineer, shall be provided and used in the field during all "special engineered lifts."

(9) Markings for gin poles shall be as follows:

(a) Each gin pole shall be permanently marked with an identification number that references a specific load chart.

(b) For proper assembly, each section and leg of the gin pole shall be marked in a specified sequence.

(10) The designer/engineer specified straightness tolerances shall be used for inspection. Minimum inspection criteria for gin poles shall be done by a qualified person as follows:

(a) A detailed documented inspection annually or within one year prior to being placed in service.

(b) A general visual inspection during assembly prior to use on a specific project.

(c) After any abnormal occurrence.

(11) Rigging equipment for the gin pole shall comply with all of the following:

(a) Wire/synthetic rope, slings, chains, shackles, turnbuckles, links, hooks, sheaves, rotating rooster heads, blocks, and hoists, used in a gin pole lifting arrangement shall meet the manufacturer's safe working load limits. In addition, each component other than chain slings, shall have a nominal breaking strength of not less than five times the static load applied. Chain slings shall have a nominal breaking strength of not less than four times the static load applied. Consideration for end fitting losses and actual positioning of connecting parts shall be given.

(b) Lugs or other devices for lifting or attaching the gin pole in position shall be designed with load and resistance factors appropriate for their intended use.

(c) Alloy chains and chain terminations shall be rated for overhead lifting. Alloy chains shall be identified with a manufacturer's mark indicating the grade of the chain.

(d) Only properly heat treated hooks and shackles shall be used. The manufacturer's load rating shall be stamped on the product.

(e) The breaking strength of the sheave shall equal or exceed the breaking strength of the wire rope intended for the sheave.

#### NEW SECTION

**WAC 296-32-24024 Gin poles—Use.** (1) Gin pole use shall comply with the following:

(a) A user's gin pole load chart shall be provided for each pole.

(b) Any special engineered lift that is outside of the load chart shall only be allowed at the direction of a registered professional engineer. Monitoring and measuring conditions, as specified by a registered professional engineer, shall be provided and used during all special engineered lifts.

(c) Modifications or repairs to the gin pole shall be designed and approved by a professional engineer or a qualified gin pole design professional and the repairs inspected by a qualified person prior to returning to service.

(d) A mechanism shall be in place to prevent the gin pole from tipping during the jumping process.

(2) Wire rope used for rigging shall be as follows:

(a) Compatible with the sheaves of the rooster head and hoisting blocks.

(b) Lubricated in accordance to manufacturer specifications to prevent corrosion and wear.

(c) End connections shall be terminated per industry and manufacturer's specifications.

(d) Wedge sockets shall have a minimum tail length of one rope lay with a properly torqued clip attached to prevent accidental disengagement.

(e) Only manufactured Flemish eyes will be acceptable.

#### NEW SECTION

**WAC 296-32-24026 Gin poles—Inspections.** The employer shall ensure that gin pole inspections include all of the following:

(1) Gin poles shall have a documented inspection annually by a qualified person.

(2) In addition to the annual inspection, the employer shall designate a competent person who shall visually inspect the gin pole and rigging prior to each use, and during use, to ensure it is in safe operating condition. Any deficiencies shall be repaired before use continues.

(3) During each inspection, a qualified person or a competent person shall do all of the following:

(a) Inspect the legs and bracing members for bends or distortion.

(b) Inspect the straightness tolerances for the overall assembly (including leg and bracing members).

(c) Visually inspect the welds for quality, deformation, cracks, rust, pitting, or loss of cross sectional area.

(d) Inspect the members for excessive rust, pitting, or loss of cross sectional area.

(e) Inspect the sling attachment points for distortion, wear, cracks, and rust.

(f) Ensure that proper bolts are used and all associated hardware is in good condition.

(g) Inspect side plates on rooster heads for distortion or other damage.

(h) Inspect all attachment hardware, including rigging and parts such as cables, slings, and sling attachment points, shackles, hooks, and sockets for wear, distortion, cracks, and rust.

(i) Ensure that all problems identified during the inspection are corrected before placing the gin pole into service.

#### NEW SECTION

**WAC 296-32-24028 Base mounted hoists used for overhead material lifting and personnel lifting.** (1) This section provides minimum design and use criteria for hoist mechanisms used for overhead material lifting and personnel lifting during the construction and/or maintenance of communication structures. All hoist mechanisms shall meet applicable requirements for design, construction, installation, testing, inspection, maintenance and operations as prescribed by the manufacturer or the qualified person designing the system. At a minimum the hoist mechanism shall comply with this standard.

(2) Design. The following identifies the minimum design parameters for those hoists used for overhead lifting and for lifting personnel.

(a) Design for overhead lifting.

(i) The hoist used for overhead lifting shall meet the applicable requirements for design, construction, installation, testing, inspection, maintenance, modification, repair and operations as prescribed by the manufacturer.

(ii) Where manufacturers' specifications are not available, the limitations assigned to the equipment shall be based on the determinations of a registered professional engineer.

(iii) The hoist mechanism may be designed to lift materials and also personnel with the same drum or drums.

(b) Design for personnel lifting.

(i) If the hoist has the ability to free spool, it must have a positive locking system to prevent free spooling during hoisting.

(ii) If the unit has the capability of exceeding two hundred feet per minute during operations, it must have a line speed indicator.

(iii) Hoists used for lifting personnel shall have a visible tag on the unit indicating the unit complies with the standard.

(c) Structural design for overhead and personnel lifting.

(i) During hoist assembly, the frame of the winch assembly and attached components shall be designed to resist at least two times the maximum attainable line pull.

(ii) Flatness of the mounting surface shall be held to tolerances specified by the hoist manufacturer.

(iii) The alignment of winch assembly components will be maintained within limits that shall prevent premature dete-

rioration of gear teeth, bearings, splines, bushings and any other parts of the hoist mechanism.

(iv) All winch drums shall have a positive means of attaching the wire rope to the drum. The hoist drum shall be designed to raise and lower 125 percent of the rated load of the hoist.

(d) Brakes. Brakes for overhead lifting.

(i) Hoist brakes shall be capable of controlling the descent of a load.

(ii) Hoist brakes shall be capable of stopping the load and minimize inertia loading.

(iii) If the hoist mechanism has the ability to free spool, then it shall have a means of controlling the load during the raising and lowering of loads.

(iv) Brakes shall be provided to prevent the drum from rotating in the lowering direction and shall be capable of holding the load indefinitely without attention from the operator.

(v) Units that have no continuous mechanical linkage between the brake actuator and the brake shall have a means of holding the load when there is a loss of brake actuating power on the winch assemblies.

(vi) Static brakes shall be provided to hold the drum from rotating in the lowering direction and shall be capable of holding the load indefinitely without attention from the operator.

(vii) Brakes, which are applied on stopped hoist drums, shall have sufficient impact capacity to hold 1.5 times the rated torque of the hoist.

(viii) Brakes shall be provided with adjustments, where necessary, to compensate for wear and to maintain adequate force on springs where used.

(ix) Foot-operated pedals, where provided, shall be constructed so the operator's feet will not readily slip off, and the force necessary to move the pedals shall be easily accomplished.

(x) Foot-operated brakes shall be equipped with a locking device to maintain the brake in a loaded position.

(e) Brakes for lifting personnel.

(i) Winch assemblies shall be provided with a primary brake and at least one independent secondary brake, each capable of holding 125 percent of the lifting and lowering capacity of the hoist.

(ii) The primary and secondary brake shall be directly connected to the drive train of the winch assembly and shall not be connected through belts, chains, etc.

(iii) The primary and secondary brake, when actuated, shall decelerate, stop and hold the load in a controlled manner.

(iv) When the primary brake fails, the secondary brake shall actuate automatically and hold the load in a controlled manner.

(v) A means to set brakes automatically in the event the loss of brake actuating power shall be provided on winch assemblies that have no continuous mechanical linkage between the brake actuator and the brake.

(vi) Brakes shall be automatically applied upon return of the control lever to its center (neutral) position.

(f) Controls for overhead and personnel lifting.

(i) All controls used during the normal operation of the hoist mechanism shall be located within easy reach of the operator while at the operator's station.

(ii) There shall be means to start and stop the prime mover under emergency conditions from the operator's station.

(iii) All control levers shall be clearly marked and easily visible from the operator's station.

(iv) All hoist control levers that are designed to do so, must spring return to neutral when released or have a comparable system that allows the braking mechanism to set automatically.

(g) Hour meter. In order to comply with the inspection criteria, there shall be an hour meter used as a means of monitoring the operating time a hoist winch assembly operates.

(h) Machine guarding.

(i) Belts, pulleys, gears, shafts, sprockets, spindles, drums, fly wheels, chains or other rotating parts shall be fully guarded to prevent employee contact.

(ii) All exhaust pipes shall be guarded where exposed to employee contact.

(3) Inspection and maintenance. The following are the requirements for inspection and maintenance for all hoists:

(a) General guidelines.

(i) The hoist shall have a documented daily inspection by a competent person before use.

(ii) Prior to initial use, all new, altered or modified hoist mechanisms shall be inspected by a qualified person.

(iii) Inspection records shall be available and accessible for a minimum of two years.

(iv) The teardown inspection records shall be available until the next teardown inspection is completed.

(v) Any hoist that has been idle for a period of over six months shall be given an annual inspection prior to use.

(vi) Any hoist that has an unknown history of repair or maintenance shall have a tear down inspection prior to use.

(b) Inspection criteria. Before use, a competent person familiar with the applicable hoist shall visually inspect the hoist to verify that the following conditions are met:

(i) A documented daily inspection shall be performed which shall include at a minimum:

(A) Engine oil level shall be checked.

(B) Engine coolant levels shall be checked.

(C) Check for external oil leaks.

(D) Hydraulic oil reservoir level shall be checked.

(E) All safety devices and brakes shall be checked for wear and tear to assure they function properly.

(F) A visual inspection shall be conducted for loose or missing structural connections.

(ii) A documented semi-annual inspection shall include the daily inspection and the following:

(A) Winch oil level shall be checked.

(B) All safety devices and brakes shall be tested to assure they are functioning properly.

(C) A visual inspection shall be conducted for loose or missing structural connections.

(D) A complete oil analysis shall be conducted.

(E) The winch assembly shall be dynamically tested in both the hoisting and lowering directions while under a load of at least 30 percent of the hoist lifting capacity.

(F) The inspection shall be documented in writing and maintained for two years.

(ii) A documented annual inspection shall include the items in the daily and semi-annual along with the following:

(A) Lubricating oil and hydraulic fluids shall be tested according to the manufacturer's specification for contaminants and replaced if necessary.

(B) The annual inspection shall be documented and maintained for two years.

(c) Teardown criteria for overhead material lifting. A teardown inspection of the winch assembly shall be completed under the supervision of a qualified person using the manufacturer's specifications and includes at a minimum the following:

(i) A teardown inspection shall include the hoist being completely disassembled, cleaned and inspected, replacement of all worn, cracked, corroded or distorted parts such as pins, bearings, shafts, gears, brake rotors, brake plates, drum and/or base;

(ii) After a teardown inspection, a certificate shall be issued that includes the following:

(A) The effective date of the repair.

(B) The asset and serial numbers of the unit.

(C) The name of the repair shop.

(D) The name of the qualified person.

(d) Teardown criteria for lifting personnel.

(i) Those winch assemblies that adhere to the required daily, monthly, semi-annually and yearly inspection criteria shall conform to the following teardown inspection time frame:

(A) Severe duty every three years.

(B) Moderate duty every five years.

(C) Infrequent use every seven years.

(ii) Those winch assemblies that do not adhere to this documented inspection criteria, shall have a teardown inspection every three years.

(iii) During any inspection, items found that may affect the performance of the unit must be repaired before use.

(iv) Documentation of the inspection shall include, but not be limited to, winch model and serial number, name and employer of repair/inspection technician, date and description of findings, parts replaced and test results.

(4) Repair and modifications. The manufacturer's specifications and guidelines for repair and modification shall be used; however, when these are not available, the following minimum requirements shall be used:

(a) All repairs and modifications shall be made under the supervision of a qualified person.

(b) Repaired hoists shall be line pull tested to the maximum rated load and the winch assembly shall be rotated several times in both hoisting and lowering directions under maximum rated load while checking for smooth operation.

(c) Prior to initial use, all new, altered or modified hoist mechanisms shall be inspected by a competent person.

(d) Documentation of all modifications and repairs shall be maintained and available for review for a minimum of two years.

(e) If modifications alter the line pull or performance of the unit, then a revised load chart must be developed and installed to reflect the change.

(5) Training. All hoist operators shall be qualified in accordance to the complexities of the work and of the hoist they are operating. Hoist operators may attain qualification through a combination of classroom training; experience gained under the direct supervision of a qualified hoist operator, and demonstrated proficiency.

(a) During training or until the training requirements are met, the operator must not operate the hoist during personnel hoisting operations.

(b) An operator shall be trained in accordance to the class of machine they will be operating:

- (i) Class A - 1,000 lbs. or less.
- (ii) Class B - 1,000 lbs. to 5,000 lbs.
- (iii) Class C - Greater than 5,000 lbs.

(c) The operator at a minimum shall have the following training:

(i) Ensure the hoist operator has classroom training in hoist operations; a minimum of forty hours as a hoist operator under the direct supervision of a qualified hoist operator, not less than eight hours in the operation of the class of hoist or one of the same type, and has demonstrated the ability to safely operate the hoist.

(ii) The operator shall have documented practical training on the safe operation of the applicable hoist by using the following:

- (A) Operator's manual provided by the manufacturer;
- (B) Company policy;
- (C) Be familiar with hand signals being used;
- (D) Be familiar with the operations of two-way radios if they are being used;
- (E) Be familiar with the work being completed.

(iii) The operator shall have a designated signal person and must take a stop signal from anyone.

(b) Operator requirements and responsibilities. Operator and operator trainees shall meet the following physical qualifications unless it can be shown that failure to meet the qualifications will not affect the operation of the hoist. In such cases, specialized clinical or medical judgments and tests may be required.

(a) Vision of at least 20/30 Snellen in one eye and 20/50 in the other, with or without corrective lenses.

(b) Ability to distinguish colors, regardless of position, if color differentiation is required.

(c) Adequate hearing to meet operational demands, with or without hearing aid.

(d) Sufficient strength, endurance, agility, coordination, and speed of reaction to meet the operation demands.

(e) No tendencies to dizziness, seizures or similar characteristics.

(f) No evidence of having physical or emotional instability that could render a hazard to the operator or others.

(g) The operator shall have adequate eyesight for the operation.

(h) The operator shall not engage in any practice which will divert their attention while operating.

(i) The operator shall be responsible for those operations under their direct control.

(j) Whenever there is any doubt as to safety, the operator shall have the authority to stop and refuse to handle the load until the situation is remedied.

(k) The operator shall not leave their position at the controls while a load is suspended.

(l) Before starting the hoist mechanism the operator shall ensure that:

- (i) The daily inspection has been done;
- (ii) All controls are in the off position; and
- (iii) All personnel are in the clear.

(7) Designated operators. The hoist mechanism can be operated by:

- (a) Designated operators;
- (b) Trainees under the direct supervision of a designated operator;
- (c) Qualified maintenance and test personnel during repairs or testing; or
- (d) Inspectors.

(8) Operations. During operations, the hoist operator shall comply with the following:

(a) The drum flange will be a minimum of two times the wire rope diameter higher than the top layer of the wire rope.

(b) The hoist drum shall have a diameter or enough layers on the drum to maintain a minimum of an 18:1 pitch diameter ratio or the proper reduction based on the applicable D:d ratios.

(c) No less than three wraps of wire rope shall be maintained on the drum at all times.

(d) The hoist shall be positioned so that it is level and the distance between the drum and the foot block at the base of the tower will allow proper spooling of wire rope.

(e) The foot block shall be anchored to prevent displacement and be supported to maintain proper alignment.

(f) An accessible fire extinguisher of 5BC rating or higher shall be at the operator's station.

(9) Operator's manual. There must be an operator's manual on-site and readily available for the applicable unit which was developed by the manufacturer, or registered professional engineer, for the specific make and model of hoist being used.

(10) Load chart. The following postings shall be at the control station readily visible or available to the operator.

(a) Where the rated capacities are inaccessible the operator must immediately cease operations or follow safe shut-down procedures until the rated capacities are available.

(b) Rated load capacities, recommended operating speeds and special hazard warnings, or instructions shall be conspicuously posted on all hoists.

(c) If a gin pole, derrick, pedestal crane or similar special lifting device is used with a base mounted hoist or winch to make lifts on a structure, the operator shall have a load chart on-site for the lifting mechanism and its use shall be included in the rigging plan for the job.

(11) Hoist anchorage.

(a) The hoist anchorage, at a minimum, shall have a working load limit (calculated with a minimum 2.0 safety factor) equal to or greater than the maximum anticipated hoist load. Alternately, a load test of 1.5 times the maximum anticipated hoist load under the expected site conditions

during the lift may be used to verify the adequacy of the hoist anchorage.

(b) Twisting, turning and sliding resistance shall be investigated.

(c) When calculating allowable sliding resistance, the assumed coefficient of friction shall not exceed 0.20 and incorporate a minimum 2.0 safety factor unless the coefficient of friction is determined by a registered professional engineer.

(d) The weight of the hoist shall be considered with the minimum load line remaining on the drum for the lift.

(e) When personnel are lifted, the maximum anticipated hoist load shall not exceed 50 percent of the hoist anchorage capacity.

(12) Communications.

(a) Loads being hoisted shall remain in continuous sight of and/or in direct communication with the operator or signal person.

(b) When hand signals are used, the employees must use standard hand signals.

(c) In those situations where direct visual contact with the operator is not possible and the use of a signal person would create a greater hazard, direct communication alone, such as by radio, shall be used.

(d) When radios are used, they shall be nontrunked closed 2-way selective frequency radio systems and the device(s) shall be tested on-site before beginning operations to ensure that the signal transmission is; effective, clear, reliable and the operator shall utilize a hands free system for receiving such signals.

(13) Weather conditions. Loads shall not be hoisted during adverse weather conditions (high winds, electrical storms, snow, ice or sleet) or when there is other impending danger, except in the case of emergency or employee rescue.

(14) Rigging plans. All hoist operations shall be part of a rigging plan as applicable in this chapter. The hoist operator shall have knowledge and understanding of the rigging plan and a copy readily available.

NEW SECTION

**WAC 296-32-24032 Personnel lifting—General requirements.** (1) Personnel platforms and/or their suspension systems must be designed, constructed and tested according to ASME B30.23-2005, Personnel Lifting Systems. The design and manufacturer's specifications must be made by a registered professional engineer.

**Note:** Additional requirements relating to personnel lifting are located in chapter 296-155 WAC, Part L.

(2) Before an employee may perform any job related to hoisting employees aloft for work, the employee shall receive training on all facets of the process. The operator of the hoist shall have a thorough understanding and comply with subsections (2) through (9) of this section pertaining to hoisting employees on the hoist line.

(3) Overhaul ball. This subsection sets forth the minimum requirements for the design and use of an overhaul ball as part of the lifting system.

(a) The weight of the ball shall overhaul the weight of the load line based on its own weight.

(b) If the ball is an integral part of the system and the load goes through the ball, then it must be designed accordingly.

(c) The ball shall be designed with attachment points at the top and bottom.

(d) A maximum of two employees may be attached to the ball at one time.

(4) An anti-two block device shall be used on all hoists, except where an employer can demonstrate that ambient radiation frequency (RFR) precludes that use. In such case, a site-specific rigging plan shall be established and maintained on-site to ensure that two blocking cannot occur and that effective communication between the hoist operator and personnel being hoisted is maintained. This plan may include a cable marking system, an employee situated on the tower in a position to observe the top block, or any other system that will adequately ensure communication. All of the following shall apply:

(a) A qualified person shall make the following determinations:

(i) The rigging, hoist line, and slings shall have a factor of safety of 10:1 against failure during personnel lifts;

(ii) The hoist line used to raise or lower employees must be wire rope and may be equipped with a swivel to prevent any rotation of the employees;

(iii) If a swivel is not used, then an alternate means shall be used to keep the employees under control at all times;

(iv) If spin resistant wire rope is used, additional and more frequent inspections are required due to different wear trends.

(b) When hoisting personnel (versus material), the hoist capacity load rating shall be derated by a factor of two (reduced by one half) and must maintain a 10:1 factor of safety after the reduction is considered. All employees shall be provided with and required to use the proper personal protective equipment (including fall protection equipment) that shall be inspected each day before use.

(c) Except where the employer can demonstrate that specific circumstances or conditions preclude its use, a guide line (tag line) shall be used to prevent the employees or the platform from contacting the tower during hoisting.

(d) The gin pole shall be thoroughly inspected before use by a competent person to determine that it is free from defects including, but not limited to, damaged and/or missing members, corrosive damage, missing fasteners and cracked or broken welds at joints, and general deterioration.

(e) The gin pole shall be attached to the tower as designed by a registered professional engineer. There shall be a minimum of two attachment locations, one at the bottom of the gin pole and one near the top of the tower or the highest position available on the structure.

(f) The personnel load capacity and material capacity of the lifting system in use shall be posted at the site near the location of the hoist operator. If the system is changed (for example, if the gin pole angle is changed), the posted capacity shall be changed accordingly.

(g) In situations where a gin pole is not being used on a communication tower and similar structures, a crown block may be used on the structure instead of a gin pole for access to the work location.

(5) A trial lift of the maximum intended personnel load shall be made from ground level to the location to which personnel are to be hoisted.

(a) The trial lift shall be made immediately prior to placing personnel on the hoist line.

(b) The hoist operator shall determine that all systems, controls, and safety devices are activated and functioning properly.

(c) A single trial lift may be performed for all locations that are to be reached from a single set-up position.

(d) The hoist operator shall determine that no interference exists and that all configurations necessary to reach those work locations remain under the limit of the hoist's rated capacity and additionally maintain a 10:1 factor of safety against failure.

(e) The trial lift shall be repeated prior to hoisting employees whenever the hoist is moved and set up in a new location or returned to a previously used position.

(f) After the trial lift, employees shall not be lifted unless the following conditions are met:

(i) Hoist wire ropes are determined to be free of damage in accordance with WAC 296-32-22555 and 296-155-53404.

(ii) Multiple part lines are not twisted around each other.

(iii) The proof testing requirements have been satisfied.

(g) If the hoist wire rope is slack, the hoisting system shall be inspected to ensure that all wire ropes are properly seated on drums and in sheaves.

(h) A visual inspection of the hoist, rigging, base support, and foundation shall be made by a competent person immediately after the trial lift to determine whether testing has exposed any defect or adverse effect upon any component of the structure.

(i) Any defects found during the inspection that may create a safety hazard shall be corrected and another trial lift shall be performed before hoisting personnel.

(ii) Prior to hoisting employees and after any repair or modification, the system shall be proof tested to its rated load, holding it in a suspended position for 5 minutes with the test load evenly distributed (this may be done concurrently with the trial lift).

(iii) After proof testing, a competent person shall inspect the rigging. Any deficiencies found shall be corrected and another proof test shall be conducted.

(6) A prelift meeting shall be held before the trial lift at each location and each time a new employee is assigned to the operation. The prelift meeting shall meet both of the following requirements:

(a) The hoist operator, each employee to be lifted, and the crew chief shall attend.

(b) The hoist operator shall review the procedures to be followed and all appropriate requirements contained in this rule with the other individuals present.

(7) The employer shall ensure that all trial lifts, inspections, and proof tests shall be performed and documented, and the documentation shall remain on-site during the entire length of the project. The employer shall ensure that the prelift meeting is documented, and the documentation shall remain on-site during the entire length of the project.

(8) Employees shall be hoisted to their work stations by using a personnel platform or by using a boatswain chair and/or boatswain seat-type full body type harness.

(a) When a boatswain chair or boatswain seat-type full body harness is used to hoist employees, the following shall apply:

(i) Not more than two employees may be hoisted at a time.

(ii) When hoisting an employee in a boatswain type full body harness, the harness shall be attached to the hoist wire rope line in such a manner as to utilize the boatswain seat part of the harness, placing the employee into a sitting position and a fall arrest lanyard must be attached from the back D ring of the full body harness to a separate attachment point.

(iii) Only locking-type snap hooks shall be used.

(iv) The harness shall be equipped with two side rings and at least one front and one back D ring.

(v) The hoist line hook shall be equipped with a safety latch that can be locked in a closed position to prevent loss of contact.

(vi) Employees must maintain 100 percent tie-off while moving between the hoist line and the tower.

(b) When a personnel platform is used, the following provisions must be followed:

(i) The maximum rate of travel shall not exceed two hundred feet per minute when a tag or trolley line is used to control personnel hoists. When a tag or trolley line cannot be used, the rate of travel of the employee being hoisted shall not exceed one hundred feet per minute.

(ii) In all personnel hoist situations, the maximum rate shall not exceed 50 feet per minute when personnel being lifted approaches to within fifty feet of the top block.

(iii) The use of free-spooling (friction lowering) is prohibited. When the hoist line is being used to raise or lower employees, there shall be no other load attached to any hoist line and no other load shall be raised or lowered at the same time on the same hoist.

(iv) As-built drawings approved by a registered professional engineer shall provide the lifting capacity of the gin pole and shall be available at the job site.

(v) The gin pole raising line shall not be used to raise or lower employees unless it is rated for lifting employees.

(vi) Employees must maintain 100 percent tie-off while moving between the personnel platform and the tower.

(9) Employees being hoisted shall remain in continuous sight of and/or in direct communication with the operator or signal person. The following shall apply:

(a) In those situations where direct visual contact with the operator is not possible and the use of a signal person would create a greater hazard for the person being hoisted, direct communication alone, such as by radio, shall be used.

(b) When radios are used, they shall be nontrunked closed 2-way selective frequency radio systems. When hand signals are used, the employees must use industry standardized hand signals.

(10) Employees shall not be hoisted during adverse weather conditions (high winds, heat, cold, lightning, rain, snow or sleet) or other impending danger, except in the case of emergency employee rescue. The competent person shall make the determination.

(11) The hoist system (gin pole and its base hoists) used to raise and lower employees on the hoist line, shall not be used unless the following clearance distances in Table 8 are maintained at all times during the lift:

**Table 8**

Power line voltage phase to phase (kV)	Minimum safe clearance (feet)
50 or below	10
Above 50 to 200	15
Above 200 to 350	20
Above 350 to 500	25
Above 500 to 750	35
Above 750 to 1,000	45

**Note:** Additional requirements relating to rigging are located in chapter 296-155 WAC, Parts F-1 and L.

### NEW SECTION

**WAC 296-32-24034 Helicopters used for lifting loads.** This section sets forth the minimum requirements for individuals working with helicopters used as a method for the installation, replacement, and/or removal of antennas and antenna supporting structures.

(1) Helicopters and helicopter cranes used for external load lifting during construction, maintenance and demolition activities shall comply with any and all applicable regulations of the Federal Aviation Administration (FAA) Part 133 for helicopter external sling load operations.

(2) Operator/pilot responsibilities. The helicopter operator/pilot shall be responsible for their machine and the operations of their equipment.

(3) FAA flight plan. All helicopter external load lifting must be reviewed by the FAA to determine if an FAA Congested Area Flight Plan must be applied for. If a plan is required, it must be filed and approved by the FAA prior to the day of the lift.

(4) Loose gear, equipment and objects. Every practical precaution shall be taken to provide for the protection of the employees from flying objects in the rotor downwash. All loose gear, equipment and materials within one hundred feet of the load lifting area and setting the load, and all other areas susceptible to rotor downwash shall be secured or removed.

(5) Operational parameters.

(a) The aircraft owner/operator/pilot(s) shall be responsible for the helicopter load lifting operations. The weight of an external load shall not exceed the manufacturer's rating for the specific aircraft being used. The helicopter operator/pilot shall be responsible for size, weight and manner in which loads are connected to the helicopter. If, for any reason, the helicopter operator/pilot believes the lift cannot be made safely, the lift shall not be made.

(b) The helicopter operator/pilot shall be familiar with the following:

- (i) Load capacities at altitudes and air densities;
- (ii) Hover capacities and limits;

(ii) Emergency operation and release of electricity operated cargo hooks;

(iv) Emergency jettison of external sling load;

(v) Static discharge of external sling load; and

(vi) Rotor downwash hazards during external sling load operations.

(6) Prejob planning. The use of a helicopter for lifting loads requires careful planning. The work must be organized around the aircraft and the factors that govern its operation such as load limitations, surrounding terrain and structures, and weather conditions. This requires the participation and cooperation of everyone involved. Planning includes, but is not limited to:

- (a) Locate and plan the staging area;
- (b) Provide for fire watch and spills;
- (c) Prepare flight plans;
- (d) Divide the job into lifting zones;
- (e) Plan the load lifting sequence;
- (f) Do alternate day planning.

(7) Helicopter on board hoists. Helicopters or helicopter cranes equipped with on board hoists or winches shall not be allowed to be attached or connected to any fixed structure on the ground at any time.

(8) Signaling systems. Signal systems between aircrew and ground personnel shall be understood and checked in advance of hoisting the load. This applies to either radio or hand signal systems.

(9) Helicopter refueling. Due to the load lifting abilities and capacities of individual models of aircraft flight with low fuel levels is common. It may become necessary to refuel the helicopter at the designated staging/lift area. Care must be given to ensure the aircraft is grounded per the manufacturer's recommendation during all refueling activities.

(10) Daily preflight briefing. Prior to each day's operation a job hazard assessment shall be conducted. This assessment shall set forth the plan of operation for all individuals involved in the helicopter external sling load lift. The preflight briefing shall include, but not be limited to, the following:

- (a) Weather forecast and visibility for the day of the lift(s);
- (b) Confirmation of flight path;
- (c) Load lifting sequence;
- (d) Individual load weights;
- (e) Wind speed and direction monitoring;
- (f) Ground crew responsibilities;
- (g) Load receiving crew's responsibilities;
- (h) Pilot's responsibilities;
- (i) Communications/signaling;
- (j) Aircraft fuel loading and refueling;
- (k) Emergency plan for load jettison and landing.

(11) Lifting plan.

(a) The lifting plan shall at a minimum cover:

- (i) Load identification;
- (ii) Lifting sequence; and
- (iii) Load orientation marks or tags.

(b) Loads that do not require upending shall be oriented in the same direction in the staging area as the laydown area. You must:

(i) Plan the layout of the staging area to avoid any light or unstable material that may blow around; and

(ii) Plan the lifting and flight path to avoid flying over employees and any material still being installed or not yet secure in the laydown area.

(12) Job hazard analysis/risk assessment. During the job hazard assessment, at a minimum, identify, assess, and eliminate or provide protection against risks posed by:

- (a) Power lines;
- (b) Cranes in the area;
- (c) Structures, roof and structure profiles;
- (d) Loose, unsecured material in staging or roof landing area;

(e) Temporary, unsecured structures in staging or landing area;

(f) Roof openings and roof access - Cover both to prevent building pressurization and to eliminate fall hazards;

- (g) Unprotected roof edges;
- (h) Pinch, crush, and similar danger points in the load/lift/land sequence;

(i) Weather conditions;

(j) Public safety.

(13) Rigging slings and inspection.

(a) Rigging slings for suspended external loads must consist of steel IWRC type slings at all direct connection points to the load being lifted.

(b) Synthetic slings may only be used in the intermediate length of the rigging between the direct steel sling and the cargo hook connection.

(c) The connection between the slings and the helicopter cargo hook must be a single steel rigging ring of either round or oval shape and must be of compatible shape and size to ensure immediate connection and release when the connection between the cargo hook and the ring is terminated by deliberate action of the pilot.

(d) All rigging components and assemblies shall have documented inspections each day before use.

(14) Tag lines.

(a) Tag lines must be used on all external sling loads.

(b) All tag lines shall be equipped at the end with a weight of sufficient size to assure that the line will not be induced into the main rotor or tail rotor under any operating condition.

(c) Hand spliced synthetic rope connections are not allowed in any helicopter external load operation.

(d) Tag line length shall be kept shorter than the load line length to assure the lines cannot be blown into the main rotors.

(15) Remotely operated cargo hooks.

(a) All cargo hooks shall have the electrical activating device so designed and installed as to prevent inadvertent operation.

(b) In addition, these cargo hooks shall be equipped with an emergency mechanical control for releasing the load.

(c) The hooks shall be tested prior to each day's operation to determine that the release functions properly, both electrically and mechanically.

(16) Personal protective equipment (PPE).

(a) Personal protective equipment for employees receiving the load shall consist of approved eye protection and head protection.

(b) Head protection shall have chin straps to prevent inadvertent loss of head protection during operations.

(c) Loose-fitting clothing likely to flap in the downwash, and thus be snagged on hoist line, shall not be worn.

(17) Housekeeping. Good housekeeping shall be maintained in all helicopter loading and unloading areas.

(18) Hooking and unhooking loads.

(a) When employees are required to perform work under a hovering helicopter, a safe means of access and egress shall be provided for employees to reach the hoist line hook and engage or disengage cargo slings.

(b) Employees shall not perform work under hovering craft except when necessary to hook, unhook or secure loads.

**Note:** Load shape, orientation, and packaging. Load shapes can affect in-flight handling. Loads can be marked with their required orientation by using north or other marks to match mark to lay-down locations. Remove loose sheeting, tarps, or other wrappings. Loose material can blow around, injure employees, and damage the aircraft if drawn into engine intakes or rotor blades.

(19) Static charge/discharge. The suspended load shall be dissipated with an insulated grounding device before any construction personnel touch the suspended load, or protective rubber gloves shall be worn by all ground personnel touching the suspended load.

**Notes:**

- A static charge can develop on any suspended external sling load. The amount of static electricity that may be present prior to discharging is directly related to the temperature, humidity, altitude and time the load is suspended and/or flown during the external sling load operation.
- The load may be equipped with a weighted grounding conductor slung below the load to discharge the static current if the pilot approves this method of discharge.

(20) Approach distance. No unauthorized person shall be allowed to approach within one hundred feet of the helicopter when the rotor blades are turning.

(21) Approaching a running helicopter.

(a) When approaching or exiting a helicopter with blades rotating, all employees shall remain in full position with arms and hands kept low.

(b) Employees shall avoid the area from the cockpit or cabin rearward unless authorized by the helicopter operator to work there.

(c) Personnel shall not approach the area of the tail rotor at any time.

(22) Communications.

(a) There shall be constant reliable communication between the pilot, competent rigger and a designated employee of the ground crew who acts as a signalman during the period of loading and unloading.

(b) The signalman shall be distinctly recognizable from other ground personnel.

(23) Personnel training. The personnel performing the work shall be trained in advance of any helicopter external sling load operation in all facets of the operation. This training can be accomplished in the prelift briefing. Employees shall be made aware of the following:

(a) Static and discharge procedures;



- (b) Wind/downwash characteristics;
- (c) Noise;
- (d) Fall protection to release hook;
- (e) Tagline parameters;
- (f) Flying objects due to wind;
- (g) PPE requirements;
- (h) Rigging connections;
- (i) Communication/signaling;
- (j) Emergency planning.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 296-32-215 Safe place standard.
- WAC 296-32-220 General.
- WAC 296-32-230 Training.
- WAC 296-32-240 Employee protection in public work areas.
- WAC 296-32-250 Tools and personal protective equipment—General.
- WAC 296-32-260 Rubber insulating equipment.
- WAC 296-32-270 Personal climbing equipment.
- WAC 296-32-280 Ladders.
- WAC 296-32-290 Vehicle-mounted material handling devices and other mechanical equipment.
- WAC 296-32-300 Materials handling and storage.
- WAC 296-32-310 Cable fault locating and testing.
- WAC 296-32-320 Grounding for employee protection—Pole lines.
- WAC 296-32-330 Overhead lines.
- WAC 296-32-340 Underground lines and cable vaults.
- WAC 296-32-350 Microwave transmission.
- WAC 296-32-360 Tree trimming—Electrical hazards.
- WAC 296-32-370 Buried facilities—Communications lines and power lines in the same trench.

**WSR 17-20-070****PERMANENT RULES****STATE BOARD OF EDUCATION**

[Filed October 2, 2017, 3:26 p.m., effective November 2, 2017]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: A fiscal impact statement was prepared by the office of superintendent of public instruction and presented per RCW 28A.305.135.

Purpose: This filing amends eight sections of chapter 180-19 WAC, Charter schools. The purposes of the amendments are:

1. Conform adopted state board of education rules on charter schools to changes made to the original charter school law by chapter 241, Laws of 2016 (E2SSB 6194).

2. Delete obsolete language left by amendments adopted in 2014 to change the due dates for various actions taken by parties under the law.

Citation of Rules Affected by this Order: Amending WAC 180-19-010, 180-19-020, 180-19-030, 180-19-040, 180-19-070, 180-19-080, 180-19-250, and 180-19-260.

Statutory Authority for Adoption: RCW 28A.710.090, 28A.710.130, 28A.710.140, 28A.710.150.

Adopted under notice filed as WSR 17-10-016 on April 24, 2017.

A final cost-benefit analysis is available by contacting T. J. Kelly, 600 Washington Street S.E., Olympia, WA 98504, phone 360-725-6301, fax 360-664-3683, TTY 360-664-3631, email thomas.kelly@k12.wa.us, web site <http://www.k12.wa.us/safs/staff.asp>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: July 13, 2017.

Kaaren Heikes  
Director of Policy  
and Partnerships

**AMENDATORY SECTION** (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

**WAC 180-19-010 Definitions.** (1) "Board" means the state board of education.

(2) "School district" or "district" means a school district board of directors.

(3) "*NACSA Principles and Standards*" means the "*Principles and Standards for Quality Charter Authorizing* (~~2012~~) 2015 Edition or most current edition" developed by the National Association of Charter School Authorizers.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

**WAC 180-19-020 Notice of intent to submit an authorizer application.**

~~((Effective until May 15, 2015))~~

~~A school district intending to file an application during a calendar year to be approved as a charter school authorizer must submit to the state board of education a notice of intent to file such application by October 1st of that same year. A district may not file an authorizer application in a calendar year unless it has filed a timely notice of intent as provided for herein. A notice of intent shall not be construed as an obligation to submit an application under these rules. The board shall post on its public web site a form for use by districts in submitting notice of intent, and shall post all notices of intent upon receipt.~~

~~((Effective May 15, 2015))~~

A school district intending to file an application during a calendar year to be approved as a charter school authorizer must submit to the state board of education a notice of intent to file such application by June 15th of that same year. A district may not file an authorizer application in a calendar year unless it has filed a timely notice of intent as provided for herein. A notice of intent shall not be construed as an obligation to submit an application under these rules. The board shall post on its public web site a form for use by districts in submitting notice of intent, and shall post all notices of intent upon receipt.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

**WAC 180-19-030 Submission of authorizer application.**

~~((Effective until May 15, 2015))~~

~~(1) The state board of education shall develop and make available on its web site, no later than October 1st of each year, an "authorizer application" that must be used by school districts seeking to be approved as a charter school authorizer. The application may include such attachments as deemed required by the board to support and complete the application.~~

~~(2) A school district seeking approval to be a charter school authorizer must submit an "authorizer application" to the state board of education by December 31st of the year prior to the year the district seeks approval as an authorizer. The district's completed application must be submitted via electronic mail to [sbe@k12.wa.us](mailto:sbe@k12.wa.us) by the date specified in this section. The board shall post on its web site each application received from a school district.~~

~~(3) A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:~~

~~(a) **The district's strategic vision for chartering.** The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with reference to the~~

~~findings and intents set forth in RCW 28A.710.005, as well as any district-specific purposes that are a priority for the district; the characteristics of the school or schools it is most interested in authorizing, while maintaining a commitment to considering all charter applicants based on the merits of their proposals and the likelihood of success; the educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will respect the autonomy and ensure the accountability of the charter schools it oversees.~~

~~(b) **A plan to support the vision presented,** including explanations and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient oversight, monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:~~

~~(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW;~~

~~(ii) Job titles, job descriptions, and brief bios and resumes of district personnel with anticipated authorizing responsibilities under RCW 28A.710.030, demonstrating the district's access to expertise in all areas essential to charter school oversight including, but not limited to: School leadership; curriculum, instruction and assessment; special education; English language learners and other diverse learning needs; performance management and law, finance and facilities, through staff and any contractual relationships or partnerships with other public entities; and~~

~~(iii) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW.~~

~~(c) **A draft or preliminary outline of the request for proposal** that the district would, if approved as an authorizer, issue to solicit charter school applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130(1)(b) and demonstrate that the district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of RCW 28A.710.170.~~

~~(d) **A draft of the performance framework** that the district would, if approved as an authorizer, use to guide the execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the~~

requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein, and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.

~~(e) A draft of the district's proposed renewal, revocation, and nonrenewal processes, consistent with RCW 28A.710.190 and 28A.710.200. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:~~

~~(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;~~

~~(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;~~

~~(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;~~

~~(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of RCW 28A.710.180.~~

~~(4) A district must sign a statement of assurances submitted with its application, which shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:~~

~~(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;~~

~~(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;~~

~~(c) Solicit applications for both new charter schools and conversion charter schools, while appropriately distinguishing the two types of charter schools in proposal requirements and evaluation criteria;~~

~~(d) Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710 RCW, in such areas as budgeting, personnel and instructional programming and design;~~

~~(e) Ensure that any contract it may execute with the governing board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited English proficient, and any other special populations of students as required by state and federal laws;~~

~~(f) Include in any charter contract it may execute with the governing board of an approved charter school, in accordance with RCW 28A.710.160(2), educational services that~~

~~at a minimum meet the basic education standards set forth in RCW 28A.150.220.~~

~~(Effective May 15, 2015))~~

(1) The state board of education shall develop and make available on its web site, no later than May 15th of each year, an "authorizer application" that must be used by school districts seeking to be approved as a charter school authorizer. The application may include such attachments as deemed required by the board to support and complete the application.

(2) A school district seeking approval to be a charter school authorizer must submit an "authorizer application" to the state board of education by October 15th of the year prior to the year the district seeks approval as an authorizer. The district's completed application must be submitted via electronic mail to [sbe@k12.wa.us](mailto:sbe@k12.wa.us) by the date specified in this section. The board shall post on its web site each application received from a school district.

(3) A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:

(a) **The district's strategic vision for chartering.** The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with reference to the findings and interests set forth in RCW 28A.710.005, as well as any district-specific purposes that are a priority for the district; the characteristics of the school or schools it is most interested in authorizing, while maintaining a commitment to considering all charter applicants based on the merits of their proposals and the likelihood of success; the educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will respect the autonomy and ensure the accountability of the charter schools it oversees.

(b) **A plan to support the vision presented,** including explanations and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient oversight, monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:

(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW;

(ii) Job titles, job descriptions, and brief bios and resumes of district personnel with anticipated authorizing responsibilities under RCW 28A.710.030, demonstrating the district's access to expertise in all areas essential to charter school oversight including, but not limited to: School leadership; curriculum, instruction and assessment; special education, English language learners and other diverse learning

needs; performance management and law, finance and facilities, through staff and any contractual relationships or partnerships with other public entities; and

(iii) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW.

(c) **A draft or preliminary outline of the request for proposal** that the district would, if approved as an authorizer, issue to solicit charter school applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130 (1)(b) and demonstrate that the district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of RCW 28A.710.170.

(d) **A draft of the performance framework** that the district would, if approved as an authorizer, use to guide the execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein, and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.

(e) **A draft of the district's proposed renewal, revocation, and nonrenewal processes**, consistent with RCW 28A.710.190 and 28A.710.200. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:

(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;

(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;

(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;

(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of RCW 28A.710.180.

(4) A district must sign a statement of assurances submitted with its application, which shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:

(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsi-

bilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;

(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;

~~(c) ((Solicit applications for both new charter schools and conversion charter schools, while appropriately distinguishing the two types of charter schools in proposal requirements and evaluation criteria;~~

~~(d))~~ Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710 RCW, in such areas as budgeting, personnel and instructional programming and design;

~~((e))~~ (d) Ensure that any contract it may execute with the ~~((governing))~~ charter school board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited-English proficient, and any other special populations of students as required by state and federal laws;

~~((f))~~ (e) Include in any charter contract it may execute with the ~~((governing))~~ charter school board of an approved charter school, in accordance with RCW ~~((28A.710.160(2), educational services))~~ 28A-710-040 (2)(b), that the charter school must provide a program of basic education that at a minimum meets ((the basic education standards set forth in RCW 28A.150.220)) the requirements of RCW 28A.150.200 and 28A.150.220, and meets the goals in RCW 28A.150.210, including instruction in the essential learning requirements and participation in the statewide student assessment system as developed under RCW 28A.655.070.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

**WAC 180-19-040 Evaluation and approval or denial of authorizer applications.**

~~(((Effective until May 15, 2015)))~~

~~(1) The board shall evaluate an application submitted by a school district seeking to be an authorizer and issue a decision approving or denying the application by April 1st of each year.~~

~~(2) In evaluating each application, the board will rate each part of the application as set forth in WAC 180-19-030 (3)(a) through (e) as well developed, partially developed, or undeveloped, based on criteria for evaluation included in the authorizer application developed and made publicly available pursuant to WAC 180-19-030(1).~~

~~(a) "Well developed" shall mean that the application response meets the expectations established by the board and the *NACSA Principles and Standards* in material respects and warrants approval subject to execution of an authorizing contract with the board.~~

~~(b) "Partially developed" shall mean that the application response contains some aspects of a well developed practice, is limited in its execution, or otherwise falls short of satisfy-~~

ing the expectations established by the board and the *NACSA Principles and Standards*.

(e) "Undeveloped" shall mean that the application response is wholly inadequate in that the applicant district has not considered or anticipated the well-developed practice at all, or proposes to carry out its authorizing duties in a way that is not recognizably connected to the expectations established by the board and the *NACSA Principles and Standards*.

(3) In its evaluation the board will consider whether the district's proposed policies and practices are consistent with the *NACSA Principles and Standards*, as required by RCW 28A.710.100(3), in at least the following areas:

(a) Organizational capacity: Commit human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(b) Solicitation and evaluation of charter applications: Implement a comprehensive application process that includes clear application questions and rigorous criteria, and grants charters only to applicants who demonstrate strong capacity to establish and operate a charter school;

(c) Performance contracting: Execute contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms;

(d) Ongoing charter school oversight and evaluation: Conduct contract oversight that competently evaluates performance and monitors compliance, ensures schools' legally entitled autonomy, protects student rights, informs intervention, revocation and renewal decisions, and provides annual reports as required by chapter 28A.710 RCW; and

(e) Charter renewal and revocation processes: Design and implement a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.

(4) The board shall develop and post on its public web site rubrics for determination of the extent to which each criterion for evaluation has been met.

(5) The board may utilize the services of external reviewers with expertise in educational, organizational or financial matters in evaluating applications.

(6) Prior to approving any application, the board shall require an in-person interview with district leadership for the purpose of reviewing and evaluating the application. The in-person interview will be used to supplement or clarify information provided by the district in the written application. The information received in the in-person interview shall be considered in formulating the overall ratings of the application under subsection (2) of this section.

(7) For an application to be approved, the board must find it to be well developed in each part of the application as set forth in WAC 180-19-030(3). A determination that an application does not meet standards of quality authorizing in any part, shall constitute grounds for disapproval. If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria included in the authorizer application.

(8) The board shall post on its public web site the applications of all school districts approved as authorizers. A school district approved as an authorizer shall post its application on a public web site.

**(Effective May 15, 2015))**

(1) The board shall evaluate an application submitted by a school district seeking to be an authorizer and issue a decision approving or denying the application by February 1st of each year.

(2) In evaluating each application, the board will rate each part of the application as set forth in WAC 180-19-030 (3)(a) through (e) as well-developed, partially developed, or undeveloped, based on criteria for evaluation included in the authorizer application developed and made publicly available pursuant to WAC 180-19-030(1).

(a) "Well-developed" shall mean that the application response meets the expectations established by the board and the *NACSA Principles and Standards* in material respects and warrants approval subject to execution of an authorizing contract with the board.

(b) "Partially developed" shall mean that the application response contains some aspects of a well-developed practice, is limited in its execution, or otherwise falls short of satisfying the expectations established by the board and the *NACSA Principles and Standards*.

(c) "Undeveloped" shall mean that the application response is wholly inadequate in that the applicant district has not considered or anticipated the well-developed practice at all, or proposes to carry out its authorizing duties in a way that is not recognizably connected to the expectations established by the board and the *NACSA Principles and Standards*.

(3) In its evaluation the board will consider whether the district's proposed policies and practices are consistent with the *NACSA Principles and Standards* as required by RCW 28A.710.100(3), in at least the following areas:

(a) Organizational capacity: Commit human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(b) Solicitation and evaluation of charter applications: Implement a comprehensive application process that includes clear application questions and rigorous criteria, and grants charters only to applicants who demonstrate strong capacity to establish and operate a charter school;

(c) Performance contracting: Execute contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms;

(d) Ongoing charter school oversight and evaluation: Conduct contract oversight that competently evaluates performance and monitors compliance, ensures schools' legally entitled autonomy, protects student rights, informs intervention, revocation and renewal decisions, and provides annual reports as required by chapter 28A.710 RCW; and

(e) Charter renewal and revocation processes: Design and implement a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions, and

revokes charters when necessary to protect student and public interests.

(4) The board shall develop and post on its public web site rubrics for determination of the extent to which each criterion for evaluation has been met.

(5) The board may utilize the services of external reviewers with expertise in educational, organizational or financial matters in evaluating applications.

(6) Prior to approving any application, the board shall require an in-person interview with district leadership for the purpose of reviewing and evaluating the application. The in-person interview will be used to supplement or clarify information provided by the district in the written application. The information received in the in-person interview shall be considered in formulating the overall ratings of the application under subsection (2) of this section.

(7) For an application to be approved, the board must find it to be well developed in each part of the application as set forth in WAC 180-19-030(3). A determination that an application does not meet standards of quality authorizing in any part shall constitute grounds for disapproval. If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria included in the authorizer application.

(8) The board shall post on its public web site the applications of all school districts approved as authorizers. A school district approved as an authorizer shall post its application on a public web site.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

**WAC 180-19-070 Charter school—Request for proposals.**

~~((Effective until January 16, 2016))~~

~~No later than April 15th, each authorizer shall annually issue requests for proposals for charter schools meeting the requirements of RCW 28A.710.130.~~

~~((Effective January 16, 2016))~~

No later than March 1st, each authorizer shall annually issue ~~((requests))~~ solicitations for proposals for charter schools meeting the requirements of RCW 28A.710.130.

AMENDATORY SECTION (Amending WSR 14-19-107, filed 9/16/14, effective 10/17/14)

**WAC 180-19-080 Charter school applications—Submission, approval, or denial.**

~~((Effective until January 16, 2016))~~

~~(1) An applicant, as defined in RCW 28A.710.010, seeking approval must:~~

~~(a) Submit a nonbinding notice of intent to be approved as a proposed charter school not less than thirty days before the last date for submission of an application to an authorizer as provided in this section. An applicant may not submit a charter school application in a calendar year unless it has filed timely notice of intent as provided herein; and~~

~~(b) Submit an application for a proposed charter school to an authorizer by no later than July 15th of the year in which the applicant seeks approval.~~

~~(2) An authorizer receiving an application for a proposed charter school must either approve or deny the proposal by no later than October 15th of the year in which the application is received.~~

~~(3) The authorizer must provide the state board of education with a written report of the approval or denial of an applicant's proposal for a charter school within ten days of such action. The notice must comply with the requirements set forth in RCW 28A.710.150(2). The report shall be sent to the board via electronic mail to [sbe@k-12.wa.us](mailto:sbe@k-12.wa.us).~~

~~((Effective January 16, 2016))~~

(1) An applicant, as defined in RCW 28A.710.010, seeking approval must:

(a) Submit a nonbinding notice of intent to be approved as a proposed charter school by May 1st of the year in which approval is sought. An applicant may not submit a charter school application in a calendar year unless it has filed timely notice of intent as provided herein; and

(b) Submit an application for a proposed charter school to an authorizer by no later than June 1st of the year in which the applicant seeks approval.

(2) An authorizer receiving an application for a proposed charter school must either approve or deny the proposal by no later than September 1st of the year in which the application is received.

(3) The authorizer must provide the state board of education with a written report of the approval or denial of an applicant's proposal for a charter school within ten days of such action. The notice must comply with the requirements set forth in RCW 28A.710.150(2). The report shall be sent to the board via electronic mail to [sbe@k-12.wa.us](mailto:sbe@k-12.wa.us).

AMENDATORY SECTION (Amending WSR 14-02-060, filed 12/26/13, effective 1/26/14)

**WAC 180-19-210 Annual report by authorizer.** (1) Each authorizer must, no later than November 1st of each year starting in 2014, submit an annual report to the state board of education meeting the requirements of RCW 28A.710.100(4). The board shall develop and post on its web site by September 1st of each year a standard form which must be used, and instructions which must be followed by each authorizer in making its report. The completed report must be sent via electronic mail to [sbe@k12.wa.us](mailto:sbe@k12.wa.us) and shall be posted on the board's web site.

(2) The report must include:

(a) The date of authorizer approval by the board;

(b) The names and job titles of district personnel having principal authorizing responsibilities with contact information for each;

(c) The names and job titles of any employees or contractors to whom the district has delegated responsibilities under RCW 28A.710.100, with contact information for each;

(d) An executive summary including, but not limited to, an overview of authorizing activity during the prior year and the status and performance of the charter schools authorized;

(e) The authorizer's strategic vision for chartering, as submitted to the state board under WAC 180-19-030 (3)(a), and its assessment of progress toward achieving that vision;

(f) The status of the authorizer's charter school portfolio, identifying all charter schools in each of the following categories:

(i) Approved but not yet open, including for each, the targeted student population and the community the school hopes to serve; the location or geographic area proposed for the school; the projected enrollment; the grades to be operated each year of the term of the charter contract; the names of and contact information for the ((governing)) charter school board, and the planned date for opening;

(ii) Operating, including for each, location; grades operated; enrollment in total and by grade; and for each student subgroup as defined in RCW 28A.300.042 in totals and as percentages of enrollment;

(iii) Charter renewed with date of renewal;

(iv) Charter transferred to another authorizer during the prior year, with date of transfer;

(v) Charter revoked during the prior year with date of and reasons for revocation;

(vi) Voluntarily closed;

(vii) Never opened, with no planned date for opening.

(g) The academic performance of each operating charter school overseen by the authorizer, based on the authorizer's performance framework, including:

(i) Student achievement on each of the required indicators of academic performance in RCW 28A.710.170 (2)(a) through (f), as applicable by grade, in absolute values and in comparison to the annual performance targets set by the charter school under RCW 28A.710.170(3). Student academic proficiency, student academic growth, achievement gaps, graduation rates and postsecondary readiness must be included as reported in the achievement index developed by the state board of education under RCW 28A.657.110.

(ii) Student achievement on each additional indicator of academic performance the authorizer has chosen to include in its performance framework to augment external evaluations of performance, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170.

(iii) Student achievement on each indicator must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status as required of performance frameworks in RCW 28A.710.170.

(h) The financial performance of each operating charter school overseen by the authorizer, based on the indicators and measures of financial performance and sustainability in the authorizer's performance framework, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170;

(i) The organizational performance of the ((governing)) charter school board of each operating charter school overseen by the authorizer, based on the indicators and measures of organizational performance in the authorizer's performance framework, including compliance with all applicable laws, rules and terms of the charter contract;

(j) The authorizer's operating costs and expenses for the prior year for fulfilling the responsibilities of an authorizer as enumerated in RCW 28A.710.100(1) and provided under the terms of each charter contract, detailed in annual financial statements that conform with generally accepted accounting principles and applicable reporting and accounting requirements of the office of the superintendent of public instruction;

(k) The contracted, fee-based services purchased from the authorizer by the charter schools under its jurisdiction under RCW 28A.710.110, including a brief description of each service purchased, an itemized accounting of the revenue received from the schools for the services, and the actual costs of these services to the authorizer.

AMENDATORY SECTION (Amending WSR 14-08-033, filed 3/25/14, effective 4/25/14)

**WAC 180-19-250 Oversight of authorizers—Revocation of authorizing contract.** (1) Evidence of material or persistent failure by an authorizer to carry out its duties according to nationally recognized principles and standards for charter authorizing is grounds for revocation of an authorizer's chartering contract. This may include:

(a) Failure to comply with the terms of the authorizing contract between the authorizer and the board;

(b) Violation of a term of the charter contract between the authorizer and a charter school board;

(c) Demonstrated failure to develop and follow chartering policies and practices that are consistent with the principles and standards for quality charter authorizing developed by the National Association of Charter School Authorizers in any of the following areas, as required by RCW 28A.710.-100:

(i) Organizational capacity;

(ii) Soliciting and evaluating charter applications;

(iii) Performance contracting;

(iv) Ongoing charter school oversight and evaluation;

(v) Charter renewal decision making.

(2) Notice of intent to revoke. If the board makes a determination, after due notice to the authorizer and reasonable opportunity to effect a remedy, that the authorizer continues to be in violation of a material provision of a charter contract or its authorizing contract, or has failed to remedy other identified authorizing problems:

(a) The board shall notify the authorizer in writing that it intends to revoke the authorizer's chartering authority under RCW 28A.710.120. The notification to the authorizer shall explain and document the reasons for the intent to revoke chartering authority.

(b) The authorizer shall, within thirty days of notification, submit a written response showing that the authorizer has implemented or will implement within sixty days of submitting the written response, a sufficient remedy for the violation or deficiencies that are the stated grounds for the intent to revoke chartering authority. The board shall within thirty days of receipt provide written notice to the authorizer whether it finds the proposed remedy sufficient to correct the violation or deficiencies.

(3) Notice of revocation. If the authorizer fails to provide a timely written response or if the response is found insufficient by the board to meet the requirement set forth in subsection (1) of this section:

(a) The board shall provide the authorizer with written notice of revocation of the authorizer's chartering authority. The notice of revocation shall state the effective date of revocation, which shall not be sooner than twenty days from the date of receipt of the notice of revocation by the authorizer unless a timely notice of a request for an adjudicative proceeding is filed as set forth herein.

(b) The authorizer may request an adjudicative proceeding to contest the revocation. The request for an adjudicative proceeding must be submitted in writing by the authorizer to the board within twenty days of receipt of the notice of revocation at the following address:

Old Capitol Building  
P.O. Box 47206  
600 Washington St. S.E., Room 253  
Olympia, Washington 98504

Any adjudicative proceeding shall be conducted in accordance with the Administrative Procedure Act (APA).

AMENDATORY SECTION (Amending WSR 14-08-033, filed 3/25/14, effective 4/25/14)

**WAC 180-19-260 Authorizer oversight—Transfer of charter contract.** (1) In the event that a notice of revocation is provided to the authorizer under WAC 180-19-250, any charter contract held by that authorizer shall be transferred, for the remaining portion of the charter term, to the Washington charter school commission on documentation of mutual agreement to the transfer by the charter school board and the commission.

(2) Documentation of mutual agreement shall consist of a written agreement between the charter school board and the commission, signed and dated by the chair or president of the charter school board and the chair of the commission. The agreement shall include any modification or amendment of the charter contract as may be mutually agreed upon by the charter school (~~board~~) and the commission.

(3) The commission shall submit the agreement to the state board of education. The board shall review the agreement and on a determination that the requirements of these rules have been met, issue written certification of the transfer of the charter contract to the charter school (~~governing~~) board and the commission.

(4) On certification by the board of the transfer of the charter contract, the prior authorizer shall transfer to the commission all student records and school performance data collected and maintained in the performance of its duties as an authorizer under RCW 28A.710.100 and 28A.710.170.

(5) The commission, in consultation with the charter school (~~governing~~) board, shall develop and implement a procedure for timely notification to parents of the transfer of the charter contract and any modifications or amendments to the charter included in the written agreement executed under subsection (2) of this section.

(6) If mutual agreement is not obtained on the transfer of the charter contract under RCW 28A.710.120(6) and this section, the charter school shall be closed under the provisions of RCW 28A.710.210. The district shall develop and implement a termination protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, as necessary, and proper disposition of public school funds, property, and assets. The protocol must include, at a minimum, a plan for addressing the following:

(a) Adequate and timely communication with parents, school staff and the community regarding the closing of the charter school and the options for student transfer to another public school;

(b) Retention of student, personnel, governance and financial records in compliance with all applicable laws and policies;

(c) The transfer of all student records in accordance with privacy rules set forth in the Family Educational Rights and Privacy Act (FERPA) and any applicable state laws and school district policies;

(d) Resolution of all financial obligations associated with the closure of the charter school;

(e) Return of the public funds in the possession of the charter school as provided for in RCW 28A.710.201(2), or as required by any other state law; and

(f) A plan for the disposition of all other assets, in compliance with applicable state and federal laws or district policies governing the assets.

The protocol must specify tasks, timelines, and responsible parties, including delineating the respective duties of the charter school and the authorizer. The district shall provide the board with a copy of the termination protocol. The board may review the protocol and request revisions for implementation.

(7) If a charter public school or its authorizer petitions the state board of education, under RCW 28A.710.210(3), for authorization to transfer a charter contract from one authorizer to another or from one charter school to another before the expiration of the charter contract, and if the potential transfer would entail a relocation to another school district, the petitioner shall transmit a written copy of the petition to the board and superintendent of the school district to which the charter public school may relocate, on the same date it submits the petition to the state board of education.

## WSR 17-20-071

### PERMANENT RULES

#### SHORELINE COMMUNITY COLLEGE

[Filed October 2, 2017, 4:19 p.m., effective November 2, 2017]

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

Purpose: The college has revised the student conduct code to incorporate new model language which implements best practices and enhances the college's compliance chapter 28B-110 [28B.110] RCW, Gender equality in higher education, and compliance with federal law including Title IX and Violence Against Women Reauthorization Act.

Citation of Rules Affected by this Order: New chapter 132G-121 WAC; and repealing chapter 132G-120 WAC.



Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 17-14-111 on July 5, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 18, Amended 0, Repealed 18; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 27, 2017.

Cheryl Roberts  
President

## Chapter 132G-121 WAC

### STUDENT CONDUCT CODE

#### NEW SECTION

**WAC 132G-121-005 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. The president has delegated the administration of the disciplinary procedures to the executive vice president for student learning and success. Unless otherwise specified, the student conduct officer or delegate shall serve as the principal investigator and administrator for alleged violations of this code.

#### NEW SECTION

**WAC 132G-121-010 Statement of student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

#### NEW SECTION

**WAC 132G-121-015 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

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

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

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

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

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

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

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

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

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

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

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

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

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

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

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

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

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

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

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

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

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

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

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

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

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational pro-

gram or that creates an intimidating, hostile, or offensive environment for other campus community members.

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

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

(i) Nonconsensual sexual intercourse 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

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

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

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is

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

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

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

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

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

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

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

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

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

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

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

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

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profes-

sion for which the student is taking a course or is pursuing as an educational goal or major.

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

#### NEW SECTION

**WAC 132G-121-020 Disciplinary sanctions and terms and conditions.** (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code:

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action;

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action;

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college;

(d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken;

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation;

(b) **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 col-

lege 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 rules of conduct;

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

#### NEW SECTION

**WAC 132G-121-025 Statement of jurisdiction.** (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises;

(b) At or in connection with college sponsored activities;

or

(c) Off campus and is conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from notification of acceptance at the college through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

#### NEW SECTION

**WAC 132G-121-030 Definitions.** The following definitions shall apply for purposes of this student conduct code:

(1) **"Student conduct officer"** is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

(2) "**Conduct review officer**" is the vice president of students, equity and success, or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(3) "**The president**" is the president of the college. The president is authorized to:

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

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

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

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

(6) "**Respondent**" is the student against whom disciplinary action is initiated.

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

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

(b) Sending the document by email and by certified mail or first-class mail to the party's last known address. Service is deemed complete upon hand delivery of the document or upon the date the document is emailed or deposited in the mail.

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

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

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

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(9) "**College premises**" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

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

(11) "**Business day**" means a week day, excluding weekends, college holidays, or periods of closure.

(12) A "**complainant**" is an alleged victim of sexual misconduct.

(13) "**Sexual misconduct**" has the meaning ascribed to this term in WAC 132G-121-015(13).

#### NEW SECTION

##### **WAC 132G-121-035 Initiation of disciplinary action.**

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

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing such respondent to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

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

(4) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), as described in WAC 132G-121-020;

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

(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protec-

tion, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

#### NEW SECTION

**WAC 132G-121-040 Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

(3) The parties to an appeal shall be the respondent and the conduct review officer.

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

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

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

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

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

(b) Dismissals; and

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

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

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

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

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth in subsection (9) of this section for the respondent:

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

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

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college

shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

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

#### NEW SECTION

**WAC 132G-121-045 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

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

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

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

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

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

#### NEW SECTION

**WAC 132G-121-050 Brief adjudicative proceedings—Review of initial decision.** (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within ten days of service of the initial decision.

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

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

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

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

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

#### NEW SECTION

**WAC 132G-121-055 Student conduct committee.** (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;
- (c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

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

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

#### NEW SECTION

**WAC 132G-121-060 Appeal—Student conduct committee.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

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

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

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

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

- (a) The conduct officer's notification of imposition of discipline or referral to the committee; and
- (b) The notice of appeal or any response to referral by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

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

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

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of the party's choice. The respondent in all committee disciplinary appeals, or a complainant in a case involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at the person's own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent or the complainant is represented by an attorney,

ney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

#### NEW SECTION

**WAC 132G-121-065 Student conduct committee hearings—Presentation of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

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

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

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

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

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

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

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in such chair's discretion shall pose the questions on the party's behalf.

#### NEW SECTION

**WAC 132G-121-070 Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

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

violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

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

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president, subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

#### NEW SECTION

**WAC 132G-121-075 Appeal from student conduct committee initial decision.** (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged, and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee, and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to the party and the student conduct officer within twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice



shall inform the complainant whether the sexual misconduct allegation was found to have merit, and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

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

#### NEW SECTION

**WAC 132G-121-080 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

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

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

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

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

(4) The written notification shall be entitled "Notice of summary suspension" and shall include:

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

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

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

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

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

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

(c) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

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

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

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

#### NEW SECTION

##### **WAC 132G-121-085 Sexual misconduct proceedings.**

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

#### NEW SECTION

##### **WAC 132G-121-090 Brief adjudicative proceedings**

**authorization.** This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

Student conduct appeals involving the following disciplinary actions:

(1) Suspensions of ten instructional days or less;

(2) Disciplinary probation;

(3) Written reprimands;

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

(5) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

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

(b) Issues a verbal warning to respondent.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132G-120-010	Student conduct code—Preamble.
WAC 132G-120-015	Grounds for discipline.
WAC 132G-120-030	Jurisdiction.
WAC 132G-120-040	The use of disciplinary authority.
WAC 132G-120-050	Student notification.
WAC 132G-120-060	Possible actions.
WAC 132G-120-061	Initiation of summary suspension proceedings.
WAC 132G-120-062	Permission to enter or remain on campus.
WAC 132G-120-063	Notice of summary suspension proceedings.
WAC 132G-120-064	Decision by the vice president for student services.
WAC 132G-120-065	Suspension for failure to appear.
WAC 132G-120-070	College discipline committee.
WAC 132G-120-080	Discipline committee procedural guidelines and safeguards.
WAC 132G-120-090	The president's review.
WAC 132G-120-100	Appeals.
WAC 132G-120-110	Disciplinary terms.
WAC 132G-120-130	Readmission after expulsion.
WAC 132G-120-140	Reporting, recording and maintenance of records.

**WSR 17-20-076****PERMANENT RULES****DEPARTMENT OF AGRICULTURE**

[Filed October 3, 2017, 9:53 a.m., effective November 3, 2017]

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

Purpose: The department is removing all references to "arbitration" in chapter 16-301 WAC, and changing "arbitration" to "mediation" in WAC 16-301-015, due to changes in the underlying statute, chapter 15.49 RCW. SB 5075, effective July 23, 2017, amends RCW 15.49.071 Damages—Arbitration prerequisite to legal action and 15.49.091 Arbitration—Procedure, and repeals RCW 15.49.081 Arbitration—Filing fee—Rules, 15.49.101 Investigation of complaint by arbitration committee, and 15.49.111 Arbitration committee—Creation—Generally. To implement the repeal or amendment under SB 5075 of all "arbitration" provisions in sections of chapter 15.49 RCW, and the replacement of the arbitration requirements with mediation requirements under RCW 15.49.071 and [15.49].091, the department is repealing arbitration sections or subsections under chapter 16-301 WAC and is amending WAC 16-301-015 to require notice of the mediation requirement.

Citation of Rules Affected by this Order: Repealing WAC 16-301-100, 16-301-105, 16-301-110, 16-301-115, 16-301-120, 16-301-125, 16-301-130, 16-301-135, 16-301-140, 16-301-145, 16-301-150, 16-301-155, 16-301-160, 16-301-165, 16-301-170, 16-301-175, 16-301-180, 16-301-185, 16-301-190, 16-301-195, 16-301-200, 16-301-205, and 16-301-210; and amending WAC 16-301-005 and 16-301-015.

Statutory Authority for Adoption: RCW 15.49.005.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-16-164 on August 2, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 23.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 23.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 23.

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

Date Adopted: October 3, 2017.

Derek I. Sandison  
Director

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

**WAC 16-301-005 General seed standards—Definitions.** Definitions for terms used in this chapter and in chapters 16-302 and 16-303 WAC may be found in chapter 15.49 RCW, seed. For the purposes of these chapters, the following definitions shall apply unless otherwise provided for in law or rule:

"**Agricultural seed**" as defined in RCW 15.49.011(2) includes grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn seeds, and combination of such seeds, and may include common and restricted noxious weed seeds but not prohibited noxious weed seeds.

"**AOSA**" means the Association of Official Seed Analysts.

"**AOSCA**" means the Association of Official Seed Certifying Agencies.

"**Approved trial grounds**" means a specific parcel of land approved by the director for experimental or limited production or increase of bean seed.

~~("Arbitration committee" means the committee established by the director under RCW 15.49.101 to hear and make determinations in mandatory, nonbinding, arbitration cases.)~~

"**Bean**" means common beans and adzuki beans.

**"Blend"** as defined in RCW 15.49.011(3) means seed consisting of more than one variety of a species, each in excess of five percent by weight of the whole.

**"Blending"** as related to this chapter shall be the process of commingling two or more lots of seed to form one lot of uniform quality.

**"Buyer"** means a person who purchases seeds.

**"Certifying agency"** as defined in RCW 15.49.011(6) means:

(a) An agency authorized under the laws of any state, territory, or possession to certify seed officially and which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or

(b) An agency of a foreign country determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed-certifying agencies under (a) of this subsection.

~~("Chairperson" means the person selected by the arbitration committee from among their numbers to preside.)~~

**"Common bean"** means *Phaseolus vulgaris L.*

**"Complete record"** means information which relates to the origin, treatment, germination and purity (including variety) of each lot of seed. Records include seed samples and records of declaration, labels, purchases, sales, cleaning, bulking, treatment, handling, storage, analyses, tests and examinations.

**"Dealer"** as defined in RCW 15.49.011(9) means any person who distributes seeds.

**"Department"** as defined in RCW 15.49.011(10) means the Washington state department of agriculture or its duly authorized representative.

**"Director"** as defined in RCW 15.49.011(11) means the director of the department of agriculture.

**"Field standards"** means the tolerances permitted as determined by established field inspection procedures.

**"Fiscal year"** means the twelve-month period July 1 through June 30.

**"Flower seeds"** as defined in RCW 15.49.011(13) include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold as flower seeds in this state.

**"Germination"** as defined in RCW 15.49.011(15) means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

**"Interagency certification"** means the participation of two or more official certifying agencies in performing the services required to certify the same lot or lots of seed.

**"Isolation standards"** means the distance in feet from any contaminating source (i.e., distance from other fields of same species).

**"Label"** as defined in RCW 15.49.011(21) includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by chapter 15.49 RCW, and may include other information including the requirement for ~~(arbitration)~~ mediation.

**"Land standards"** means the number of years that must elapse between the destruction of a stand of a kind, and establishment of a stand of a specified class of a variety of the same kind (i.e., number of years out of production of same crop kind).

**"Mixture, mixed or mix"** as defined in RCW 15.49.011(24) means seed consisting of more than one species, each in excess of five percent by weight of the whole.

**"Nursery"** means an area of two acres or less in which grass for seed production is seeded in rows with twenty-four inch minimum spacing to facilitate roguing.

**"O.E.C.D."** means the Organization for Economic Cooperation and Development certification scheme.

**"Off-type"** means a plant or seed which deviates in one or more characteristics from that which has been described as being usual for the strain or variety.

**"Official certificate"** means a document issued by an official testing agency including but not limited to seed certification tags, bulk seed certification certificates, phyto-sanitary certificates, laboratory sanitary certificates, and other letters, tags, stamps, or similar documents certifying seed quality or condition.

**"Official sample"** as defined in RCW 15.49.011(25) means any sample taken and designated as official by the department.

**"Official seed laboratory"** means a seed testing laboratory approved by the director, such as, but not limited to, Washington State Seed Laboratory, 21 N 1st Avenue, Yakima, Washington; and Oregon State Seed Laboratory, Oregon State University, Corvallis, Oregon.

**"Origin"** means the county within the state of Washington, or the state, territory, or country where a specific seed lot was grown.

**"Person"** as defined in RCW 15.49.011(27) means an individual, partnership, corporation, company, association, receiver, trustee or agent.

**"Proprietary variety"** means that crop variety for which a person has exclusive production and/or marketing rights.

**"Representative sample"** means a sample drawn in accordance with sampling procedures adopted in WAC 16-301-095.

**"Seeds"** as defined in RCW 15.49.011(35) means agricultural or vegetable seeds, or other seeds as determined by rules adopted by the department.

**"Seed labeling permit"** means a permit issued by the department pursuant to RCW 15.49.400 to a person labeling seed for distribution in this state.

**"Seed program advisory committee"** means a committee of representatives from the small grains, pea, lentil, bean, vegetable, small seeded legumes, and grass seed industries selected by the program manager in consultation with the industry.

**"Seed standards"** means the tolerances permitted as determined by established seed inspection procedures.

**"Serology"** means precipitation, agglutination, immunodiffusion, or labeled antibody test methods (such as ELISA) that use the specificity of antigen-antibody reactions to detect and identify antigenic substances and the organisms such as viruses and bacteria that carry viruses.

"Stock seed" means breeders, prebasic, or like initial generation of seed.

"Sudangrass" means *Sorghum bicolor x drummondii*.

"University" means the Washington State University.

"USDA" means the United States Department of Agriculture.

"Vegetable seeds" as defined in RCW 15.49.011(40) include the seeds of all crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

"WSCIA" means the Washington State Crop Improvement Association.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

**WAC 16-301-015 Seed labeling requirements for agricultural, vegetable, and flower seeds.** (1) Each container of agricultural, vegetable or flower seeds, that is sold, offered or exposed for sale, or transported within this state for sowing purposes, must bear or have attached to the container a plainly written or printed label or tag in the English language; and

(a) The label provides information required in WAC 16-301-060 through 16-301-085 on treated seeds in addition to the information required in subsection (2) of this section; and

(b) The label is placed in a conspicuous manner on the seed container; and

(c) The printed label or tag is not modified or denied in the labeling or on any label attached to the seed container.

(2) Each container of agricultural, vegetable, or flower seeds sold, offered or exposed for sale, or transported within this state for sowing purposes must bear "*Requirement for ((arbitration)) mediation - The Washington State Seed Act, chapter 15.49 RCW, requires ((mandatory arbitration)) mediation of disputes involving allegedly defective seed. ((See chapter 16-301 WAC or contact the Washington State Department of Agriculture, Seed Program, 509-249-6950.))*" on:

(a) The analysis tag; or

(b) A separate tag or label attached securely to each container; or

(c) Printed in a conspicuous manner on the side of each container; or

(d) Alternate wording may be approved in writing by the department to meet the needs of the industry.

(3) Except for grass seed mixtures, and hybrids that contain less than ninety-five percent hybrid seed, the label for agricultural seeds must contain the following information:

(a) The name of the kind and variety of each agricultural seed present in excess of five percent of the whole and the percentage by weight of each or if the variety is not listed with the certifying agency, the name of the kind and the words, "*variety not stated.*" Hybrids must be labeled as hybrids; and

(b) The lot number or other lot identification; and

(c) The origin state or foreign country, if known. If the origin is not known, that fact shall be stated on the label; and

(d) The percentage, by weight, of all weed seeds present. The maximum weed seed content may not exceed two percent by weight; and

(e) The name and rate of occurrence in seeds per pound of each kind of restricted noxious weed seed present; and

(f) The percentage by weight of agricultural seeds, which may be designated as "crop seeds," other than those required to be named on the label; and

(g) The percentage by weight of inert matter; and

(h) The percentage of seed germination, exclusive of hard seed, and the percentage of hard seed, if present, or "total germination and hard seed" as a single percentage; and

(i) The calendar month and year the seed germination test was completed to determine such percentages; and

(j) The name and address of the person who labels, sells, offers, or exposes for sale seed within this state.

(4) For seed that is coated the label must also contain the following:

(a) The percentage of pure seed with coating material removed;

(b) The percentage of coating material shown as a separate item in close association with the percentage of inert material;

(c) The percentage of germination as determined on four hundred coated seed pellets, with or without seeds.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-301-100 Matters subject to mandatory arbitration.
- WAC 16-301-105 Filing of a complaint for arbitration.
- WAC 16-301-110 Requirement to respond to complaint.
- WAC 16-301-115 Acceptance of filing by telefax.
- WAC 16-301-120 Arbitration committee.
- WAC 16-301-125 Referral to arbitration committee.
- WAC 16-301-130 Scheduling of hearing.
- WAC 16-301-135 Representation by counsel.
- WAC 16-301-140 Waiver of oral hearing.
- WAC 16-301-145 Record of the hearing.
- WAC 16-301-150 Attendance at hearings.
- WAC 16-301-155 Committee investigation.
- WAC 16-301-160 Evidence.
- WAC 16-301-165 Evidence by affidavit.
- WAC 16-301-170 Discovery.
- WAC 16-301-175 Arbitration in the absence of a party.
- WAC 16-301-180 Order of proceedings.
- WAC 16-301-185 Expert evidence and performance tests.
- WAC 16-301-190 Conservation of property.
- WAC 16-301-195 Reopening of a hearing.
- WAC 16-301-200 Expenses.

WAC 16-301-205 Arbitration committee report.  
 WAC 16-301-210 Award upon settlement.

**WSR 17-20-097**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**  
 (Washington Apple Health)

[Filed October 3, 2017, 4:17 p.m., effective November 3, 2017]

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

Purpose: The agency is amending several sections of chapter 182-535 WAC, Dental-related services and chapter 182-535A WAC, Orthodontic services. Amendments are being made to: Add, remove, or update definitions; add covered services; clarify or change coverage limits; remove or

update some prior authorization requirements; and clarify processes described in WAC. The revisions also include housekeeping changes.

Citation of Rules Affected by this Order: Amending WAC 182-535-1050, 182-535-1060, 182-535-1066, 182-535-1070, 182-535-1079, 182-535-1082, 182-535-1084, 182-535-1086, 182-535-1088, 182-535-1090, 182-535-1094, 182-535-1098, 182-535-1099, 182-535-1100, 182-535-1220, 182-535-1245, 182-535A-0010, 182-535A-0020, 182-535A-0040, and 182-535A-0060.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 17-17-155 on August 23, 2017.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
<b>Original WAC 182-535-1084 (7)(c) Dental-related services—Covered—Restorative services.</b>		
Proposed	Cannot be performed with interim therapeutic restoration on the same tooth.	In the interest of aligning medicaid reimbursement with the practice guidelines currently under consideration, and removing barriers to safe, highly effective, and low-cost care, the stakeholders recommend amending WAC 182-535-1084(7). Recommended language: (c) Cannot be <del>performed</del> <i>billed</i> with interim therapeutic restoration on the same tooth.
Adopted	Cannot be performed <u>and billed</u> with interim therapeutic restoration on the same tooth.	
<b>Original WAC 182-535A-0010 Orthodontic services—Definitions.</b>		
Proposed	"Adolescent dentition" means teeth that are present after the loss of primary teeth and prior to the cessation of growth that affects orthodontic treatment.	The definition of "Adolescent dentition" should read "means teeth that are present after the normal loss of primary teeth <i>or pulling of primary teeth</i> and prior to the cessation of growth that affects orthodontic treatment." The stakeholders recommend adding "or pulling of primary teeth" because some children and adolescents experience the growth of new teeth while the primary teeth are still present and have not been lost. Some children have their primary teeth pulled for various reasons. These factors should not limit access to orthodontia.
Adopted	"Adolescent dentition" means teeth that are present after the <del>normal</del> loss of primary teeth and prior to the cessation of growth that affects orthodontic treatment.	
<b>Original WAC 182-535A-0040 (5)(e) Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitation to coverage.</b>		
Proposed	N/A	The stakeholders believe that the language indicates that the orthodontist may need to incur the costs for retainers lost by the patient at any point after treatment has finished. Lab fees are typically \$50-150 for these appliances and loss is frequent. Most providers provide initial retention but ask for payment for subsequent appliances when active treatment is over. The stakeholders suspect that the change in rule will mean "one and done" since the agency is essentially barring providers from charging for this service. No provider can afford to
Adopted	(e) <u>Replacement retainers after the first replacement retainer and within six months of debanding.</u>	

Proposed/Adopted	WAC Subsection	Reason
		continuously pay for a patient's replacement retainers. At the very minimum, the stakeholders suggest the agency reword the statement to indicate that this replacement will only be within the twenty-four or thirty months of approved treatment time.
<b>Original WAC 182-535A-0060 (5)(b) Orthodontic treatment and orthodontic-related services—Payment.</b>		
Proposed	(b) The agency's initial payment includes replacement of brackets and lost or broken orthodontic appliances, appliance removal, initial and replacement retainer fees, and final records (photos, a panoramic X ray, a cephalometric film, and final trimmed study models).	The stakeholders believe that the language indicates that the orthodontist may need to incur the costs for retainers lost by the patient at any point after treatment has finished. Lab fees are typically \$50-150 for these appliances and loss is frequent. Most providers provide initial retention but ask for payment for subsequent appliances when active treatment is over. The stakeholders suspect that the change in rule will mean "one and done" since the agency is essentially barring providers from charging for this service. No provider can afford to continuously pay for a patient's replacement retainers. At the very minimum, the stakeholders suggest the agency reword the statement to indicate that this replacement will only be within the twenty-four or thirty months of approved treatment time.
Adopted	(b) <u>The agency's initial payment includes:</u> (i) <del>replacement</del> <u>The replacement of brackets and lost or broken orthodontic appliances;</u> (ii) <del>appliance</del> <u>Appliance removal;</u> (iii) <u>The initial and the first replacement retainer fees within the first six months after debanding;</u> and (iv) <u>The final records (photos, a panoramic X ray, a cephalometric film, and final trimmed study models).</u>	
<b>Original WAC 182-535A-0060 (6)(b) Orthodontic treatment and orthodontic-related services—Payment.</b>		
Proposed	(b) The agency's initial payment includes replacement of brackets and lost or broken orthodontic appliances, appliance removal, initial and replacement retainer fees, and final records (photos, a panoramic X ray, a cephalometric film, and final trimmed study models).	The stakeholders believe that the language indicates that the orthodontist may need to incur the costs for retainers lost by the patient at any point after treatment has finished. Lab fees are typically \$50-150 for these appliances and loss is frequent. Most providers provide initial retention but ask for payment for subsequent appliances when active treatment is over. The stakeholders suspect that the change in rule will mean "one and done" since the agency is essentially barring providers from charging for this service. No provider can afford to continuously pay for a patient's replacement retainers. At the very minimum, the stakeholders suggest the agency reword the statement to indicate that this replacement will only be within the twenty-four or thirty months of approved treatment time.
Adopted	(b) <u>The agency's initial payment includes:</u> (i) <del>replacement</del> <u>The replacement of brackets and lost or broken orthodontic appliances;</u> (ii) <del>appliance</del> <u>Appliance removal;</u> (iii) <u>The initial and the first replacement retainer fees within the first six months after debanding;</u> and (iv) <u>The final records (photos, a panoramic X ray, a cephalometric film, and final trimmed study models).</u>	

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 20, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 20, Repealed 0.

Date Adopted: October 3, 2017.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-13-110, filed 6/20/16, effective 8/1/16)

**WAC 182-535-1050 Dental-related services—Definitions.** The following definitions and abbreviations and those found in chapter 182-500 WAC apply to this chapter. The medicaid agency also uses dental definitions found in the American Dental Association's Current Dental Terminology (CDT) and the American Medical Association's Physician's Current Procedural Terminology (CPT). Where there is any discrepancy between the CDT or CPT and this section, this section prevails. (CPT is a trademark of the American Medical Association.)

**"Access to baby and child dentistry (ABCD)"** is a program to increase access to dental services ~~((in targeted areas))~~ for medicaid eligible infants, toddlers, and preschoolers ~~((up))~~ through ~~((the))~~ age ~~((of))~~ five. See WAC ~~((182-535-1300))~~ 182-535-1245 for specific information.

**"Alternate living facility"** is defined in WAC 182-513-1100.

**"American Dental Association (ADA)"** is a national organization for dental professionals and dental societies.

**"Anterior"** refers to teeth (maxillary and mandibular incisors and canines) and tissue in the front of the mouth. Permanent maxillary anterior teeth include teeth six, seven, eight, nine, ten, and eleven. Permanent mandibular anterior teeth include teeth twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, and twenty-seven. Primary maxillary anterior teeth include teeth C, D, E, F, G, and H. Primary mandibular anterior teeth include teeth M, N, O, P, Q, and R.

~~("Asymptomatic" means having or producing no symptoms.~~

~~"Base metal" means dental alloy containing little or no precious metals.)~~

**"Behavior management"** means using ~~((the assistance of))~~ one additional ~~((dental))~~ professional staff, who is employed by the dental provider or clinic and who is not delivering dental treatment to the client, to manage the ~~((behavior of a client))~~ client's behavior to facilitate ~~((the delivery of))~~ dental treatment delivery.

**"By-report"** ~~((-))~~ means a method of reimbursement in which the department determines the amount it will pay for a service when the rate for that service is not included in the agency's published fee schedules. Upon request the provider must submit a "report" ~~((which))~~ that describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

**"Caries"** means carious lesions or tooth decay through the enamel or decay ~~((of))~~ on the root surface.

• **"Incipient caries"** means the beginning stages of caries or decay, or subsurface demineralization.

• **"Rampant caries"** means a sudden onset of widespread caries that affects most of the teeth and penetrates quickly to the dental pulp.

**"Comprehensive oral evaluation"** means a thorough evaluation and documentation of a client's dental and medical history to include extra-oral and intra-oral hard and soft tissues, dental caries, missing or unerupted teeth, restorations, occlusal relationships, periodontal conditions (including periodontal charting), hard and soft tissue anomalies, and oral cancer screening.

**"Conscious sedation"** ~~((is))~~ means a drug-induced depression of consciousness during which a client responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, spontaneous ventilation is adequate, and cardiovascular function is maintained.

**"Core buildup"** ~~((refers to))~~ means the building up of clinical crowns, including pins.

**"Coronal"** ~~((is))~~ means the portion of a tooth that is covered by enamel.

~~("Coronal polishing" is a mechanical procedure limited to the removal of plaque and stain from exposed tooth surfaces.)~~

**"Crown"** means a restoration covering or replacing ~~((part of))~~ the whole clinical crown of a tooth.

**"Current dental terminology (CDT)"** ~~((is))~~ means a systematic listing of descriptive terms and identifying codes for reporting dental services and procedures performed by dental practitioners. CDT is published by the Council on Dental Benefit Programs of the American Dental Association (ADA).

**"Current procedural terminology (CPT)"** ~~((is))~~ means a systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians and other practitioners who provide physician-related services. CPT is copyrighted and published annually by the American Medical Association (AMA).

**"Decay"** ~~((is))~~ means a term for caries or carious lesions and means decomposition of tooth structure.

**"Deep sedation"** ~~((is))~~ means a drug-induced depression of consciousness during which a client cannot be easily aroused, ventilatory function may be impaired, but the client responds to repeated or painful stimulation.

**"Dental general anesthesia"** see **"general anesthesia."**

**"Dentures"** means an artificial replacement for natural teeth and adjacent tissues, and includes complete dentures, immediate dentures, overdentures, and partial dentures.

**"Denturist"** means a person licensed under chapter 18.30 RCW to make, construct, alter, reproduce, or repair a denture.

"Edentulous" means lacking teeth.

**"Endodontic"** means the etiology, diagnosis, prevention and treatment of diseases and injuries of the pulp and associated periradicular conditions.

**"EPSDT"** means the agency's early and periodic screening, ~~((diagnosis))~~ diagnostic, and treatment program for clients age twenty ((years of age)) and younger as described in chapter 182-534 WAC.

**"Extraction"** see **"simple extraction"** and **"surgical extraction."**

**"Flowable composite"** ~~((is))~~ means a diluted low-viscosity-filled resin-based composite dental restorative material that is used in cervical restorations and small, low stress bearing occlusal restorations.

**"Fluoride varnish, rinse, foam or gel"** ~~((is))~~ means a substance containing dental fluoride which is applied to teeth, not including silver diamine fluoride.

**"General anesthesia"** ((is)) means a drug-induced loss of consciousness during which a client is not arousable even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Clients may require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

~~("High noble metal" is a dental alloy containing at least sixty percent pure gold.)~~

**"Interim therapeutic restoration (ITR)"** means the placement of an adhesive restorative material following caries debridement by hand or other method for the management of early childhood caries. It is not considered a definitive restoration.

**"Limited oral evaluation"** ((is)) means an evaluation limited to a specific oral health condition or problem. Typically a client receiving this type of evaluation has a dental emergency, such as trauma or acute infection.

~~"Limited visual oral assessment" ((is)) means an assessment by a dentist or dental hygienist ((to determine the need for fluoride treatment and/or when triage services are provided in settings other than dental offices or dental clinics)) provided in a setting other than a dental office or dental clinic to identify signs of disease and the potential need for referral for diagnosis.~~

~~("Major bone grafts" is a transplant of solid bone tissue(s).)~~

**"Medically necessary"** see WAC 182-500-0070.

~~("Minor bone grafts" is a transplant of nonsolid bone tissue(s), such as powdered bone, buttons, or plugs.~~

~~"Noble metal" is a dental alloy containing at least twenty-five percent but less than sixty percent pure gold.)~~

**"Oral evaluation"** see **"comprehensive oral evaluation."**

**"Oral hygiene instruction"** means instruction for home oral hygiene care, such as tooth brushing techniques or flossing.

~~("Oral prophylaxis" is the dental procedure of scaling and polishing which includes removal of calculus, plaque, and stains from teeth.)~~

**"Partials" or "partial dentures"** ((are)) mean a removable prosthetic appliance that replaces missing teeth ((~~is one~~)) on either arch.

**"Periodic oral evaluation"** ((is)) means an evaluation performed on a patient of record to determine any changes in the client's dental or medical status since a previous comprehensive or periodic evaluation.

**"Periodontal maintenance"** ((is)) means a procedure performed for clients who have previously been treated for periodontal disease with surgical or nonsurgical treatment. It includes the removal of supragingival and subgingival microorganisms, calculus, and deposits with hand and mechanical instrumentation, an evaluation of periodontal conditions, and a complete periodontal charting as appropriate.

**"Periodontal scaling and root planing"** ((is)) means a procedure to remove plaque, calculus, microorganisms, and rough cementum and dentin from tooth surfaces. This includes hand and mechanical instrumentation, an evaluation

of periodontal conditions, and a complete periodontal charting as appropriate.

**"Posterior"** ((refers to)) means the teeth (maxillary and mandibular premolars and molars) and tissue towards the back of the mouth. Permanent maxillary posterior teeth include teeth one, two, three, four, five, twelve, thirteen, fourteen, fifteen, and sixteen. Permanent mandibular posterior teeth include teeth seventeen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, thirty-one, and thirty-two. Primary maxillary posterior teeth include teeth A, B, I, and J. Primary mandibular posterior teeth include teeth K, L, S, and T.

**"Prophylaxis"** means the dental procedure of scaling and polishing which includes removal of calculus, plaque, and stains from teeth.

**"Proximal"** ((is)) means the surface of the tooth near or next to the adjacent tooth.

**"Radiograph (X ray)"** ((is)) means an image or picture produced on a radiation sensitive film emulsion or digital sensor by exposure to ionizing radiation.

**"Reline"** means to resurface the tissue side of a denture with new base material or soft tissue conditioner in order to achieve a more accurate fit.

**"Root canal"** ((is)) means the chamber within the root of the tooth that contains the pulp.

**"Root canal therapy"** ((is)) means the treatment of the pulp and associated periradicular conditions.

**"Root planing"** ((is)) means a procedure to remove plaque, calculus, microorganisms, and rough cementum and dentin from tooth surfaces. This includes hand and mechanical instrumentation.

**"Scaling"** ((is)) means a procedure to remove plaque, calculus, and stain deposits from tooth surfaces.

**"Sealant"** ((is)) means a dental material applied to teeth to prevent dental caries.

**"Simple extraction"** ((is the routine removal of a tooth. ~~Six months~~ is equal to one hundred eighty days))

means the extraction of an erupted or exposed tooth to include the removal of tooth structure, minor smoothing of socket bone, and closure, as necessary.

**"Standard of care"** means what reasonable and prudent practitioners would do in the same or similar circumstances.

**"Surgical extraction"** ((is the removal of a tooth by cutting of the gingiva and bone)) means the extraction of an erupted or impacted tooth requiring removal of bone and/or sectioning of the tooth, and including elevation of mucoperiosteal flap if indicated. This includes ((~~soft tissue extractions, partial boney extractions, and complete boney extractions.~~

~~**"Symptomatic"** means having symptoms (e.g., pain, swelling, and infection)) related cutting of gingiva and bone, removal of tooth structure, minor smoothing of socket bone, and closure.~~

**"Temporomandibular joint dysfunction (TMJ/TMD)"** ((is)) means an abnormal functioning of the temporomandibular joint or other areas secondary to the dysfunction.

**"Therapeutic pulpotomy"** ((is)) means the surgical removal of a portion of the pulp (inner soft tissue of a tooth), to retain the healthy remaining pulp.



"Usual and customary" means the fee that the provider usually charges nonmedicaid customers for the same service or item. This is the maximum amount that the provider may bill the agency.

~~("Wisdom teeth" are the third molars, teeth one, sixteen, seventeen, and thirty two.~~

~~"Xerostomia" is a dryness of the mouth due to decreased saliva.)~~

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

**WAC 182-535-1060 Dental-related services—Client eligibility.** (1) Refer to WAC 182-501-0060 to see which ~~((Washington))~~ apple health programs include dental-related services in their benefit package.

(2) Managed care clients are eligible under ~~((Washington))~~ apple health fee-for-service for covered dental-related services not covered by their managed care organization (MCO) (plan), subject to the provisions of this chapter and other applicable agency rules.

(3) See WAC 182-507-0115 for rules for clients eligible under ~~((an))~~ the alien emergency medical program.

(4) Exception to rule procedures as described in WAC ~~((182-501-0169))~~ 182-501-0160 are not available for services that are excluded from a client's benefit package.

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

**WAC 182-535-1066 Dental-related services—Medical care services clients (formerly general assistance (GA)).** (1) The medicaid agency covers the following dental-related services for a medical care services client ~~((as listed in))~~ under WAC 182-501-0060 when the services are provided by a dentist to assess, diagnose, and treat pain, infection, or trauma of the mouth, jaw, or teeth, including treatment of postsurgical complications, such as dry socket:

- (a) Limited oral evaluation;
  - (b) Periapical or bitewing radiographs (X rays) that are medically necessary to diagnose only the client's chief complaint;
  - (c) Palliative treatment to relieve dental pain or infection;
  - (d) Pulpal debridement to relieve dental pain or infection; and
  - (e) Tooth extraction.
- (2) Tooth extractions require prior authorization when:
- (a) The extraction of a tooth or teeth results in the client becoming edentulous in the maxillary arch or mandibular arch; or
  - (b) A full mouth extraction is necessary because of radiation therapy for cancer of the head and neck.

(3) Each dental-related procedure described under this section is subject to the coverage limitations listed in this chapter.

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

**WAC 182-535-1070 Dental-related services—Provider information.** (1) The following providers are eligible to enroll with the medicaid agency to furnish and bill for dental-related services provided to eligible clients:

(a) Persons currently licensed by the state of Washington to:

- (i) Practice dentistry or specialties of dentistry.
- (ii) Practice as dental hygienists.
- (iii) Practice as denturists.
- (iv) Practice anesthesia by:

(A) Providing conscious sedation with parenteral or multiple oral agents, deep sedation, or general anesthesia as an anesthesiologist or dental anesthesiologist;

(B) Providing conscious sedation with parenteral or multiple oral agents, deep sedation, or general anesthesia as a ~~((certified registered nurse anesthetist (CRNA) under WAC 246-817-180))~~ qualified professional under chapter 246-817 WAC; or

(C) Providing conscious sedation with parenteral or multiple oral agents as a dentist, when the dentist has a conscious sedation permit issued by the department of health (DOH) that is current at the time the billed service(s) is provided; or

(D) Providing deep sedation or general anesthesia as a dentist when the dentist has a general anesthesia permit issued by DOH that is current at the time the billed service(s) is provided.

(v) Practice medicine and osteopathy for:

- (A) Oral surgery procedures; or
- (B) Providing fluoride varnish under EPSDT.

(b) Facilities that are:

- (i) Hospitals currently licensed by the DOH;
- (ii) Federally qualified health centers (FQHCs);
- (iii) Medicare-certified ambulatory surgical centers (ASCs);

(iv) Medicare-certified rural health clinics (RHCs); or

(v) Community health centers.

(c) Participating local health jurisdictions.

(d) Bordering city or out-of-state providers of dental-related services who are qualified in their states to provide these services.

(2) Subject to the restrictions and limitations in this section and other applicable WAC, the agency pays licensed providers participating in the agency's dental program for only those services that are within their scope of practice.

(3) For the dental specialty of oral and maxillofacial surgery, the agency requires a dentist to meet the following requirements in order to be reimbursed for oral and maxillofacial surgery:

- (a) The provider's professional organization guidelines;
- (b) The department of health (DOH) requirements in chapter 246-817 WAC; and

(c) Any applicable DOH medical, dental, and nursing anesthesia regulations.

(4) See WAC 182-502-0020 for provider documentation and record retention requirements. The agency requires additional dental documentation under specific sections in this chapter and as required by DOH under chapter 246-817 WAC.

(5) See WAC 182-502-0100 and 182-502-0150 for provider billing and payment requirements. Enrolled dental providers who do not meet the conditions in subsection (3) of this section must bill all claims using only the CDT codes for services that are identified in WAC and the agency's published billing instructions and provider notices. The agency does not reimburse for billed CPT codes when the dental provider does not meet the requirements in subsection (3)(a) of this section.

(6) See WAC 182-502-0160 for regulations concerning charges billed to clients.

(7) See WAC 182-502-0230 for provider payment reviews and dispute rights.

(8) See chapter 182-502A WAC for provider audits and the audit appeal process.

**AMENDATORY SECTION** (Amending WSR 16-18-033, filed 8/26/16, effective 9/26/16)

**WAC 182-535-1079 Dental-related services—General.** (1) Clients described in WAC 182-535-1060 are eligible to receive the dental-related services described in this chapter, subject to coverage limitations, restrictions, and client age requirements identified for a specific service. The medicare agency pays for dental-related services and procedures provided to eligible clients when the services and procedures:

- (a) Are part of the client's dental benefit package;
- (b) Are within the scope of an eligible client's Washington apple health program;
- (c) Are medically necessary;
- (d) Meet the agency's (~~prior~~) authorization requirements, if any;
- (e) Are documented in the client's dental record in accordance with chapter 182-502 WAC and meet the department of health's requirements in WAC 246-817-305 and 246-817-310;
- (f) Are within accepted dental or medical practice standards;
- (g) Are consistent with a diagnosis of a dental disease or dental condition;
- (h) Are reasonable in amount and duration of care, treatment, or service; and
- (i) Are listed as covered in the agency's rules and published billing instructions and fee schedules.

(2) For orthodontic services, see chapter 182-535A WAC.

(3) The agency requires site-of-service prior authorization, in addition to prior authorization of the procedure, if applicable, for nonemergency dental-related services performed in a hospital or an ambulatory surgery center when:

- (a) A client is not a client of the developmental disabilities administration of the department of social and health services (DSHS) according to WAC 182-535-1099;
- (b) A client is age nine or older;
- (c) The service is not listed as exempt from the site-of-service authorization requirement in the agency's current published dental-related services fee schedule or billing instructions; and

(d) The service is not listed as exempt from the prior authorization requirement for deep sedation or general anesthesia (see WAC 182-535-1098 (1)(c)(v)).

(4) To be eligible for payment, dental-related services performed in a hospital or an ambulatory surgery center must be listed in the agency's current published outpatient fee schedule or ambulatory surgery center fee schedule. The claim must be billed with the correct procedure code for the site-of-service.

(5) Under the early and periodic screening (~~and~~), diagnostic, and treatment (EPSDT) program, clients age twenty and younger may be eligible for dental-related services listed as noncovered. The standard for coverage for EPSDT is found in chapter 182-534 WAC.

(6) The agency evaluates a request for dental-related services that are:

- (a) In excess of the dental program's limitations or restrictions, according to WAC 182-501-0169; and
- (b) Listed as noncovered, according to WAC 182-501-0160.

**AMENDATORY SECTION** (Amending WSR 16-18-033, filed 8/26/16, effective 9/26/16)

**WAC 182-535-1082 Dental-related services—Covered—Preventive services.** Clients described in WAC 182-535-1060 are eligible for the dental-related preventive services listed in this section, subject to coverage limitations and client-age requirements identified for a specific service.

(1) (~~Dental~~) **Prophylaxis.** The medicare agency covers prophylaxis as follows. Prophylaxis:

- (a) Includes scaling and polishing procedures to remove coronal plaque, calculus, and stains when performed on primary or permanent dentition.
- (b) Is limited to once every:
  - (i) Six months for clients age eighteen and younger;
  - (ii) Twelve months for clients age nineteen and older; or
  - (iii) (~~Four~~) Six months for a client residing in (~~a~~) an alternate living facility or nursing facility.

(c) Is reimbursed (~~only~~) according to (b) of this subsection when the service is performed:

- (i) At least six months after periodontal scaling and root planing, or periodontal maintenance services, for clients from age thirteen through eighteen;
- (ii) At least twelve months after periodontal scaling and root planing, periodontal maintenance services, for clients age nineteen and older; or
- (iii) At least six months after periodontal scaling and root planing, or periodontal maintenance services for clients who reside in (~~a~~) an alternate living facility or nursing facility.

(d) Is not reimbursed separately when performed on the same date of service as periodontal scaling and root planing, periodontal maintenance, gingivectomy, (~~or~~) gingivoplasty, or scaling in the presence of generalized moderate or severe gingival inflammation.

(e) Is covered for clients of the developmental disabilities administration of the department of social and health services (DSHS) according to (a), (c), and (d) of this subsection and WAC 182-535-1099.

(2) **Topical fluoride treatment.** The agency covers the following per client, per provider or clinic:

(a) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, for clients age six and younger, ~~((every four months))~~ three times within a twelve-month period with a minimum of one hundred ten days between applications.

(b) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, for clients from age seven through eighteen, ~~((every six months))~~ two times within a twelve-month period with a minimum of one hundred seventy days between applications.

(c) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, every ~~((four months))~~ three times within a twelve-month period during orthodontic treatment with a minimum of one hundred ten days between applications.

(d) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, for clients age nineteen and older, once within a twelve-month period.

(e) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, for clients who reside in alternate living facilities ~~((as defined in WAC 182-513-1301))~~ or nursing facilities, every ~~((four months))~~ two times within a twelve-month period with a minimum of one hundred seventy days between applications.

(f) Additional topical fluoride applications only on a case-by-case basis and when prior authorized.

(g) Topical fluoride treatment for clients of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(3) **Oral hygiene instruction.** Includes instruction for home care such as tooth brushing technique, flossing, and use of oral hygiene aids. Oral hygiene instruction is included as part of the global fee for prophylaxis for clients age nine and older. The agency covers individualized oral hygiene instruction ~~((, per client, as follows))~~ for clients age eight and younger when all of the following criteria are met:

(a) ~~((For clients age eight and younger. For clients age nine and older, oral hygiene instruction is included as part of the global fee for oral prophylaxis.~~

~~((b) One))~~ Only once per client every six months within a twelve-month period.

~~((c))~~ (b) Only when not performed on the same date of service as prophylaxis or within six months from a prophylaxis by the same provider or clinic.

~~((d))~~ (c) Only when provided by a licensed dentist or a licensed dental hygienist and the instruction is provided in a setting other than a dental office or clinic.

(4) **Tobacco cessation counseling for the control and prevention of oral disease.** The agency covers tobacco cessation counseling for pregnant women only. See WAC 182-531-1720.

(5) **Sealants.** The agency covers:

(a) Sealants for clients age twenty and younger and clients any age of the developmental disabilities administration of DSHS.

(b) Sealants, other than glass ionomer cement, only when used on a mechanically or chemically prepared enamel surface.

(c) Sealants once per tooth:

(i) In a three-year period for clients age twenty and younger; and

(ii) In a two-year period for clients any age of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(d) Sealants only when used on the occlusal surfaces of:

(i) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty, and thirty-one; and

(ii) Primary teeth A, B, I, J, K, L, S, and T.

(e) Sealants on noncarious teeth or teeth with incipient caries.

(f) Sealants only when placed on a tooth with no preexisting occlusal restoration, or any occlusal restoration placed on the same day.

(g) Sealants are included in the agency's payment for occlusal restoration placed on the same day.

(h) Additional sealants not described in this subsection on a case-by-case basis and when prior authorized.

(6) **Space maintenance.** The agency covers:

(a) One fixed unilateral space maintainer per quadrant or one fixed bilateral space maintainer per arch, including re-plantation, for missing primary molars A, B, I, J, K, L, S, and T, when:

(i) Evidence of pending permanent tooth eruption exists; and

(ii) The service is not provided during approved orthodontic treatment.

(b) Replacement space maintainers on a case-by-case basis when ~~((prior))~~ authorized.

(c) The removal of fixed space maintainers when removed by a different provider.

(i) Space maintainer removal is allowed once per appliance.

(ii) Reimbursement for space maintainer removal is included in the payment to the original provider that placed the space maintainer.

**AMENDATORY SECTION** (Amending WSR 16-18-033, filed 8/26/16, effective 9/26/16)

**WAC 182-535-1084 Dental-related services—Covered—Restorative services.** Clients described in WAC 182-535-1060 are eligible for the dental-related restorative services listed in this section, subject to coverage limitations, restrictions, and client age requirements identified for a specific service.

(1) **Amalgam and resin restorations for primary and permanent teeth.** The medicaid agency considers:

(a) Tooth preparation, acid etching, all adhesives (including bonding agents), liners and bases, indirect and direct pulp capping, polishing, and curing as part of the restoration.

(b) Occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the restoration.

(c) Restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

**(2) Limitations for all restorations.** The agency:

(a) Considers multiple restoration involving the proximal and occlusal surfaces of the same tooth as a multisurface restoration, and limits reimbursement to a single multisurface restoration.

(b) Considers multiple restorative resins, flowable composite resins, or resin-based composites for the occlusal, buccal, lingual, mesial, and distal fissures and grooves on the same tooth as a one-surface restoration.

(c) Considers multiple restorations of fissures and grooves of the occlusal surface of the same tooth as a one-surface restoration.

(d) Considers resin-based composite restorations of teeth where the decay does not penetrate the ~~((dentineenamel))~~ dentinoenamel junction (DEJ) to be sealants. (See WAC 182-535-1082~~((4))~~) for sealant coverage.)

(e) Reimburses proximal restorations that do not involve the incisal angle on anterior teeth as a two-surface restoration.

(f) Covers only one buccal and one lingual surface per tooth. The agency reimburses buccal or lingual restorations, regardless of size or extension, as a one-surface restoration.

(g) Does not cover preventive restorative resin or flowable composite resin on the interproximal surfaces (mesial or distal) when performed on posterior teeth or the incisal surface of anterior teeth.

(h) Does not pay for replacement restorations within a two-year period unless the restoration is cracked or broken or has an additional adjoining carious surface. The agency pays for the replacement restoration as one multisurface restoration. The client's record must include X rays or documentation supporting the medical necessity for the replacement restoration.

**(3) Additional limitations ~~((4))~~ for restorations on primary teeth.** The agency covers:

(a) A maximum of two surfaces for a primary first molar. (See subsection (6) of this section for a primary first molar that requires a restoration with three or more surfaces.) The agency does not pay for additional restorations on the same tooth.

(b) A maximum of three surfaces for a primary second molar. (See subsection (6) of this section for a primary posterior tooth that requires a restoration with four or more surfaces.) The agency does not pay for additional restorations on the same tooth.

(c) A maximum of three surfaces for a primary anterior tooth. (See subsection (6) of this section for a primary anterior tooth that requires a restoration with four or more surfaces.) The agency does not pay for additional restorations on the same tooth after three surfaces.

~~((d) Glass ionomer restorations for primary teeth, only for clients age five and younger. The agency pays for these restorations as a one-surface, resin-based composite restoration.))~~

**(4) Additional limitations ~~((4))~~ for restorations on permanent teeth.** The agency covers:

(a) Two occlusal restorations for the upper molars on teeth one, two, three, fourteen, fifteen, and sixteen if, the restorations are anatomically separated by sound tooth structure.

(b) A maximum of five surfaces per tooth for permanent posterior teeth, except for upper molars. The agency allows a maximum of six surfaces per tooth for teeth one, two, three, fourteen, fifteen, and sixteen.

(c) A maximum of six surfaces per tooth for resin-based composite restorations for permanent anterior teeth.

**(5) Crowns.** The agency:

(a) Covers the following indirect crowns once every five years, per tooth, for permanent anterior teeth for clients age fifteen through twenty when the crowns meet prior authorization criteria in WAC 182-535-1220 and the provider follows the prior authorization requirements in (c) of this subsection:

(i) Porcelain/ceramic crowns to include all porcelains, glasses, glass-ceramic, and porcelain fused to metal crowns; and

(ii) Resin crowns and resin metal crowns to include any resin-based composite, fiber, or ceramic reinforced polymer compound.

(b) Considers the following to be included in the payment for a crown:

(i) Tooth and soft tissue preparation;

(ii) Amalgam and resin-based composite restoration, or any other restorative material placed within six months of the crown preparation. Exception: The agency covers a one-surface restoration on an endodontically treated tooth, or a core buildup or cast post and core;

(iii) Temporaries, including but not limited to, temporary restoration, temporary crown, provisional crown, temporary prefabricated stainless steel crown, ion crown, or acrylic crown;

(iv) Packing cord placement and removal;

(v) Diagnostic or final impressions;

(vi) Crown seating (placement), including cementing and insulating bases;

(vii) Occlusal adjustment of crown or opposing tooth or teeth; and

(viii) Local anesthesia.

(c) Requires the provider to submit the following with each prior authorization request:

(i) Radiographs to assess all remaining teeth;

(ii) Documentation and identification of all missing teeth;

(iii) Caries diagnosis and treatment plan for all remaining teeth, including a caries control plan for clients with rampant caries;

(iv) Pre- and post-endodontic treatment radiographs for requests on endodontically treated teeth; and

(v) Documentation supporting a five-year prognosis that the client will retain the tooth or crown if the tooth is crowned.

(d) Requires a provider to bill for a crown only after delivery and seating of the crown, not at the impression date.

**(6) Other restorative services.** The agency covers the following restorative services:

(a) All recementations of permanent indirect crowns.

(b) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, resin-based composite crowns (direct), prefabricated esthetic coated stainless steel crowns, and prefabricated resin crowns for primary anterior

teeth once every three years only for clients age twenty and younger as follows:

(i) For age twelve and younger without prior authorization if the tooth requires a four or more surface restoration; and

(ii) For age thirteen through twenty with prior authorization.

(c) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, resin-based composite crowns (direct), prefabricated esthetic coated stainless steel crowns, and prefabricated resin crowns, for primary posterior teeth once every three years without prior authorization if:

(i) Decay involves three or more surfaces for a primary first molar;

(ii) Decay involves four or more surfaces for a primary second molar; or

(iii) The tooth had a pulpotomy.

(d) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, and prefabricated resin crowns, for permanent posterior teeth excluding one, sixteen, seventeen, and thirty-two once every three years, for clients age twenty and younger, without prior authorization.

(e) Prefabricated stainless steel crowns for clients of the developmental disabilities administration of the department of social and health services (DSHS) without prior authorization according to WAC 182-535-1099.

(f) Core buildup, including pins, only on permanent teeth, only for clients age twenty and younger, and only allowed in conjunction with crowns and when prior authorized. For indirect crowns, prior authorization must be obtained from the agency at the same time as the crown. Providers must submit pre- and post-endodontic treatment radiographs to the agency with the authorization request for endodontically treated teeth.

(g) Cast post and core or prefabricated post and core, only on permanent teeth, only for clients age twenty and younger, and only when in conjunction with a crown and when prior authorized.

**(7) Silver diamine fluoride.** The agency covers silver diamine fluoride per application as follows:

(a) When used for stopping the progression of caries only;

(b) May be provided two times per client in a twelve-month period; and

(c) Cannot be performed and billed with interim therapeutic restoration on the same tooth.

**AMENDATORY SECTION** (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

**WAC 182-535-1086 Dental-related services—Covered—Endodontic services.** Clients described in WAC 182-535-1060 are eligible to receive the dental-related endodontic services listed in this section, subject to coverage limitations, restrictions, and client age requirements identified for a specific service.

(1) **Pulp capping.** The medicaid agency considers pulp capping to be included in the payment for the restoration.

(2) **Pulpotomy.** The agency covers:

(a) Therapeutic pulpotomy on primary teeth only for clients age twenty (~~((years of age))~~) and younger.

(b) Pulpal debridement on permanent teeth only, excluding teeth one, sixteen, seventeen, and thirty-two. The agency does not pay for pulpal debridement when performed with palliative treatment of dental pain or when performed on the same day as endodontic treatment.

(3) **Endodontic treatment on primary teeth.** The agency covers endodontic treatment with resorbable material for primary teeth, if the entire root is present at treatment.

(4) **Endodontic treatment on permanent teeth.** The agency:

(a) Covers endodontic treatment for permanent anterior teeth for all clients.

(b) Covers endodontic treatment for permanent bicuspid and molar teeth, excluding teeth one, sixteen, seventeen, and thirty-two for clients age twenty (~~((years of age))~~) and younger.

(c) Considers the following included in endodontic treatment:

(i) Pulpotomy when part of root canal therapy;

(ii) All procedures necessary to complete treatment; and

(iii) All intra-operative and final evaluation radiographs (X rays) for the endodontic procedure.

(d) Pays separately for the following services that are related to the endodontic treatment:

(i) Initial diagnostic evaluation;

(ii) Initial diagnostic radiographs; and

(iii) Post treatment evaluation radiographs if taken at least three months after treatment.

(5) **Endodontic retreatment on permanent anterior teeth.** The agency:

(a) Covers endodontic retreatment for clients age twenty (~~((years of age))~~) and younger when prior authorized.

(b) Covers endodontic retreatment of permanent anterior teeth for clients twenty-one years of age and older when prior authorized.

(c) Considers endodontic retreatment to include:

(i) The removal of post(s), pin(s), old root canal filling material, and all procedures necessary to prepare the canals;

(ii) Placement of new filling material; and

(iii) Retreatment for permanent anterior, bicuspid, and molar teeth, excluding teeth one, sixteen, seventeen, and thirty-two.

(d) Pays separately for the following services that are related to the endodontic retreatment:

(i) Initial diagnostic evaluation;

(ii) Initial diagnostic radiographs; and

(iii) Post treatment evaluation radiographs if taken at least three months after treatment.

(e) Does not pay for endodontic retreatment when provided by the original treating provider or clinic unless prior authorized by the agency.

(6) **Apexification/apicoectomy.** The agency covers:

(a) Apexification for apical closures for anterior permanent teeth only (~~((on a case-by-case basis and when prior authorized))~~). Apexification is limited to the initial visit and three interim treatment visits per tooth and is limited to clients age twenty (~~((years of age))~~) and younger (~~((per tooth))~~).

(b) Apicoectomy and a retrograde fill for anterior teeth only for clients age twenty (~~((years of age))~~) and younger.

AMENDATORY SECTION (Amending WSR 16-18-033, filed 8/26/16, effective 9/26/16)

**WAC 182-535-1088 Dental-related services—Covered—Periodontic services.** Clients described in WAC 182-535-1060 are eligible to receive the dental-related periodontic services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specified service.

(1) **Surgical periodontal services.** The medicaid agency covers the following surgical periodontal services, including all postoperative care:

(a) Gingivectomy/gingivoplasty (does not include distal wedge procedures on erupting molars) only on a case-by-case basis and when prior authorized and only for clients age twenty and younger; and

(b) Gingivectomy/gingivoplasty (does not include distal wedge procedures on erupting molars) for clients of the developmental disabilities administration of the department of social and health services (DSHS) according to WAC 182-535-1099.

(2) **Nonsurgical periodontal services.** The agency:

(a) Covers periodontal scaling and root planing for clients age thirteen through eighteen, once per quadrant per client, in a two-year period on a case-by-case basis, when prior authorized, and only when:

(i) The client has radiographic evidence of periodontal disease and subgingival calculus;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting done within the past twelve months from the date of the prior authorization request and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) Performed at least two years from the date of completion of periodontal scaling and root planing or surgical periodontal treatment, or at least twelve calendar months from the completion of periodontal maintenance.

(b) Covers periodontal scaling and root planing once per quadrant per client in a two-year period for clients age nineteen and older. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Considers ultrasonic scaling, gross scaling, or gross debridement to be included in the procedure and not a substitution for periodontal scaling and root planing.

(d) Covers periodontal scaling and root planing only when the services are not performed on the same date of service as prophylaxis, periodontal maintenance, gingivectomy, or gingivoplasty.

(e) Covers periodontal scaling and root planing for clients of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(f) Covers periodontal scaling and root planing, one time per quadrant in a twelve-month period for clients residing in ((a)) an alternate living facility or nursing facility.

(3) **Other periodontal services.** The agency:

(a) Covers periodontal maintenance for clients age thirteen through eighteen once per client in a twelve-month period on a case-by-case basis, when prior authorized, and only when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting done within the past twelve months with location of the gingival margin and clinical attachment loss and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) The client has had periodontal scaling and root planing but not within twelve months of the date of completion of periodontal scaling and root planing, or surgical periodontal treatment.

(b) Covers periodontal maintenance once per client in a twelve month period for clients age nineteen and older. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Covers periodontal maintenance only if performed at least twelve calendar months after receiving prophylaxis, periodontal scaling and root planing, gingivectomy, or gingivoplasty.

(d) Covers periodontal maintenance for clients of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(e) Covers periodontal maintenance for clients residing in ((a)) an alternate living facility or nursing facility:

(i) Periodontal maintenance (four quadrants) substitutes for an eligible periodontal scaling or root planing once every six months.

(ii) Periodontal maintenance allowed six months after scaling or root planing.

(f) Covers full-mouth scaling in the presence of generalized moderate or severe gingival inflammation and only:

(i) For clients age nineteen and older once in a twelve-month period after an oral evaluation; and

(ii) For clients age thirteen through eighteen once in a twelve-month period after an oral evaluation and when prior authorized.

AMENDATORY SECTION (Amending WSR 16-18-033, filed 8/26/16, effective 9/26/16)

**WAC 182-535-1090 Dental-related services—Covered—Prosthodontics (removable).** Clients described in WAC 182-535-1060 are eligible to receive the prosthodontics (removable) and related services, subject to the coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Prosthodontics.** The medicaid agency requires prior authorization for ((aH)) removable prosthodontic and prosthodontic-related procedures, except as otherwise noted in this section. Prior authorization requests must meet the criteria in WAC 182-535-1220. In addition, the agency requires the dental provider to submit:

(a) Appropriate and diagnostic radiographs of all remaining teeth.

(b) A dental record which identifies:

(i) All missing teeth for both arches;

(ii) Teeth that are to be extracted; and

(iii) Dental and periodontal services completed on all remaining teeth.

(2) **Complete dentures.** The agency covers complete dentures, including overdentures, when prior authorized, except as otherwise noted in this section.

The agency considers three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the delivery (placement) date of the complete denture as part of the complete denture procedure and does not pay separately for this care.

(a) The agency covers complete dentures only as follows:

(i) One initial maxillary complete denture and one initial mandibular complete denture per client ~~(per the client's lifetime).~~

(ii) Replacement of a partial denture with a complete denture only when the replacement occurs three or more years after the ~~(seat)~~ delivery (placement) date of the last resin partial denture.

(iii) One replacement maxillary complete denture and one replacement mandibular complete denture per client, per client's lifetime. The replacement must occur at least five years after the delivery (placement) date of the initial complete denture or overdenture. The replacement does not require prior authorization.

~~(b) (The agency covers replacement of a complete denture or overdenture only if prior authorized, and only when the replacement occurs at least five years after the seat date of the initial complete denture or overdenture.)~~ The agency reviews requests for replacement that exceed the limits in this subsection (2) under WAC 182-501-0050(7).

(c) The provider must obtain a current signed Denture Agreement of Acceptance (HCA 13-809) form from the client at the conclusion of the final denture try-in and at the time of delivery for an agency-authorized complete denture. If the client abandons the complete denture after signing the agreement of acceptance, the agency will deny subsequent requests for the same type of dental prosthesis if the request occurs prior to the dates specified in this section. A copy of the signed agreement must be kept in the provider's files and be available upon request by the agency. Failure to submit the completed, signed Denture Agreement of Acceptance form when requested may result in recoupment of the agency's payment.

(3) **Resin partial dentures.** The agency covers resin partial dentures only as follows:

(a) For anterior and posterior teeth only when the following criteria are met:

(i) The remaining teeth in the arch must be free of periodontal disease and have a reasonable prognosis.

(ii) The client has established caries control.

(iii) The client has one or more missing anterior teeth or four or more missing posterior teeth (excluding teeth one, two, fifteen, and sixteen) ~~(:))~~ on the upper arch to qualify for a maxillary partial denture. Pontics on an existing fixed bridge do not count as missing teeth. The agency does not consider closed spaces of missing teeth to qualify as a missing tooth.

(iv) The client has one or more missing anterior teeth or four or more missing posterior teeth (excluding teeth seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, thirty-one, and thirty-two) on the lower arch to qualify for a mandibular partial denture. Pontics on an exist-

ing fixed bridge do not count as missing teeth. The agency does not consider closed spaces of missing teeth to qualify as a missing tooth.

~~((iv))~~ (v) There is a minimum of four functional, stable teeth remaining per arch.

~~((v))~~ (vi) There is a three-year prognosis for retention of the remaining teeth.

(b) Prior authorization is required.

(c) The agency considers three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the delivery (placement) date of the resin partial denture as part of the resin partial denture procedure and does not pay separately for this care.

(d) Replacement of a resin-based partial denture with a new resin partial denture or a complete denture if it occurs at least three years after the ~~(seat)~~ delivery (placement) date of the resin-based partial denture. The replacement partial or complete denture must be prior authorized and meet agency coverage criteria in (a) of this subsection.

~~(e) The agency (does not cover replacement of a cast-metal framework partial denture, with any type of denture, within five years of the seat date of the cast-metal partial denture.)~~ reviews requests for replacement that exceed the limits in this subsection (3) under WAC 182-501-0050(7).

(f) The provider must obtain a signed Partial Denture Agreement of Acceptance (HCA 13-809) form from the client at the time of delivery for an agency-authorized partial denture. A copy of the signed agreement must be kept in the provider's files and be available upon request by the agency. Failure to submit the completed, signed Partial Denture Agreement of Acceptance form when requested may result in recoupment of the agency's payment.

(4) **Provider requirements.**

(a) The agency requires a provider to bill for a removable partial or complete denture only after the delivery of the prosthesis, not at the impression date. Refer to subsection (5)(e) of this section for what the agency may pay if the removable partial or complete denture is not delivered and inserted.

(b) The agency requires a provider to submit the following with a prior authorization request for a removable resin partial or complete denture for a client residing in an alternate living facility ~~((ALF) as defined in WAC 182-513-1301 or in a))~~ or nursing facility ((as defined in WAC 182-500-0075)):

(i) The client's medical diagnosis or prognosis;

(ii) The attending physician's request for prosthetic services;

(iii) The attending dentist's or denturist's statement documenting medical necessity;

(iv) A written and signed consent for treatment from the client's legal guardian when a guardian has been appointed; and

(v) A completed copy of the Denture/Partial Appliance Request for Skilled Nursing Facility Client (HCA 13-788) form available from the agency's published billing instructions which can be downloaded from the agency's web site.

(c) The agency limits removable partial dentures to resin-based partial dentures for all clients residing in one of the facilities listed in (b) of this subsection.

(d) The agency requires a provider to deliver services and procedures that are of acceptable quality to the agency. The agency may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(5) **Other services for removable prosthodontics.** The agency covers:

(a) Adjustments to complete and partial dentures three months after the date of delivery.

(b) Repairs:

(i) To complete dentures, once in a twelve-month period, per arch. The cost of repairs cannot exceed the cost of the replacement denture. The agency covers additional repairs on a case-by-case basis and when prior authorized.

(ii) To partial dentures, once in a twelve-month period, per arch. The cost of the repairs cannot exceed the cost of the replacement partial denture. The agency covers additional repairs on a case-by-case basis and when prior authorized.

(c) A laboratory relin or rebase to a complete or partial denture, once in a three-year period when performed at least six months after the delivery (placement) date. The agency does not pay for a denture relin and a rebase in the same three-year period. An additional relin or rebase may be covered for complete or partial dentures on a case-by-case basis when prior authorized.

~~(d) ((Up to two tissue conditionings, only for clients age twenty and younger, and only when performed within three months after the delivery (placement) date.~~

~~(e))~~ Laboratory fees, subject to the following:

(i) The agency does not pay separately for laboratory or professional fees for complete and partial dentures; and

(ii) The agency may pay part of billed laboratory fees when the provider obtains prior authorization, and the client:

(A) Is not eligible at the time of delivery of the partial or complete denture;

(B) Moves from the state;

(C) Cannot be located;

(D) Does not participate in completing the partial or complete denture; or

(E) Dies.

(iii) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

**AMENDATORY SECTION** (Amending WSR 16-18-033, filed 8/26/16, effective 9/26/16)

**WAC 182-535-1094 Dental-related services—Covered—Oral and maxillofacial surgery services.** Clients described in WAC 182-535-1060 are eligible to receive the oral and maxillofacial surgery services listed in this section, subject to the coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Oral and maxillofacial surgery services.** The Medicaid agency:

(a) Requires enrolled providers who do not meet the conditions in WAC 182-535-1070(3) to bill claims for services that are listed in this subsection using only the current dental terminology (CDT) codes.

(b) Requires enrolled providers (oral and maxillofacial surgeons) who meet the conditions in WAC 182-535-1070(3) to bill claims using current procedural terminology (CPT) codes unless the procedure is specifically listed in the agency's current published billing guide as a CDT covered code (e.g., extractions).

(c) Covers nonemergency oral surgery performed in a hospital or ambulatory surgery center only for:

(i) Clients age eight and younger;

(ii) Clients age nine through twenty only on a case-by-case basis and when the site-of-service is prior authorized by the agency; and

(iii) Clients any age of the developmental disabilities administration of the department of social and health services (DSHS).

(d) For site-of-service and oral surgery CPT codes that require prior authorization, the agency requires the dental provider to submit current records (within the past twelve months), including:

(i) Documentation used to determine medical appropriateness;

(ii) Cephalometric films;

(iii) Radiographs (X rays);

(iv) Photographs; and

(v) Written narrative/letter of medical necessity, including proposed billing codes.

(e) Requires the client's dental record to include supporting documentation for each type of extraction or any other surgical procedure billed to the agency. The documentation must include:

(i) Appropriate consent form signed by the client or the client's legal representative;

(ii) Appropriate radiographs;

(iii) Medical justification with diagnosis;

(iv) Client's blood pressure, when appropriate;

(v) A surgical narrative and complete description of each service performed beyond surgical extraction or beyond code definition;

(vi) A copy of the post-operative instructions; and

(vii) A copy of all pre- and post-operative prescriptions.

(f) Covers ~~((routine))~~ simple and surgical extractions.

~~((Prior))~~ Authorization is required ((when the)) for the following:

(i) Surgical extractions of four or more teeth per arch over a six-month period, resulting in the client becoming edentulous in the maxillary arch or mandibular arch; ~~((or))~~

(ii) Simple extractions of four or more teeth per arch over a six-month period, resulting in the client becoming edentulous in the maxillary arch or mandibular arch; or

~~((or))~~  Tooth number is not able to be determined.

(g) Covers unusual, complicated surgical extractions with prior authorization.

(h) Covers tooth reimplantation/stabilization of accidentally evulsed or displaced teeth.

(i) Covers surgical extraction of unerupted teeth for clients ~~((age twenty and younger))~~.

(j) Covers debridement of a granuloma or cyst that is five millimeters or greater in diameter. The agency includes debridement of a granuloma or cyst that is less than five millimeters as part of the global fee for the extraction.



(k) Covers the following without prior authorization:

(i) Biopsy of soft oral tissue;

(ii) Brush biopsy; and

(iii) Surgical excision of soft tissue lesions.

(l) Requires providers to keep all biopsy reports or findings in the client's dental record.

(m) Covers the following with prior authorization (photos or radiographs, as appropriate, must be submitted to the agency with the prior authorization request):

(i) Alveoloplasty on a case-by-case basis.

~~(ii) ((Surgical excision of soft tissue lesions only on a case-by-case basis.~~

~~(iii))~~ Only the following excisions of bone tissue in conjunction with placement of complete or partial dentures:

(A) Removal of lateral exostosis;

(B) Removal of torus palatinus or torus mandibularis; and

(C) Surgical reduction of osseous tuberosity.

~~((iv))~~ (iii) Surgical access of unerupted teeth for clients age twenty and younger.

(2) **Surgical incisions.** The agency covers the following surgical incision-related services:

(a) Uncomplicated intraoral and extraoral soft tissue incision and drainage of abscess. The agency does not cover this service when combined with an extraction or root canal treatment. Documentation supporting the medical necessity must be in the client's record.

(b) Removal of foreign body from mucosa, skin, or subcutaneous alveolar tissue (~~when prior authorized~~). Documentation supporting the medical necessity for the service must be in the client's record.

(c) Frenuloplasty/frenulectomy for clients age six and younger without prior authorization.

(d) Frenuloplasty/frenulectomy for clients age seven through twelve only on a case-by-case basis and when prior authorized. Photos must be submitted to the agency with the prior authorization request. Documentation supporting the medical necessity for the service must be in the client's record.

(3) **Occlusal orthotic devices.** (Refer to WAC 182-535-1098 (4)(c) for occlusal guard coverage and limitations on coverage.) The agency covers:

(a) Occlusal orthotic devices for clients age twelve through twenty only on a case-by-case basis and when prior authorized.

(b) An occlusal orthotic device only as a laboratory processed full arch appliance.

**AMENDATORY SECTION** (Amending WSR 16-18-033, filed 8/26/16, effective 9/26/16)

**WAC 182-535-1098 Dental-related services—Covered—Adjunctive general services.** Clients described in WAC 182-535-1060 are eligible to receive the adjunctive general services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Adjunctive general services.** The medicaid agency:

(a) Covers palliative (emergency) treatment, not to include pupal debridement (see WAC 182-535-1086 (2)(b)),

for treatment of dental pain, limited to once per day, per client, as follows:

(i) The treatment must occur during limited evaluation appointments;

(ii) A comprehensive description of the diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record supporting the medical necessity of the treatment.

(b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.

(c) Covers office-based deep sedation/general anesthesia services:

(i) For all eligible clients age eight and younger and clients any age of the developmental disabilities administration of the department of social and health services (DSHS). Documentation supporting the medical necessity of the anesthesia service must be in the client's record.

(ii) For clients age nine through twenty on a case-by-case basis and when prior authorized, except for oral surgery services. For oral surgery services listed in WAC 182-535-1094 (1)(f) through (m) and clients with cleft palate diagnoses, deep sedation/general anesthesia services do not require prior authorization.

(iii) For clients age twenty-one and older when prior authorized. The agency considers these services for only those clients:

(A) With medical conditions such as tremors, seizures, or asthma;

(B) Whose ~~((files))~~ records contain documentation of tried and failed treatment under local anesthesia or other less costly sedation alternatives due to behavioral health conditions; or

(C) With other conditions for which general anesthesia is medically necessary, as defined in WAC 182-500-0070.

(d) Covers office-based intravenous moderate (conscious) sedation/analgesia:

(i) For any dental service for clients age twenty and younger, and for clients any age of the developmental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.

(ii) For clients age twenty-one and older when prior authorized. The agency considers these services for only those clients:

(A) With medical conditions such as tremors, seizures, or asthma;

(B) Whose ~~((files))~~ records contain documentation of tried and failed treatment under local anesthesia, or other less costly sedation alternatives due to behavioral health conditions; or

(C) With other conditions for which general anesthesia or conscious sedation is medically necessary, as defined in WAC 182-500-0070.

(e) Covers office-based nonintravenous conscious sedation:

(i) For any dental service for clients age twenty and younger, and for clients any age of the developmental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.

(ii) For clients age twenty-one and older, only when prior authorized.

(f) Requires providers to bill anesthesia services using the current dental terminology (CDT) codes listed in the agency's current published billing instructions.

(g) Requires providers to have a current anesthesia permit on file with the agency.

(h) Covers administration of nitrous oxide((;)) once per day, per client per provider.

(i) Requires providers of oral or parenteral conscious sedation, deep sedation, or general anesthesia to meet:

(i) The prevailing standard of care;

(ii) The provider's professional organizational guidelines;

(iii) The requirements in chapter 246-817 WAC; and

(iv) Relevant department of health (DOH) medical, dental, or nursing anesthesia regulations.

(j) Pays for dental anesthesia services according to WAC 182-535-1350.

(k) Covers professional consultation/diagnostic services as follows:

(i) A dentist or a physician other than the practitioner providing treatment must provide the services; and

(ii) A client must be referred by the agency for the services to be covered.

(2) **Professional visits.** The agency covers:

(a) Up to two house/extended care facility calls (visits) per facility, per provider. The agency limits payment to two facilities per day, per provider.

(b) One hospital visit, including emergency care, per day, per provider, per client, and not in combination with a surgical code unless the decision for surgery is a result of the visit.

(c) Emergency office visits after regularly scheduled hours. The agency limits payment to one emergency visit per day, per client, per provider.

(3) **Drugs and medicaments (pharmaceuticals).**

(a) The agency covers oral sedation medications only when prescribed and the prescription is filled at a pharmacy. The agency does not cover oral sedation medications that are dispensed in the provider's office for home use.

(b) The agency covers therapeutic parenteral drugs as follows:

(i) Includes antibiotics, steroids, anti-inflammatory drugs, or other therapeutic medications. This does not include sedative, anesthetic, or reversal agents.

(ii) Only one single-drug injection or one multiple-drug injection per date of service.

(c) For clients age twenty and younger, the agency covers other drugs and medicaments dispensed in the provider's office for home use. This includes, but is not limited to, oral antibiotics and oral analgesics. The agency does not cover the time spent writing prescriptions.

(4) **Miscellaneous services.** The agency covers:

(a) Behavior management provided ~~((in dental offices or dental clinics.))~~ by a dental provider or clinic. The agency does not cover assistance with managing a client's behavior provided by a dental provider or staff member delivering the client's dental treatment.

(i) Documentation supporting the need for behavior management must be in the client's record((Behavior management is for the following clients)) and including the following:

(A) A description of the behavior to be managed;

(B) The behavior management technique used; and

(C) The identity of the additional professional staff used to provide the behavior management.

(ii) Clients, who meet one of the following criteria and whose documented behavior requires the assistance of one additional professional staff employed by the dental provider or clinic to protect the client and the professional staff from injury while treatment is rendered, may receive behavior management:

((+)) (A) Clients age eight and younger;

((+)) (B) Clients age nine through twenty, only on a case-by-case basis and when prior authorized;

((+)) (C) Clients any age of the developmental disabilities administration of DSHS;

((+)) (D) Clients diagnosed with autism; ~~(and~~

(E) Clients who reside in an alternate living facility (ALF) as defined in WAC 182-513-1301, or in a nursing facility as defined in WAC 182-500-0075.

(iii) Behavior management can be performed in the following settings:

(A) Clinics (including independent clinics, tribal health clinics, federally qualified health centers, rural health clinics, and public health clinics);

(B) Offices;

(C) Homes (including private homes and group homes); and

(D) Facilities (including nursing facilities and alternate living facilities).

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity of the service must be in the client's record.

(c) Occlusal guards when medically necessary and prior authorized. (Refer to WAC 182-535-1094(3) for occlusal orthotic device coverage and coverage limitations.) The agency covers:

(i) An occlusal guard only for clients age twelve through twenty when the client has permanent dentition; and

(ii) An occlusal guard only as a laboratory processed full arch appliance.

AMENDATORY SECTION (Amending WSR 16-18-033, filed 8/26/16, effective 9/26/16)

**WAC 182-535-1099 Dental-related services for clients of the developmental disabilities administration of the department of social and health services.** Subject to coverage limitations and restrictions identified for a specific service, the medicaid agency pays for the additional dental-related services listed in this section that are provided to clients of the developmental disabilities administration of the department of social and health services (DSHS), regardless of age.

(1) **Preventive services.** The agency covers:

(a) Periodic oral evaluations once every four months per client, per provider.

(b) ~~((Dental))~~ Prophylaxis once every four months.

(c) Periodontal maintenance once every six months (see subsection (3) of this section for limitations on periodontal scaling and root planing).

(d) Topical fluoride varnish, rinse, foam or gel, once every four months, per client, per provider or clinic.

(e) Sealants:

(i) Only when used on the occlusal surfaces of:

(A) Primary teeth A, B, I, J, K, L, S, and T; or

(B) Permanent teeth two, three, four, five, twelve, thirteen, fourteen, fifteen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, and thirty-one.

(ii) Once per tooth in a two-year period.

(2) **Other restorative services.** The agency covers:

(a) All recementations of permanent indirect crowns.

(b) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, resin-based composite crowns (direct), prefabricated esthetic coated stainless steel crowns, and prefabricated resin crowns for primary anterior teeth once every two years only for clients age twenty and younger without prior authorization.

(c) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, resin-based composite crowns (direct), prefabricated esthetic coated stainless steel crowns, and prefabricated resin crowns for primary posterior teeth once every two years for clients age twenty and younger without prior authorization if:

(i) Decay involves three or more surfaces for a primary first molar;

(ii) Decay involves four or more surfaces for a primary second molar; or

(iii) The tooth had a pulpotomy.

(d) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, and prefabricated resin crowns for permanent posterior teeth excluding one, sixteen, seventeen, and thirty-two once every two years without prior authorization for any age.

(3) **Periodontic services.**

(a) **Surgical periodontal services.** The agency covers:

(i) Gingivectomy/gingivoplasty once every three years. Documentation supporting the medical necessity of the service must be in the client's record (e.g., drug induced gingival hyperplasia).

(ii) Gingivectomy/gingivoplasty with periodontal scaling and root planing or periodontal maintenance when the services are performed:

(A) In a hospital or ambulatory surgical center; or

(B) For clients under conscious sedation, deep sedation, or general anesthesia.

(b) **Nonsurgical periodontal services.** The agency covers:

(i) Periodontal scaling and root planing, one time per quadrant in a twelve-month period.

(ii) Periodontal maintenance (four quadrants) substitutes for an eligible periodontal scaling or root planing, twice in a twelve-month period.

(iii) Periodontal maintenance allowed six months after scaling or root planing.

(iv) Full-mouth or quadrant debridement allowed once in a twelve-month period.

(v) Full-mouth scaling in the presence of generalized moderate or severe gingival inflammation.

(4) **Adjunctive general services.** The agency covers:

(a) Oral parenteral conscious sedation, deep sedation, or general anesthesia for any dental services performed in a dental office or clinic. Documentation supporting the medical necessity must be in the client's record.

(b) Sedation services according to WAC 182-535-1098 (1)(c) and (e).

(5) **Nonemergency dental services.** The agency covers nonemergency dental services performed in a hospital or an ambulatory surgical center for services listed as covered in WAC 182-535-1082, 182-535-1084, 182-535-1086, 182-535-1088, and 182-535-1094. Documentation supporting the medical necessity of the service must be included in the client's record.

(6) **Miscellaneous services - Behavior management.** The agency covers behavior management ~~((provided in dental offices or dental clinics. Documentation supporting the medical necessity of the service must be included in the client's record))~~ according to WAC 182-535-1098.

AMENDATORY SECTION (Amending WSR 15-10-043, filed 4/29/15, effective 5/30/15)

**WAC 182-535-1100 Dental-related services—Not covered.** (1) The medicaid agency does not cover the following under the dental program:

(a) The dental-related services described in subsection (2) of this section unless the services are covered under the early periodic screening, ~~((diagnosis))~~ diagnostic, and treatment (EPSDT) program. When EPSDT applies, the agency evaluates a noncovered service, equipment, or supply according to the process in WAC 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental.

(b) Any service specifically excluded by statute.

(c) More costly services when less costly, equally effective services as determined by the agency are available.

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) That the agency or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The agency's current published documents.

(2) The agency does not cover dental-related services listed under the following categories of service (see subsection (1)(a) of this section for services provided under the EPSDT program):

(a) **Diagnostic services.** The agency does not cover:

(i) Detailed and extensive oral evaluations or reevaluations.

(ii) Posterior-anterior or lateral skull and facial bone survey films.

- (iii) Any temporomandibular joint films.
- (iv) Tomographic surveys/3-D imaging.
- (v) Comprehensive periodontal evaluations.
- (vi) Viral cultures, genetic testing, caries susceptibility tests, or adjunctive prediagnostic tests.
- (b) **Preventive services.** The agency does not cover:
  - (i) Nutritional counseling for control of dental disease.
  - (ii) Removable space maintainers of any type.
  - (iii) Sealants placed on a tooth with the same-day occlusal restoration, preexisting occlusal restoration, or a tooth with occlusal decay.
  - (iv) Custom fluoride trays of any type.
  - (v) Bleach trays.
- (c) **Restorative services.** The agency does not cover:
  - (i) Restorations for wear on any surface of any tooth without evidence of decay through the ~~((dentoenamel))~~ dentinoenamel junction (DEJ) or on the root surface.
  - (ii) Preventative restorations.
  - (iii) Labial veneer resin or porcelain laminate restorations.
  - (iv) Sedative fillings.
  - (v) Crowns and crown related services.
    - (A) Gold foil restorations.
    - (B) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations.
    - (C) Crowns for cosmetic purposes (e.g., peg laterals and tetracycline staining).
    - (D) Permanent indirect crowns for posterior teeth.
    - (E) Permanent indirect crowns on permanent anterior teeth for clients age fourteen ~~((years of age))~~ and younger.
    - (F) Temporary or provisional crowns (including ion crowns).
    - (G) Any type of coping.
    - (H) Crown repairs.
    - (I) Crowns on teeth one, sixteen, seventeen, and thirty-two.
  - (vi) Polishing or recontouring restorations or overhang removal for any type of restoration.
  - (vii) Any services other than extraction on supernumerary teeth.
- (d) **Endodontic services.** The agency does not cover:
  - (i) Indirect or direct pulp caps.
  - (ii) Any endodontic ~~((therapy))~~ treatment on primary teeth, except as described in WAC 182-535-1086(3)~~((a))~~.
- (e) **Periodontic services.** The agency does not cover:
  - (i) Surgical periodontal services including, but not limited to:
    - (A) Gingival flap procedures.
    - (B) Clinical crown lengthening.
    - (C) Osseous surgery.
    - (D) Bone or soft tissue grafts.
    - (E) Biological material to aid in soft and osseous tissue regeneration.
    - (F) Guided tissue regeneration.
    - (G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts.
    - (H) Distal or proximal wedge procedures.

- (ii) Nonsurgical periodontal services including, but not limited to:
  - (A) Intracoronal or extracoronal provisional splinting.
  - (B) Full mouth or quadrant debridement (except for clients of the developmental disabilities administration).
  - (C) Localized delivery of chemotherapeutic agents.
  - (D) Any other type of surgical periodontal service.
- (f) **Removable prosthodontics.** The agency does not cover:
  - (i) Removable unilateral partial dentures.
  - (ii) Any interim complete or partial dentures.
  - (iii) Flexible base partial dentures.
  - (iv) Any type of permanent soft relin (e.g., molloplast).
  - (v) Precision attachments.
  - (vi) Replacement of replaceable parts for semi-precision or precision attachments.
  - (vii) Replacement of second or third molars for any removable prosthesis.
  - (viii) Immediate dentures.
  - (ix) Cast-metal framework partial dentures.
  - (x) Replacement of ~~((upper and lower prosthodontic no sooner than every five years for complete dentures and every three years for resin partial dentures:))~~ agency-purchased removable prosthodontics that have been lost, broken, stolen, sold, or destroyed as a result of the client's carelessness, negligence, recklessness, deliberate intent, or misuse as described in WAC 182-501-0050.
  - ~~((xi) More than one replacement of complete denture upper and lower arch per lifetime))~~
- (g) **Implant services.** The agency does not cover:
  - (i) Any type of implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implants, eosteal implants, and transosteal implants), abutments or implant supported crowns, abutment supported retainers, and implant supported retainers.
  - (ii) Any maintenance or repairs to procedures listed in (g)(i) of this subsection.
  - (iii) The removal of any implant as described in (g)(i) of this subsection.
- (h) **Fixed prosthodontics.** The agency does not cover any type of:
  - (i) Fixed partial denture pontic.
  - (ii) Fixed partial denture retainer.
  - (iii) Precision attachment, stress breaker, connector bar, coping, cast post, or any other type of fixed attachment or prosthesis.
  - ~~((iv) Occlusal orthotic splint or device, bruxing or grinding splint or device, temporomandibular joint splint or device, or sleep apnea splint or device.))~~
- (i) **Oral maxillofacial prosthetic services.** The agency does not cover any type of oral or facial prosthesis other than those listed in WAC 182-535-1092.
- (j) **Oral and maxillofacial surgery.** The agency does not cover:
  - (i) Any oral surgery service not listed in WAC 182-535-1094.
  - (ii) ~~((Any oral surgery service that is not listed in the agency's list of covered current procedural terminology (CPT) codes published in the agency's current rules or billing instructions.))~~

~~(iii))~~ Vestibuloplasty.

(k) **Adjunctive general services.** The agency does not cover:

(i) Anesthesia, including, but not limited to:

(A) Local anesthesia as a separate procedure.

(B) Regional block anesthesia as a separate procedure.

(C) Trigeminal division block anesthesia as a separate procedure.

(D) Medication for oral sedation, or therapeutic intramuscular (IM) drug injections, including antibiotic and injection of sedative.

(E) Application of any type of desensitizing medicament or resin.

(ii) Other general services including, but not limited to:

(A) Fabrication of an athletic mouthguard.

(B) ~~((Nightguards.))~~ Sleep apnea devices or splints.

(C) Occlusion analysis.

(D) Occlusal adjustment, tooth or restoration adjustment or smoothing, or odontoplasties.

(E) Enamel microabrasion.

(F) Dental supplies such as toothbrushes, toothpaste, floss, and other take home items.

(G) Dentist's or dental hygienist's time writing or calling in prescriptions.

(H) Dentist's or dental hygienist's time consulting with clients on the phone.

(I) Educational supplies.

(J) Nonmedical equipment or supplies.

(K) Personal comfort items or services.

(L) Provider mileage or travel costs.

(M) Fees for no-show, canceled, or late arrival appointments.

(N) Service charges of any type, including fees to create or copy charts.

(O) Office supplies used in conjunction with an office visit.

(P) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

(Q) Botox or ~~((derma fillers))~~ dermal fillers.

(3) The agency does not cover the following dental-related services for clients age twenty-one (~~((years of age))~~) and older:

(a) The following diagnostic services:

(i) Occlusal intraoral radiographs;

(ii) Diagnostic casts;

(iii) Sealants (for clients of the developmental disabilities administration, see WAC 182-535-1099);

(iv) Pulp vitality tests.

(b) The following restorative services:

(i) Prefabricated resin crowns;

(ii) Any type of core buildup, cast post and core, or prefabricated post and core.

(c) The following endodontic services:

(i) Endodontic treatment on permanent bicuspid or molar teeth;

(ii) Any apexification/recalcification procedures;

(iii) Any apicoectomy/periradicular surgical endodontic procedures including, but not limited to, retrograde fillings (except for anterior teeth), root amputation, reimplantation, and hemisections.

(d) The following adjunctive general services:

(i) Occlusal guards, occlusal orthotic splints or devices, bruxing or grinding splints or devices, or temporomandibular joint splints or devices; and

(ii) Analgesia or anxiolysis as a separate procedure except for administration of nitrous oxide.

(4) The agency evaluates a request for any dental-related services listed as noncovered in this chapter under the provisions of WAC 182-501-0160.

AMENDATORY SECTION (Amending WSR 16-18-033, filed 8/26/16, effective 9/26/16)

**WAC 182-535-1220 Obtaining prior authorization for dental-related services.** (1) The medicaid agency uses the determination process for payment described in WAC 182-501-0165 for covered dental-related services that require prior authorization.

(2) The agency requires a dental provider who is requesting prior authorization to submit sufficient, current (within the past twelve months), objective clinical information to establish medical necessity. The request must be submitted in writing on the General Information for Authorization (HCA 13-835) form, available on the agency's web site.

(3) The agency may request additional information as follows:

(a) Additional radiographs (X rays) (refer to WAC 182-535-1080(2));

(b) Study models;

(c) Photographs; and

(d) Any other information as determined by the agency.

(4) The agency may require second opinions and/or consultations by a licensed independent doctor of dental surgery (DDS)/doctor of dental medicine (DMD) before authorizing any procedure.

(5) When the agency authorizes a dental-related service for a client, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The authorization is valid for six to twelve months as indicated in the agency's authorization letter and only if the client is eligible for covered services on the date of service.

(6) The agency denies a request for a dental-related service when the requested service:

(a) Is covered by another state agency program;

(b) Is covered by an ~~((agency or other))~~ entity outside the agency; or

(c) Fails to meet the program criteria, limitations, or restrictions in this chapter.

AMENDATORY SECTION (Amending WSR 16-13-110, filed 6/20/16, effective 8/1/16)

**WAC 182-535-1245 Access to baby and child dentistry (ABCD) program.** The access to baby and child dentistry (ABCD) program is a program established to increase access to dental services for medicaid-eligible clients ages five and younger.

(1) Client eligibility for the ABCD program is as follows:

(a) Clients must be age five and younger. Once enrolled in the ABCD program, eligible clients are covered until their sixth birthday.

(b) Clients eligible under one of the following medical assistance programs are eligible for the ABCD program:

- (i) Categorically needy program (CNP);
- (ii) Limited casualty program-medically needy program (LCP-MNP);
- (iii) Children's health program; or
- (iv) State children's health insurance program (SCHIP).

(c) ABCD program services for eligible clients enrolled in a managed care organization (MCO) plan are paid through the fee-for-service payment system.

(2) Health care providers and community service programs identify and refer eligible clients to the ABCD program. If enrolled, the client and an adult family member may receive:

- (a) Oral health education;
- (b) "Anticipatory guidance" (expectations of the client and the client's family members, including the importance of keeping appointments); and
- (c) Assistance with transportation, interpreter services, and other issues related to dental services.

(3) The medicaid agency pays enhanced fees only to ABCD-certified dentists and other agency-approved certified providers for furnishing ABCD program services. ABCD program services include, when appropriate:

(a) Family oral health education. An oral health education visit:

(i) Is limited to one visit per day per family, up to two visits per child in a twelve-month period, per provider or clinic; and

(ii) Must include documentation of all of the following in the client's record:

- (A) "Lift the lip" training;
- (B) Oral hygiene training;
- (C) Risk assessment for early childhood caries;
- (D) Dietary counseling;
- (E) Discussion of fluoride supplements; and
- (F) Documentation in the client's ~~((file or the client's designated adult member's (family member or other responsible adult) file))~~ record to record the activities provided and duration of the oral education visit.

(b) Comprehensive oral evaluations as defined in WAC 182-535-1050, once per client, per provider or clinic, as an initial examination. The agency covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years;

(c) Periodic oral evaluations as defined in WAC 182-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation;

(d) Topical application of fluoride varnish;

(e) Amalgam, resin, and glass ionomer restorations on primary teeth, as specified in the agency's current published documents;

(f) Interim therapeutic restorations (ITRs) for primary teeth, only for clients age five and younger. The agency pays an enhanced rate for these restorations to ABCD-certified, ITR-trained dentists as follows:

(i) A one-surface, resin-based composite restoration with a maximum of five teeth per visit; and

(ii) Restorations on a tooth can be done every twelve months through age five, or until the client can be definitively treated for a restoration.

~~((g))~~ (g) Therapeutic pulpotomy;

~~((g))~~ (h) Prefabricated stainless steel crowns on primary teeth, as specified in the agency's current published documents;

~~((h))~~ (i) Resin-based composite crowns on anterior primary teeth; and

~~((h))~~ (j) Other dental-related services, as specified in the agency's current published documents.

(4) The client's ~~((file))~~ record must show documentation of the ABCD program services provided.

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

**WAC 182-535A-0010 Orthodontic services—Definitions.** The following definitions and those found in chapter 182-500 WAC apply to this chapter.

**"Adolescent dentition"** means teeth that are present after the loss of primary teeth and prior to the cessation of growth that affects orthodontic treatment.

**"Appliance placement"** means the application of orthodontic attachments to the teeth for the purpose of correcting dentofacial abnormalities.

**"Cleft"** means an opening or fissure involving the dentition and supporting structures, especially one occurring in utero. These can be:

~~((+))~~ (a) Cleft lip;

~~((+))~~ (b) Cleft palate (involving the roof of the mouth);

or

~~((+))~~ (c) Facial clefts (e.g., macrostomia).

**"Comprehensive full orthodontic treatment"** means utilizing fixed orthodontic appliances for treatment of ~~((the permanent))~~ adolescent dentition leading to the improvement of a client's severe handicapping craniofacial dysfunction and/or dentofacial deformity, including anatomical and functional relationships.

**"Craniofacial anomalies"** means abnormalities of the head and face, either congenital or acquired, involving disruption of the dentition and supporting structures.

**"Craniofacial team"** means a cleft palate/maxillofacial team or an American Cleft Palate Association-certified craniofacial team. These teams are responsible for the management (review, evaluation, and approval) of patients with cleft palate craniofacial anomalies to provide integrated management, promote parent-professional partnership, and make appropriate referrals to implement and coordinate treatment plans.

**"Crossbite"** means an abnormal relationship of a tooth or teeth to the opposing tooth or teeth, in which normal buccolingual or labiolingual relations are reversed.

**"Dental dysplasia"** means an abnormality in the development of the teeth.

**"Ectopic eruption"** means a condition in which a tooth erupts in an abnormal position or is fifty percent blocked out of its normal alignment in the dental arch.

"**EPSDT**" means the agency's early and periodic screening, (~~(diagnosis)~~) diagnostic, and treatment program for clients twenty years of age and younger as described in chapter 182-534 WAC.

"**Hemifacial microsomia**" means a developmental condition involving the first and second brachial arch. This creates an abnormality of the upper and lower jaw, ear, and associated structures (half or part of the face (~~(appears)~~) is smaller (~~(sized)~~) in size).

"**Interceptive orthodontic treatment**" means procedures to lessen the severity or future effects of a malformation and to affect or eliminate the cause. Such treatment may occur in the primary or transitional dentition and may include such procedures as the redirection of ectopically erupting teeth, correction of isolated dental cross-bite, or recovery of recent minor space loss where overall space is adequate.

"**Limited (~~(transitional)~~) orthodontic treatment**" means orthodontic treatment with a limited objective, not involving the entire dentition. It may be directed only at the existing problem, or at only one aspect of a larger problem in which a decision is made to defer or forego more comprehensive therapy.

"**Malocclusion**" means improper alignment of biting or chewing surfaces of upper and lower teeth or abnormal relationship of the upper and lower dental arches.

"**Maxillofacial**" means relating to the jaws and face.

"**Occlusion**" means the relation of the upper and lower teeth when in functional contact during jaw movement.

"**Orthodontics**" means treatment involving the use of any appliance, in or out of the mouth, removable or fixed, or any surgical procedure designed to redirect teeth and surrounding tissues.

"**Orthodontist**" means a dentist who specializes in orthodontics, who is a graduate of a postgraduate program in orthodontics that is accredited by the American Dental Association, and who meets the licensure requirements of the department of health.

"**Permanent dentition**" means those teeth that succeed the primary teeth and the additional molars that erupt.

"**Primary dentition**" means teeth that develop and erupt first in order of time and are normally shed and replaced by permanent teeth.

"**Transitional dentition**" means the final phase from primary to permanent dentition, in which most primary teeth have been lost or are in the process of exfoliating and the permanent successors are erupting.

**AMENDATORY SECTION** (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

**WAC 182-535A-0020 Orthodontic treatment and orthodontic services—Client eligibility.** (1) Subject to the limitations of this chapter (~~(and the age restrictions listed in this section)~~), the medicaid agency covers medically necessary orthodontic treatment and orthodontic-related services for severe handicapping malocclusions, craniofacial anomalies, or cleft lip or palate, for eligible clients through age twenty. Refer to WAC 182-501-0060 to see which Washington apple health programs include orthodontic services in their benefit package. (~~(Any orthodontic treatment plan that~~

~~extends beyond the client's twenty-first birthday will not be approved by the agency.)~~

(2) Eligible clients may receive the same orthodontic treatment and orthodontic-related services in recognized out-of-state bordering cities on the same basis as if provided in-state. See WAC 182-501-0175.

(3) Eligible clients may receive the same orthodontic treatment and orthodontic-related services for continued orthodontic treatment when originally rendered by a nonmedicaid or out-of-state provider as follows:

(a) The provider must submit the initial orthodontic case study and treatment plan records with the request for continued treatment.

(b) The agency evaluates the initial orthodontic case study and treatment plan to determine if the client met the agency's orthodontic criteria per WAC 182-535A-0040 (1) through (3).

(c) The agency determines continued treatment duration based on the client's current orthodontic conditions.

(d) The agency does not cover continued treatment if the client's initial condition did not meet the agency's criteria for the initial orthodontic treatment. The agency pays a deband and retainer fee if the client does not meet the initial orthodontic treatment criteria.

**AMENDATORY SECTION** (Amending WSR 16-10-064, filed 5/2/16, effective 6/2/16)

**WAC 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage.** (1) Subject to the limitations in this section and other applicable WAC, the medicaid agency covers orthodontic treatment and orthodontic-related services for a client who has one of the medical conditions listed in (a) and (b) of this subsection. Treatment and follow-up care must be performed only by an orthodontist or agency-recognized craniofacial team and do not require prior authorization.

(a) Cleft lip and palate, cleft palate, or cleft lip with alveolar process involvement.

(b) The following craniofacial anomalies including, but not limited to:

- (i) Hemifacial microsomia;
- (ii) Craniosynostosis syndromes;
- (iii) Cleidocranial dental dysplasia;
- (iv) Arthrogyposis; (~~(øø)~~)
- (v) Marfan syndrome;
- (vi) Treacher Collins syndrome;
- (vii) Ectodermal dysplasia; or
- (viii) Achondroplasia.

(2) Subject to prior authorization requirements and the limitations in this section and other applicable WAC, the agency covers orthodontic treatment and orthodontic-related services for severe malocclusions with a Washington Modified Handicapping Labiolingual Deviation (HLD) Index Score of twenty-five or higher. The agency determines the final HLD Index Score based on documentation submitted by the provider.

(3) The agency may cover orthodontic treatment for dental malocclusions other than those listed in subsection (1) and (2) of this section on a case-by-case basis and when prior

authorized. The agency determines medical necessity based on documentation submitted by the provider.

(4) The agency does not cover the following orthodontic treatment or orthodontic-related services:

(a) ~~((Replacement of lost, or repair of broken, orthodontic appliances;~~

~~((b)))~~ Orthodontic treatment for cosmetic purposes;

~~((c)))~~ (b) Orthodontic treatment that is not medically necessary (as defined in WAC 182-500-0070);

~~((d))~~ (c) Orthodontic treatment provided out-of-state, except as stated in WAC 182-501-0180 (see also WAC 182-501-0175 for medical care provided in bordering cities); ~~((e))~~

~~((e)))~~ (d) Orthodontic treatment and orthodontic-related services that do not meet the requirements of this section or other applicable WAC; or

(e) Case studies that do not include a definitive orthodontic treatment plan.

(5) The agency covers the following orthodontic treatment and orthodontic-related services with prior authorization, subject to the following limitations ~~((listed))~~ (providers must bill for these services according to WAC 182-535A-0060):

(a) Panoramic radiographs (X rays) when medically necessary.

(b) Interceptive orthodontic treatment, when medically necessary.

(c) Limited ~~((transitional))~~ orthodontic treatment, when medically necessary. ~~((The treatment must be completed within twelve months of the date of the original appliance placement (see subsection (8)(a) of this section for information on limitation extensions). The agency's payment includes final records, photos, panoramic X rays, cephalometric films, and final trimmed study models.))~~

(i) Approval for limited orthodontic treatment includes up to twelve months of treatment. (See subsection (7)(a) of this section for information on limitation extensions.)

(ii) The agency may approve a single impacted tooth for limited orthodontic treatment.

(d) Comprehensive full orthodontic treatment on adolescent dentition, when medically necessary. The treatment must be completed within thirty months ~~((of))~~ from the date of the original appliance placement (see subsection ~~((8))~~ (7)(a) of this section for information on limitation extensions). ~~((The agency's payment includes final records, photos, panoramic X rays, cephalometric films, and final trimmed study models.))~~

(e) Replacement retainers after the first replacement retainer and within six months of debanding.

(f) Orthodontic appliance removal as a stand-alone service only when:

(i) The client's appliance was placed by a different provider or dental clinic; and

(ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.

~~((f)))~~ (g) Other medically necessary orthodontic treatment and orthodontic-related services as determined by the agency.

~~((6))~~ ~~((The treatment plan must indicate that the course of treatment will be completed prior to the client's twenty-first birthday.~~

~~((7)))~~ The treatment must meet industry standards and correct the medical issue. If treatment is discontinued prior to completion, or treatment objectives are not obtained, clear documentation must be kept in the client's ~~((file))~~ record explaining why treatment was discontinued or not completed or why treatment goals were not achieved.

~~((8))~~ (7) The agency evaluates a request for orthodontic treatment or orthodontic-related services:

(a) That are in excess of the limitations or restrictions listed in this section, according to WAC 182-501-0169; and

(b) That are listed as noncovered according to WAC 182-501-0160.

~~((9))~~ (8) The agency reviews requests for orthodontic treatment or orthodontic-related services for clients who are eligible for services under the EPSDT program according to the provisions of WAC 182-534-0100.

AMENDATORY SECTION (Amending WSR 16-10-064, filed 5/2/16, effective 6/2/16)

**WAC 182-535A-0060 Orthodontic treatment and orthodontic-related services—Payment.** (1) The medicaid agency pays providers for furnishing covered orthodontic treatment and orthodontic-related services described in WAC 182-535A-0040 according to this section and other applicable WAC.

(2) The agency considers that a provider who furnishes covered orthodontic treatment and orthodontic-related services to an eligible client ~~((has accepted))~~ accepts the agency's fees as published in the agency's fee schedules according to WAC 182-502-0010.

(3) The agency requires a provider to deliver services and procedures that are of acceptable quality to the agency. The agency may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

**(4) Interceptive orthodontic treatment.** The agency pays for interceptive orthodontic treatment ~~((as follows:~~

~~((a) The first three months of treatment starts the date the initial appliance is placed and includes active treatment for the first three months.~~

~~((b) Treatment must be completed within twelve months of the date of appliance placement))~~ on primary or transitional dentition in one payment that includes all professional fees, laboratory costs, and required follow-up.

~~((4)))~~ (5) Limited ((transitional)) orthodontic treatment. The agency pays for limited ~~((transitional))~~ orthodontic treatment on transitional or adolescent dentition as follows:

(a) The first three months of treatment starts on the date the initial appliance is placed and includes active treatment for the first three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

(i) The replacement of brackets and lost or broken orthodontic appliances;

(ii) Appliance removal;



(iii) The initial and the first replacement retainer fees within the first six months after debanding; and

(iv) The final records (photos, a panoramic X ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed after each three-month treatment interval during the treatment.

~~((e) Treatment must be completed within twelve months of the date of appliance placement.))~~ (d) Treatment provided after ~~((one year))~~ twelve months from the date the appliance is placed requires a limitation extension. See WAC 182-535A-0040(8).

~~((5))~~ **(6) Comprehensive full orthodontic treatment.** The agency pays for comprehensive full orthodontic treatment on adolescent dentition as follows:

(a) The first six months of treatment starts the date the initial appliance is placed and includes active treatment for the first six months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) The agency's initial payment includes:

(i) The replacement of brackets and lost or broken orthodontic appliances;

(ii) Appliance removal;

(iii) The initial and the first replacement retainer fees within six months after debanding; and

(iv) The final records (photos, a panoramic X ray, a cephalometric film, and final trimmed study models).

(c) Continuing follow-up treatment must be billed after each three-month treatment interval, with the first three-month interval beginning six months after the initial appliance placement.

~~((e) Treatment must be completed within thirty months of the date of appliance placement.))~~ (d) Treatment provided after thirty months from the date the appliance is placed requires a limitation extension. See WAC 182-535A-0040(8).

~~((6))~~ **(7) Payment for orthodontic treatment and orthodontic-related services is based on the agency's published fee schedule.**

~~((7))~~ **(8) Orthodontic providers who are in agency-designated bordering cities must:**

(a) Meet the licensure requirements of their state; and

(b) Meet the same criteria for payment as in-state providers, including the requirements to contract with the agency.

~~((8))~~ **(9) If the client's eligibility for orthodontic treatment under WAC 182-535A-0020 ends before the conclusion of the orthodontic treatment, payment for any remaining treatment is the client's responsibility. The agency does not pay for these services.**

~~((9))~~ **(10) Any orthodontic treatment provided after the client's twenty-first birthday will not be paid for by the agency and will become the client's financial responsibility.**

**(11) The client is responsible for payment of any orthodontic service or treatment received during any period of medicaid ineligibility, even if the treatment was started when the client was eligible. The agency does not pay for these services.**

~~((10))~~ **(12) See WAC 182-502-0160 and 182-501-0200 for when a provider or a client is responsible to pay for a covered service.**

## WSR 17-20-100

### PERMANENT RULES

#### DEPARTMENT OF COMMERCE

[Filed October 4, 2017, 7:52 a.m., effective November 4, 2017]

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

Purpose: To amend existing rules to reflect recent growth management hearings board (GMHB) cases and supreme court decisions pertaining to development regulations and the adequate protection of critical areas' functions and values where agricultural activities take place. The proposal also adopts amendments to reflect legislative changes to the Growth Management Act, which was amended in 2011 to include a chapter on the voluntary stewardship program (RCW 36.70A.700). This includes amending rules to add the statutory definition for "agricultural activities," to describe the responsibility of counties enrolled in the voluntary stewardship program when conducting a periodic review and update of comprehensive plans and development regulations, to clarify the relationship between the shoreline management program and the voluntary stewardship program, and to provide direction on the exemption of agricultural activities in critical areas. Additionally, a housekeeping amendment is proposed to comply with updated definitions in RCW 82.02.090. The rule update includes new WAC 365-196-832 within chapter 365-196 WAC, to provide specific guidance to implement the voluntary stewardship program. The proposal amends WAC 365-196-200, 365-196-580, 365-196-610, 365-196-830 and 365-196-850; and new WAC 365-196-832.

Citation of Rules Affected by this Order: New WAC 365-196-832; and amending WAC 365-196-200, 365-196-580, 365-196-610, 365-196-830, and 365-196-850.

Statutory Authority for Adoption: RCW 36.70A.050, 36.70A.190.

Adopted under notice filed as WSR 17-15-084 on July 17, 2017.

Changes Other than Editing from Proposed to Adopted Version: Minor, nonsubstantive changes were made to WAC 365-196-610 (1)(a) and (3)(b), 365-196-830 (8)(b), 365-196-832 (4) and (5)(d), changing "necessary" to "needed" for consistency throughout the rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 5, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 5, Repealed 0.

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

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

Date Adopted: October 2, 2017.

Brian Bonlender  
Director

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

**WAC 365-196-200 Statutory definitions.** The following definitions are contained in chapter 36.70A RCW and provided under this section for convenience. Most statutory definitions included in this section are located in RCW 36.70A.030. Other relevant statutory terms defined elsewhere in chapter 36.70A RCW are also included in this section.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural activities" means all agricultural uses and practices as defined in RCW 90.58.065.

(3) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by \*RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock and that has long-term commercial significance for agricultural production.

~~((3))~~ (4) "City" means any city or town, including a code city.

~~((4))~~ (5) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

~~((5))~~ (6) "Critical areas" include the following areas and ecosystems:

- (a) Wetlands;
- (b) Areas with a critical recharging effect on aquifers used for potable water;
- (c) Fish and wildlife habitat conservation areas;
- (d) Frequently flooded areas; and
- (e) Geologically hazardous areas.

"Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.

~~((6))~~ (7) "Department" means the department of commerce.

~~((7))~~ (8) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

~~((8))~~ (9) "Essential public facilities" includes those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and in-

patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

~~((9))~~ (10) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under \*RCW 84.33.100 through 84.33.110, and that has long-term commercial significance. In determining whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered:

(a) The proximity of the land to urban, suburban, and rural settlements;

(b) Surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses;

(c) Long-term local economic conditions that affect the ability to manage for timber production; and

(d) The availability of public facilities and services conducive to conversion of forest land to other uses.

~~((10))~~ (11) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

~~((11))~~ (12) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

~~((12))~~ (13) "Master planned resort" means a self-contained and fully integrated planned unit development, in a setting of significant natural amenities, with primary focus on destination resort facilities consisting of short-term visitor accommodations associated with a range of developed on-site indoor or outdoor recreational facilities.

~~((13))~~ (14) "Minerals" include gravel, sand, and valuable metallic substances.

~~((14))~~ (15) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

~~((15))~~ (16) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

~~((16))~~ (17) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

~~((17))~~ (18) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

~~((18))~~ (19) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

~~((19))~~ (20) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

~~((20))~~ (21) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.170 (1)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

~~((21))~~ (22) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

~~((22))~~ (23) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands cre-

ated after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.

\* RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

AMENDATORY SECTION (Amending WSR 10-22-103, filed 11/2/10, effective 12/3/10)

**WAC 365-196-580 Integration with the Shoreline Management Act.** (1) For shorelines of the state, the goals and policies of the Shoreline Management Act as set forth under RCW 90.58.020 are added as one of the goals of this chapter as set forth under RCW 36.70A.020 without creating an order of priority among the fourteen goals. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(2) The shoreline master program shall be adopted pursuant to the procedures under chapter 90.58 RCW rather than the goals, policies, and procedures set forth in chapter 36.70A RCW for the adoption of a comprehensive plan or development regulations.

(3)(a) The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with chapter 36.70A RCW except as the shoreline master program is required to comply with the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105.

(b) Except as otherwise provided in (c) of this subsection, development regulations adopted under chapter 36.70A RCW to protect critical areas within shorelines of the state apply within shorelines of the state until the department of ecology approves one of the following: A comprehensive master program update, as defined under RCW 90.58.030; a segment of a master program relating to critical areas, as provided under RCW 90.58.090; or a new or amended master program approved by the department of ecology on or after March 1, 2002, as provided under RCW 90.58.080. The adoption or update of development regulations to protect critical areas under chapter 36.70A RCW prior to department of ecology approval of a master program update as provided in this subsection is not a comprehensive or segment update to the master program.

(c)(i) Until the department of ecology approves a master program or segment of a master program as provided in (b) of this subsection, a use or structure legally located within shorelines of the state that was established or vested on or before the effective date of the local government's development regulations to protect critical areas may continue as a conforming use and may be redeveloped or modified if:

(A) The redevelopment or modification is consistent with the local government's master program; and

(B) The local government determines that the proposed redevelopment or modification will result in no net loss of shoreline ecological functions. The local government may waive this requirement if the redevelopment or modification is consistent with the master program and the local government's development regulations to protect critical areas.

(ii) For purposes of (c) of this subsection, an agricultural activity that does not expand the area being used for the agricultural activity is not a redevelopment or modification. "Agricultural activity," as used in (c) of this subsection, has the same meaning as defined under RCW 90.58.065.

(d) Upon department of ecology approval of a shoreline master program or critical area segment of a shoreline master program, critical areas within shorelines of the state are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of chapter 36.70A RCW, except as provided in subsection (6) of this section. Nothing in chapter 321, Laws of 2003 or the act is intended to affect whether or to what extent agricultural activities, as defined under RCW 90.58.065, are subject to chapter 36.70A RCW.

(e) The provisions under RCW 36.70A.172 shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local government's shoreline master program with chapter 90.58 RCW and applicable guidelines. Nothing in this section; however, is intended to limit or change the quality of information to be applied in protecting critical areas within shorelines of the state, as required under chapter 90.58 RCW and applicable guidelines.

(4) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW 90.58.060.

(5) Shorelines of the state shall not be considered critical areas under chapter 36.70A RCW except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided under RCW 36.70A.030(5) and have been designated as such by a local government pursuant to RCW 36.70A.060(2).

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized under RCW 90.58.030 (2)(f), then the local jurisdiction shall continue to regulate those critical areas and their required buffers pursuant to RCW 36.70A.060(2).

(7) County participation in the voluntary stewardship program does not change applicability of the Shoreline Management Act, or requirements of local shoreline master programs.

(a) As required by RCW 90.58.065, shoreline master programs shall not limit or modify existing and ongoing agricultural activities occurring on agricultural lands.

(b) Master programs shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities.

AMENDATORY SECTION (Amending WSR 15-04-039, filed 1/27/15, effective 2/27/15)

**WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations. (1) Requirements.**

(a) Counties and cities must periodically take legislative action to review and, if ~~((necessary))~~ needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of the act. This review and revision, required under RCW 36.70A.-130(1), is referred to in this section as the periodic update.

(b) Deadlines for periodic update. Comprehensive plans and development regulations are subject to periodic update on a schedule established in RCW 36.70A.130(5).

(i) Deadlines for completion of periodic review are as follows:

Table WAC 365-196-610.1

Deadlines for Completion of Periodic Review 2015 - 2018

Update must be complete by June 30 of:	Affected counties and the cities within:
2015/2023	King, Pierce, Snohomish
2016/2024	Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, Whatcom
2017/2025	Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, Yakima
2018/2026	Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, Whitman

(ii) Certain smaller, slower-growing counties and cities may take up to an additional two years to complete the update.

(A) The eligibility of a county for the two-year extension does not affect the eligibility of the cities within the county.

(B) A county is eligible if it has a population of less than fifty thousand and a growth rate of less than seventeen percent.

(C) A city is eligible if it has a population of less than five thousand, and either a growth rate of less than seventeen percent or a total population growth of less than one hundred persons.

(D) Growth rates are measured using the ten-year period preceding the due date listed in RCW 36.70A.130(5).

(E) If a city or county qualifies for the extension on the statutory due date, they remain eligible for the entire extension period, even if they no longer meet the criteria due to population growth.

(c) Taking legislative action.

(i) The periodic update must be accomplished through legislative action. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing including, at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore.

(ii) Legislative action includes two components. It includes a review of the comprehensive plan and development regulations and it includes the adoption of any amendments necessary to bring the comprehensive plan and development regulations into compliance with the requirements of the act.

(d) What must be reviewed.

(i) Counties and cities that plan under RCW 36.70A.040 must review and, if needed, revise their comprehensive plans and development regulations for compliance with the act. This includes the critical areas ordinance.

(ii) Counties and cities that do not plan under RCW 36.70A.040 must review and, if needed, revise their resource lands designations and their development regulations designating and protecting critical areas.

(iii) Counties participating in the voluntary stewardship program must review and, if needed, revise their development regulations not governed by the voluntary stewardship program, except as provided in RCW 36.70A.130(8).

(e) The required scope of review. The purpose of the review is to determine if revisions are needed to bring the comprehensive plan and development regulation into compliance with the requirements of the act. The update process provides the method for bringing plans into compliance with the requirements of the act that have been added or changed since the last update and for responding to changes in land use and in population growth. This review is necessary so that comprehensive plans are not allowed to fall out of compliance with the act over time through inaction. This review must include at least the following:

(i) Consideration of the critical areas ordinance;

(ii) Analysis of urban growth area review required by RCW 36.70A.130(3) (see WAC 365-196-310);

(iii) Review of mineral resource lands designations and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060; and

(iv) Changes to the act or other applicable laws since the last review that have not been addressed in the comprehensive plan and development regulations.

(2) Recommendations for meeting requirements.

(a) Public participation program.

(i) Counties and cities should establish a public participation program that includes a schedule for the periodic update and identifies when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on proposed changes to the comprehensive plan and clearly identify the scope of the review. Notice of the

update process should be broadly disseminated as required by RCW 36.70A.035.

(ii) Counties and cities may adjust the public participation program to best meet the intent of the requirement. RCW 36.70A.140 notes that errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed. For example, if an established public participation program included one public hearing on all actions having to do with the periodic update process, the public participation program could be adjusted later to provide additional public hearings to accommodate strong public interest.

(b) Review of relevant statutes and local information and analysis of whether there is a need for revisions.

(i) Amendments to the act. Counties and cities should first review amendments to the act that have occurred since the initial adoption or previous periodic update, and determine if local amendments are needed to maintain compliance with the act. The department will maintain a comprehensive list of legislative amendments and a checklist to assist counties and cities with this review.

(ii) Review and analysis of relevant plans, regulations and information. Although existing comprehensive plans and development regulations are considered compliant, counties and cities should consider reviewing development and other activities that have occurred since adoption to determine if the comprehensive plans and development regulations remain consistent with, and implement, the act. This should include at least the following:

(A) Analysis of the population allocated to a city or county during the most recent urban growth area review (see WAC 365-196-310);

(B) Consideration of critical areas and resource lands ordinances;

(C) Review of mineral resource lands designations and development regulations adopted pursuant to RCW 36.70A.-040 and 36.70A.060;

(D) Capital facilities plans. Changes in anticipated circumstances and needs should be addressed by updating the ten-year transportation plan and six-year capital facilities elements. This includes a reassessment of the land use element if funding falls short;

(E) Land use element;

(F) Changes to comprehensive plans and development regulations in adjacent jurisdictions, special purpose districts, or state plans that create an inconsistency with the county or city's comprehensive plan or development regulations;

(G) Basic assumptions underlying key calculations and conclusions in the existing comprehensive plan. If recent data demonstrates that key existing assumptions are no longer appropriate for the remainder of the twenty-year plan, counties and cities should consider updating them as part of the periodic update (see WAC 365-196-310). Counties and cities required to establish a review and evaluation program under RCW 36.70A.215, should use that information in this review (see WAC 365-196-315); and

(H) Inventories. Counties and cities should review required inventories and to determine if new data or analysis

is needed. Table 2 contains summary of the inventories required in the act.

Table WAC 365-196-610.2  
Inventories Required by the Act

Requirement	RCW Location	WAC Location
Housing Inventory	36.70A.070(2)	365-196-430
Inventory and analyze existing and projected housing needs, identifying the number of housing units necessary to manage project growth.		
Capital Facilities	36.70A.070(3)	365-196-445
Inventory existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities, and forecast future needs and proposed locations and capacities of expanded or new facilities.		
Transportation	36.70A.070(6)	365-196-455
An inventory of air, water and ground transportation facilities and services, including transit alignments and general aviation airport facilities, to define existing capital facilities and travel levels and a basis for future planning. This inventory must include state-owned transportation facilities within the city's or county's jurisdictional boundaries.		

(c) Take legislative action.

(i) Any legislative action that completes a portion of the review and update process, either in whole or in part, must state in its findings that it is part of the update process.

(ii) Any public hearings on legislative actions that are, either in whole or in part, legislative actions completing the update must state in the notice of hearing that the actions considered are part of the update process.

(iii) At the end of the review and update process, counties and cities should take legislative action declaring the update process complete, either as a separate legislative action, or as a part of the final legislative action that occurs as part of the update process. This action should reference all prior legislative actions occurring as part of the update process.

(d) Submit notice of completion to the department. When adopted, counties and cities should transmit the notice of adoption to the department, consistent with RCW 36.70A.-106. RCW 36.70A.130 requires compliance with the review and update requirement as a condition of eligibility for state grant and loan programs. The department tracks compliance with this requirement for agencies managing these grant and loan programs. Providing notice of completion to the department will help maintain access to these grant and loan programs.

(3) Relationship to other review and amendment requirements in the act.

(a) Relationship to the comprehensive plan amendment process. Cities and counties may amend the comprehensive plan no more often than once per year, as required in RCW 36.70A.130(2), and referred to as the docket. If a city or county conducts a comprehensive plan docket cycle in the year in which the review of the comprehensive plan is completed, it must be combined with the periodic review process.

Cities and counties may not conduct the periodic review and a docket of amendments as separate processes in the same year.

(b) Urban growth area (UGA) review. As part of the periodic review, cities and counties must review the areas and densities contained in the urban growth area and, if (~~needed~~) needed, revise their comprehensive plan to accommodate the growth projected to occur in the county for the succeeding twenty-year period, as required in RCW 36.70A.130 (3) (see WAC 365-196-310).

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

**WAC 365-196-830 Protection of critical areas.** (1)

The act requires the designation of critical areas and the adoption of regulations for the protection of such areas by all counties and cities, including those that do not plan under RCW 36.70A.040. The department has adopted minimum guidelines in chapter 365-190 WAC detailing the process involved in establishing a program to protect critical areas.

(2) Critical areas that must be protected include the following areas and ecosystems:

- (a) Wetlands;
- (b) Areas of critical recharging effect on aquifers used for potable water;
- (c) Fish and wildlife habitat conservation areas;
- (d) Frequently flooded areas; and
- (e) Geologically hazardous areas.

(3) "Protection" in this context means preservation of the functions and values of the natural environment, or to safeguard the public from hazards to health and safety.

(4) Although counties and cities may protect critical areas in different ways or may allow some localized impacts to critical areas, or even the potential loss of some critical areas, development regulations must preserve the existing functions and values of critical areas. If development regulations allow harm to critical areas, they must require compensatory mitigation of the harm. Development regulations may not allow a net loss of the functions and values of the ecosystem that includes the impacted or lost critical areas.

(5) Counties and cities must include the best available science in developing policies and development regulations to protect functions and values of critical areas. See chapter 365-195 WAC.

(6) Functions and values must be evaluated at a scale appropriate to the function being evaluated. Functions are the conditions and processes that support the ecosystem. Conditions and processes operate on varying geographic scales ranging from site-specific to watershed and even regional scales. Some critical areas, such as wetlands and fish and wildlife habitat conservation areas, may constitute ecosystems or parts of ecosystems that transcend the boundaries of individual parcels and jurisdictions, so that protection of their function, and values should be considered on a larger scale.

(7) Protecting some critical areas may require using both regulatory and nonregulatory measures. When impacts to critical areas are from development beyond jurisdictional control, counties and cities are encouraged to use regional approaches to protect functions and values. It is especially

important to use a regional approach when giving special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. Conservation and protection measures may address land uses on any lands within a jurisdiction, and not only lands with designated critical areas.

(8) Local government may develop and implement alternative means of protecting critical areas from some activities using best management practices or a combination of regulatory and nonregulatory programs.

(a) When developing alternative means of protection, counties and cities must assure no net loss of functions and values and must include the best available science.

(b) Local governments must review and, if needed, revise their development regulations to assure the protection of critical areas where agricultural activities take place.

(c) Local governments shall not broadly exempt agricultural activities from their critical areas regulations.

(d) Counties participating in the voluntary stewardship program must review and, if needed, revise their development regulations not governed by the voluntary stewardship program, except as provided in RCW 36.70A.130(8).

(9) In designing development regulations and nonregulatory programs to protect designated critical areas, counties and cities should endeavor to make such regulations and programs fit together with regional, state and federal programs directed to the same environmental, health, safety and welfare ends. Local plans and policies may in some respects be adequately implemented by adopting the provisions of such other programs as part of the local regulations.

#### NEW SECTION

**WAC 365-196-832 Protection of critical areas and voluntary stewardship program.** (1) Upon approval of a watershed work plan, counties participating in the voluntary stewardship program pursuant to RCW 36.70A.710 are encouraged to reference and describe their participation in the program within their critical areas development regulations. Counties should ensure their development regulations are consistent with the approved watershed work plan.

(2) Prior to the approval of a work plan by the state conservation commission director, agricultural activities located in participating watersheds as defined in RCW 36.70A.703(5) are subject to existing development regulations that protect critical areas.

(3) After watershed work plan approval, protection of functions and values of critical areas from agricultural activities located in participating watersheds as defined in RCW 36.70A.703(5) is provided by the watershed work plan and any applicable development regulations. Agricultural activities located in nonparticipating watersheds are subject to applicable development regulations that protect critical areas.

(4) **County responsibilities when withdrawing from the voluntary stewardship program.** Counties that elect to protect critical areas through the voluntary stewardship program under RCW 36.70A.710 (1)(a) may withdraw a participating watershed from the program by adopting an ordinance or resolution withdrawing the watershed from the program. A county may withdraw a watershed from the program at the

end of three years, five years or eight years after receipt of funding, or any time after ten years of funding. Watersheds withdrawn from the program are subject to RCW 36.70A.710 (7)(b).

Within eighteen months after withdrawing a participating watershed from the program, counties must review and, if needed, revise their development regulations that protect critical areas in that watershed as they specifically apply to agricultural activities. The development regulations must protect the critical area functions and values as they existed on July 22, 2011. During this interim period, counties must continue to protect critical areas in watersheds withdrawn from the program. The adopted ordinance or resolution used to withdraw participating watersheds must state how counties will continue to protect critical areas in watersheds withdrawn from the program. Counties have two options during the interim period:

(a) Adopt interim development regulations or revert to development regulations that were in place at the time of the watershed work plan approval; or

(b) Continue to implement the watershed work plan.

(5) **County responsibilities when exiting the voluntary stewardship program.** Watershed work plans that are not approved, fail, or are not funded are subject to RCW 36.70A.735(1).

Within eighteen months, counties must adopt one of the four options pursuant to RCW 36.70A.735(1). During this interim period, counties must continue to protect critical areas in areas used for agricultural activities. The four options include:

(a) Pursuant to RCW 36.70A.735 (1)(a) develop, adopt, and implement a watershed work plan approved by the state department of commerce that protects critical areas in areas used for agricultural activities while maintaining the viability of agriculture in the watershed.

(b) Pursuant to RCW 36.70A.735 (1)(b) adopt development regulations previously adopted by another local government to protect critical areas in areas used for agricultural activities. Counties may adopt another county's critical area development regulations, provided such regulations are from a region with similar agricultural activities, geography, and geology, and are from Clallam, Clark, King, or Whatcom counties at the time the voluntary stewardship program legislation was enacted, and have not been invalidated, or are from any county (including Clallam, Clark, King, or Whatcom) and have been upheld as adequately protective of critical areas functions and values in areas used for agricultural activities by the growth management hearings board or court after July 1, 2011.

(c) Pursuant to RCW 36.70A.735 (1)(c) adopt development regulations certified by the state department of commerce as protective of critical areas in areas used for agricultural activities.

(d) Pursuant to RCW 36.70A.735 (1)(d) review and, if needed, revise development regulations adopted to protect critical areas as they relate to agricultural activities.

AMENDATORY SECTION (Amending WSR 10-03-085, filed 1/19/10, effective 2/19/10)

**WAC 365-196-850 Impact fees.** (1) Counties and cities planning under the act are authorized to impose impact fees on development activities as part of public facilities financing. However, the financing for system improvements to serve new development must provide a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(2) The decision to use impact fees should be specifically implemented through development regulations. The regulations should call for a specific finding on all three of the following limitations whenever an impact fee is imposed. The impact fees:

(a) Must only be imposed for system improvements that are reasonably related to the new development. "System improvements" (in contrast to "project improvements") are public facilities included in the capital facilities plan that are designed to provide service to service areas within the community at large;

(b) Must not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Must be used for system improvements that will reasonably benefit the new development.

(3) Impact fees may be collected and spent only for the following capital facilities owned or operated by government entities:

(a) Public streets and roads;

(b) Publicly owned parks;

(c) Open space and recreation facilities;

(d) School facilities; and

(e) Fire protection facilities (~~in jurisdictions that are not part of a fire district~~).

(4) Capital facilities for which impact fees will be imposed must have been addressed in a capital facilities plan element which identifies:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

(5) The local ordinance by which impact fees are imposed must conform to the provisions of RCW 82.02.060. The department recommends that jurisdictions include the authorized exemption for low-income housing.

(1) Explaining the reasons that it would be unduly burdensome for the department to establish the actual costs it charges for providing copies of public records as required by RCW 42.56.120(2);

(2) Adopting the fee schedule for public records established in RCW 42.56.120;

(3) Adding an exemption related to information about marijuana processors established in RCW 69.07.200(4); and

(4) Adding an exemption related to information about marijuana producers, processors, and retailers established in RCW 15.125.050.

Citation of Rules Affected by this Order: Amending WAC 16-06-200 and 16-06-210.

Statutory Authority for Adoption: Chapter 42.56 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-16-136 on August 1, 2017.

Changes Other than Editing from Proposed to Adopted Version: All references to session law were deleted since the session law was codified into the Revised Code of Washington. An effective date of April 1, 2018, was added to the exemption pertaining to information about marijuana-infused edible processors to match the language in the recently enacted legislation (RCW 69.07.200(4)).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: October 4, 2017.

Derek I. Sandison  
Director

AMENDATORY SECTION (Amending WSR 17-06-034, filed 2/23/17, effective 3/26/17)

**WAC 16-06-200 Costs of disclosure.** (1) No fee will be charged for the inspection of public records.

(2) ~~((The department charges a fee of fifteen cents per page of photocopy when copy charges exceed twenty dollars for providing copies of public records. The department may also charge actual costs of mailing, including the cost of the shipping container. This charge is the amount necessary to reimburse the department for copying costs incident to the disclosure request.)) Pursuant to RCW 42.56.120(2), the department declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate such actual~~

## WSR 17-20-102

### PERMANENT RULES

#### DEPARTMENT OF AGRICULTURE

[Filed October 4, 2017, 8:21 a.m., effective November 4, 2017]

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

Purpose: This rule-making order amends chapter 16-06 WAC by:



costs and the agency lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

~~(3) ((The department may charge the actual cost involved for the duplication of tape recordings, video tapes, photographs, slides, postage, other electronic records, or delivery if these costs exceed twenty dollars.)) The department may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120.~~

(4) The public records officer may waive the fee when the expenses of processing payment exceeds the costs of providing copies.

~~((5) Electronic records: The department charges a fee of five cents per page of scanned copy when the costs exceed twenty dollars and the records are converted from paper to electronic format, upon request. There will be no charge for emailing electronic records to a requestor unless another cost applies.))~~

AMENDATORY SECTION (Amending WSR 17-06-034, filed 2/23/17, effective 3/26/17)

**WAC 16-06-210 Exemptions.** The Public Records Act provides that a number of types of information or records are exempt from public inspection and copying. In addition, records are exempt from disclosure if any other statute exempts or prohibits disclosure. Requestors should be aware of the following exemptions to public disclosure specific to department records. This list is not exhaustive and other exemptions may apply:

(1) Personal information in any files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy (reference RCW 42.56.230(3)).

(2) Investigative records (reference RCW 42.56.240).

(3) Test questions, scoring keys, and other examination data used to administer a license (reference RCW 42.56.250 (1)).

(4) Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts (reference RCW 42.56.290).

(5) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(9)).

(6) Records related to the entry of prohibited agricultural products imported into Washington state or that had Washington state as a final destination received from the United States Department of Homeland Security or the United States Department of Agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552 (reference RCW 42.56.380(12)).

(7) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required or governed by other law (reference RCW 42.56.230 (5)).

(8) Applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to the applicant (reference RCW 42.56.250(2)).

(9) Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, driver's license numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of employees or volunteers of a public agency that are held by any agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency (reference RCW 42.56.250(3)).

(10) Information provided for the semi-annual report for fertilizers, minerals and limes that would reveal the business operation of the person making the report (reference RCW 15.54.362(5) and 42.56.380(2)).

(11) The semiannual report required in the Commercial Feed Act is not a public record, and any information given in such report which would reveal the business operation of the person making the report is exempt from disclosure, and information obtained by the department from other governmental agencies or other sources that is used to verify information received in the report is exempt from public disclosure (reference RCW 15.53.9018).

(12) The department has the authority to publish reports of official seed inspections, seed certifications, laboratory statistics, verified violations of this chapter, and other seed branch activities which do not reveal confidential information regarding individual company operations or production (reference RCW 15.49.370(8)).

(13) Business related information obtained under the Organic Food Products Act concerning an entity certified under that act or an applicant for certification under RCW 15.86.110, and records whose disclosure is prohibited by the federal Organic Certification Act, 7 U.S.C. Sec. 6515(g) and the rules adopted under that act (reference RCW 42.56.380 (1)).

(14) Consignment information contained on phytosanitary certificates issued by the department under chapters 15.13, 15.17, and 15.49 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States Department of Agriculture, or on applications for phytosanitary certification required by the department (reference RCW 42.56.380(4)).

(15) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by the former chapter 15.110 RCW or chapter 43.325 RCW (the energy freedom loan program) (reference RCW 42.56.270(4)).

(16) Information obtained under RCW 15.19.080 regarding the purchases, sales, or production of an individual American ginseng grower or dealer (reference RCW 42.56.380 (6)).

(17) Financial statement information required to determine whether or not an applicant for a license to operate a warehouse under chapter 22.09 RCW, agriculture commodities, meets minimum net worth requirements (reference RCW 22.09.040(9)).

(18) All financial statement information to determine whether or not an applicant for a license to be a grain dealer under chapter 22.09 RCW meets the minimum net worth requirements (reference RCW 22.09.045(7)).

(19) Information submitted by an individual or business to the department of agriculture under the requirements of chapters 16.36, 16.57, and 43.23 RCW for the purpose of herd inventory management for animal disease traceability, is exempt from disclosure. This information includes animal ownership, numbers of animals, locations, contact information, movements of livestock, financial information, the purchase and sale of livestock, account numbers or unique identifiers issued by government to private entities, and information related to livestock disease or injury that would identify an animal, a person or location. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete (reference RCW 42.56.380(9)).

(20) Results of testing for animal diseases from samples submitted by or at the direction of the animal owner or the owner's designee and that can be identified to a particular business or individual is exempt from disclosure (reference RCW 42.56.380(10)).

(21) Information that can be identified to a particular business and that is collected under chapter 15.17 RCW, standards of grades and packs, and specifically RCW 15.17.140(2) and 15.17.143 for certificates of compliance (reference RCW 42.56.380(7)).

(22) Financial statement information provided under RCW 16.65.030 (1)(d), public livestock markets, is confidential information and not subject to public disclosure (reference RCW 16.65.030 (1)(d) and 42.56.380(8)).

(23) Privileged or confidential information or data that contains trade secrets, commercial, or financial information and is required and submitted under the Washington Pesticide Control Act (reference RCW 15.58.060 (1)(c) and 15.58.065).

(24) Except for release of statistical information not descriptive of any readily identifiable person or persons, all financial and commercial information and records supplied by persons to the department with respect to export market development projects (reference RCW 43.23.270 and 42.56.270(3)).

(25) Information submitted by an applicant under chapter 17.24 RCW that is privileged or confidential because it contains trade secrets or commercial or financial information (reference RCW 17.24.061).

(26) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.89, 15.100, and 16.67 RCW, or required by the department to administer these chapters or the department's programs (reference RCW 42.56.380(3)).

(27) Financial and commercial information and records supplied by persons:

(a) To the department for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or

(b) To the department or commodity boards or commissions formed under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.89, 15.100, or 16.67 RCW, with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(28) Farm plans developed by conservation districts, unless the farm plan is used for the application or issuance of a permit (reference RCW 42.56.270(17)).

(29) Under RCW 42.56.610 and 90.64.190, information identifying the number of animals; volume of livestock nutrients generated; number of acres covered by the plan or used for land application of livestock nutrients; livestock nutrients transferred to other persons; and crop yields in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations not required to apply for a National Pollutant Discharge Elimination System permit is disclosable in the following ranges:

(a) Number of animals: Beef cattle

1 to 19  
20 to 159  
160 to 299  
300 to 999  
1,000 to 5,999  
6,000 to 10,999  
11,000 to 15,999  
16,000 to 20,999  
21,000 to 25,999  
26,000 to 31,199  
31,200 to 37,439  
37,440 to 44,999  
45,000 and above

(b) Number of animals: Mature dairy cattle

1 to 37  
38 to 199  
200 to 699  
700 to 1,699  
1,700 to 2,699  
2,700 to 3,699  
3,700 to 4,699  
4,700 to 5,699  
5,700 to 6,839  
6,840 and above

(c) Number of animals: Dairy heifers

1 to 49  
50 to 149  
150 to 299  
300 to 999  
1,000 to 1,999  
2,000 to 2,999  
3,000 to 3,999  
4,000 and above

(d) Number of animals: Swine (fifty-five pounds or greater)	(i) Livestock nutrients generated or exported by volume (ft <sup>3</sup> /day)
1 to 19	1 to 74
20 to 159	75 to 134
160 to 399	135 to 299
400 to 749	300 to 449
750 to 2,499	450 to 749
2,500 to 4,249	750 to 1,499
4,250 to 5,999	1,500 to 2,499
6,000 to 7,749	2,500 to 4,999
7,750 and above	5,000 to 8,499
(e) Number of animals: Swine (less than fifty-five pounds)	8,500 to 11,999
1 to 99	12,000 to 15,999
100 to 499	16,000 and above
500 to 1,099	(j) Livestock nutrients generated or exported by weight (tons/year)
1,100 to 1,999	1 to 5,256
2,000 to 2,999	5,257 to 10,512
3,000 to 9,999	10,513 to 21,024
10,000 to 16,999	21,025 to 42,048
17,000 to 23,999	42,049 to 84,096
24,000 to 30,999	84,097 to 164,184
31,000 and above	164,185 to 262,734
(f) Number of animals: Layers (all ages)	262,735 to 394,200
1 to 199	394,201 to 558,384
200 to 999	558,385 to 722,634
1,000 to 10,999	722,635 to 919,734
11,000 to 24,999	919,735 to 1,051,134
25,000 to 81,999	1,051,135 and above
82,000 to 138,999	(k) Number of acres covered by the plan or used for land application of livestock nutrients
139,000 to 195,999	0 to 25
196,000 to 252,999	26 to 65
253,000 to 309,999	66 to 120
310,000 to 371,999	121 to 300
372,000 to 446,399	301 to 550
446,400 to 535,679	551 to 900
535,680 to 642,815	901 to 1,300
642,816 to 771,379	1,301 to 1,800
771,380 to 925,655	1,801 to 2,500
925,656 to 1,110,787	2,501 to 3,200
1,110,788 to 1,332,945	3,201 to 4,000
1,332,946 and above	4,001 to 6,000
(g) Number of animals: Broilers (all ages)	6,001 to 9,000
1 to 199	9,001 to 11,500
200 to 999	11,501 to 14,000
1,000 to 17,999	14,001 and above
18,000 to 37,499	(l) Crop yields - tons/acre
37,500 to 124,999	0 to 1
125,000 to 212,499	1.1 to 2
212,500 to 299,999	2.1 to 3.5
300,000 and above	3.6 to 5
(h) Number of animals: Horses	5.1 to 7
1 to 19	7.1 to 9
20 to 79	9.1 to 12
80 to 149	12.1 to 14.5
150 to 499	14.6 to 17
500 to 849	17.1 to 19.5
850 to 1,199	19.6 to 22
1,200 to 1,549	22.1 to 26
1,550 and above	

26.1 and above

(30) Records of international livestock importation that can be identified to a particular animal, business, or individual received from the United States Department of Homeland Security or the United States Department of Agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552 (reference RCW 42.56.380(11)).

(31) A person aggrieved by a violation of chapter 17.21 RCW or the rules adopted under that chapter is entitled, on request, to have his or her name protected from disclosure in any communication with persons outside the department and in any record published, released, or made available to persons outside the department except as provided in RCW 17.21.340 (1)(a)(ii).

(32) All records, data, and information filed in support of an industrial hemp research program license application (reference RCW 15.120.050(7)).

(33) Effective April 1, 2018, information about marijuana processors otherwise exempt from public inspection and copying under chapter 42.56 RCW is also exempt from public inspection and copying if submitted to or used by the department (reference RCW 69.07.200(4)).

(34) Information about marijuana producers, marijuana processors, and marijuana retailers otherwise exempt from public inspection and copying under chapter 42.56 RCW is also exempt from public inspection and copying if submitted to or used by the department (reference RCW 15.125.050).

### WSR 17-20-113

#### PERMANENT RULES

#### OFFICE OF THE

#### INSURANCE COMMISSIONER

[Filed October 4, 2017, 10:28 a.m., effective November 4, 2017]

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

Purpose: The rule creates a safe harbor of compliance for licensees who use the federal model privacy form.

Citation of Rules Affected by this Order: New WAC 284-04-910; and amending WAC 284-04-210.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.505.

Other Authority: Gramm-Leach-Bliley Act, Public Law 102-106, sec. 501(b), sec. 505 (b)(2), Financial Services Regulatory Relief Act of 2006, Public Law 109-351, sec. 728.

Adopted under notice filed as WSR 17-16-158 on August 1, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: October 4, 2017.

Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 01-03-034, filed 1/9/01, effective 2/9/01)

**WAC 284-04-210 Information to be included in privacy notices.** (1) General rule. The initial, annual and revised privacy notices that a licensee provides under WAC 284-04-200, 284-04-205, and 284-04-220 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects;

(b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under WAC 284-04-405 and 284-04-410;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under WAC 284-04-405 and 284-04-410;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under WAC 284-04-400 (and no other exception in WAC 284-04-405 and 284-04-410 applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under WAC 284-04-300(1) to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under section 603 (d)(2)(A)(iii) of the Federal Fair Credit Reporting Act (15 U.S.C. 1681a (d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(i) Any disclosure that the licensee makes under subsection (2) of this section.

(2) Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under WAC 284-04-405 and 284-04-410, the

licensee is not required to list those exceptions in the initial or annual privacy notices required by WAC 284-04-200 and 284-04-205. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) Examples.

(a) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

- (i) Information from the consumer;
- (ii) Information about the consumer's transactions with the licensee or its affiliates;
- (iii) Information about the consumer's transactions with nonaffiliated third parties; and
- (iv) Information from a consumer reporting agency.

(b) Categories of nonpublic personal financial information a licensee discloses.

(i) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in (a) of this subsection, as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

- (A) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address, and Social Security number;
- (B) Transaction information, such as information about balances, payment history, and parties to the transaction; and
- (C) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(ii) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(iii) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(c) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(i) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(ii) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(iii) A licensee also may categorize the affiliates and nonaffiliated third parties to whom it discloses nonpublic personal financial information about consumers using more detailed categories.

(d) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in WAC 284-04-400 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of subsection (1)(e) of this section if it:

(i) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of subsection (1)(b) of this section, as applicable; and

(ii) States whether the third party is:

(A) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(B) A financial institution with whom the licensee has a joint marketing agreement.

(e) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under WAC 284-04-405 and 284-04-410, the licensee may simply state that fact, in addition to the information it shall provide under subsections (1)(h), (i) and (2) of this section.

(f) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(i) Describes in general terms who is authorized to have access to the information; and

(ii) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

(4) Short-form initial notice with opt out notice for non-customers.

(a) A licensee may satisfy the initial notice requirements in WAC 284-04-200 (1)(b) for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in WAC 284-04-215.

(b) A short-form initial notice shall:

(i) Be clear and conspicuous;

(ii) State that the licensee's privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(c) The licensee shall deliver its short-form initial notice according to WAC 284-04-225. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to WAC 284-04-225.

(d) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

(i) Provides a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at the licensee's office, maintain copies of the notice on hand that the licensee provides to the consumer immediately upon request.

(5) Future disclosures. The licensee's notice may include:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but do not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

(6) Sample Clauses and Federal Model Privacy Form. Sample clauses illustrating some of the notice content required by this section and the Federal Model Privacy Form are included in Appendix A and Appendix B of this regulation.

#### NEW SECTION

**WAC 284-04-910 Appendix B—Federal Model Privacy Form.** Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the federal Model Privacy Form, if the form is accurate for each institution that uses the form. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

##### (1) **General instructions.**

(a) How the Model Privacy Form is used.

(i) The model form may be used, (at the option of a "licensee"), including a group of licensees or other financial institutions that use a common privacy notice, to meet the content requirements of the privacy notice and opt-out notice set forth in WAC 284-04-210 and 284-04-215.

(ii) The model form is a standardized form, including page layout, content, format, style, pagination, and shading. Licensees seeking to obtain the safe harbor through use of the model form may modify it only as described in these instructions.

(iii) Note that disclosure of certain information, such as assets, income, and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act (FCRA), codified at 15 U.S.C. §§ 1681-1681x, such as a requirement to permit a consumer to opt out of disclosures to affiliates, or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.

(iv) The word "customer" may be replaced by the word "member," whenever it appears in the model form, as appropriate.

(b) The contents of the Model Privacy Form. The model form consists of two pages, which may be printed on both sides of a single sheet of paper or may appear on two separate pages. Where a licensee provides a long list of licensees or financial institutions at the end of the model form in accordance with subsection (2)(c)(i)(A) of this instruction, or provides additional information in accordance with subsection (2)(c)(iii) of this instruction and such list or additional information exceeds the space available on page two of the model form, such list or additional information may extend to a third page.

(i) Page one. The first page consists of the following components:

(A) Date last revised (upper right-hand corner)

(B) Title

(C) Key frame (Why? What? How?)

(D) Disclosure table ("Reasons we can share your personal information")

(E) "To limit our sharing" box, as needed, for the licensee's opt-out information

(F) "Questions" box, for customer service contact information

(G) Mail-in opt-out form, as needed

(ii) Page two. The second page consists of the following components:

(A) Heading (Page two)

(B) Frequently asked questions ("Who we are" and "What we do")

(C) Definitions

(D) "Other important information" box, as needed

(c) The format of the Model Privacy Form. The format of the model form may be modified only as described below.

(i) Easily readable type font. Licensees that use the model form must use an easily readable type font. While a number of factors together produce easily readable font, licensees are required to use a minimum of 10-point font (unless otherwise expressly permitted in these instructions) and sufficient spacing between lines.

(ii) Logo. A licensee may include a corporate logo on any page of the notice, so long as it does not interfere with the readability of the model form or the space constraints of each page.

(iii) Page size and orientation. Each page of the model form must be printed in portrait orientation, the size of which must be sufficient to meet the layout and minimum font size requirements, with sufficient white space on the top, bottom, and sides of the content.

(iv) Color. The model form must be printed on white or light color paper (such as cream) with black or other contrasting ink color. Spot color may be used to achieve visual inter-

est, so long as the color contrast is distinctive and the color does not detract from the readability of the model form. Logos may also be printed in color.

(v) Languages. The model form may be translated into languages other than English.

**(2) Information required in the Model Privacy Form.** The information in the model form may be modified only as described below:

(a) Name of licensee or group of affiliated licensees or institutions providing the notice: Insert the name of the licensee providing the notice, or a common identity of the affiliated licensees or financial institutions jointly providing the notice on the form, wherever [name of licensee] appears.

(b) Page one

(i) Last revised date. The licensee must insert in the upper right-hand corner the date on which the notice was last revised. The information shall appear in minimum eight-point font as "rev. [month/year]" using either the name or number of the month, such as "rev. July 2016" or "rev. 7/16."

(ii) General instructions for the "What?" box

(A) The bulleted list identifies the types of personal information that the licensee collects and shares. All licensees must use the term "Social Security number" in the first bullet.

(B) A licensee must use five of the following terms, to complete the bulleted list: Income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.

(iii) General instructions for the disclosure table. The left column lists reasons for sharing or using personal information. Each reason correlates to a specific legal provision described in subsection (2)(b)(iv) of this instruction. In the middle column, each licensee must provide a "Yes" or "No" response that accurately reflects its information-sharing policies and practices with respect to the reason listed on the left. In the right column, each licensee must provide in each box one of the following three responses, as applicable, that reflects whether a consumer can limit such sharing: "Yes," if it is required to or voluntarily provides an opt-out; "No," if it does not provide an opt-out; or "We don't share," if it answers "No" in the middle column. Only the sixth row ("For our affiliates to market to you") may be omitted at the option of the licensee. See subsection (2)(b)(iv)(F) of this instruction.

(iv) Specific disclosures and corresponding legal provisions.

(A) For our everyday business purposes. This reason incorporates sharing information under WAC 284-04-405 and 284-04-410 and with service providers pursuant to WAC

284-04-400 other than the disclosures described in subsection (2)(b)(iv)(B) or (C) of this instruction.

(B) For our marketing purposes. This reason incorporates sharing information with service providers by a licensee for its own marketing pursuant to WAC 284-04-400. A licensee that shares for this reason may choose to provide an opt-out.

(C) For joint marketing with other financial companies. This reason incorporates sharing information under joint marketing agreements between two or more licensees or financial institutions and with any service provider used in conjunction with such agreement pursuant to WAC 284-04-400. A licensee that shares for this reason may choose to provide an opt-out.

(D) For our affiliates' everyday business purposes - Information about transactions and experiences. This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. A licensee that shares information for this reason may choose to provide an opt-out.

(E) For our affiliates' everyday business purposes - Information about creditworthiness. This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. A licensee that shares information for this reason must provide an opt-out.

(F) For our affiliates to market to you. This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when: The licensee does not have affiliates (or does not disclose personal information to its affiliates); the licensee's affiliates do not use personal information in a manner that requires an opt-out; or the licensee provides the affiliate marketing notice separately. Licensees that include this reason must provide an opt-out of indefinite duration. A licensee that is required to provide an affiliate marketing opt-out, but does not include that opt-out in the model form under this part, must comply with section 624 of the FCRA and WAC 284-04-200 and 284-04-215, with respect to the initial notice and opt-out and any subsequent renewal notice and opt-out. A licensee not required to provide an opt-out under this subparagraph may elect to include this reason in the model form.

(G) For nonaffiliates to market to you. This reason incorporates sharing described in WAC 284-04-215 and 284-04-300. A licensee that shares personal information for this reason must provide an opt-out.

(v) To limit our sharing. A licensee must include this section of the model form only if it provides an opt-out. The word "choice" may be written in either the singular or plural, as appropriate. Licensees must select one or more of the applicable opt-out methods described: Telephone, such as by a toll-free number; a web site; or use of a mail-in opt-out form. Licensees may include the word "toll-free" before telephone, as appropriate. A licensee that allows consumers to opt out online must provide either a specific web address that takes consumers directly to the opt out page or a general web address that provides a clear and conspicuous direct link to the opt-out page. The opt-out choices made available to the

consumer who contacts the licensee through these methods must correspond accurately to the "Yes" responses in the third column of the disclosure table. In the part entitled "Please note," licensees may insert a number that is thirty days or greater in the space marked "[30]." Instructions on voluntary or state privacy law opt-out information are in subsection (2)(b)(vii)(E) of these instructions.

(vi) Questions box. Customer service contact information must be inserted as appropriate where [phone number] or [web site] appear. Licensees may elect to provide either a phone number, such as a toll-free number, or a web address, or both. Licensees may include the words "toll-free" before the telephone number, as appropriate.

(vii) Mail-in opt-out form. Licensees must include this mail-in form only if they state in the "To limit our sharing" box that consumers can opt out by mail. The mail-in form must provide opt-out options that correspond accurately to the "Yes" responses in the third column of the disclosure table. Licensees that require consumers to provide only name and address may omit the section identified as "[account #]." Licensees that require additional or different information, such as a random opt-out number or a truncated account number to implement an opt-out election should modify the "[account #]" reference accordingly. This includes licensees that require customers with multiple accounts to identify each account to which the opt-out should apply. A licensee must enter its opt-out mailing address in the far right of this form (see version three); or below the form (see version four). The reverse side of the mail-in opt-out form must not include any content of the model form.

(A) Joint accountholder. Only licensees that provide their joint accountholders the choice to opt out for only one accountholder, in accordance with subsection (2)(c)(i)(E) of these instructions, must include in the far left column of the mail-in form the following statement:

"If you have a joint account, your choice(s) will apply to everyone on your account unless you mark below.

Apply my choice(s) only to me."

The word "choice" may be written in either the singular or plural, as appropriate. Licensees that provide insurance products or services, provide this option, and elect to use the model form may substitute the word "policy" for "account" in this statement. Licensees that do not provide this option may eliminate this left column from the mail-in form.

(B) FCRA section 603 (d)(2)(A)(iii) opt-out. If the licensee shares personal information pursuant to section 603 (d)(2)(A)(iii) of the FCRA, it must include in the mail-in opt-out form the following statement:

"Do not share information about my creditworthiness with your affiliates for their everyday business purposes."

(C) FCRA section 624 opt-out. If the licensee uses section 624 of the FCRA, in accord with subsection (2)(b)(iv)(F) of these instructions, it must include in the mail-in opt-out form the following statement:

"Do not allow your affiliates to use my personal information to market to me."

(D) Nonaffiliate opt-out. If the licensee shares personal information pursuant to WAC 284-04-300, it must include in the mail-in opt-out form the following statement:

"Do not share my personal information with nonaffiliates to market their products and services to me."

(E) Additional opt-outs. Licensees that use the disclosure table to provide opt-out options beyond those required by federal law must provide those opt-outs in this section of the model form. A licensee that chooses to offer an opt-out for its own marketing in the mail-in opt-out form must include one of the two following statements:

"Do not share my personal information to market to me."; or

"Do not use my personal information to market to me."

A licensee that chooses to offer an opt-out for joint marketing must include the following statement:

"Do not share my personal information with other financial institutions to jointly market to me."

(viii) Barcodes. A licensee may elect to include a barcode and/or "tagline" (an internal identifier) in six-point type at the bottom of page one, as needed for information internal to the licensee, so long as these do not interfere with the clarity or text of the form.

(c) Page two

(i) General instructions for the questions. Certain questions on the model form may be customized as follows:

(A) "Who is providing this notice?" This question may be omitted where only one licensee provides the model form and that licensee is clearly identified in the title on page one. Two or more licensees or financial institutions that jointly provide the model form must use this question to identify themselves as required by WAC 284-04-225. Where the list of licensees or financial institutions exceeds four lines, the licensee must describe in the response to this question the general types of licensees or financial institutions jointly providing the notice and must separately identify those licensees or financial institutions, in minimum 8-point font, directly following the "Other important information" box, or, if that box is not included in the licensee's form, directly following the "Definitions." The list may appear in a multi-column format.

(B) "How does [name of licensee] protect my personal information?" The licensee may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the licensee's use of cookies or other measures it uses to safeguard personal information. Licensees are limited to a maximum of thirty additional words.

(C) "How does [name of licensee] collect my personal information?" Licensees must use five of the following terms to complete the bulleted list for this question: Open an account; deposit money; pay your bills; apply for a loan; use



your credit or debit card; seek financial or tax advice; apply for insurance; pay insurance premiums; file an insurance claim; seek advice about your investments; buy securities from us; sell securities to us; direct us to buy securities; direct us to sell your securities; make deposits or withdrawals from your account; enter into an investment advisory contract; give us your income information; provide employment information; give us your employment history; tell us about your investment or retirement portfolio; tell us about your investment or retirement earnings; apply for financing; apply for a lease; provide account information; give us your contact information; pay us by check; give us your wage statements; provide your mortgage information; make a wire transfer; tell us who receives the money; tell us where to send the money; show your government-issued ID; show your driver's license; order a commodity futures or option trade. Licensees that collect personal information from their affiliates and/or credit bureaus must include the following statement after the bulleted list: "We also collect your personal information from others, such as credit bureaus, affiliates, or other companies." Licensees that do not collect personal information from their affiliates or credit bureaus but do collect information from other companies must include the following statement instead: "We also collect your personal information from other companies." Only licensees that do not collect any personal information from affiliates, credit bureaus, or other companies can omit both statements.

(D) "Why can't I limit all sharing?" Licensees that describe state privacy law provisions in the "Other important information" box must use the bracketed sentence: "See below for more on your rights under state law." Other licensees must omit this sentence.

(E) "What happens when I limit sharing for an account I hold jointly with someone else?" Only licensees that provide opt-out options must use this question. Other licensees must omit this question. Licensees must choose one of the following two statements to respond to this question:

"Your choices will apply to everyone on your account."; or

"Your choices will apply to everyone on your account—unless you tell us otherwise." Licensees may substitute the word "policy" for "account" in these statements.

(ii) General instructions for the definitions. The licensee must customize the space below the responses to the three definitions in this section. This specific information must be in italicized lettering to set off the information from the standardized definitions.

(A) Affiliates. As required by WAC 284-04-210, where [affiliate information] appears, the licensee must:

(I) If it has no affiliates, state: "[name of licensee] has no affiliates";

(II) If it has affiliates but does not share personal information with them, state: "[name of licensee] does not share with our affiliates"; or

(III) If it shares with its affiliates, state, as applicable: "Our affiliates include companies with a [common corporate

identity of licensee] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies]; and others, such as [insert illustrative list]."

(B) Nonaffiliates. As required by WAC 284-04-210, where [nonaffiliate information] appears, the licensee must:

(I) If it does not share with nonaffiliated third parties, state: "[name of licensee] does not share with nonaffiliates so they can market to you"; or

(II) If it shares with nonaffiliated third parties, state, as applicable: "Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations]."

(C) Joint marketing. As required by WAC 284-04-400, where [joint marketing] appears, the licensee must:

(I) If it does not engage in joint marketing, state: "[name of licensee] doesn't jointly market"; or

(II) If it shares personal information for joint marketing, state, as applicable:

"Our joint marketing partners include [list categories of companies such as credit card companies]."

(iii) General instructions for the "Other important information" box. This box is optional. The space provided for information in this box is not limited, and an additional page may be used if necessary. Only the following types of information can appear in this box:

(A) State and/or international privacy law information; and/or

(B) A form by which the consumer may acknowledge receipt of the notice.

**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.