

**WSR 20-11-006**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed May 8, 2020, 12:07 p.m., effective June 8, 2020]

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

Purpose: The department is amending WAC 458-20-186 to reflect the transition of the cigarette tax program from the special programs division to the taxpayer account administration division. References in the rule to special programs have been replaced with taxpayer account administration. The rule is being updated to incorporate program responsibility changes within the department.

Citation of Rules Affected by this Order: Amending WAC 458-20-186.

Statutory Authority for Adoption: RCW 82.24.550, 82.32.300, 82.01.060.

Adopted under notice filed as WSR 20-05-062 on February 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 8, 2020.

Atif Aziz  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-01-107, filed 12/18/14, effective 1/18/15)

**WAC 458-20-186 Tax on cigarettes. (1) Introduction.** This rule explains the tax liabilities of persons who sell, use, consume, handle, possess, or distribute cigarettes in Washington. The tax on cigarettes (also called the "cigarette tax") is in addition to all other taxes owed, such as retailing or wholesaling business and occupation tax, retail sales tax, use tax, and litter tax. See WAC 458-20-185 for tax liabilities associated with taxes that apply to tobacco products other than cigarettes.

(2) **Organization of rule.** The information provided in this rule is divided into eight parts:

(a) Part I explains the tax liabilities of persons who sell, use, consume, handle, possess, or distribute cigarettes in this state.

(b) Part II explains wholesale and retail cigarette vendor licensing requirements and responsibilities.

(c) Part III explains stamping requirements, cigarette tax rates, and refunds.

(d) Part IV describes the roll-your-own cigarette provisions.

(e) Part V describes the exemptions from the tax and the procedures that must be followed to qualify for exemption.

(f) Part VI explains the requirements and responsibilities for persons transporting cigarettes in Washington.

(g) Part VII explains the enforcement and administration of the cigarette tax.

(h) Part VIII explains requirements and responsibilities related to making sales or purchases of cigarettes in Indian country.

### Part I - Tax on Cigarettes

(101) **In general.** Except as otherwise provided in chapter 82.24 RCW and this rule, the Washington state cigarette tax is due and payable by the first person who sells, uses, consumes, handles, possesses, or distributes the cigarettes in this state.

(102) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) "Board" means the liquor control board.

(b) "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly, including any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing cigarettes in this state.

(c) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state. Cigarette includes a roll-your-own cigarette.

(d) "Cigarette paper" means any paper or any other material except tobacco, prepared for use as a cigarette wrapper.

(e) "Cigarette tube" means cigarette paper made into a hollow cylinder for use in making cigarettes.

(f) "Commercial cigarette-making machine" means a machine that is operated in a retail establishment and that is capable of being loaded with loose tobacco, cigarette paper or tubes, and any other components related to the production of roll-your-own cigarettes, including filters.

(g) "Department" means the department of revenue.

(h) "Governmental entity" means:

(i) The United States;

(ii) The state of Washington (state) including, its departments and institutions, as distinct from its corporate agencies or instrumentalities; and

(iii) Any municipal corporation or political subdivision of the state of Washington.

(i) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian wholesaler or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country. For purposes of this rule, the terms "Indian," "Indian country," and "Indian tribe" have the same meaning as defined in WAC 458-20-192.

(j) "Manufacture" means the production, assembly, or creation of new cigarettes. For the purposes of this rule, "manufacture" does not necessarily have the same meaning as provided in RCW 82.04.120.

(k) "Manufacturer" means a person who manufactures and sells cigarettes.

(l) "Municipal corporation or political subdivision of the state of Washington" means any county, city, town, school district, fire protection district, or other authority identified as a municipal corporation or political subdivision of the state of Washington by statute and that qualifies for the property tax exemption provided by Article VII of the Washington state Constitution.

(m) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

(n) "Place of business" means any location where business is transacted with, or sales are made to, customers. The term includes, but is not limited to, any vending machine and any vehicle, truck, vessel or the like at which sales are made.

(o) "Possession" means both:

(i) Physical possession by the purchaser; and

(ii) When cigarettes are being transported to or held for the purchaser or his or her designee by a person other than the purchaser, constructive possession by the purchaser or his or her designee, which constructive possession is deemed to occur at the location of the cigarettes being so transported or held.

(p) "Retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale or distributes any one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate.

(q) "Roll-your-own cigarettes" means cigarettes produced by a commercial cigarette-making machine.

(r) "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration.

(s) "Stamp" means any stamp authorized by the state of Washington, including the stamp or stamps by use of which the cigarette tax is paid or identification is made of those cigarettes with respect to which no tax is imposed.

(t) "United States" means:

(i) The federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by reason of specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality of the federal government or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity depends on the benefits and immunities conferred upon it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(ii) "United States" does not include entities associated with, but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

(u) "Wholesaler" means every person who purchases, sells, or distributes cigarettes to retailers for the purpose of resale only.

(103) **Imposition of tax.** The cigarette tax is imposed on the first person to sell, use, consume, handle, possess, or distribute cigarettes in Washington. Please refer to subsection (302) of this rule for an explanation of the measure and rate of the tax.

(a) **Payment.** Payment of the cigarette tax is made through the purchase of stamps from banks authorized by the department to sell the stamps. Please refer to subsection (301) of this rule for an explanation of stamping requirements.

(b) **Possession of cigarettes in Washington state.**

(i) Every person (A) in possession of unstamped cigarettes in this state, and (B) not specifically exempt by law, is liable for payment of the cigarette tax as provided in chapter 82.24 RCW and this rule.

(ii) Active duty or retired military personnel, and their dependents, may purchase cigarettes for their own consumption on military reservations without paying the state tax (see Part V). However, such persons are not permitted to give or resell those cigarettes to others.

(iii) Possession of unstamped and untaxed cigarettes, and possession of counterfeit cigarettes, are criminal offenses in this state. See Part VII.

## Part II - Wholesale and Retail Cigarette Vendor Licensing Requirements and Responsibilities

(201) **License required.** No person, other than a governmental entity or an Indian tribal organization, may engage in the retail or wholesale distribution of cigarettes in this state without a license. Failure to obtain the required license prior to selling cigarettes at wholesale or retail is a criminal act. RCW 82.24.500.

(202) **Cigarette wholesaler license.** Prior to the sale or distribution of cigarettes at wholesale, each wholesaler must first obtain a cigarette wholesaler license from the department through its business licensing service.

(a) **Background check.** Each wholesaler must undergo a criminal background check by the board before a license will be issued. RCW 82.24.510. See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license by the department.

(b) **Application.** Application for a license or renewal of a license is made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A cigarette wholesaler license is valid for one year from the date it is issued.

(c) **Multiple locations.** If the wholesaler sells, stores, or intends to sell, cigarettes at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.24 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(d) Bond required. Each licensed wholesaler must file a bond with the department in an amount determined by the department, but not less than five thousand dollars. The bond must be executed by the wholesaler as principal, and by a corporation approved by the department and authorized to engage in business as a surety company in this state, as surety. The bond must run concurrently with the cigarette wholesaler license.

**(203) Duties and responsibilities of licensed wholesalers.**

(a) Stamps. Except as provided in Parts IV and VIII of this rule, only licensed wholesalers may purchase or obtain cigarette stamps. Wholesalers are prohibited by law from selling or providing stamps to any other wholesaler or person.

(b) Numbering. Each roll of stamps, or group of sheets, has a separate serial number. The department keeps records of which wholesaler purchases each roll or group of sheets. Wholesalers and retailers of roll-your-own cigarettes are prohibited from possessing stamps other than those specifically issued to them.

(c) Sales restricted. Wholesalers selling cigarettes in this state may sell:

(i) Stamped or unstamped cigarettes to other Washington licensed cigarette wholesalers;

(ii) State tax stamped cigarettes only to Washington retailers who have a current cigarette retailer license or to an Indian tribal organization;

(iii) Tribal tax stamped cigarettes to Indian tribal organizations if the Indian tribal organization is subject to a cigarette compact between the state of Washington and the Indian tribe; or

(iv) Tax-exempt stamped cigarettes to an Indian tribal organization if the Indian tribe does not have a cigarette compact and is subject to the cigarette allocation per WAC 458-20-192.

(d) Unstamped cigarettes. Except as provided in Parts IV, V, and VIII of this rule, no person other than a licensed wholesaler may possess unstamped cigarettes in this state. Cigarettes are "unstamped" if they do not have a "stamp" as the term is defined in subsection (102)(s). Licensed wholesalers may possess unstamped cigarettes in this state only in the following circumstances:

(i) Licensed wholesalers may possess unstamped cigarettes for up to seventy-two hours after receipt; however, the cigarettes must be stamped on or before sale or transfer to any other party other than another licensed wholesaler. Licensed wholesalers may possess unstamped cigarettes for more than seventy-two hours after receipt if they receive prior written permission from the department to do so.

(ii) Licensed wholesalers may set aside, without stamping, that portion of their stock reasonably necessary for conducting sales to persons outside this state or to instrumentalities of the federal government, so long as the licensed wholesalers have furnished a surety bond in a sum equal to eighty percent of the amount of tax that would be affixed to the cigarettes that are set aside for the conduct of such business without affixing the stamps. All unstamped stock must be kept separate and apart from stamped stock.

(e) Transfers. Wholesalers in possession of unstamped cigarettes under subsection (204)(d) of this rule that are trans-

ferred by the wholesaler to another facility within this state must be transferred in compliance with RCW 82.24.250.

(204) **Cigarette retailer license.** Prior to the retail sale or distribution of cigarettes, each retailer must first be issued a cigarette retailer license from the department through its business licensing service. A license is required for each location at which cigarettes are sold at retail. Each license must be exhibited at the place of business for which it is issued.

(a) Background check. Each retailer must undergo a criminal background check by the board before a license will be issued. RCW 82.24.510. See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license by the department.

(b) Application. Applications for a license or renewal of a license are made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A retail cigarette license is valid for one year from the date it is issued.

(c) Multiple locations. A separate license with a license fee as provided in chapter 82.24 RCW is required for each additional place of business at which the retailer operates. Each license must be exhibited in the place of business for which it is issued.

(d) **Cigarette vending machine license.** Retailers who have received a cigarette retailer license and operate cigarette vending machines must obtain a cigarette vending machine license from the department and are required to pay an additional annual fee as set forth in chapter 82.24 RCW for each vending machine.

(e) **Commercial cigarette making machine license.** Retailers who have received a cigarette retailer license and tobacco products retailer license (see WAC 458-20-185) and operate commercial cigarette making machines must obtain a commercial cigarette making machine license from the department and are required to pay an additional annual fee as set forth in chapter 82.24 RCW for each location with a machine. Each license must be exhibited in the place of business for which it is issued.

Persons operating a commercial cigarette making machine are also subject to federal licensing requirements as a cigarette manufacturer. Please contact the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.

**(205) Duties and responsibilities of retailers.**

(a) No retailer in this state may possess unstamped cigarettes unless he or she is also a licensed wholesaler.

(b) Retailers may obtain cigarettes only from cigarette wholesalers licensed by this state.

(206) **Additional requirements for manufacturers, wholesalers, and retailers.** Persons making wholesale or retail sales of cigarettes or manufacturing cigarettes must comply with all the provisions of chapters 70.155 and 70.158 RCW.

(207) **Licensing enforcement.** The board has the licensing enforcement responsibilities for cigarettes. See chapters 314-33 and 314-34 WAC for rules related to the board's enforcement of cigarette licensing.

### Part III - Stamping, Rates, and Refunds

#### (301) Cigarette stamps.

(a) Stamps indicating payment of the cigarette tax must be affixed prior to any sale, use, consumption, handling, possession, or distribution of all cigarettes other than those specifically exempted as explained in Part V of this rule. The stamp must be affixed securely and applied one time (not to be reused) to the smallest container or package (such as a pack of cigarettes rather than a carton of cigarettes), unless the department, in its sole discretion, determines that it is impractical to do so. Stamps must be of the type authorized by the department and affixed in such a manner that they cannot be removed from the package or container without being mutilated or destroyed. Further, the stamps must be affixed in such manner as to permit the department to readily ascertain by inspection whether or not such tax has been paid. RCW 82.24.030(1). To that end, any package that is missing more than fifty percent of the stamp will be considered unstamped and untaxed.

(b) Licensed wholesalers may purchase state-approved cigarette stamps from authorized banks. Payment for stamps must be made at the time of purchase unless the wholesaler has prior approval of the department to defer payment and furnishes a surety bond equal to the proposed monthly credit limit. Payments under a deferred plan are due within thirty days following purchase. Licensed wholesalers are compensated for affixing the stamps at the rate of \$6.00 per thousand stamps affixed (the "stamping allowance").

#### (302) Rates.

(a) The Washington state cigarette tax is imposed on a per cigarette basis. The rate of the tax is a combination of statutory rates found in chapter 82.24 RCW.

(b) When the rate of tax increases, the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed cigarettes after the rate increase is liable for the additional tax.

(303) **Refunds.** Any person may request a refund of the face value of the stamps when the tax is not applicable and the stamps are returned to the department.

(a) Forms. The claim for refund must be filed on a form provided by the department. Documentation supporting the claim must be provided at the time the claim for refund is made as specified on the form. The department has the following forms for cigarette tax refund claims:

(i) Cigarette Tax Claim for Refund form. The form is for wholesalers who have returned stamped cigarettes to the manufacturer or are returning damaged or unused stamps to the department. An affidavit or certificate from the manufacturer for stamped cigarettes returned to the manufacturer for destruction or by an agent of the department verifying the voiding of stamps and authorizing the refund must accompany the claim for refund.

(ii) Tribal Member Claim for Refund form. This refund form is for Indian tribal members who purchase state stamped cigarettes as consumers within their own Indian country.

(b) Refunds may be claimed for stamped cigarettes if the stamps are:

(i) Damaged, or unfit for sale, and as a result are destroyed or returned to the manufacturer or distributor; or

(ii) Improperly or partially affixed through burns, jams, double stamps, stamped on carton flaps, or improperly removed from the stamp roll.

Refunds for stamped cigarettes will not include the stamping allowance.

### Part IV - Roll-Your-Own Cigarettes

#### (401) Retailers.

(a) Licenses required. Only retailers licensed to sell cigarettes in Washington may provide consumers with access to a commercial cigarette making machine to make roll-your-own cigarettes. Retailers must also be licensed to sell tobacco products in Washington in order to sell the tobacco to make roll-your-own cigarettes.

(b) Stamped containers. A retailer may not allow consumers to use a commercial cigarette making machine unless the retailer provides the consumer with a box or similar container to transport the roll-your-own cigarettes affixed with cigarette stamps, and the consumer transports the cigarettes from the retailer only in such box or similar container. A retailer must provide cigarette tubes to a consumer in one or more twenty unit denominations. For purposes of this rule, a "similar container" to a box is any package used to transport roll-your-own cigarettes.

(402) **Stamps.** Retailers of roll-your-own cigarettes must purchase and affix roll-your-own cigarette tax stamps for the cigarettes produced through the cigarette making machine. Retailers must contact the department's (~~special programs~~) taxpayer account administration division to purchase the stamps. Stamps affixed must be for an amount equaling the cigarette tax due. Each cigarette tube or paper provided to the consumer is deemed a cigarette for purposes of imposing and collecting the cigarette tax. Stamps must be of the type authorized by the department and affixed in the manner provided for wholesalers in subsection (301)(a) of this rule. Retailers purchasing stamps for roll-your-own cigarettes are compensated for affixing the stamps with the stamping allowance provided under subsection (301)(b) of this rule, as well as an additional amount of five cents per cigarette to offset the cost of the tobacco products tax under chapter 82.26 RCW and WAC 458-20-185. See RCW 82.24-030(6) for additional rules relating to the affixing of stamps for roll-your-own cigarettes.

### Part V - Exemptions

(501) **In general.** There are limited exemptions from the cigarette tax provided by law. This part discusses exemptions and the procedures that must be followed to qualify for an exemption for certain government sales and sales in interstate commerce. For exemptions for sales in Indian country, please see Part VIII of this rule.

(502) **Government sales.** The cigarette tax does not apply to the sale of cigarettes to:

(a) The United States Army, Navy, Air Force, Marine Corps, or Coast Guard exchanges and commissaries and Navy or Coast Guard ships' stores;

(b) The United States Veteran's Administration; or

(c) Any person authorized to purchase from the federal instrumentalities named in (a) or (b) above, if the cigarettes

are purchased from the instrumentality for personal consumption.

(503) **Interstate commerce.** The cigarette tax does not apply to cigarettes sold to persons licensed as cigarette wholesalers in other states when, as a condition of the sale, the seller either delivers the cigarettes to the buyer at a point outside this state, or delivers the same to a common carrier with the shipment consigned by the seller to the buyer at a location outside this state.

#### Part VI - Transporting Cigarettes in Washington

(601) **Transportation of cigarettes restricted.** No person other than a licensed wholesaler may transport unstamped cigarettes in this state except as specifically set forth in RCW 82.24.250 and this rule, or as may be allowed under a cigarette compact under RCW 43.06.450 through 43.06.466. Licensed wholesalers transporting unstamped cigarettes in this state must do so only in their own vehicles unless they have given prior notice to the board of their intent to transport unstamped cigarettes in a vehicle belonging to another person.

(602) **Notice required.** Persons other than licensed wholesalers using their own vehicles intending to transport unstamped cigarettes in this state must first give notice to the board of their intent to do so, except as provided under RCW 82.24.250(5), or other applicable law.

(603) **Transportation of unstamped cigarettes.** All persons transporting unstamped cigarettes must have in their actual possession invoices or delivery tickets for such cigarettes. The invoices or delivery tickets must show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes transported. It is the duty of the person responsible for the delivery or transport of the cigarettes to ensure that all drivers, agents, or employees have the delivery tickets or invoices in their actual possession for all such shipments.

(604) **Purchase or consignment.** If the unstamped cigarettes transported pursuant to subsection (601), (602), or (603) of this rule are consigned to or purchased by any person in this state, that purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state. As provided in RCW 82.24.250, the following persons are "authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state":

- (a) A wholesaler, licensed under Washington state law;
- (b) The United States or an agency thereof;
- (c) Any person, including an Indian tribal organization, who, after notice has been given to the board as provided in subsection (602) of this rule, brings or causes to be brought in the state unstamped cigarettes, if within seventy-two hours after receipt of the cigarettes the person has caused stamps to be affixed in accordance with subsection (301) of this rule;
- (d) Any purchaser or consignee of unstamped cigarettes, including an Indian tribal organization, who has given notice to the board in advance of receiving unstamped cigarettes and who within seventy-two hours after receipt of the cigarettes has caused the stamps to be affixed in accordance with subsection (301) of this rule.

(605) **Compliance required.** No person may possess or transport cigarettes in this state unless the cigarettes have been properly stamped or that person has fully complied with the requirements of RCW 82.24.250 and this rule. Failure to comply with the requirements of RCW 82.24.250 is a criminal act. Cigarettes in the possession of persons who have failed to comply are deemed contraband and are subject to seizure and forfeiture under RCW 82.24.130.

#### Part VII - Enforcement and Administration

(701) **Books and records.** An accurate set of records showing all transactions related to the purchase, sale, or distribution of cigarettes must be retained. RCW 82.24.090. These records may be combined with those required in connection with the tobacco products tax (see WAC 458-20-185), if there is a segregation therein of the amounts involved. All records must be preserved for five years from the date of the transaction.

(702) **Reports and returns.** The department may require any person dealing with cigarettes in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, and other data required by the department to maintain control over trade in cigarettes.

(a) Manufacturers and wholesalers selling stamped, unstamped, or untaxed cigarettes must submit a complete record of sales of cigarettes in this state monthly. This report is due no later than the fifteenth day of the calendar month and must include all transactions occurring in the previous month.

(b) Persons making sales of tax-exempt cigarettes to Indian tribes or Indian retailers pursuant to WAC 458-20-192 (9)(a) must transmit a copy of the invoice for each such sale to the (~~(special programs)~~) taxpayer account administration division of the department prior to shipment.

(c) Wholesalers selling stamped cigarettes manufactured by nonparticipating manufacturers as defined in WAC 458-20-264 must report all such sales to the (~~(special programs)~~) taxpayer account administration division no later than the twenty-fifth day of the calendar month and must include all transactions occurring in the previous month. See WAC 458-20-264, National Uniform Tobacco Settlement, for more details on this report.

(d) A person who sells, transfers, or ships for profit cigarettes (as such term is defined in 15 U.S.C. Sec. 375) in interstate commerce, whereby such cigarettes are shipped into Washington, or who advertises or offers such cigarettes for sale, transfer, or shipment in this state, must file a report as required under 15 U.S.C. Sec. 376. This report is due no later than the 10th day of each calendar month and must include a memorandum or invoice covering all shipments of cigarettes made into Washington during the previous calendar month.

(e) Washington consumers who purchase cigarettes outside Washington state, or from some other source without paying Washington taxes, must pay both the cigarette tax and the use tax directly to the department of revenue within seventy-two hours of first possessing them in this state using a "Tax Declaration for Cigarettes" form, which may be obtained from the department.

(703) **Criminal provisions.** Chapter 82.24 RCW prohibits certain activities with respect to cigarettes. Persons handling cigarettes within this state must refer to these statutes. The prohibited activities include, but are not limited to, the following:

(a) **Transportation, possession, or receiving 10,000 or fewer cigarettes.** Transportation, possession or receiving 10,000 or fewer unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a gross misdemeanor. RCW 82.24.110 (1)(n) and (o).

(b) **Transportation, possession, or receiving more than 10,000 cigarettes.** Transportation, possession, or receiving more than 10,000 unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.-250 have been met; failure to meet those notice requirements is a felony. RCW 82.24.110(2).

(c) **Forgery or counterfeiting of stamps.** Alteration, fabrication, forgery, and counterfeiting of stamps are felonies. RCW 82.24.100.

(d) **Counterfeit cigarettes.** The manufacture, sale, or possession of counterfeit cigarettes in this state is a felony. RCW 82.24.570.

(704) **Search, seizure, and forfeiture.** Any collection agent of the department, enforcement officer of the board, or law enforcement officer of this state may search for, seize, and subsequently dispose of unstamped cigarette packages and containers, counterfeit cigarettes, conveyances of all kinds (including aircraft, vehicles, and vessels) used for the transportation of unstamped and/or counterfeit cigarettes, and vending machines used for the sale of unstamped and/or counterfeit cigarettes. See RCW 82.24.130, et seq., for provisions relating to search, seizure, and forfeiture of property, possible redemption of property, and for treatment of such property in the absence of redemption.

(705) **Penalties.** RCW 82.24.120 provides a penalty for failure to affix the cigarette stamps or to cause the stamps to be affixed as required, or to pay any tax due under chapter 82.24 RCW. In addition to the tax deemed due, a penalty equal to the greater of \$10.00 per package of unstamped cigarettes or \$250.00 will be assessed. Interest is also assessed on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment. The department may, in its sole discretion, cancel all or part of the penalty for good cause.

### Part VIII - Sales in Indian Country

(801) **Definitions.** The definitions of "Indian," "Indian country," and "Indian tribe" in WAC 458-20-192 apply to this rule.

(802) **Cigarette compacts.** The state cigarette tax does not apply to cigarettes taxed by an Indian tribe in accordance with a cigarette compact under RCW 43.06.450 through 43.06.466. Cigarette wholesalers making sales in conformance with such compact will be required to obtain and affix a unique tribal stamp prior to sale. For additional information, wholesalers should contact the Indian tribe in question and the department.

(803) **Sales to Indians in Indian country.** The state cigarette tax does not apply to cigarettes sold in Indian country

to tribal members of the particular tribe where the cigarettes are purchased for personal consumption. Sales of cigarettes to nonmembers are subject to the tax. Licensed wholesalers may sell exempt stamped cigarettes to tribal retailers in accordance with the requirements of WAC 458-20-192 and the instructions of the department. For reporting such sales, see subsection (702)(b) of this rule.

(804) **Refunds.** Indians who purchase, in their own Indian country, cigarettes to which state stamps have been affixed may apply for a refund under subsection (303) of this rule.

(805) **Licenses.** Indians and Indian tribes engaged in business in Indian country are not required to obtain a cigarette wholesaler or state-issued retailer license in order to purchase cigarettes from state-licensed wholesalers.

(806) **Preemption.** Application of the state cigarette tax may be preempted by tribal, federal, or state law, depending on the circumstance. For additional information, please consult WAC 458-20-192.

### WSR 20-11-016

#### PERMANENT RULES

#### WASHINGTON STATE LOTTERY

[Filed May 12, 2020, 11:23 a.m., effective June 12, 2020]

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

Purpose: Amendments to chapter 315-39 WAC, Hit 5 game rules will change the draw game's odds, draw frequency, and prize structure thereby increasing player attraction and sales. This in turn will also enhance lottery's contributions to our beneficiaries.

Citation of Rules Affected by this Order: Amending WAC 315-39-010, 315-39-040, and 315-39-060.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Adopted under notice filed as WSR 20-03-050 on January 9, 2020.

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

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Date Adopted: May 12, 2020.

Kristi Weeks  
Director of Legal Services

AMENDATORY SECTION (Amending WSR 07-03-113, filed 1/22/07, effective 2/22/07)

**WAC 315-39-010 Definitions for Hit 5 Game.** (1) Number: Any play integer from 1 through ~~((39))~~ 42 inclusive.

(2) Game grids: A field of ~~((39))~~ 42 numbers found on the play slip.

(3) Play: One selection of five numbers.

(4) Play slip: A mark-sensitive game card used by players of Hit 5 Game to select plays.

(5) Hit 5 Game ticket: A computer-generated receipt evidencing payment for one or more plays in the Hit 5 Game. Tickets shall be issued by a licensed lottery retailer and shall list the set of five-number plays that belong to the ticket holder.

(6) Cashpot: The game's top prize.

(7) Lottery drawing official: Lottery personnel designated by the director to conduct drawings.

AMENDATORY SECTION (Amending WSR 07-03-113, filed 1/22/07, effective 2/22/07)

**WAC 315-39-040 Prizes for Hit 5 Game.** (1) The prize amount to be paid to each Hit 5 Game player who holds a winning combination of numbers in the first prize category shall vary due to the parimutuel calculation of prizes. The prize amount to be paid to each Hit 5 Game player who holds a winning combination of numbers in the second prize category shall be ~~\$(100))~~ 150.00. The prize amount to be paid to each Hit 5 Game player who holds a winning combination of numbers in the third prize category shall be ~~\$(10.00))~~ 15.00. The prize amount to be ~~((paid))~~ given to each Hit 5 Game player who holds a winning combination of numbers in the fourth prize category shall be ~~\$(1.00))~~ a free play.

WINNING COMBINATIONS	PRIZE CATEGORIES	ODDS OF WINNING (ONE PLAY)
All five winning numbers in one play	First Prize:	<del>((1:575,757))</del>
	Cashpot	<u>1:850,668.00</u>
Any four but not five winning numbers in one play	Second Prize:	<del>((1:3,387))</del>
	<del>\$(100.00))</del> <u>150.00</u>	<u>1:4,598.21</u>
Any three but not four or five winning numbers in one play	Third Prize:	<del>((1:102))</del>
	<del>\$(10.00))</del> <u>15.00</u>	<u>1:127.73</u>
Any two, but not three, four or five winning numbers in one play	Fourth Prize:	<del>((1:9.6))</del>
	<del>\$(1.00))</del> <u>free play</u>	<u>1:10.95</u>

(2) Prize amounts.

(a) First prize (cashpot). All first prizes will be the amount announced by the director as the Hit 5 Game cashpot. The cashpot will be divided equally among all players who selected all five winning numbers in one play (in any sequence).

(b) Second prize. A ~~\$(100))~~ 150.00 prize is to be paid to each player who holds four of the five winning numbers in one play in any sequence.

(c) Third prize. A ~~\$(10.00))~~ 15.00 prize is to be paid to each player who holds three of the five winning numbers in one play in any sequence.

(d) Fourth prize. A ~~\$(1.00))~~ free play prize is to be ~~((paid))~~ given to each player who holds two of the five winning numbers in one play in any sequence.

(e) The holder of a winning ticket may win only one prize per play.

(f) In the event any player who holds two, three, four or five of the five winning numbers does not claim the prize won within one hundred eighty days after the drawing in which the prize was won, that player's prize shall be retained in the state lottery account for use, pursuant to RCW 67.70-190.

(3) Prize payments will be made in accordance with WAC 315-30-030(6). Each prize shall be paid in a single payment. Federal income tax shall be withheld from prize payments as required by law.

AMENDATORY SECTION (Amending WSR 07-03-113, filed 1/22/07, effective 2/22/07)

**WAC 315-39-060 Drawings.** (1) The Hit 5 Game drawings shall be held pursuant to WAC 315-30-040.

(2) The drawing will be conducted by lottery drawing officials.

(3) Each drawing shall randomly select five winning numbers. The drawing method shall be tested before and after each drawing. Any drawn numbers are not declared winners until the drawing is certified by the lottery. The winning numbers shall be used in determining all Hit 5 Game winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

(4) The drawing shall not be invalidated based on the liability of the lottery.

(5) The Hit 5 game drawings shall be held on a daily basis, Monday through Sunday, except that the director may exclude certain holidays from the drawing schedule.

**WSR 20-11-017**

**PERMANENT RULES**

**WASHINGTON STATE LOTTERY**

[Filed May 12, 2020, 11:25 a.m., effective June 12, 2020]

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

Purpose: Modifications to chapter 315-31 WAC, Daily game rules will change the name of the draw game to "Pick 3" which will help in differentiating amongst other lottery draw games. Lottery currently offers several different types of draw games that occur daily, therefore changing the name will more accurately align the game with lottery's other games.

Citation of Rules Affected by this Order: Amending WAC 315-31-020, 315-31-030, 315-31-040, 315-31-050, and 315-31-060.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Adopted under notice filed as WSR 20-03-049 on January 9, 2020.

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

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

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

Date Adopted: May 12, 2020.

Kristi Weeks  
Director of Legal Services

## Chapter 315-31 WAC

### ~~((DAILY GAME))~~ **PICK 3 RULES**

AMENDATORY SECTION (Amending WSR 89-12-042, filed 6/1/89)

**WAC 315-31-020 Price of ~~((Daily Game))~~ Pick 3 online ticket.** The base price of a ~~((Daily Game))~~ Pick 3 online ticket shall be \$.50 or \$1.00, except six-way straight box and three-way straight box tickets, which cost \$1.00 each.

AMENDATORY SECTION (Amending WSR 89-12-042, filed 6/1/89)

**WAC 315-31-030 Types of play for ~~((Daily Game))~~ Pick 3.** (1) The following play options may be selected by the player for ~~((Daily Game))~~ Pick 3:

(a) Straight. A play in which winning is achieved only when the three digits selected by the player match in exact order the winning digits drawn for the day selected. For example, if the winning digits are "123," only straight plays of "123" in that exact order will be winners.

(b) Six-way box. A play in which winning is achieved only when the three digits selected by the player contains three unique digits and those three digits are contained in any combination of the winning digits drawn for the day selected. For example, if the winning digits are "123," only box plays of "123," "132," "213," "231," "312," and "321" will be winners.

(c) Three-way box. A play in which winning is achieved only when the three digits selected by the player contains two identical digits and one unique digit and those three digits are contained in the winning digits drawn for the day selected.

For example, if the winning digits are "122," only box plays of "122," "212," and "221" will be winners.

(d) Front-pair. A play in which winning is achieved only when the player selects two digits and those two digits match in exact order the first two winning digits drawn for the day selected. For example, if the player selects a front-pair play of "12\*," the player will win only if the winning digits are "120," "121," "122," "123," "124," "125," "126," "127," "128," or "129."

(e) Back-pair. A play in which winning is achieved only when the player selects two digits and those two digits match in exact order the last two winning digits drawn for the day selected. For example, if the player selects a back-pair play of "\*12," the player will win only if the winning digits are "012," "112," "212," "312," "412," "512," "612," "712," "812," or "912."

(f) Six-way straight box. A play in which the player selects three digits with three unique digits and plays \$.50 on a straight play and \$.50 on a box play for a particular day. For example, if the player selects a "123" six-way straight/box play:

(i) The player will win both the straight and box players if the winning digits are "123" for the day selected.

(ii) The player will win the box play only if the winning digits are "132," "213," "231," "312," or "321" for the day selected.

(g) Three-way straight/box. A play in which the player selects three digits with two identical digits and one unique digit and plays \$.50 on a straight play and \$.50 on a box play for a particular day. For example, if the player selects a "122" three-way straight/box play:

(i) The player will win both the straight and box plays if the winning digits are "122" for the day selected.

(ii) The player will win the box play only if the winning digits are "212" or "221" for the day selected.

(h) Super six-way box. A play in which winning is achieved only when the three digits selected by the player contain three unique digits and those three digits are contained in the winning digits drawn for the day selected. This play is the equivalent of six straight plays on a single online ticket. The cost of this type of play is 6 times the base price. For example, if the player selects a "123" super six-way box play, the player will win one straight play if the winning digits are "123," "132," "213," "231," "312," or "321."

(i) Super three-way box. A play in which winning is achieved only when the three digits selected by the player contain two identical digits and one unique digit and those three digits are contained in the winning digits drawn for the day selected. This play is the equivalent of three straight plays on a single online ticket. The cost of this type of play is three times the base price. For example, if the player selects a "122" super three-way box play, the player will win one straight play if the winning digits are "122," "212," or "221."

(2) Method of play: The player may use play slips to make number selections. The TDM will read the play slip and issue ticket(s) with corresponding plays. If a play slip is not available, the online retailer may enter the selected numbers via the keyboard. A player may leave all play selections to a random number generator operated by the computer, commonly referred to as "quick play."

AMENDATORY SECTION (Amending WSR 89-12-042, filed 6/1/89)

**WAC 315-31-040 Prizes for ((Daily Game)) Pick 3.**

(1) The prize amounts for winning \$.50 plays are:

(a) Straight	\$ 250.00
(b) Six-way box	\$ 40.00
(c) Three-way box	\$ 80.00
(d) Front-pair or back-pair	\$ 25.00

(2) The prize amounts for winning \$1.00 plays are:

(a) Straight	\$ 500.00
(b) Six-way box	\$ 80.00
(c) Three-way box	\$ 160.00
(d) Front-pair or back-pair	\$ 50.00
(e) Six-way straight/box	
Straight play win	\$ 290.00
Box play only win	\$ 40.00
(f) Three-way straight/box	
Straight play win	\$ 330.00
Box play only win	\$ 80.00

(3) The prize amounts for winning super six-way plays are:

(a) Base price \$.50, cost \$3.00	\$ 250.00
(b) Base price \$1.00, cost \$6.00	\$ 500.00

(4) The prize amounts for winning super three-way plays are:

(a) Base price \$.50, cost \$1.50	\$ 250.00
(b) Base price \$1.00, cost \$3.00	\$ 500.00

AMENDATORY SECTION (Amending WSR 89-12-042, filed 6/1/89)

**WAC 315-31-050 Ticket purchases.** (1) ((Daily Game)) Pick 3 tickets may be purchased or redeemed no less than seventeen hours each day in accordance with a schedule to be determined by the director, provided online retailers shall only sell and redeem tickets during their normal business hours.

(2) ((Daily Game)) Pick 3 tickets may be purchased only from a lottery retailer authorized by the director to sell online tickets.

(3) Each ((Daily Game)) Pick 3 ticket shall contain the player's selection of digits, amount, type of play, and drawing date.

AMENDATORY SECTION (Amending WSR 92-16-004, filed 7/23/92, effective 11/5/92)

**WAC 315-31-060 Drawings.** (1) Drawings for ((Daily Game)) Pick 3 shall be held on a daily basis, Monday through Sunday, except that the director may exclude certain holidays from the drawing schedule.

(2) The drawing shall determine, at random, three winning digits or symbols with the aid of mechanical drawing equipment which shall be tested before and after each drawing. Any drawn digits are not declared winning digits until the drawing is certified by the lottery. The winning digits shall be used in determining all ((Daily Game)) Pick 3 winners for the day of the drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

(3) The winning digits shall not be invalidated based on the liability of the lottery.

**WSR 20-11-019  
PERMANENT RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 20-75—Filed May 12, 2020, 3:08 p.m., effective June 12, 2020]

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

Purpose: As stated in the CR-102, rule amendments are proposed as necessary to implement elements of 2SHB 1579, chapter 290, Laws of 2019. This bill implements recommendations of the southern resident orca task force (task force) related to increasing Chinook abundance. Rule amendments include:

- Adding a procedure for prospective applicants to request and receive a determination of whether a project proposed landward of the ordinary high water line (OHWL) requires a hydraulic project approval (HPA);
- Adding language clarifying that the department can disapprove a new application if the applicant has failed to pay a civil penalty, respond to a stop-work order, or respond to a notice to comply;
- Striking language from rule that references the repealed marine beach front protective bulkheads or rockwalls statute (former RCW 77.55.141);
- Requiring saltwater bank protection location benchmarks to be recorded on plans as part of a complete HPA application;
- Clarifying the compliance sequence, which ranges from seeking voluntary compliance through technical assistance and correction requests to the use of increasingly stronger civil enforcement tools and adding the new compliance tools to the rules:
  - Stop work orders;
  - Notice to comply;
  - Notice of civil penalty;
- Specifying a maximum civil penalty amount; and
- Providing a civil penalty schedule and specify signature authority for certain compliance tools, as directed by 2SHB 1579.

Citation of Rules Affected by this Order: Amending WAC 220-660-050 Procedures, 220-660-370 Bank protection in saltwater areas, 220-660-460 Informal appeal of administrative actions, 220-660-470 Formal appeal of administrative actions, and 220-660-480 Compliance with HPA provisions.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.047, 77.55.021, 34.05.328; and chapter 290, Laws of 2019 (including provision codified at RCW 77.55.400 - [77.55].470).

Adopted under notice filed as WSR 19-24-081 [20-07-095] on December 3, 2019 [March 17, 2020].

Changes Other than Editing from Proposed to Adopted Version: There are two minor changes between the rules proposed in the supplemental CR-102 (filed as WSR 20-06-053 on March 2, 2020) and the version adopted by the fish and wildlife commission on April 24, 2020. The table presents changes prior to adoption in bold.

WAC Section	Proposed change from CR-102	Reason for change
220-660-050 (13)(d)	<u>The department may require a person to notify the department before <b>hydraulic project construction or other hydraulic project work starts...</b></u>	To clarify this refers to hydraulic project construction or other hydraulic project work.
220-660-480 (5)(c)	<u>Scope of a stop work order: <b>A stop work order may require that any person stop all work connected with the project violation until corrective action is taken, and the department has indicated that work may resume.</b></u>	To clarify a stop work order can only be used to stop work connected with a violation.

A final cost-benefit analysis is available by contacting Randi Thurston, P.O. Box 43200, Olympia, WA 98504-3200, phone 360-902-2602, fax 360-902-2946, TTY 360-902-2207, email HPARules@dfw.wa.gov, website HPA rule-making web page <https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking>. The final cost-benefit analysis is contained in the hydraulic code rules chapter 220-226 WAC, incorporating elements of 2SHB 1579 into HPA rules final regulatory analyses document that also contains the small business economic impact statement, least burdensome alternative analysis and significant legislative rule determinations. The concise explanatory statement and implementation plan are also available at the HPA rule-making web page noted above.

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 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 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

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

Date Adopted: April 24, 2020.

Larry Carpenter, Chair  
Fish and Wildlife Commission

**AMENDATORY SECTION** (Amending WSR 18-10-054, filed 4/27/18, effective 6/1/18)

**WAC 220-660-050 Procedures—Hydraulic project approvals. (1) Description:**

(a) There are six categories of HPAs: Standard, emergency, imminent danger, chronic danger, expedited, and pamphlet. These categories are discussed in more detail throughout this section. Most HPAs issued by the department are standard HPAs. Guidance for applying for an HPA is provided on the department's website.

(b) HPAs do not exempt a person from obtaining other necessary permits and following the rules and regulations of local, federal, and other Washington state agencies.

(2) **Fish life concerns:** Construction and other work activities in or near water bodies can kill or injure fish life directly and can damage or destroy habitat that supports fish life. Damaged or destroyed habitat can continue to cause lost fish life production for as long as the habitat remains altered. HPAs help ensure construction and other work is done in a manner that protects fish life.

**(3) Standard HPA:**

(a) The department issues a standard HPA when a hydraulic project does not qualify for an emergency, imminent danger, chronic danger, expedited or pamphlet HPA. An individual standard HPA is limited to a single project site. Some special types of standard HPAs may cover multiple project sites.

**(b) Special types of standard HPAs:**

(i) Fish habitat enhancement project (FHEP) HPA.

(A) Projects must satisfy the requirements in RCW 77.55.181(1) to be processed as a fish habitat enhancement project.

(B) Projects that are compensatory mitigation for a development or other impacting project are not eligible. This includes proposals for mitigation banks or in-lieu fee mitigation proposals. The sole purpose of the project must be for fish habitat enhancement.

(C) The department may reject an FHEP proposed under RCW 77.55.181 if the local government raises concerns during the comment period that impacts from the project cannot be mitigated by conditioning the HPA. The department will reject an FHEP if the department determines that the size and the scale of the project raises public health or safety concerns. If the department rejects a project for streamlined pro-

cessing, the department must provide written notice to the applicant and local government within forty-five days of receiving the application.

(D) An applicant whose fish habitat enhancement project is rejected may submit a new complete written application with project modifications or additional information required for streamlined processing. An applicant may request that the department consider the project under standard HPA processing procedures by submitting a new complete written application for standard processing.

(ii) Multisite HPA.

(A) A standard HPA may authorize work at multiple project sites if:

(I) All project sites are within the same water resource inventory area (WRIA) or tidal reference area;

(II) The primary hydraulic project is the same at each site so there is little variability in HPA provisions across all sites; and

(III) Work will be conducted at no more than five project sites to ensure department staff has sufficient time to conduct site reviews.

(B) The department may make an exception for projects the department has scoped prior to application submittal or when no prepermit issuance site visits are needed.

(iii) General HPA.

(A) The department may issue general HPAs to government agencies, organizations, or companies to perform the same work in multiple water bodies across a large geographic area.

(B) To qualify for a general HPA, projects must protect fish life:

(I) Technical provisions in the HPA must fully mitigate impacts to fish life;

(II) The projects must be relatively simple so that the HPA provisions are the same across all sites, and can therefore be permitted without site-specific provisions; and

(III) The projects must have little or no variability over time in site conditions or work performed.

(C) The general HPA will include a requirement that notice be given to the department when activities utilizing heavy equipment begin. The department may waive this requirement if the permittee and department meet annually to review scheduled activities for the upcoming year.

(D) The department and the applicant may negotiate the scope and scale of the project types covered. The department and the applicant must agree on the fish protection provisions required before the application is submitted.

(E) The department may reject applications for a general HPA if:

(I) The proposed project does not meet the eligibility requirements described in subsection (3)(b)(iii)(B) of this section; or

(II) The department and the applicant cannot agree on the fish protection provisions.

(F) The department must provide written notice of rejection of a general HPA application to the applicant. The applicant may submit a new complete written application with project modifications or additional information required for department consideration under standard HPA processing procedures.

(iv) "Model" HPA.

(A) The department will establish a "model" HPA application and permitting process for qualifying hydraulic projects. To qualify, an individual project must comply with the technical provisions established in the application. Hydraulic projects that qualify for the model process must:

(I) Fully mitigate impacts to fish life in the technical provisions of the HPA;

(II) Be a low complexity project that minimizes misinterpretation of the HPA provisions allowing the HPA to be permitted without site-specific provisions; and

(III) Meet all of the eligibility requirements described in the model application.

(B) If needed to confirm project eligibility, the department may conduct a site visit before approving or rejecting a model application.

(C) The department may reject applications for model HPAs if:

(I) The plans and specifications for the project are insufficient to show that fish life will be protected; or

(II) The applicant or authorized agent does not fill out the application completely or correctly.

(D) The department must provide written notice of rejection of an application to the applicant. The applicant may submit a new complete written application with project modifications or additional information required for department consideration under standard HPA processing procedures under this section, or may submit a new model application if the department rejected the application because the person did not fill out the original application correctly.

**(4) Emergency HPA:**

(a) Declaring an emergency.

(i) Authority to declare an emergency, or continue an existing declaration of emergency, is conveyed to the governor, the department, or to a county legislative authority by statute. An emergency declaration may be made when there is an immediate threat to life, the public, property, or of environmental degradation;

(ii) The county legislative authority must notify the department, in writing, if it declares an emergency;

(iii) Emergency declarations made by the department must be documented in writing;

(iv) When an emergency is declared, the department must immediately grant verbal approval upon request for work to protect life or property threatened by waters of the state because of the emergency, including repairing or replacing a stream crossing, removing obstructions, or protecting stream banks. The department may also grant written approval if the applicant agrees.

(b) If the department issues a verbal HPA, the department must follow up with a written HPA documenting the exact provisions of the verbal HPA within thirty days of issuing the verbal HPA.

(c) Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for emergency HPAs.

(d) The department may require a person to submit an as-built drawing within thirty days after the hydraulic project authorized in the emergency HPA is completed.

(e) Within ninety days after a hydraulic project authorized in an emergency HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

**(5) Imminent danger HPA:**

(a) Authority to declare imminent danger is conveyed to the department or county legislative authority by statute. The county legislative authority must notify the department in writing if it determines that an imminent danger exists.

(b) Imminent danger declarations made by the department must be documented in writing.

(c) When imminent danger exists, the department must issue an expedited HPA upon request for work to remove obstructions, repair existing structures, restore banks, and to protect fish life or property.

(d) When imminent danger exists, and before starting work, a person must submit a complete written application to the department to obtain an imminent danger HPA. Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for imminent danger HPAs.

(e) Imminent danger HPAs must be issued by the department within fifteen calendar days after receiving a complete written application. Work under an imminent danger HPA must be completed within sixty calendar days of the date the HPA is issued.

(f) Within ninety days after a hydraulic project authorized in an imminent danger HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

**(6) Chronic danger HPA:**

(a) The department must issue a chronic danger HPA upon request for work required to abate the chronic danger. This work may include removing obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish life, or protecting property.

(b) Authority to declare when a chronic danger exists is conveyed to a county legislative authority by statute. A chronic danger is a condition in which any property, except for property located on a marine shoreline, has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway.

(c) The county legislative authority must notify the department in writing when it determines a chronic danger exists.

(d) When chronic danger is declared, and before starting work, a person must submit a complete written application to the department to obtain a chronic danger HPA. Unless the project also satisfies the requirements for fish habitat enhancement projects identified in RCW 77.55.181 (1)(a)(ii), compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is required. Projects that meet the requirements in RCW 77.55.181 (1)(a)(ii), will be processed under RCW 77.55.181(3), and the provisions of chapter 43.21C RCW will not be required.

**(7) Expedited HPA:**

(a) The department may issue an expedited HPA when normal processing would result in significant hardship for the

applicant or unacceptable environmental damage would occur.

(b) Before starting work, a person must submit a complete written application to the department to obtain an HPA.

(c) Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for expedited HPAs. The department must issue expedited HPAs within fifteen calendar days after receipt of a complete written application. Work under an expedited HPA must be completed within sixty calendar days of the date the HPA is issued.

(d) Within ninety days after a hydraulic project authorized in an expedited HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

**(8) Pamphlet HPA:**

(a) There are two pamphlet HPAs, *Gold and Fish* and *Aquatic Plants and Fish*, that cover the most common types of mineral prospecting and removing or controlling aquatic plants, respectively. A person must follow the provisions in the pamphlet. If a person cannot follow the provisions, or disagrees with any provision, the permittee must apply for a standard HPA before starting the hydraulic project.

(b) A person must review a pamphlet HPA before conducting the authorized hydraulic project.

(c) When a pamphlet HPA is used, the permittee must have the pamphlet HPA on the job site when conducting work and the pamphlet must be immediately available for inspection by the department upon request.

(d) All persons conducting the project must follow all provisions of the pamphlet HPA.

(e) The department may grant exceptions to a pamphlet HPA only if a person applies for a standard individual HPA for the project.

(f) Pamphlet HPAs do not exempt a person from obtaining other appropriate permits and following the rules and regulations of local, federal, and other Washington state agencies.

**(9) How to get an HPA:**

(a) How to get a pamphlet HPA: A person can download and save or print a pamphlet HPA from the department's website. A person may also request a pamphlet HPA from the department either verbally or in writing.

(b) How to get an emergency HPA: Upon an emergency declaration, and before starting emergency work, a person must obtain a verbal or written HPA from the department. A complete written application is not required. However, a person must provide adequate information describing the proposed action. Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act), is not required for emergency HPAs. A person may request a verbal or written emergency HPA from the biologist who issues HPAs for the geographic area where the emergency is located Monday through Friday from 8:00 a.m. to 5:00 p.m. If the biologist cannot be contacted or it is after business hours, a person must contact the emergency hotline at 360-902-2537 to request an emergency HPA.

(c) How to get a standard, expedited, or chronic danger HPA:

(i) A person must submit a complete written application to the department to obtain an HPA unless the project qualifies for one of the following:

- (A) A pamphlet HPA, subsection (3) of this section; or
- (B) An emergency HPA, subsection (5) of this section.

(ii) When applying for an HPA, a person must submit one of the following application forms to the department:

(A) The electronic online application developed by the department;

(B) The current version of the JARPA;

(C) The current version of the JARPA including the most recent version of the application for streamlined processing of fish habitat enhancement projects when applying for streamlined processing under RCW 77.55.181. These may be submitted to the department as attachments to the online application form;

(D) The most recent version of the model HPA application or other department-approved alternative applications available from the department's public website; or

(E) The current version of the JARPA if applying for approval of a watershed restoration project under RCW 77.55.171. This may be submitted to the department as an attachment to the online application form.

(iii) A complete application package for an HPA must contain:

(A) A completed application form signed and dated by the applicant, landowner(s) or landowner representative(s) of any project site or off-site mitigation location, and the authorized agent, if any. Completing and submitting the application forms through the department's online permitting system is the same as providing signature and date, if all documents required during the online application process are submitted to the department. The property owner, if different than the applicant, or easement holder must consent to the department staff entering the property where the project is located to inspect the project site or any work;

(B) Plans for the overall project;

(C) Complete plans and specifications for all aspects of the proposed construction or work waterward of the mean higher high water line in salt water, or waterward of the ordinary high water line in fresh water;

(D) A description of the measures that will be implemented for the protection of fish life, including any reports assessing impacts from the hydraulic project to fish life and their habitat ((~~that supports fish life~~)), and plans to mitigate those impacts to ensure the project results in no net loss;

(E) For a standard or chronic danger HPA application, a copy of the written notice from the lead agency demonstrating compliance with any applicable requirements of the State Environmental Policy Act under chapter 43.21C RCW, unless otherwise provided for in chapter 77.55 RCW; or the project qualifies for a specific categorical exemption under chapter 197-11 WAC;

(F) Written approval by one of the entities specified in RCW 77.55.181 if the applicant is proposing a fish enhancement project;

(G) For an expedited application, an explanation of why normal processing would result in significant hardship for the applicant or unacceptable environmental damage.

(iv) HPA application submission:

(A) A person must submit the complete application package:

- (I) Using the department's online permitting system;
- (II) Sending the package via mail to:

Department of Fish and Wildlife  
P.O. Box 43234  
Olympia, WA 98504-3234;

(III) Email: HPAapplications@dfw.wa.gov;

(IV) Fax: 360-902-2946;

(V) Uploading to a file transfer protocol site acceptable to the department; or

(VI) Hand delivering to the department at 1111 Washington Street S.E., Olympia, WA 98504, Habitat Program, Fifth Floor. The department will not accept applications submitted elsewhere or by other than the applicant or authorized agent.

(B) Dimensions of printed documents submitted with the application package may not be larger than eleven inches by seventeen inches. Pages of documents submitted may not be bound except by paper clips or other temporary fastening.

(C) A person must submit applications and supporting documents with a combined total of thirty or more pages as digital files rather than printed documents. All digital files must be in formats compatible with Microsoft Word, Microsoft Excel, or Microsoft Access programs or in PDF, TIFF, JPEG, or GIF formats.

(D) Applications submitted to the habitat program during normal business hours are deemed received on the date the habitat program receives the application. The department may declare applications received by the habitat program after normal business hours as received on the next business day.

**(10) Incomplete applications:**

(a) Within ten days of receipt of the application, the department must determine whether an application meets the requirements of this section. If the department determines the application does not meet the requirements, the department will provide written or emailed notification of an incomplete application to the applicant or authorized agent. This written or emailed notification must include a description of information needed to make the application complete. The department may return the incomplete application to the applicant or authorized agent or hold the application on file until it receives the missing information. The department will not begin to process the application until it receives all information needed to complete the application.

(b) The applicant or authorized agent must submit additional information in response to a written notification of incomplete application through the department's online permitting system or to the department's habitat program, Olympia headquarters office. The department will not accept additional information submitted elsewhere or by other than the applicant or authorized agent.

(c) The department may close any application that has been incomplete for more than twelve months. The department must provide the applicant or authorized agent with written notification at least one week before closing the application and must provide the option for the applicant or authorized agent to postpone the closure for up to one year.

The department must provide the applicant with written notification at the time it closes the application. After an application is closed, the applicant or authorized agent must submit a new complete application to receive further consideration of the project.

**(11) Application review period:**

(a) Once the department determines an application is complete, the department will provide to tribes and local, state, and federal permitting or authorizing agencies a seven-calendar-day review and comment period. The department will not issue the HPA (~~(permit)~~) before the end of the review period to allow all interested tribes and agencies to provide comments to the department. The department may consider all written comments received when issuing or provisioning the HPA. The review period is concurrent with the department's overall review period. Emergency, imminent danger, expedited, and modified HPAs are exempt from the review period requirement.

(b) Except for emergency, imminent danger, and expedited HPAs, the department will grant or deny approval within forty-five calendar days of the receipt of a complete written application. The department will grant approval of imminent danger and expedited HPAs within fifteen days of the receipt of a complete written application. The department will grant approval of emergency HPAs immediately upon request if an emergency declaration has been made.

(c) If the department declares an imminent danger, applicant hardship, or immediate threat regarding an application for expedited or emergency HPA, the department must place written documentation of that declaration and justification for it in the application record within three days of issuing the written HPA.

**(12) Suspending the review period:**

(a) An applicant or authorized agent may request a delay in processing a standard HPA. The applicant or authorized agent must submit a written request for the delay through the department's online permitting system or to the habitat program's Olympia headquarters office. The department may not accept delay requests submitted elsewhere or by a person other than the applicant or authorized agent.

(b) If the department suspends the review period, the department must immediately notify the applicant in writing of the reasons for the delay. The department may suspend the review period (with or without the applicant's concurrence) if:

(i) The site is physically inaccessible for inspection or not in a condition to be evaluated (i.e., snow cover, frozen);

(ii) The applicant or authorized agent remains unavailable or unable to arrange for a field evaluation of the proposed project within ten working days of the department's receipt of the application;

(iii) The applicant or authorized agent submits a written request for a delay;

(iv) The department is issuing (~~(a permit)~~) an HPA for a stormwater discharge and is complying with the requirements of RCW 77.55.161 (3)(b); or

(v) The department is reviewing the application as part of a multiagency permit streamlining effort, and all participating permitting and authorizing agencies and the permit

applicant agree to an extended timeline longer than forty-five calendar days.

(c) The department may close any application if the application has been delayed for processing more than twelve months for any of the reasons identified in subsection (12)(a) or (b) of this section. The department must provide the applicant or authorized agent with written notification at least one week before closing the application and must provide the option for the applicant or authorized agent to postpone the closure for up to one year. The department must provide the applicant with written notification at the time it closes the application. After an application is closed, the applicant or authorized agent must submit a new complete application to receive further consideration of the project.

**(13) Issuing or denying a hydraulic project approval:**

(a) Protection of fish life is the only grounds upon which the department may deny or provision an HPA, as provided in RCW 77.55.021. The department may not unreasonably withhold or condition approval of (~~(a permit)~~) an HPA. The HPA provisions must reasonably relate to the project and must ensure that the project provides proper protection for fish life. The department may not impose provisions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(b) The department may not deny an emergency, imminent danger, chronic danger, or an expedited HPA, as provided in RCW 77.55.021. (~~(In addition, the department may not deny an HPA for a project that complies with the conditions of RCW 77.55.141.)~~) However, these projects must (~~(meet the mitigation)~~) comply with the provisions in ((WAC 220-660-080 and the provisions in WAC 220-660-100 through 220-660-450)) this chapter that are included in an HPA. The department will deny any other type of HPA or request to change an existing HPA when the project will not protect fish life, unless enough mitigation can be assured by provisioning the HPA or modifying the proposal. If the department denies approval, the department must provide the applicant with a written statement of the specific reasons why and how the proposed project would adversely affect fish life, as provided in RCW 77.55.021.

(c) The department may place specific time limitations on project activities in an HPA to protect fish life.

(d) The department may require a person to notify the department before hydraulic project construction or other hydraulic project work starts, upon project completion, or at other times that the department deems necessary while the (~~(permit)~~) HPA is in effect. The department may also require a person to provide periodic written reports to assess (~~(permit)~~) HPA compliance.

(e) The HPA must contain provisions that allow for minor modifications to the work timing, plans, and specifications of the project without requiring the reissuance of the (~~(permit)~~) HPA, as long as the modifications do not adversely affect fish life or the habitat that supports fish life. The permittee should contact the habitat program's Olympia headquarters office through email or the department's online permit application system to request a minor modification.

(f) A person may propose or conduct a hydraulic project under an environmental excellence program agreement authorized under chapter 43.21K RCW. These projects must

be applied for and permitted under the requirements of chapter 43.21K RCW.

**(14) Hydraulic project approval expiration time periods:**

(a) Except for emergency, imminent danger, expedited, and pamphlet HPAs, the department may grant standard HPAs that are valid for up to five years. The permittee must demonstrate substantial progress on construction of the portion of the project authorized in the HPA within two years of the date of issuance.

(b) Imminent danger and expedited HPAs are valid for up to sixty days, and emergency HPAs are valid for the expected duration of the emergency hydraulic project.

(c) Pamphlet HPAs remain in effect indefinitely until modified or rescinded by the department.

(d) The following types of agricultural hydraulic project HPAs remain in effect without the need for periodic renewal; however, a person must notify the department before starting work each year:

(i) Seasonal work that diverts water for irrigation or stock watering; and

(ii) Stream bank stabilization projects to protect farm and agricultural land if the applicant can show that the problem causing the erosion occurs annually or more frequently. Evidence of erosion may include history of permit application, approval, or photographs. Periodic floodwaters alone do not constitute a problem that requires an HPA.

**(15) Requesting a time extension, renewal, modification, or transfer of a hydraulic project approval:**

(a) The permittee may request a time extension, renewal, modification, or transfer of an active HPA. Before the HPA expires, the permittee or authorized agent must submit a written request through the department's online permitting system or to the habitat program's Olympia headquarters office. The department may not accept requests for delay, renewal, modification, or transfer of an HPA submitted elsewhere or by a person other than the permittee or authorized agent. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the permit number or application identification number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA if requesting a time extension, renewal, or modification, the reason for the requested change, the date of the request, and the requestor's signature. Requests for transfer of an HPA to a new permittee or authorized agent must additionally include a signed, written statement that the new permittee or authorized agent agrees to the conditions of the HPA, that they agree to allow the department access to the project location to inspect the project site, mitigation site, or any work related to the project, and that they will not conduct any project activities until the department has issued approval.

(b) Requests for time extensions, renewals, or modifications of HPAs are deemed received on the date received by the department. The department may declare applications submitted to habitat program after normal business hours as received on the next business day.

(c) Within forty-five days of the requested change, the department must approve or deny the request for a time

extension, renewal, modification, or transfer of an approved HPA.

(d) Unless the new permittee or authorized agent requests a time extension, renewal, or modification of an approved HPA, the department may change only the name and contact information of the permittee or authorized agent and must not alter any provisions of the HPA except the project or location start dates when granting a transfer.

(e) A permittee may request a modification or renewal of an emergency HPA until the emergency declaration expires or is rescinded. Requests for changes to emergency HPAs may be verbal, but must contain all of the information in (a) of this subsection.

(f) The department must not modify or renew an HPA beyond the applicable five-year or sixty-day periods. A person must submit a new complete application for a project needing further authorization beyond these time periods.

(g) The department will issue a letter documenting an approved minor modification(s) and a written HPA documenting an approved major modification(s) or transfer.

**(16) Modifications of a hydraulic project approval initiated by the department:**

(a) After consulting with the permittee, the department may modify an HPA because of changed conditions. The modification becomes effective immediately upon issuance of a new HPA.

(b) For hydraulic projects that divert water for agricultural irrigation or stock watering, or when the hydraulic project or other work is associated with stream bank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the department must show that changed conditions warrant the modification in order to protect fish life.

**(17) Revoking an HPA.**

(a) The department may revoke an HPA under the following conditions:

(i) At the written request of the permittee or authorized agent;

(ii) As the result of an informal or formal appeal decision;

(iii) As the result of a court ruling finding that the department issued the HPA in error;

(iv) Following change of a determination of nonsignificance or mitigated determination of nonsignificance to a determination of significance by a lead agency under chapter 43.21C RCW that applies to the hydraulic project approved by the HPA;

(v) The applicant did not correctly identify compliance with the requirements of chapter 43.21C RCW in the HPA application (~~for an HPA~~) and the department was unaware of the error until after the (~~permit~~) HPA was issued;

(vi) Changed physical or biological conditions at the site of the hydraulic project have occurred before project initiation such that fish life cannot be protected if the project proceeds under the requirements of the existing HPA;

(vii) The permittee has not demonstrated substantial progress on construction of the hydraulic project within two years of the date of issuance as required in RCW 77.55.021 (9)(a). Substantial progress means initiation of work at any of the project locations identified in the HPA;

(viii) Duplicate HPAs have been issued for the same hydraulic project.

(b) The department must provide the permittee or authorized agent with written notification before revoking the HPA.

(c) The department must notify the permittee or authorized agent in writing immediately upon revoking the HPA.

**(18) Requesting a preapplication determination:**

(a) A person may request information or a technical assistance site visit from the department prior to submitting an HPA application or at any other time. The department will provide the requested information either verbally or in writing.

(b) If a person is unsure about whether proposed construction or other work landward of (above) the ordinary high water line requires an HPA, they may request a preapplication determination from the department under RCW 77.55-400. The department must evaluate the proposed project and determine if it is a hydraulic project and, if so, whether an HPA from the department is required to ensure proper protection of fish life.

(c) The preapplication determination request must be submitted through the department's online permitting system and must contain:

(i) A description of the proposed project, which must include the location of the ordinary high water line;

(ii) A map showing the location of the project site, which must include the location of the ordinary high water line; and

(iii) Preliminary plans and specifications of the proposed project, if available, which include the location of the ordinary high water line.

(d) The department must provide tribes and local governments a seven calendar day review and comment period. The department must consider all applicable written comments that it receives before it issues a determination as described in this subsection.

(e) The department must issue a written determination, including its rationale for the decision, within twenty-one calendar days of receiving the request.

(f) Chapter 43.21C RCW (state environmental policy) does not apply to preapplication determinations issued under this subsection.

(g) The department's preapplication determination decision may be appealed as provided in WAC 220-660-460 (Informal appeal of administrative action) or WAC 220-660-470 (Formal appeal of administrative action).

**(19) Notice of intent to disapprove HPA applications:**

(a) The department may disapprove HPA applications submitted by a project proponent who has failed to comply with a stop work order or notice to comply issued under WAC 220-660-480, or who has failed to pay civil penalties issued under WAC 220-660-480. The term "project proponent" has the same definition as in RCW 77.55.410.

(b) The department may disapprove HPA applications submitted by such project proponents for up to one year after the date on which the department issues a notice of intent to disapprove HPA applications, or until such project proponent pays all outstanding civil penalties and complies with all notices to comply and stop work orders issued under WAC 220-660-480, whichever is longer (disapproval period).

(c) The department must provide written notice of its intent to disapprove HPA applications to the project proponent and to any authorized agent or landowner identified in the application, in person or via United States mail, to the mailing address(es) listed on the project proponent's HPA application.

(d) The disapproval period begins on the date the department's notice of intent to disapprove HPA applications becomes final. The notice of intent to disapprove HPA applications becomes final thirty calendar days after the department issues it, or upon exhaustion of all applicable administrative and/or judicial remedies.

(e) Any project proponent issued a notice of intent to disapprove HPA applications may, within thirty days of the date of the notice, initiate a formal appeal of the notice as provided in WAC 220-660-470 (Formal appeal of administrative actions).

(f) The department will provide notice and waiver of fines, civil penalties, and administrative sanctions consistent with RCW 34.05.110 and WAC 220-660-480(12).

**AMENDATORY SECTION** (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

**WAC 220-660-370 Bank protection in saltwater areas.** ((RCW 77.55.141 applies to single-family residence bank protection that will not result in a permanent loss of critical food fish and shellfish habitat. RCW 77.55.021 applies to nonsingle-family residence bank protection and single-family residence bank protection that does not comply with the criteria in RCW 77.55.141. The department may deny bank protection applications processed under RCW 77.55.021 that do not provide proper protection of fish life.)) Appropriate methods to assess the need for marine bank protection and, if needed, to design marine bank protection are available in the department's *Marine Shoreline Design Guidelines*, as well as other published manuals and guidelines.

(1) **Description:** ((A bank protection structure is a permanent or temporary structure constructed to protect or stabilize the bank. Bank protection methods are either hard or soft techniques. Soft approaches attempt to mimic natural processes by using biotechnical methods such as live plantings, rootwads and large woody material (LWM), and beach nourishment. Usually, soft approaches are designed to be less impacting to fish life. Hard approaches armor the bank with material such as rock, concrete, or wood intended to prevent erosion of the bank. Some projects use both hard and soft approaches. To be considered soft, at least eighty-five percent of the total project area must be constructed with naturally occurring materials in a manner that mimics the natural shore processes taking place in the vicinity of the project. In addition, the remaining fifteen percent of the total project area must not interrupt sediment delivery to the beach (e.g., must not bulkhead a feeder bluff). The total project area extends cross-shore from MLLW to the OHWL, and long-shore from a line perpendicular to the shoreline at the beginning of one end of construction to the other end.)) A broad spectrum of bank protection techniques can be applied to protect property. These range from natural techniques that require minimal or no engineering to engineered soft shore

protection to hard shore armor. Natural techniques include planting native vegetation, improving drainage, and relocating structures. Natural techniques typically preserve the natural condition of the shore and have few to no negative impacts on fish life. Soft shore techniques include log placement, beach nourishment, resloping the bank, and revegetation can provide erosion protection using strategically placed natural materials while allowing beach processes and fish habitat to remain intact. Conventional hard techniques include bulkheads, seawalls, revetments and retaining walls, which are designed to preclude shoreline migration and bank erosion. Each type of approach has varying degrees of impact. In general, natural techniques result in the fewest impacts to fish life and hard armor have the most impacts.

(2) **Fish life concerns:** ~~((Bank protection structures))~~ Conventional hard techniques as well as some soft shore techniques can physically alter the beach and disrupt ((near-shore ecosystem)) beach processes ((and physical conditions)). This alteration can cause a loss of the beach spawning habitat for Pacific sand lance and surf smelt ((and a loss of migration, feeding, and rearing habitat for juvenile salmon)). These forage fish species are a primary food source for some adult salmon species. This alteration can also reduce beach complexity, the presence of marine riparian vegetation including overhanging vegetation alongshore that produces terrestrial insects that are eaten by juvenile salmon. To protect fish life, the department protects ~~((the))~~ both beaches where ((critical food fish or shellfish habitat)) saltwater habitats of special concern occur and the ((nearshore zone geomorphic)) beach processes that form and maintain this ((erit-eat)) habitat.

(3) ~~((Bulkheads and other))~~ **Bank protection design:**

(a) If the ordinary high water line (OHWL) ~~((is))~~ has changed since an existing hard bank protection structure was built, and OHWL reestablishes landward of ((a bulkhead protection)) the structure, the department will consider this reestablished OHWL to be the existing OHWL for permitting purposes. If an HPA application ~~((for an HPA))~~ is submitted for repairs within three years of the breach, the bank protection structure may be repaired or replaced in the original footprint.

(b) A person must use the least impacting technically feasible bank protection alternative. A person should propose a hard armor technique only after considering site characteristics such as the threat to major improvements, wave energy, and other factors in an alternatives analysis. The common alternatives below are in order from most preferred to least preferred:

- (i) Remove the bank protection structure;
- (ii) ~~((No action--))~~ Control upland drainage;
- (iii) Protect, enhance, and replace native vegetation;
- (iv) Relocate improvements or structures;
- (v) Construct a soft structure ~~((by placing beach nourishment and large woody material));~~
- (vi) Construct upland retaining walls;
- (vii) Construct ~~((a))~~ hard structure ((such as bulkhead and rock revetment)) landward of the OHWL; and
- (viii) Construct ~~((a))~~ hard structure ((such as a bulkhead and rock revetments)) at the OHWL.

(c) ~~((Upon receipt of a complete application, the department will determine the applicable RCW under which to process the application.~~

(i) ~~A new, replacement, or repaired single-family residence bulkhead in saltwater areas must not result in the permanent loss of critical food fish or shellfish habitat to be processed under RCW 77.55.141.~~

(ii) ~~If construction of a new single-family residence bulkhead or other bank protection project, or replacement or repair of an existing single-family residence bulkhead or other bank protection project waterward of the existing structure will result in the permanent loss of critical food fish or shellfish habitat, the department must instead process the application under RCW 77.55.021. However,))~~ The construction of all ((bulkheads or other)) bank protection must not result in a permanent loss of surf smelt or Pacific sand lance spawning beds.

(d) An HPA application for ~~((a))~~ new ((bulkhead or other)) bank protection ((work)), or the replacement or rehabilitation of ((a bulkhead or other)) bank protection ((structure)) that extends waterward of ((the)) an existing bank protection structure must include a site assessment, alternatives analysis and design rationale for the proposed method prepared by a qualified professional ~~((such as a coastal geologist, geomorphologist, etc.)) for the proposed project and selected technique)).~~ The department may grant an exemption depending on the scale and nature of the project. ~~((In addition, this requirement does not apply to projects processed under RCW 77.55.141. This report must include))~~ The applicant must submit the qualified professional's report to the department as part of a complete application for an HPA that includes:

(i) An assessment of the level of risk to existing buildings, roads, or services being threatened by the erosion;

(ii) Evidence of erosion and/or slope instability to warrant the stabilization work;

(iii) Alternatives considered and the technical rationale specific to the ((design developed)) bank protection technique proposed;

(iv) An analysis of the benefits and impacts associated with the chosen protection ~~((technique))~~ method; and

(v) An explanation of the ~~((technique))~~ method chosen, design parameters, types of materials, quantities, staging, and site rehabilitation.

(e) The department may require the design of hard bank protection ~~((projects))~~ structures to incorporate beach nourishment, large woody material or native vegetation as mitigation.

(4) ~~((Single-family residence bulkhead projects processed under RCW 77.55.141:~~

(a) ~~Locate the waterward face of a new bulkhead at or above the OHWL. Where this is not feasible because of geological, engineering, or safety concerns, the bulkhead may extend waterward of the OHWL the least distance needed to excavate for footings or place base rock, but no more than six feet waterward of the OHWL.~~

(b) ~~Do not locate the waterward face of a replacement or repaired bulkhead further waterward than the structure it is replacing. Where removing the existing bulkhead will result in environmental degradation such as releasing deleterious~~

material or problems due to geological, engineering, or safety concerns, the department will authorize the replacement bulkhead to extend waterward of, but directly abutting, the existing structure. In these instances, the design must use the least impacting type of structure and construction method.

**(5)) Bank protection ((~~projects processed under RCW 77.55.024~~) location:**

(a) Locate the waterward face of a new ((~~bulkhead~~) hard bank protection structure at or above the OHWL. Where this is not feasible because of geological, engineering, or safety concerns, the ((~~bulkhead~~) hard bank protection structure may extend waterward of the OHWL the least distance needed to excavate for footings or place base rock, but no greater than six feet. Soft shoreline ((~~stabilization techniques that provide restoration of shoreline ecological functions may be permitted~~) methods that allow beach processes and habitat to remain intact may extend waterward of the OHWL.

(b) Do not locate the waterward face of a replacement or repaired ((~~bulkhead~~) hard bank protection further waterward than the structure it is replacing. Where removing the existing ((~~bulkhead~~) hard bank protection will result in environmental degradation such as releasing deleterious material or problems due to geological, engineering, or safety concerns, the department will authorize the replacement ((~~bulkhead~~) bank protection to extend waterward of, but directly abutting, the existing structure. In these instances, ((~~the design~~) a person must use the least-impacting type of structure and construction method.

**((~~6~~) Bulkhead and other) (5) Bank protection construction:**

(a) The department ((~~may require a person to establish~~) requires that plans submitted as part of a complete application show the horizontal distances of the structure(s) from ((a) permanent local benchmark(s) (fixed objects) ((before starting work on the project)). Each horizontal distance shown must include the length and compass bearing from the benchmark to the waterward face of the structure(s). The benchmark(s) must be located, marked, and protected to serve as a post-project reference for at least ten years from the date the HPA application is submitted to the department.

(b) A person must not conduct project activities when tidal waters cover the work area including the work corridor, except the area occupied by a grounded barge.

(c) No stockpiling of excavated materials containing silt, clay, or fine-grained soil is approved waterward of the OHWL.

(d) The department may allow stockpiling of sand, gravel, and other coarse material waterward of the OHWL. Place this material within the designated work corridor ((~~waterward of the bulkhead footing or base rock~~). Remove all excavated or stockpiled material from the beach within seventy-two hours of construction.

(e) Backfill all trenches, depressions, or holes created during construction that are waterward of the OHWL before they are filled by tidal waters.

AMENDATORY SECTION (Amending WSR 18-10-054, filed 4/27/18, effective 6/1/18)

**WAC 220-660-460 Informal appeal of administrative actions.** An informal appeal is an ((~~appeal to the department pursuant to~~) internal department review of a department HPA decision and is conducted under chapter 34.05 RCW (Administrative Procedure Act).

(1) The department recommends that a person aggrieved by ((~~the issuance, denial, provisioning, or modification of an HPA~~) a department HPA decision contact the department employee responsible for making the decision ((~~on the HPA~~) before initiating an informal appeal. Discussion of concerns with the department employee often results in a resolution ((~~of the problem~~) without the need for an informal appeal.

(2) The department encourages ((~~aggrieved persons~~) a person aggrieved by a department HPA decision to take advantage of the informal appeal process before initiating a formal appeal. However, ((~~the informal appeal process is not mandatory, and~~) a person may ((proceed directly to) pursue a formal appeal under WAC 220-660-470 without first obtaining informal review under this section.

This rule does not apply to ((~~any provisions in~~) pamphlet HPAs. A person who disagrees with a provision in a pamphlet HPA may apply for an individual, written HPA.

This rule does not apply to correction requests issued following a technical assistance visit or compliance inspection under WAC 220-660-480.

**(3) Requesting an informal appeal.**

(a) Any person with legal standing may request an informal appeal of ((~~the following department actions:~~

((a)) the issuance, denial, provisioning, or modification of an HPA((; or), the rejection of a fish habitat enhancement project application, or a preapplication determination.

(b) ((~~An order imposing civil penalties~~) Issuance of a stop work order or notice to comply may be informally appealed only by the project proponent who received the notice or order or by the owner of the land on which the hydraulic project is located.

(c) Issuance of a notice of civil penalty may be informally appealed only by the person incurring the penalty.

(4) A request for an informal appeal must be in writing and must be received by the department within thirty days from the date of receipt of the decision ((~~or~~) order, or notice. "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence, up to forty-five days from the date of mailing. A person's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt. ((~~The date of actual receipt, however, may not exceed forty-five days from the date of mailing~~)

(5) A request for informal appeal must be submitted in one of the following ways:

(a) Mailed to the:

HPA Appeals Coordinator  
Department of Fish and Wildlife  
Habitat Program  
P.O. Box 43234

Olympia, WA 98504-3234;

(b) Email: HPAapplications@dfw.wa.gov;

(c) Fax: 360-902-2946; or

(d) Hand delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth Floor.

(6) The request must be plainly labeled as "Request for Informal Appeal" and must include the following:

(a) The appellant's name, address, email address (if available), and phone number;

(b) The specific department action that the appellant contests;

(c) The date of the specific department ~~((issued, denied, provisioned, or modified an HPA, or the date the department issued the order imposing civil penalties))~~ action being contested;

(d) The log number or a copy of the HPA, or a copy of the ~~((order imposing civil penalties))~~ specific department action that the appellant contests;

(e) A short and plain statement explaining why the appellant considers the department action or order to provide inadequate protection of fish life or to be otherwise unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) Whether the appellant is the permittee, HPA applicant, landowner, resident, or another person with an interest in the department action in question;

(h) The specific relief requested;

(i) The attorney's name, address, email address (if available), and phone number, if the appellant is represented by legal counsel; and

(j) The signature of the appellant or his or her attorney.

(7) Upon receipt of a valid request for an informal appeal, the department may initiate a review of the department action.

(8) Informal conference. If the appellant agrees, and the appellant applied for the HPA, resolution of the appeal may be facilitated through an informal conference. The informal conference is an optional part of the informal appeal and is normally a discussion between the appellant, the department employee responsible for the decision, and a supervisor. The time period for the department to issue a decision on an informal appeal is suspended during the informal conference process.

(9) Informal appeal hearing. If the appeal is received from a person who is not the permittee, or if the appeal involves an order imposing civil penalties, or if a resolution is not reached through the informal conference process, then the HPA appeals coordinator or designee may conduct an informal appeal hearing or review. Upon completion of the informal appeal hearing or review, the HPA appeals coordinator or designee must recommend a decision to the director or designee. The director or designee must approve or decline to approve the recommended decision within sixty days of the date the department received the request for informal appeal, unless the appellant agrees to an extension of time. The department must notify the appellant in writing of the decision of the director or designee.

(10) If the department declines to initiate an informal review of its action after receipt of a valid request, or the appellant still wishes to contest the department action follow-

ing completion of the informal appeal process, the appellant may initiate a formal appeal under WAC 220-660-470. Formal review must be requested within the time periods specified in WAC 220-660-470.

AMENDATORY SECTION (Amending WSR 18-10-054, filed 4/27/18, effective 6/1/18)

**WAC 220-660-470 Formal appeal of administrative actions.** A formal appeal is an appeal to the pollution control hearings board ~~((pursuant to))~~ (board) under chapters 34.05 RCW and 371-08 WAC.

(1) The department recommends that a person aggrieved by ~~((the issuance, denial, provisioning, or modification of an))~~ a department HPA decision contact the department employee responsible for making the decision on the HPA before initiating a formal appeal. Discussion of concerns with the department employee often results in a resolution ~~((of the problem))~~ without the need for a formal appeal.

(2) The department encourages ~~((aggrieved persons))~~ a person aggrieved by a department HPA decision to take advantage of the informal appeal process under WAC 220-660-460 before initiating a formal appeal. However, ~~((the informal appeal process is not mandatory, and))~~ a person may ~~((proceed directly to))~~ pursue a formal appeal under this section without first completing the informal appeal process under WAC 220-660-460.

This rule does not apply to ~~((any provisions in))~~ pamphlet HPAs. A person who disagrees with a provision in a pamphlet HPA may apply for an individual, written HPA.

This rule does not apply to correction requests issued following a technical assistance visit or compliance inspection, under WAC 220-660-480.

(3) Requesting a formal appeal.

(a) Any person with standing may request a formal appeal of the ~~((following department actions:~~

~~((a) The))~~ issuance, denial, provisioning, or modification of an HPA; ~~((or~~

~~((b) An order imposing civil penalties.~~

~~((4) As required by the Administrative Procedure Act, chapter 34.05 RCW, the department must inform the HPA permittee or applicant, or person subject to civil penalty order of the department, of the opportunity for appeal, the time within which to file a written request for an appeal, and the place to file it.))~~ the rejection of a fish habitat enhancement project application for streamlined processing; a notice of intent to disapprove HPA applications; or a preapplication determination.

(b) Issuance of a stop work order, notice to comply, or notice of intent to disapprove HPA applications, may be formally appealed only by a person who received the order or notice from the department or by the owner of the land on which the hydraulic project is located.

(c) Issuance of a notice of civil penalty may be formally appealed only by the person incurring the penalty.

(4) The recipient of a stop work order must comply with the order immediately upon receipt. However, the board may stay, modify, or discontinue the order upon motion, under such conditions as the board may impose.

(5) A request for formal appeal must be in writing and must be filed with the clerk of the (~~pollution control hearings~~) board (~~(PCHB)~~) and served on the department within thirty days from the date of receipt of the decision (~~(or)~~), order, or notice. "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence (~~(The recipient's)~~), up to forty-five days from the date of mailing. A person's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt. ((The date of actual receipt; however, may not exceed forty-five days from the date of mailing.))

(6) The request must be plainly labeled as "Request for Formal Appeal" and, (~~(pursuant to)~~) under WAC 371-08-340, must include the following:

(a) The appellant's name, mailing address, email address (if available), and phone number; and if represented by another, the representative's name, mailing address, email address, and phone number;

(b) The specific department action that the appellant contests;

(c) The date of the specific department (~~(issued, denied, provisioned, or modified an HPA, or the date the department issued the order imposing civil penalties)~~) action being contested;

(d) A copy of the decision, notice, order, or ((permit)) HPA you are appealing, and if appealing a permit decision, a copy of the (~~(permit)) HPA~~ application;

(e) A short and plain statement explaining why the appellant considers the department action, notice, or order to provide inadequate protection of fish life or to be otherwise unjust or unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) Whether the appellant is the permittee, HPA applicant, landowner, resident, or another person with an interest in the department action in question;

(h) The specific relief requested;

(i) The signature of the appellant or his or her representative.

(7) Service on the department must be submitted in one of the following ways:

(a) Mailed to:

HPA Appeals Coordinator  
Department of Fish and Wildlife  
Habitat Program  
P.O. Box 43234  
Olympia, WA 98504-3234;

(b) Email: [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov);

(c) Fax: 360-902-2946; or

(d) Hand delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth Floor.

(8) The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal must be within thirty days from the date of

receipt of the department's written decision in response to the informal appeal.

(9) The department at its discretion may stay the effectiveness of any decision or order that has been appealed to the (~~(PCHB)~~) board. The department will use the standards in WAC 371-08-415(4) to make a decision on any stay request. At any time during the appeal (~~(to the PCHB)~~), the appellant may apply to the (~~(PCHB)~~) board for a stay of the decision or order, or removal of a stay imposed by the department.

(10) If there is no timely request for an appeal, the department action will be final and nonappealable.

AMENDATORY SECTION (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

**WAC 220-660-480 Compliance with HPA provisions.** A project proponent must comply with all provisions of chapter 77.55 RCW, this chapter, and the HPA. If a project proponent violates chapter 77.55 RCW or this chapter or deviates from any provision of an HPA issued by the department, the department may issue a correction request, a stop work order, a notice to comply, or a notice of civil penalty. The term "project proponent" has the same definition as in RCW 77.55.410. This section does not apply to a project, or to that portion of a project, that has received a forest practices hydraulic project (FPHP) permit from the department of natural resources under chapter 76.09 RCW.

The department is responsible to help the regulated community understand how to comply. The department achieves voluntary compliance through education and technical assistance when the department advises and consults on permits, conducts compliance checks, performs on-site technical visits, or provides guidance materials written in easily understood language.

When the department cannot get voluntary compliance by issuing a correction request, the department may use a range of increasingly strict enforcement tools. This ranges from issuing notices of correction and stop work orders to penalties and, when appropriate, criminal prosecution.

(1) **Technical assistance program:** (~~(Pursuant to)~~) Under chapter 43.05 RCW, the department will continue to develop programs to encourage voluntary compliance (~~(with HPA provisions)~~) by providing technical assistance consistent with chapter 43.05 RCW. The programs include technical assistance visits, printed information, information and assistance by telephone, training meetings, and other appropriate methods for the delivery of technical assistance. In addition, (~~(provisions of chapter 43.05 RCW require)~~) the department (~~(to)~~) must provide, upon request, a list of organizations (~~(, including private companies,))~~ that provide technical assistance. This list (~~(must be))~~ is compiled by the department from information submitted by the organizations and does not constitute an endorsement by the department of any organization.

(a) Technical assistance is defined in chapter 43.05 RCW as including:

(i) Information on the laws, rules, and compliance methods and technologies applicable to the department's programs;

- (ii) Information on methods to avoid compliance problems;
- (iii) Assistance in applying for permits; and
- (iv) Information on the mission, goals, and objectives of the program.

(b) "Technical assistance documents" means documents prepared to provide information specified in (a) of this subsection that is labeled a technical assistance document by the department. Technical assistance documents do not include ~~((notices of correction, violation,))~~ correction requests or civil or criminal enforcement actions. "Correction request" means a notice of violation or a notice of correction as defined in chapter 43.05 RCW. Technical assistance documents do not impose mandatory obligations or serve as the basis for a citation.

**(2) Technical assistance visit:**

(a) ~~((Pursuant to))~~ Under RCW 43.05.030, a technical assistance visit is defined as a visit by the department to a project site or other location that:

- (i) Has been requested or is voluntarily accepted; and
- (ii) The department declares to be a technical assistance visit at the start of the visit.

(b) ~~((Notice of violation.))~~ During a technical assistance visit, or within a reasonable time thereafter, the department must prepare a ~~((notice of violation))~~ correction request to inform the ~~((person))~~ project proponent of any violations of law or department rules identified by the department ~~((as follows:~~

(i) ~~A description of what is not in compliance and the text of the specific section or subsection of the applicable state law or rule;~~

(ii) ~~A statement of what is required to achieve compliance;~~

(iii) ~~The date by which the project must achieve compliance;~~

(iv) ~~Notice of the means to obtain any technical assistance services provided by the department or others; and~~

(v) ~~Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.~~

(e) ~~A notice of violation is not a formal enforcement action and is not subject to appeal.~~

**~~(3) Notice of correction:~~**

~~((a) Procedures for correction of violations)).~~ "Correction request" means a notice of violation or a notice of correction as defined in chapter 43.05 RCW.

(c) As provided in RCW 43.05.050, the department may issue a civil penalty under this section without first issuing a correction request when a violation is observed during a technical assistance visit only if:

(i) The project proponent has previously been subject to an enforcement action for the same or similar type of HPA violation, or has been given previous notice for the same or similar type of HPA violation; or

(ii) The violation has a probability of causing more than minor harm to fish life.

**(3) Compliance inspection:**

(a) If, during any inspection or visit that is not a technical assistance visit, the department becomes aware of conditions that do not comply with applicable laws and rules enforced

by the department and are not subject to penalties as provided for in ~~((subsection (4) of))~~ this section, the department may issue a ~~((notice of))~~ correction request to the ~~((responsible party that must include:~~

~~(i) A description of what is not in compliance and the text of the specific section or subsection of the applicable state law or rule;~~

~~(ii) A statement of what is required to achieve compliance;~~

~~(iii) The date by which the department requires compliance to be achieved;~~

~~(iv) Notice of the means to contact any technical assistance services provided by the department or others; and~~

~~(v) Notice of when, where, and to who in the department a person may file a request to extend the time to achieve compliance for good cause.~~

~~(b) A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.~~

~~((c))~~ project proponent.

(b) If the department issues a ~~((notice of))~~ correction request, it must not issue a civil penalty for the violations identified in the ~~((notice of))~~ correction request unless the ~~((responsible party))~~ project proponent fails to comply with the notice(~~(-~~

**(4) Civil penalties:**

(a) The department may impose a civil penalty of up to one hundred dollars per day for a violation of any provisions of chapter 77.55 RCW or this chapter. The department must impose the civil penalty with an order in writing delivered by certified mail or personal service to the person who is penalized. The notice must describe the violation, identify the amount of the penalty, identify how to pay the penalty, and identify the process for informal and formal appeals of the penalty. If the violation is an ongoing violation, the penalty may accrue for each additional day of violation.

(b) The department may issue a civil penalty without first issuing a notice of correction, as provided in RCW 43.05.110)) request.

(c) As provided in RCW 43.05.050, the department may issue a civil penalty under this section without first issuing a correction request when a violation is observed during a compliance inspection only if:

(i) The ~~((person))~~ project proponent has previously been subject to an enforcement action for the same or similar type of HPA violation, or has been given previous notice of the same or similar type of HPA violation; or

(ii) Compliance for the current violation is not achieved by the date set or modified by the department in a ~~((previously issued notice of))~~ previous correction(~~(, if the department has responded to any request for review of such date by reaffirming the original date or establishing a new date))~~ request for the current violation; or

(iii) The violation has ~~((a probability of placing a person in danger of death or bodily harm, has))~~ a probability of causing more than minor ~~((environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars; or~~

(iv) The violation was committed by a business that employed fifty or more employees on at least one day in each of the preceding twelve months.

~~(e) Appeal of a civil penalty. If a civil penalty order is not appealed in a timely manner under WAC 220-660-460 or 220-660-470, the civil penalty order is final and nonappealable. If appealed, the civil penalty becomes final upon issuance of a final order not subject to any further administrative appeal. When a civil penalty order becomes final, it is due and payable.~~

~~(d) Payment of a civil penalty. The penalty imposed is due and payable thirty days after receipt of a notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this chapter is filed, the penalty is due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. If the civil penalty is not paid within thirty days after it becomes due and payable, the department may seek enforcement of the order under RCW 77.55.291 and 34.05.578.~~

~~(e) Unpaid civil penalty. If the amount of any penalty is not paid within thirty days after it is due and payable, the attorney general, upon the request of the director, must bring an action in the name of the state of Washington in the superior court of Thurston County or of any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence must be the same as an ordinary civil action. All penalties recovered under this section must be paid into the state's general fund.~~

~~(f) The department must comply with the requirements of RCW 34.05.110 before issuing a civil penalty to a small business as defined in that statute.~~

~~(5) **Time for compliance:** The department must provide for a reasonable time to achieve compliance. Any person receiving a notice of correction under subsection (3) or (4) of this section may request an extension of time for good cause to achieve compliance. The person must request an extension from the department in writing and follow the procedures specified by the department in the notice. The department must respond in writing within ten calendar days.~~

~~(6)) harm to fish life.~~

**(4) Correction request:**

~~(a) "Correction request" means a notice of violation or a notice of correction as defined in chapter 43.05 RCW. A correction request is not a formal enforcement action and is not subject to appeal under state law or WAC 220-660-460 Informal appeal of administrative actions or WAC 220-660-470 Formal appeal of administrative actions.~~

~~(b) If during a technical assistance visit or compliance inspection, the department discovers a violation of any provisions within chapter 77.55 RCW, this chapter, or an HPA issued by the department, it must, during the visit or within a reasonable time thereafter, issue a correction request to the project proponent detailing steps needed to bring the project into compliance.~~

~~(c) Contents of a correction request: A correction request must indicate whether it originates from a technical assistance visit or a compliance inspection. A correction request must include:~~

~~(i) A description of what is not in compliance with chapter 77.55 RCW, this chapter, or the HPA;~~

~~(ii) The text of the specific section(s) or subsection(s) of chapter 77.55 RCW, this chapter, or the HPA provision(s) for that violation;~~

~~(iii) A statement of what is required to achieve compliance;~~

~~(iv) The date by which the project proponent must achieve compliance;~~

~~(v) Notice of the means to obtain technical assistance services provided by the department or others; and~~

~~(vi) Notice of when, where, and to whom a request may be submitted to the department to extend, for good cause, the deadline for achieving compliance with the correction request.~~

~~(d) The department must provide for a reasonable time to achieve compliance.~~

~~(e) Time extension to comply: A request for an extension of the deadline for achieving compliance with the correction request must be submitted to the department in writing within ten calendar days of receiving the correction request. "Date of receipt" is defined in WAC 220-660-460 (4)(b) and 220-660-470 (5)(b). The department must respond in writing to a request for extension of the deadline.~~

~~**(5) Stop work order:**~~

~~(a) The department may issue a stop work order if:~~

~~(i) A violation of chapter 77.55 RCW or this chapter occurs or a deviation from any provisions of an HPA occurs. To qualify for a stop work order, the violation must be serious enough that it could cause significant harm to fish life; and~~

~~(ii) Immediate action is necessary to prevent continuation of harm, or to avoid more than minor harm, to fish life.~~

~~(b) Stop work orders are effective immediately upon issuance. Project proponents must therefore comply with stop work orders immediately upon receipt.~~

~~(c) Scope of a stop work order: A stop work order may require that any person stop all work connected with the violation until corrective action is taken, and the department has indicated that work may resume. A stop work order may also require that the project proponent take corrective action to prevent, correct, or compensate for adverse impacts to fish life caused by the violation.~~

~~(d) Contents of a stop work order. The stop work order must include:~~

~~(i) A description of the condition that is not in compliance with chapter 77.55 RCW, this chapter, or the HPA;~~

~~(ii) The text of the specific section(s) or subsection(s) of chapter 77.55 RCW, this chapter, or the HPA provision(s) for that violation;~~

~~(iii) A statement of what is required to achieve compliance;~~

~~(iv) The date by which the department requires compliance with the corrective actions identified in the order;~~

~~(v) Notice of the means to contact any technical assistance services provided by the department or others;~~

~~(vi) Notice of when, where, and to whom a request may be submitted to the department to extend, for good cause, the deadline for achieving compliance with the order;~~

~~(vii) Means for contacting the department to schedule an inspection to assess compliance; and~~

~~(viii) The right to appeal the order.~~

(e) Signature authority for a stop work order: A stop work order for hydraulic projects conducted without an HPA must be authorized by a regional habitat program manager, regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director. A stop work order for permitted hydraulic projects must be authorized by the regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director.

(f) Providing notice of a stop work order: A stop work order may be issued and provided directly and immediately to the person whose actions are in violation of chapter 77.55 RCW, this chapter, or the HPA, regardless of whether that person is the project proponent. Upon receipt of the stop work order, that person must immediately comply with it. Within five business days of issuing a stop work order, the department must mail a copy of the order to the last known address of any project proponent, to the last known address of the owner of the land on which the hydraulic project is located, and to the local jurisdiction in which the hydraulic project is located. The department must take all reasonable measures to ensure that the project proponent actually receives notice of the stop work order.

(g) Consequences of noncompliance: Failure to comply with a stop work order can result in subsequent civil or criminal enforcement actions, and can also cause the project proponent to be disapproved for future HPA applications as set forth in WAC 220-660-050.

(h) Appealing a stop work order: A stop work order may be appealed within thirty days from receipt of the order by a person who received a copy of the order or by the owner of the land on which the hydraulic project is located. Informal appeals must be filed in the form and manner provided in WAC 220-660-460, and formal appeals must be filed in the form and manner provided in WAC 220-660-470.

**(6) Notice to comply:**

(a) The department may issue a notice to comply if a violation of chapter 77.55 RCW or this chapter occurs, a deviation from any provisions of an HPA occurs, or damage or potential damage to fish life occurs, and the department determines that a stop work order is not necessary to prevent continuation of or avoid more than minor harm to fish life.

(b) Scope of a notice to comply: A notice to comply must specify the corrective action to be taken, and may also require additional action to prevent, correct, or compensate for adverse impacts to fish life caused by the violation.

(c) Contents of a notice to comply. A notice to comply must include:

(i) A description of the condition that is not in compliance;

(ii) The text of the specific section(s) or subsection(s) of chapter 77.55 RCW, this chapter, or the HPA provision(s) for that violation;

(iii) A statement of what is required to achieve compliance;

(iv) The date by which the department requires compliance to be achieved;

(v) Notice of the means to contact any technical assistance services provided by the department or others;

(vi) Notice of when, where, and to whom a request may be submitted to the department to extend, for good cause, the deadline for achieving compliance with the order; and

(vii) The right to appeal the notice.

(d) The department must provide for a reasonable time to achieve compliance.

(e) Signature authority for a notice to comply: A notice to comply must be authorized by a regional habitat program manager, regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director.

(f) Providing notice: Within five business days of issuing a notice to comply, the department must mail a copy of the notice to the last known address of any project proponent, to the last known address of the owner of the land on which the hydraulic project is located, and to the local jurisdiction in which the hydraulic project is located. The department must take all reasonable measures to ensure that the project proponent actually receives the notice.

(g) Consequences of noncompliance: Failure to comply with a notice to comply can result in subsequent civil or criminal enforcement actions, and can also cause the project proponent to be subject to disapproval of future HPA applications as set forth in WAC 220-660-050.

(h) Appealing a notice to comply: A notice to comply may be appealed within thirty days from the date of receipt of the notice by a person who received the notice or by the owner of the land on which the hydraulic project is located. Informal appeals must be filed in the form and manner provided in WAC 220-660-460 and formal appeals must be filed in the form and manner provided in WAC 220-660-470.

**(7) Civil penalties:**

(a) The department may levy civil penalties of up to ten thousand dollars for each and every violation of chapter 77.55 RCW, this chapter, or provisions of an HPA. Each and every violation is a separate and distinct civil offense. Penalties are issued in accordance with the penalty schedule provided in subsection (8) of this section.

(b) Notice of civil penalty: The department must issue written notice of any civil penalty imposed under this section. At a minimum, the notice must include:

(i) The factual and legal basis for the penalty, including a description of the violation(s) for which the penalty is imposed and the text of the specific section(s) or subsection(s) of chapter 77.55 RCW, this chapter, or the HPA provision(s) for those violation(s);

(ii) The amount of the penalty; and

(iii) The right of the person incurring the civil penalty to appeal it.

(c) Signature authority for a notice of civil penalty: Civil penalties must be authorized by the regional habitat program manager, regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director. Civil penalties of two thousand five hundred dollars or more must be authorized by the habitat program director, habitat program deputy director, or department director.

(d) Service of notice: The department must serve a notice of civil penalty as follows:

(i) By certified mail to:

(A) The last known address of the person incurring the penalty; and

(B) The local jurisdiction in which the hydraulic project is located; or

(ii) By personal service to:

(A) The person incurring the penalty; and

(B) The local jurisdiction in which the hydraulic project is located.

Within five business days of issuing a penalty, the department must mail a copy of the notice of civil penalty to the last known address of any project proponent and the owner of the land on which the hydraulic project is located. The department must take all reasonable measures to ensure that the project proponent actually receives notice of the penalty.

(e) Effective date of penalty: The penalty imposed becomes due and payable thirty days after receipt of a penalty notice unless an appeal is filed. Whenever an appeal is filed, the penalty becomes due and payable only upon completion of all review proceedings and the issuance of a final notice or order confirming the penalty in whole or in part.

Failure to pay a civil penalty can result in disapproval of future HPA applications as set forth in WAC 220-660-050. When a penalty becomes past due, it is also subject to interest at the rate allowed by RCW 43.17.240 for debts owed to the state.

Unpaid penalties may also be subject to enforcement under RCW 77.55.440 and other applicable laws and regulations under RCW 77.55.470.

(f) Right to appeal civil penalty: Any person incurring a civil penalty issued under RCW 77.55.440 and this section may appeal the civil penalty informally or formally within thirty days of receiving the notice of civil penalty. Informal appeals are conducted under WAC 220-660-460, and formal appeals are conducted under WAC 220-660-470.

(g) Civil penalties received or recovered under RCW 77.55.440 must be deposited into the state's general fund, except that the department is authorized to retain any attorneys' fees and costs it may be awarded in connection with an action brought under RCW 77.55.440 to recover a civil penalty.

**(8) Civil penalty schedule:**

(a) The department may levy a civil penalty, as defined in this section, in any of the following circumstances:

(i) The project proponent fails to complete actions required to be completed in a correction request, stop work order or notice to comply within the time period required for completion contained in the request or notice. Unless the project proponent has previously been subject to an HPA enforcement action or the violation has a probability of more than minor harm to fish life, the department will make a reasonable attempt to achieve voluntary compliance before issuing a civil penalty.

(ii) A project proponent is conducting or has conducted a hydraulic project without having an active HPA or without first obtaining an HPA for the project.

(b) The department's decision to issue a civil penalty under RCW 77.55.440 is based upon consideration of the following:

(i) Previous violation history of the person who will be incurring the penalty;

(ii) Severity and reparability of the impact of the violation(s) on fish life;

(iii) Whether the violation(s) was intentional;

(iv) The extent, if any, to which the person who would be incurring the penalty has cooperated or is cooperating with the department in addressing the violation(s) and its impact on fish life; and

(v) If the penalty will be imposed on a person for a violation committed by another, the extent to which the person incurring the penalty was unaware of the violation, and whether that person received a substantial economic benefit from the violation.

(c) Determining civil penalty amounts: When a penalty is assessed it will be calculated by the department using the following process:

(i) Determine the base civil penalty:

(A) The following violations have a base civil penalty amount of two thousand dollars: Conducting a hydraulic project without a valid HPA; willful misrepresentation of information on the HPA application; or a significant, in the opinion of the department, deviation from the valid HPA that adversely impacts fish life.

(B) All other violations not specifically mentioned have a base penalty of five hundred dollars.

(ii) Calculate the civil penalty amount from the considerations specific to the incident and the site. The following considerations will be independently evaluated for each violation and added to the base civil penalty to calculate the total civil penalty for each violation:

(A) Previous violation history of the person who will be incurring the penalty, including the frequency and similarity of any previous violations within five years preceding the violation leading to the issuance of the penalty. A history of violations that, under a preponderance of the evidence, shows a pattern of disregard for specific HPA provisions, chapter 77.55 RCW, or this chapter will likely result in a higher penalty amount. In reviewing a person's violation history for purposes of this section, the department may consider previously issued correction requests, stop work orders, notices to comply, notices of civil penalty imposed under chapter 77.55 RCW, criminal convictions imposed under RCW 77.15.300, and any other relevant information that may be available. Points are assessed to determine the penalty amount imposed under (d) of this subsection according to the following criteria:

0 points = The violator has no documented violations within five years preceding the violation leading to the issuance of the penalty.

2 points = The violator has one documented violation within five years preceding the violation leading to the issuance of the penalty.

4 points = The violator has more than one documented violation within five years preceding the violation leading to the issuance of the penalty.

(B) Severity and reparability of impacts, which the department assesses based on harm to fish life caused by the violation(s).

Violations that injure or kill fish life, decrease habitat function, value, or quantity, or cause long term or irreparable damage will likely result in a higher penalty amount. Points are assessed to determine the penalty amount imposed under (d) of this subsection according to the following criteria:

0 points = There is no adverse impact to fish life.

2 points = There is adverse impact to fish life, but it is minor, and no impacts will last beyond the duration of the construction activity.

4 points = There is extensive and/or significant adverse impact to fish life and impacts will last beyond the duration of the construction activity.

(C) Whether the violation(s) was intentional, which the department determines by considering whether the person knew or should have known the action was a violation, whether and to what extent the violation was foreseeable, whether the person to incur the penalty took precautions to avoid committing the violation, and whether the person to incur the penalty had an economic incentive for committing the violation. Violations that are intentional, foreseeable, where economic incentives are clear, or when precautions were not taken to avoid the impact likely result in a larger penalty amount. Points are assessed to determine the penalty amount imposed under (d) of this subsection according to the following criteria:

0 points = The violation was not foreseeable.

1 point = The violation was foreseeable, and no precaution was taken to avoid it.

3 points = The violation occurred after consultation, a technical or compliance site visit, or an enforcement action; or there was a clear economic incentive.

(D) The extent, if any, to which the person who would be incurring the penalty has cooperated or is cooperating with the department in addressing the violation(s) and its impact on fish life. The department assesses the level of a person's cooperation by examining whether the person reported the violation voluntarily, the time lapse, if any, between when the person discovered the violation and when the person reported it, and how responsive the person to incur the penalty was toward department staff. Evidence of a person's poor or inconsistent cooperation with department staff will likely result in a higher penalty amount. Points are assessed to determine the penalty amount imposed under (d) of this subsection according to the following criteria:

0 points = The violator reported the violation in a timely manner and cooperated with department staff to correct the violation.

1 point = The violator did not report the violation in a timely manner, or they did not cooperate with department staff to correct the violation.

3 points = The violator ignored or evaded department contacts or refused to allow department staff to enter the job site where the violation occurred.

(d) The department will calculate a penalty for each violation by adding the points assessed under (c)(ii) of this subsection and applying those corresponding amounts listed in the table below to the base penalty assessed under (c)(i) of this subsection. The base penalty plus the additional amount assessed using the department's point system will determine the total penalty for each violation not to exceed \$10,000.

Points	1	2	3	4	5
Penalty	\$1,000	\$2,000	\$3,000	\$4,000	\$5,000
Points	6	7	8	9	10 or greater
Penalty	\$6,000	\$7,000	\$8,000	\$9,000	\$10,000

Adjusting civil penalty amounts:

(i) A penalty for a violation committed by another may be adjusted downward based on the extent, if any, to which a person incurring the penalty was unaware of the violation and did not receive a substantial economic benefit from the violation.

(ii) The department senior or executive level staff person with signature authority for the notice of civil penalty may adjust penalty amounts based on circumstances not listed under (c) of this subsection.

(iii) The department will determine whether all or a portion of a penalty should be assessed against a landowner, lessee, contractor or another project proponent. The department should consider the responsible party, the degree of control, the sophistication of the party, and whether different parties conducted different violations.

(e) Nothing in this section prevents the department from:

(i) Choosing not to issue a civil penalty;

(ii) Issuing a stop work order or notice to comply in lieu of a civil penalty; or

(iii) Referring a violation to any local, state, tribal, or federal agency with jurisdiction.

(f) Penalties determined under this subsection are administered in accordance with procedures in subsection (7) of this section.

(9) Criminal penalty: Under RCW 77.15.300, it is a gross misdemeanor to ~~((construct))~~ conduct any form of hydraulic project or perform other work on a hydraulic project without having first obtained an HPA from the department, or to violate any requirements or conditions of the HPA for such construction or work.

(10) Remedies not exclusive: The remedies under this chapter are not exclusive and do not limit or abrogate any other civil or criminal penalty, remedy, or right available in law, equity, or statute.

(11) Permission to enter property denied - Administrative inspection warrant: If the department is denied entry to a project site for the purpose of ensuring compliance or it has probable cause to believe a violation of chapter 77.55 RCW, this chapter, or the HPA provision(s) has occurred it must obtain landowner consent or an administrative inspection warrant under RCW 77.55.450 before entering the property for this purpose.

(12) First time paperwork violations by small businesses:

(a) The department will provide notice and waiver of fines, civil penalties, and administrative sanctions for first time paperwork violations by a small business, consistent with RCW 34.05.110.

(b) A paperwork violation is limited to:

(i) Failure to have a copy of the HPA, plans, and specifications for a permitted project on-site during construction of, or work on, the project;

- (ii) Failure to submit to the department photos or survey results required as a provision in the HPA;
- (iii) Failure to notify the department when such notification described in WAC 220-660-050 (13)(d) is required as a provision of the HPA; and
- (iv) Failure to submit reports required in the HPA.
- (c) A small business may request the waiver by contacting the department and submitting a copy of the business's most recent federal income tax return or most recent return filed with the Washington state department of revenue.

**WSR 20-11-020**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 20-67—Filed May 12, 2020, 3:13 p.m., effective June 12, 2020]

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

Purpose: Within the context of the Washington department of fish and wildlife's (WDFW) mandate to preserve, protect, and perpetuate wildlife and provide hunting opportunity for game species, which includes cougar, these rules set the cougar hunting seasons and regulations, including harvest guidelines. These rules have been modified with the intent of providing additional cougar harvest opportunity by extending the cougar hunting seasons in areas where harvest has been historically high and where cougar human conflict is also high while continuing to ensure the long-term sustainability of cougar populations on the landscape.

Citation of Rules Affected by this Order: Amending WAC 220-415-100.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, and 77.04.055.

Adopted under notice filed as WSR 20-04-091 [20-07-016] on February 5, 2020 [March 5, 2020].

Changes Other than Editing from Proposed to Adopted Version: WAC 220-415-100 Cougar hunting seasons and regulations, the rule changes associated with cougar hunting seasons and weapons that could be used to hunt cougars, there are no changes between the proposed rule and adopted rule. However, in the proposed rule, WDFW had included a

table with four options for cougar harvest guidelines listed by game management unit. With the adoption of the fourth option by the fish and wildlife commission, the adopted rule includes a modified table with the harvest guidelines listed by game management unit that were associated with option 4 in the proposed rule.

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

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

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

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

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

Date Adopted: April 10, 2020.

Larry Carpenter, Chair  
 Washington Department of  
 Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 18-11-061, filed 5/11/18, effective 6/11/18)

**WAC 220-415-100 ((2018-2019 and 2019-2020)) Cougar hunting seasons and regulations.** (1) As used in this section and in the context of general cougar hunting seasons, "harvest guideline" means the estimated allowable harvest; the actual harvest may be less than or more than the harvest guideline.

(2) Early general cougar season is September 1 to December 31, late general cougar season is January 1 to April 30 of the following year. Hunters can use any legal weapon to hunt cougars.

((~~Season dates and~~)) Harvest guidelines ((~~for each season~~)):

<del>((</del> Hunt Area	<del>Harvest</del> Guideline	<del>Early Hunting</del> Season	<del>Late Hunting</del> Season	<del>Legal</del> Weapon
<del>GMU 101</del>	<del>7-9</del>	<del>Sept. 1 – Dec. 31</del>	<del>Jan. 1 – Apr. 30</del>	<del>Any Legal Weapon</del>
<del>GMU 105</del>	<del>2</del>	<del>Sept. 1 – Dec. 31</del>	<del>Jan. 1 – Apr. 30</del>	<del>Any Legal Weapon</del>
<del>GMUs 108, 111</del>	<del>5-6</del>	<del>Sept. 1 – Dec. 31</del>	<del>Jan. 1 – Apr. 30</del>	<del>Any Legal Weapon</del>
<del>GMU 113</del>	<del>5-6</del>	<del>Sept. 1 – Dec. 31</del>	<del>Jan. 1 – Apr. 30</del>	<del>Any Legal Weapon</del>
<del>GMU 117</del>	<del>6-8</del>	<del>Sept. 1 – Dec. 31</del>	<del>Jan. 1 – Apr. 30</del>	<del>Any Legal Weapon</del>
<del>GMU 121</del>	<del>5-6</del>	<del>Sept. 1 – Dec. 31</del>	<del>Jan. 1 – Apr. 30</del>	<del>Any Legal Weapon</del>
<del>GMUs 124, 127, 130</del>	<del>7-9</del>	<del>Sept. 1 – Dec. 31</del>	<del>Jan. 1 – Apr. 30</del>	<del>Any Legal Weapon</del>
<del>GMUs 133, 136, 139, 142, 248, 254, 260, 262, 266, 269, 272, 278, 284, 290, 330, 334, 371, 372, 373, 379, 381</del>	<del>None</del>	<del>Sept. 1 – Dec. 31</del>	<del>Jan. 1 – Apr. 30</del>	<del>Any Legal Weapon</del>

<b>((Hunt Area</b>	<b>Harvest Guideline</b>	<b>Early-Hunting Season</b>	<b>Late-Hunting Season</b>	<b>Legal-Weapon</b>
GMUs 149, 154, 162, 163	4-5	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 145, 166, 175, 178	3-4	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 169, 172, 181, 186	3	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMU 203	5	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMU 204	6-8	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 209, 215	4	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 218, 231	5-6	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMU 224	2	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 233, 239	4	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 242, 243	5-6	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 244, 246, 247	5-6	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 245, 250	5-6	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 249, 251	5-6	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 328, 329, 335	6-7	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 336, 340, 342, 346	5-6	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 352, 356, 360, 364, 368	5-6	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 382, 388	3-4	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMU 407	None	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 418, 426, 437	11-15	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 448, 450	10-13	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMU 454	None	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMU 460	5-6	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 466, 485, 490	3	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 501, 504, 506, 530	8-10	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 503, 505, 520, 550	6-8	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 510, 513	3-4	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMU 516	4	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 524, 554, 556	3	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMU 560	5-6	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMU 564	1	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMU 568	2	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMU 572	3	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 574, 578	4	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 601, 602, 603, 612	5-7	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 607, 615	4	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 618, 636, 638	4-5	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 621, 624, 627, 633	None	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 642, 648, 651	6-8	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 652, 666	None	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 653, 654	5	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon
GMUs 658, 660, 663, 672, 673, 681, 684, 699	9-12	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon

<b>((Hunt Area</b>	<b>Harvest Guideline</b>	<b>Early Hunting Season</b>	<b>Late Hunting Season</b>	<b>Legal Weapon</b>
GMU 667	3-4	Sept. 1 – Dec. 31	Jan. 1 – Apr. 30	Any Legal Weapon))

(Implied density in parentheses)

<u>Hunt Area</u>	<u>Harvest Guideline</u>
GMU 101	7-11 (2.6)
GMU 105	4 (3.72)
GMUs 108, 111	9-11 (3.63)
GMU 113	4-5 (1.91)
GMU 117	11-13 (3.57)
GMU 121	9-11 (3.65)*
GMUs 124, 127, 130	7-9 (2.15)
GMUs 133, 136, 139, 142, 248, 254, 260, 262, 266, 269, 272, 278, 284, 290, 330, 334, 371, 372, 373, 379, 381	None
GMUs 149, 154, 162, 163	7-9 (3.56)*
GMUs 145, 166, 175, 178	6-7 (3.51)
GMUs 169, 172, 181, 186	5-6 (3.68)
GMU 203	4-5 (1.91)
GMU 204	6-8 (2.17)
GMUs 209, 215	3-4 (1.91)
GMUs 218, 231	4-5 (1.91)
GMU 224	2 (1.91)
GMUs 233, 239	4-5 (2.42)
GMUs 242, 243	5-6 (2.28)
GMUs 244, 246, 247	4-6 (1.91)
GMUs 245, 250	4-6 (1.91)
GMUs 249, 251	4-6 (1.91)
GMUs 328, 329, 335	8-10 (2.79)
GMUs 336, 340, 342, 346	9-11 (3.61)
GMUs 352, 356, 360, 364, 368	7-9 (2.9)
GMUs 382, 388	3 (1.91)
GMU 407	None
GMUs 418, 426, 437	10-13 (1.91)
GMUs 448, 450	8-11 (1.91)
GMU 454	None
GMU 460	4-6 (1.91)
GMUs 466, 485, 490	2-3 (1.91)
GMUs 501, 504, 506, 530	6-9 (1.91)
GMUs 503, 505, 520, 550	5-7 (1.91)
GMUs 510, 513	3 (1.91)
GMU 516	3-4 (1.91)
GMUs 524, 554, 556	3 (1.91)

<u>Hunt Area</u>	<u>Harvest Guideline</u>
GMU 560	4-5 (1.91)
GMU 564	1 (1.91)
GMU 568	3 (2.74)
GMU 572	2-3 (1.91)
GMUs 574, 578	5-6 (2.82)
GMUs 601, 602, 603, 612	4-6 (1.91)
GMUs 607, 615	3-4 (1.91)
GMUs 618, 636, 638	3-5 (1.91)
GMUs 621, 624, 627, 633	None
GMUs 642, 648, 651	6-8 (2.18)
GMUs 652, 666	None
GMUs 653, 654	4-5 (1.91)
GMUs 658, 660, 663, 672, 673, 681, 684, 699	8-11 (1.91)
GMU 667	6-7 (3.48)

\* Adjusted to stay within realistic density.

(a) In hunt areas with a harvest guideline, the cougar late hunting season may close on or after January 1st in one or more GMUs if cougar harvest meets or exceeds the guideline.

(b) In hunt areas with a harvest guideline, starting January 1st, cougar hunters may hunt cougar from January 1st until the hunt area harvest guideline has been met, and the department has notified licensed cougar hunters by posting the hunt area closure on the department's website and on the toll-free cougar hunting hotline, or April 30th, whichever occurs first.

(3) Harvest guideline system:

(a) All cougar of the appropriate age class killed by licensed hunters during the early and late hunting seasons, ~~((and seasons authorized under WAC 220-440-030))~~ shall be counted toward the harvest guideline.

(b) Individual problem cougar will continue to be killed on an as-needed basis utilizing depredation permits, land-owner kill permits, and WDFW depredation authority regardless of harvest guidelines.

(c) It is each cougar hunter's responsibility to verify if the cougar late hunting season is open or closed in hunt areas with a harvest guideline. Cougar hunters can verify if the season is open or closed by calling the toll-free cougar hunting hotline or visiting the department's website.

(4) Cougar hunting season requirements and special restrictions.

(a) A valid big game hunting license which includes cougar as a species option is required to hunt cougar.

(b) The statewide bag limit is one (1) cougar per license year; excluding removals authorized under WAC 220-440-030. It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

(c) The use of dogs to hunt cougar is prohibited; except by a commission authorized permit (WAC 220-440-030).

(d) Any person who takes a cougar must comply with the notification and sealing requirements in WAC 220-400-050.

(e) A special cougar permit is required to hunt cougar in GMU 485.

### WSR 20-11-022

#### PERMANENT RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed May 13, 2020, 8:06 a.m., effective July 5, 2020]

Effective Date of Rule: July 5, 2020.

Purpose: In order to be eligible for unemployment benefits, an individual must be available for work. The amendments to WAC 192-170-010 set forth the availability requirements for claimants who are physically located outside of the United States.

Citation of Rules Affected by this Order: Amending WAC 192-170-010.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department. RCW 50.12.042 and 50.20.010 provide specific rule-making authority regarding the requirement that unemployment claimants register for work, be able to work, be available for work, and actively seek work.

Adopted under notice filed as WSR 19-22-081 on November 6, 2019.

A final cost-benefit analysis is available by contacting Joshua Dye, P.O. Box 9046, phone 360-890-3472, fax 844-652-7096, email rules@esd.wa.gov, website <https://esd.wa.gov/newsroom/rulemaking/benefits>.

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

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

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

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

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

Date Adopted: May 13, 2020.

Dan Zeitlin  
Policy Director

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

**WAC 192-170-010 Availability for work—RCW 50.20.010.** (1) In general, the department will consider you available for work if you:

(a) Are willing to work full-time, part-time, and accept temporary work during all of the usual hours and days of the week customary for your occupation.

(i) You are not required to be available for part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be available for full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

(3) If you are physically located outside of the United States, Puerto Rico, or the U.S. Virgin Islands, the department will consider you available for work if you meet the requirements of subsections (1) and (2) of this section, and:

(a) You are legally authorized to work in the country in which you are physically located;

(b) You are immediately available for work in the United States; or

(c) You are a spouse or domestic partner of a member of the United States Armed Forces and you are legally authorized to work within the foreign military base where your spouse or domestic partner is stationed.

### WSR 20-11-026

#### PERMANENT RULES

#### DEPARTMENT OF

#### CHILDREN, YOUTH, AND FAMILIES

[Filed May 13, 2020, 1:55 p.m., effective June 13, 2020]

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

Purpose: Foundational quality standards for early learning programs: Grant new family home child care licensees, who do not otherwise meet professional development requirements, five years from the date of licensure to complete an early childhood education initial certificate. Require current first-aid and CPR certifications of all paid and volunteer early learning providers who are, or have the potential to be, counted in provider to child ratios.

Citation of Rules Affected by this Order: Amending WAC 110-300-0100, 110-300-0106, 110-300-0230, and 110-300-0480.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Adopted under notice filed as WSR 20-08-124 on March 31, 2020.

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

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

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

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

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

Date Adopted: May 13, 2020.

Brenda Villarreal  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-22-103, filed 11/6/19, effective 12/7/19)

**WAC 110-300-0100 General staff qualifications.** All early learning providers must meet the following requirements prior to working:

(1) **Family home early learning program licensees** work from their private residence to provide early learning programming to a group of no more than twelve children present at one time.

(a) A family home licensee must meet the following qualifications upon application:

- (i) Be at least eighteen years old;
- (ii) Have a high school diploma or equivalent; and
- (iii) Complete the applicable preservice requirements pursuant to WAC 110-300-0105.

(b) A family home licensee must meet the following qualifications:

(i) Family home licensees must have an ECE initial certificate, or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) A family home licensee licensed prior to August 1, 2019, must complete an ECE initial certificate or equivalent within five years of the date this section becomes effective;

(B) A family home licensee licensed August 1, 2019, or later must complete an ECE initial certificate or equivalent within five years of licensure; and

(ii) Upon completion of the ECE initial certificate or equivalent, family home licensees must complete an ECE short certificate or equivalent within two years, as approved and verified in the electronic workforce registry by the department.

(A) If a family home licensee already has an existing ECE initial certificate or equivalent, the licensee must complete an ECE short certificate or equivalent within five years of licensure by the department.

~~(B) ((Five years from the date this rule takes effect))~~  
Beginning August 1, 2024, the family home licensee must complete an ECE short certificate or equivalent within three years.

(iii) Have their continued professional development progress documented annually.

(c) Family home licensees must provide the following services:

(i) Be on-site for the daily operation of the early learning program fifty percent or more of weekly operating hours, or designate a person with the qualifications of a family home licensee to be on-site when not present;

(ii) Comply with these foundational quality standards;

(iii) Develop a curriculum philosophy, communicate the philosophy to all early learning program staff and parents, and train staff to ensure the philosophy serves all children in the early learning program;

(iv) Have knowledge of community resources available to families, including resources for children with special needs and the ability to share these resources with families; and

(v) Oversee early learning program staff and support staff in creating and maintaining staff records.

(2) **Center early learning program licensees** must meet the requirements of a center director, listed in subsection (3) of this section, or hire a center director who meets the qualifications prior to being granted an initial license. Center licensees who fulfill the role of center director in their early learning program must complete all trainings and requirements for center directors.

(3) **Center directors or assistant directors** manage the early learning program and set appropriate program and staff expectations.

(a) A center director must meet the following qualifications:

- (i) Be at least eighteen years old;
- (ii) Have an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) A center director working at the time this chapter becomes effective must complete an ECE state certificate or equivalent within five years of the date this section becomes effective;

(B) A center director hired or promoted after this chapter becomes effective must have an ECE state certificate or equivalent within five years of the time of hire.

(iii) Have two years of experience as a teacher of children in any age group enrolled in the early learning program and at least six months of experience in administration or management or a department approved plan;

(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;

(v) If a center director does not meet the minimum qualification requirements, the center early learning program must employ an assistant director or program supervisor who meets the minimum qualifications of these positions;

(vi) Have their continued professional development progress documented annually.

(b) An assistant director must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have an ECE state certificate or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) An assistant director working at the time this chapter becomes effective must complete an ECE state certificate or equivalent within five years of the date this section becomes effective;

(B) An assistant director hired or promoted after this chapter becomes effective must have an ECE state certificate or equivalent within five years of the time of hire.

(iii) Have two years of experience as a teacher of children in any age group enrolled in the early learning program or two years of experience in administration or management, or a department approved plan;

(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;

(v) Have their continued professional development progress documented annually.

(c) A center director or assistant director or equivalent must provide the following services:

(i) Be on-site for the daily operation of the early learning program fifty percent or more of weekly operating hours up to forty hours per week, or designate a person with the qualifications of an assistant director, program supervisor, or equivalent. A center director may act as a substitute teacher if acting as a substitute does not interfere with management or supervisory responsibilities;

(ii) Comply with foundational quality standards;

(iii) Develop a curriculum philosophy, communicate the philosophy to all early learning program staff and parents, and train staff to ensure the philosophy serves all children in the early learning program (or designate a program supervisor with this responsibility);

(iv) Have knowledge of community resources available to families, including resources for children with special needs and be able to share these resources with families; and

(v) Oversee professional development plans for early learning program staff including, but not limited to:

(A) Providing support to staff for creating and maintaining staff records;

(B) Setting educational goals with staff and locating or coordinating state-approved training opportunities for staff; and

(C) Observing and mentoring staff.

(4) **Center program supervisors** plan the early learning program services under the oversight of a center director or assistant director.

(a) A program supervisor must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have an ECE state certificate or equivalent within five years of the date this section becomes effective or from the time of hire or promotion, if a director or assistant director does not have an ECE state certificate or equivalent as required by this section;

(ii) Have two years of experience as a teacher of children in any age group enrolled in any early learning program;

(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105; and

(v) Have their continued professional development progress documented annually.

(b) A program supervisor performs the following duties:

(i) Guide the planning of curriculum philosophy, implementation, and environmental design of the early learning program;

(ii) Comply with foundational quality standards;

(iii) Act as a teacher or director as long as it does not interfere with the program supervisor's primary responsibilities; and

(iv) Manage the professional development plans and requirements for staff as needed.

(c) One person may be the center director, assistant director, and the program supervisor when qualified for all positions, provided that all requirements of subsection (3)(a) and (b) of this section are met.

(5) Any individual hired or promoted into a position detailed in subsections (2), (3), and (4) of this section who does not have an ECE state certificate or equivalent as required under subsections (3)(a)(ii), (b)(ii), and (4)(a)(ii) of this section must instead meet the following requirement as approved and verified in the electronic workforce registry by the department:

If a center is licensed for this number of children:	Then the director, assistant director, or program supervisor must have completed at least this number of college quarter credits in early childhood education core competencies:
(a) 12 or fewer	10
(b) 13 to 24	25
(c) 25 or more	45

(6) **Lead teachers** are responsible for implementing the center or family home early learning program. Lead teachers develop and provide a nurturing and responsive learning environment that meets the needs of enrolled children.

(a) A lead teacher must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have a high school diploma or equivalent; and

(iii) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105.

(b) A center lead teacher must meet the following requirements:

(i) Have an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or five years from being employed or promoted into this position at any licensed early learning program;

(ii) Progress towards an ECE short certificate or equivalent. A center lead teacher hired after this chapter becomes effective must have an ECE short certificate within two years

of receiving an ECE initial certificate, or seven years from being employed or promoted into this position at any licensed early learning program; and

(iii) Have their professional development progress documented annually.

(c) A family home lead teacher must meet the following requirements:

(i) Have an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or from being employed or promoted into this position at any licensed early learning program;

(ii) Prior to being in charge of their early learning program fifty percent or more of the time, a family home lead teacher must meet the qualifications of the family home licensee and complete or be registered in orientation training required in WAC 110-300-0105(1); and

(iii) Have their professional development progress documented annually.

(7) **Assistant teachers** help a lead teacher or licensee provide instructional support to children and implement developmentally appropriate programs in center or family home early learning programs.

(a) An assistant teacher must meet the following qualifications:

(i) Be at least eighteen years old;

(ii) Have a high school diploma or equivalent; and

(iii) Have a minimum of an ECE initial certificate or equivalent as approved and verified in the electronic workforce registry by the department within five years of the date this section becomes effective, or from being employed or promoted to this position at any licensed early learning program;

(iv) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105; and

(v) Have their professional development progress documented annually.

(b) Assistant teachers may work alone with children with regular, scheduled, and documented oversight and on-the-job classroom training from the classroom's assigned lead teacher who is primarily responsible for the care of the same group of children for the majority of their day.

(c) For continuity of care, assistant teachers can act as a substitute lead teacher up to two weeks. If longer than two weeks, the provider must notify the department with a plan to manage the classroom.

(8) **Aides** provide classroom support to an assistant teacher, lead teacher, program supervisor, center director, assistant director, or family home licensee. Aides must meet the following qualifications:

(a) Be at least fourteen years old;

(b) Have a high school diploma or equivalent, or be currently enrolled in high school or an equivalent education program;

(c) Complete the applicable preservice requirements, pursuant to WAC 110-300-0105;

(d) Have their professional development progress documented annually; and

(e) Aides may be counted in the staff-to-child ratio if they are working under the continuous oversight of a lead

teacher, program supervisor, center director, assistant director, assistant teacher, or family home licensee.

(i) Aides working nineteen or fewer hours per month (~~or less can count~~) can be counted towards staff-to-child ratio with applicable preservice requirements pursuant to WAC 110-300-0105 (~~and~~) but without in-service training requirements pursuant to WAC 110-300-0107 (1)(a).

(ii) Aides who work (~~twenty hours or~~) more than nineteen hours per month (~~with~~) and who have a cumulative twelve months of employment must complete applicable preservice requirements (~~pursuant to~~) detailed in WAC 110-300-0105 and the in-service training (~~pursuant to~~) detailed in WAC 110-300-0107 (1)(a).

(9) **Other personnel** who do not directly care for children and are not listed in subsections (1) through (8) of this section must meet the following qualifications:

(a) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(b) Have a negative TB test, pursuant to WAC 110-300-0105; and

(c) Complete program based staff policies and training, pursuant to WAC 110-300-0110.

(10) **Volunteers** help at early learning programs. Volunteers must meet the following qualifications:

(a) Be at least fourteen years old (volunteers must have written permission to volunteer from their parent or guardian if they are under eighteen years old);

(b) Work under the continuous oversight of a lead teacher, program supervisor, center director, assistant director, assistant teacher, or family home licensee;

(c) Regular, ongoing volunteers may count in staff-to-child ratio if they:

(i) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(ii) Complete a TB test, pursuant to WAC 110-300-0105;

(iii) Complete the training requirements, pursuant to WAC 110-300-0106;

(iv) Complete program based staff policies and training, pursuant to WAC 110-300-0110; and

(v) Have their professional development progress documented annually.

(d) Occasional volunteers must comply with (a) and (b) of this subsection and cannot count in staff-to-child ratio. Occasional volunteers may include, but are not limited to, a parent or guardian helping on a field trip, special guest presenters, or a parent or guardian, family member, or community member helping with a cultural celebration.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

**WAC 110-300-0106 Training requirements.** (1) Early learning providers licensed, working, or volunteering in an early learning program before the date this section becomes effective must complete the applicable training requirements of this section within three months of the date this section becomes effective unless otherwise indicated. State or federal rules may require health and safety training described under this chapter to be renewed annually. Early learning providers

hired after the date this section becomes effective must complete the training requirements of subsections (4) through (10) of this section within three months of the date of hire and prior to working in an unsupervised capacity with children.

(2) License applicants and early learning providers must register with the electronic workforce registry prior to being granted an initial license or working with children in an unsupervised capacity.

(3) License applicants, center directors, assistant directors, program supervisors, lead teachers, assistant teachers, and aides must complete the child care basics training as approved or offered by the department:

- (a) Prior to being granted a license;
- (b) Prior to working unsupervised with children; or
- (c) Within three months of the date this section becomes effective if already employed or being promoted to a new role.

(4) Early learning providers must complete the recognizing and reporting suspected child abuse, neglect, and exploitation training as approved or offered by the department according to subsection (1) of this section. Training must include the prevention of child abuse and neglect as defined in RCW 26.44.020 and mandatory reporting requirements under RCW 26.44.030.

(5) Early learning providers must complete the emergency preparedness training as approved or offered by the department (applicable to the early learning program where they work or volunteer) according to subsection (1) of this section.

(6) Early learning providers licensed to care for infants must complete the prevention and identifying shaken baby syndrome/abuse head trauma training as approved or offered by the department according to subsection (1) of this section.

(7) Early learning providers must complete the serving children experiencing homelessness training as approved or offered by the department according to subsection (1) of this section.

(8) License applicants and early learning providers licensed to care for infants must complete the safe sleep training as approved or offered by the department. This training must be completed annually and:

- (a) Prior to being licensed;
- (b) Prior to caring for infants; or
- (c) According to subsection (1) of this section.

~~(9) ((Family home licensees, center directors, assistant directors, program supervisors, lead teachers, and other appropriate staff members must complete the child restraint training as approved or offered by the department. This training must be completed annually; and:~~

- ~~(a) Prior to being authorized to restrain an enrolled child;~~
- ~~(b) According to subsection (1) of this section.~~

~~(10))~~ (10) Family home licensees, center directors, assistant directors, program supervisors, and lead teachers must complete the medication management and administration training as approved or offered by the department prior to giving medication to an enrolled child, or as indicated in subsection (1) of this section.

~~((11))~~ (11) Early learning providers who directly care for children must complete the prevention of exposure to

blood and body fluids training that meets Washington state department of labor and industries' requirements prior to being granted a license or working with children. This training must be repeated pursuant to Washington state department of labor and industries regulations.

~~((12))~~ (11) Family home licensees, center directors, assistant directors, program supervisors, lead teachers, assistant teachers, and any other early learning providers counted in staff-to-child ratio, or who could potentially be counted in ratio, must ((have a current)) be trained in first-aid and cardiopulmonary resuscitation (CPR) ((certification prior to being alone with children. Early learning providers must ensure that at least one staff person with a current first-aid and CPR certificate is present with each group of children at all times)).

(a) Proof of training can be shown with a certification ((may be a)) card, certificate, or instructor letter.

(b) The first-aid and CPR training and certification must:

- (i) Be delivered in person and include a hands-on component for first aid and CPR demonstrated in front of an instructor certified by the American Red Cross, American Heart Association, American Safety and Health Institute, or other nationally recognized certification program;
- (ii) Include child and adult first-aid and CPR; and
- (iii) Infant first-aid and CPR, if applicable.

~~((13))~~ (12) Early learning providers who prepare or serve food to children at an early learning program must obtain a current food worker card prior to preparing or serving food. Food worker cards must:

- (a) Be obtained ~~((online or))~~ through the local health jurisdiction, in person or online; and
- (b) Be renewed prior to expiring.

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

**WAC 110-300-0230 First-aid—CPR certification and supplies.** (1) Family home licensees, center directors, assistant directors, program supervisors, lead teachers, assistant teachers, and any other early learning providers counted in staff-to-child ratio, or who could potentially be counted in ratio, must have a current pediatric and adult first-aid and CPR certificate, pursuant to WAC 110-300-0106(11).

(2) An early learning provider must keep a complete first-aid kit in the licensed space, on any off-site trip, and in a vehicle used to transport children in care. A first-aid kit must:

- (a) Be stored in a location that is easily accessible to staff;
  - (b) Be inaccessible to children;
  - (c) Be separate from food or chemicals;
  - (d) Be kept clean and sanitary;
  - (e) Be stored in a manner that prevents contamination;
- and

(f) Have sufficient supplies for the number of enrolled children and staff consistent with the early learning program's licensed capacity, or sufficient supplies for each room in the licensed space.

~~((2))~~ (3) A first-aid kit must include:

- (a) Disposable nonporous protective nonlatex gloves;
- (b) Adhesive bandages of various sizes;

- (c) Small scissors;
- (d) Tweezers;
- (e) An elastic wrapping bandage;
- (f) Sterile gauze pads;
- (g) Ice packs;
- (h) A disposable or mercury free thermometer that uses disposable sleeves, or is cleaned and sanitized after each use;
- (i) A sling, or a large triangular bandage;
- (j) Adhesive tape;
- (k) A CPR barrier with a one-way valve or both an adult and pediatric CPR mask with a one-way valve;
- (l) A current first-aid manual; and
- (m) Hand sanitizer (for adult use only).

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

**WAC 110-300-0480 Transportation and off-site activity policy.** (1) An early learning provider must have and follow a transportation and off-site activity policy for personal or public transportation service, or nonmotorized travel offered to children in care.

(a) The transportation and off-site activity policy must include routine trips, which must not exceed two hours per day for any individual child.

(b) Written parent or guardian authorization to transport the parent or guardian's child. The written authorization must be:

- (i) A specific event, date, and anticipated travel time;
- (ii) A specific type of trip (for example, transporting to and from school, or transporting to and from a field trip); or
- (iii) A full range of trips a child may take while in the early learning provider's care.

(c) Written notices to parents or guardians, to be given at least twenty-four hours before field trips are taken.

(2) During travel to an off-site activity, an early learning provider must:

(a) Have the health history, appropriate medication (if applicable), emergency information, and emergency medical authorization forms accessible for each child being transported;

(b) Have a phone to call for emergency help;

(c) Have a complete first-aid kit;

(d) Maintain the staff-to-child ratio, mixed groupings, and active supervision requirements;

(e) Have ~~((at least one staff member currently certified in))~~ a current first aid and CPR ~~((supervise children))~~ certification pursuant to WAC 110-300-0106(11);

(f) Take attendance using a roll call or other method that assures all children are accounted for each time children begin and end travel to an off-site activity, and every time children enter and exit a vehicle; and

(g) Never leave children unattended in the vehicle.

(3) When an early learning provider supplies the vehicle to transport children in care, the program and provider must:

(a) Follow chapter 46.61 RCW, Rules of the road, and other applicable laws regarding child restraints and car seats;

(b) Assure that the number of passengers does not exceed the seating capacity of the vehicle;

(c) Maintain the vehicle in good repair and safe operating condition;

(d) Maintain the vehicle temperature at a comfortable level to children;

(e) Assure the vehicle has a current license and registration as required by Washington state transportation laws;

(f) Assure the vehicle has emergency reflective triangles or other devices to alert other drivers of an emergency;

(g) Assure the driver has a valid driver's license for the type of vehicle being driven and a safe driving record for at least the last five years;

(h) Prevent any driver with a known condition that would compromise driving, supervision, or evacuation capabilities from operating program vehicles; and

(i) Have a current insurance policy that covers the driver, the vehicle, and all occupants.

## WSR 20-11-027

### PERMANENT RULES DEPARTMENT OF

### CHILDREN, YOUTH, AND FAMILIES

[Filed May 13, 2020, 1:59 p.m., effective June 13, 2020]

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

Purpose: Foundational quality standards for early learning programs: Require an early learning program licensed under chapter 43.216 RCW to provide meals, snacks, and beverages in accordance with standards developed by the United States Department of Agriculture (USDA). Also require a fruit or vegetable serving to be included in at least one snack that an early learning program serves each day. The fruit or vegetable serving may be counted as one of the two USDA-required components of a snack or be served in addition to the snack.

Citation of Rules Affected by this Order: Amending WAC 110-300-0185.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Adopted under notice filed as WSR 20-08-114 on March 31, 2020.

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

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

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

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

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

Date Adopted: May 13, 2020.

Brenda Villarreal

Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

**WAC 110-300-0185 Menus, milk, and food.** To ensure proper nutrition of children in care, an early learning provider must comply with the child nutrition requirements described in this section.

(1) Meals, snack foods, and beverages provided to children in care must comply with the requirements contained in the most current edition of the *USDA Child and Adult Care Food Program (CACFP)* standards, or the *USDA National School Lunch and School Breakfast Program* standards.

(a) An early learning provider must supply dated menus.

(b) Food and beverage substitutions to a scheduled menu must be of equal nutritional value.

(c) An early learning provider must only serve water, unflavored milk or one hundred percent fruit or vegetable juice.

(d) An early learning provider must limit the consumption of one hundred percent fruit juice to no more than four to six ounces per day for children between one and six years old, and eight to twelve ounces per day for children seven through twelve years old.

(2) An early learning provider must serve a fruit or vegetable ~~((as one of the two required components))~~ during at least one snack per day. The fruit and vegetable serving may count as one of the two required snack components or as a third snack component.

### WSR 20-11-033

#### PERMANENT RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed May 14, 2020, 3:16 p.m., effective June 14, 2020]

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

Purpose: The employment security department is responsible for implementing the paid family and medical leave program in accordance with Title 50A RCW. Rule making is being done on an ongoing basis. This rule making provides clarification on the definition of "claim year" and creates a definition for "sibling."

Citation of Rules Affected by this Order: New WAC 192-500-190 Sibling; and amending WAC 192-500-070 Claim year.

Statutory Authority for Adoption: RCW 50A.05.060.

Adopted under notice filed as WSR 20-08-119 on March 31, 2020.

A final cost-benefit analysis is available by contacting Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, TTY Washington relay 711 (contact Teresa Eckstein at 360-507-9890 for accommodations), email janette.benham@esd.wa.gov, website [https://www.opentownhall.com/portals/289/forum\\_home](https://www.opentownhall.com/portals/289/forum_home).

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 1, Amended 1, Repealed 0.

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

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

Date Adopted: May 13, 2020.

April Amundson  
Policy and Rules Manager

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

**WAC 192-500-070 Claim year.** (1) A "claim year" is the ((fifty-two week)) period beginning Sunday of the week of((:

(a) The date of the birth or placement of a child; or

(b) The date of the filing of a complete and timely application for all other qualifying events.

((2))) the date an eligible employee files a complete initial application for benefits and ending the Saturday fifty-two weeks later.

(2) The entitlement to family leave benefits for the birth or placement of a child expires at the end of the twelve-month period beginning on the date of such birth or placement.

(3) For applications that are backdated, the claim year is the fifty-two week period beginning Sunday of the week to which the application was backdated.

((3))) (4) An employee may only have one valid claim year at a time.

**Example 1:** An employee experiences an injury that qualifies as a serious health condition. Three days later, on Thursday, March 4, 2021, the employee files a complete initial application for medical leave benefits. The employee's claim year will run from Sunday, February 28, 2021, to Saturday, February 26, 2022.

**Example 2:** An employee filed an application for medical leave in March 2021. The employee took four weeks of medical leave and returned to work. The employee's spouse gives birth to a child in September 2021. The employee elects not to take family leave until April 2022. Because the employee's first claim year has already expired, the employee must file a new application and begin a new claim year in order to take family leave beginning in April 2022.

**Example 3:** An employee gives birth on Thursday, March 4, 2021. The employee elects not to submit an application for paid family leave until Monday, April 5, 2021. Though the employee's claim year will run from Sunday, April 4, 2021, to Saturday, April 2, 2022, the employee will not be able to claim family leave after March 3, 2022, for the birth of the child. The employee can claim leave for other qualifying reasons for the period March 4, 2022, through April 2, 2022, subject to the maximum duration limits.

NEW SECTION

**WAC 192-500-190 Sibling.** "Sibling" means an individual who shares at least one parent, as defined by RCW 50A.05.010(15), with another individual.

**WSR 20-11-034****PERMANENT RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed May 14, 2020, 3:16 p.m., effective June 14, 2020]

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

Purpose: The employment security department (ESD) is responsible for implementing the paid family and medical leave program in accordance with Title 50A RCW. Rule making is being done on an ongoing basis. This amendment to WAC 192-630-015 provides guidance to interested parties regarding the notification they will receive when ESD makes a determination on an employee's initial application for paid family or medical leave benefits.

Citation of Rules Affected by this Order: Amending WAC 192-630-015 How will a determination be made about an employee's eligibility for benefits?

Statutory Authority for Adoption: RCW 50A.05.060.

Adopted under notice filed as WSR 20-08-121 on March 31, 2020.

A final cost-benefit analysis is available by contacting Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, TTY Washington relay 711 (contact Teresa Eckstein at 360-507-9890 for accommodations), email janette.benham@esd.wa.gov, website [https://www.opentownhall.com/portals/289/forum\\_home](https://www.opentownhall.com/portals/289/forum_home).

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: May 13, 2020.

April Amundson  
Policy and Rules Manager

AMENDATORY SECTION (Amending WSR 19-13-001, filed 6/5/19, effective 7/6/19)

**WAC 192-630-015 How will a determination be made about an employee's eligibility for benefits?** (1) When the department has issued a notice under WAC 192-

630-005 the department will not make a determination on whether an employee qualifies for paid family or medical leave until all interested parties have had an opportunity to provide information about the question of eligibility by the due date indicated on the notice.

(2) If new facts are discovered before the determination is made, the department will provide interested parties with an opportunity to respond to the new information.

(3) After the department makes a determination, it will inform all interested parties ~~((will be provided with a copy of that determination))~~ whether it has approved or denied the employee's application.

(4) If the department receives new and relevant information after a determination is made:

(a) The information will be considered by the department;

(b) Interested parties will be given an opportunity to respond, if necessary; and

(c) The department may make a new determination based on the newly provided information.

**WSR 20-11-035****PERMANENT RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed May 14, 2020, 3:16 p.m., effective June 14, 2020]

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

Purpose: The employment security department is responsible for implementing the paid family and medical leave program in accordance with Title 50A RCW. Rule making is being done on an ongoing basis. This rule making creates a new section as WAC 192-700-020 to provide guidance on when employers must continue health care benefits to an employee on paid family or medical leave under Title 50A RCW. The rule making also provides clarifying amendments to WAC 192-700-010.

Citation of Rules Affected by this Order: New WAC 192-700-020 When does an employer need to provide a continuation of health benefits to an employee who is on paid family or medical leave?; and amending WAC 192-700-010 Can an employer deny employment restoration?

Statutory Authority for Adoption: RCW 50A.05.060, 50A.35.010, and 50A.35.020.

Adopted under notice filed as WSR 20-08-122 on March 31, 2020.

A final cost-benefit analysis is available by contacting Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, TTY Washington relay 711 (contact Teresa Eckstein at 360-507-9890 for accommodations), email janette.benham@esd.wa.gov, website [https://www.opentownhall.com/portals/289/forum\\_home](https://www.opentownhall.com/portals/289/forum_home).

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 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: May 13, 2020.

April Amundson  
Policy and Rules Manager

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

**WAC 192-700-010 Can an employer deny employment restoration?** (1) An employee is not entitled to ~~((employment protection under Title 50A RCW))~~ rights under RCW 50A.35.010(1) if:

(a) An employer exercises its right to deny restoration under RCW 50A.35.010 (6)(b) and the employee has elected not to return to employment after receiving notice under subsection (2) of this section; or

(b) The employer is able to show that an employee would not otherwise have been employed at the time ~~((of reinstatement))~~ the employee would return to work after the employee's family or medical leave under Title 50A RCW ends.

(2) An employer that chooses to deny restoration under subsection (1)(a) or (b) of this section to an employee on paid medical or family leave must notify the employee in writing as soon as the employer decides to deny restoration. The employer must serve this notice to the employee either in person or by certified mail. The notice must include:

(a) A statement that the employer intends to deny employment restoration when the leave has ended;

(b) The reasons behind the decision to deny restoration;

(c) An explanation that health benefits will still be paid for the duration of the leave; and

(d) The date ~~((the))~~ on which eligibility for employer-provided health benefits ends.

(3) Employers that choose to deny restoration ~~((are required to adhere to the))~~ under this section must provide continuation of health benefits as required in RCW 50A.35.020 ((for the remainder of the employee's approved leave)) and WAC 192-700-020.

#### NEW SECTION

**WAC 192-700-020 When does an employer need to provide a continuation of health benefits to an employee who is on paid family or medical leave?** (1) An employee taking family or medical leave under Title 50A RCW is entitled to the continuation of health benefits as provided in this section when there is at least one day of concurrent use with leave taken under the federal Family and Medical Leave Act as it existed on October 19, 2017.

(2) When required under subsection (1) of this section, the employee's health benefits must be maintained as if the

employee had continued to work from the date family or medical leave under Title 50A RCW commenced until whichever of the following occurs first:

(a) The employee's family or medical leave under Title 50A RCW ends; or

(b) The employee returns from leave to any employment.

(3) If the employer and employee share the cost of existing health benefits, then during any continuation of health benefits as provided in this section, the employee remains responsible for the employee's share of the cost as prescribed by 29 C.F.R. 825.210, 825.211, and 825.212, and any subsequent amendments to those regulations.

(4) Nothing in this section should be construed as restricting an employer from providing a continuation of health benefits for any employee's claim for paid family or medical leave.

#### **WSR 20-11-036**

##### **PERMANENT RULES**

#### **EMPLOYMENT SECURITY DEPARTMENT**

[Filed May 14, 2020, 3:16 p.m., effective June 14, 2020]

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

Purpose: The employment security department is responsible for implementing the paid family and medical leave program in accordance with Title 50A RCW. Rule making is being done on an ongoing basis. This amendment to WAC 192-800-150 provides guidance regarding who may file an initial application and weekly claims on behalf of a deceased employee. The rule also clarifies that the application and/or claim filed by specified parties may be filed up to and including the week in which the employee died.

Citation of Rules Affected by this Order: Amending WAC 192-800-150 Can an employee designate a representative to act on their behalf?

Statutory Authority for Adoption: RCW 50A.05.060.

Adopted under notice filed as WSR 20-08-120 on March 31, 2020.

A final cost-benefit analysis is available by contacting Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-790-6583, TTY Washington relay 711 (contact Teresa Eckstein at 360-507-9890 for accommodations), email janette.benham@esd.wa.gov, website [https://www.opentownhall.com/portals/289/forum\\_home](https://www.opentownhall.com/portals/289/forum_home).

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: May 13, 2020.

April Amundson  
Policy and Rules Manager

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

**WAC 192-800-150 Can an employee designate a representative to act on their behalf?** (1) The department may authorize another individual to act on the employee's behalf for the purposes of paid family and medical leave benefits if:

(a) An employee designates an authorized representative by submitting written documentation as required by the department;

(b) A court-appointed legal guardian with authority to make decisions on a person's behalf submits documentation as required by the department;

(c) An individual designated as an attorney-in-fact under a power of attorney submits documentation satisfactory to the department to act on the employee's behalf; or

(d) If an employee is unable to designate an authorized representative due to a serious health condition, an individual may represent the employee by submitting a complete and signed authorized representative designation form made available by the department, which must include:

(i) Documentation from the employee's health care provider certifying that the employee is incapable of completing the administrative requirements necessary for receiving paid family and medical leave benefits and is unable to designate an authorized representative to act on the employee's behalf; and

(ii) An affidavit or declaration authorized by RCW 9A.72.085 attesting to the responsibility to act in the employee's best interest.

(2) A person meeting the requirements under subsection (1) of this section may file an initial application and weekly claims up to and including the week in which the employee died subject to WAC 192-620-010.

(3) If an employee has been approved for benefit payments and the employee dies, an estate executor or administrator may file a weekly claim for the week in which the employee died.

(4) The department will terminate the authority given to the authorized representative:

(a) When the employee or authorized representative notifies the department verbally or in writing; or

(b) At the department's discretion.

~~((3))~~ (5) For the purposes of paid family and medical leave the term employee is used for both employee and authorized representative.

**WSR 20-11-039**  
**PERMANENT RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed May 14, 2020, 3:41 p.m., effective June 14, 2020]

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

Purpose: Update the effective date for external rules that are adopted by reference (AbR) in Northwest Clean Air Agency (NWCAA) Sections 104 and 155 to allow NWCAA to implement the most recent version of the referenced state and federal rules. Remove the definitions in NWCAA Section 580 because they have previously been rolled into NWCAA Section 200.

Citation of Rules Affected by this Order: Amending Sections 104, 155, and 580 of the Regulation of the NWCAA.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 20-05-092 on February 19, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: May 14, 2020.

Mark Buford  
Executive Director

**SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES**

104.1 All provisions of the following state rules that are in effect as of February 19, 2020 (~~December 26, 2018~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: chapter 173-400 WAC, (except -025, -030, -035, -036, -040(1) & (7), -045, -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-442 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-476 WAC, chapter 173-480 WAC, chapter 173-481 WAC, chapter 173-485 WAC, chapter 173-491 WAC. The requirements of the NWCAA Regulation apply in addition to the state-wide regulations adopted and enforced under this paragraph.

104.2 All provisions of the following federal rules that are in effect as of February 19, 2020 (~~December 26, 2018~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for

Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, XXX, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, OOOOa, QQQQ, and Appendix A - I; 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF; 40 CFR Part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants) Subpart LLL; 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCC, DDDD, EEEEE, FFFFF, GGGG, HHHH, IIII, LLLL, MMMM, NNNN, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, WWWW, YYYYY, ZZZZ, BBBB, CCCC, EEEEE, FFFFF, GGGG, HHHH, IIII, JJJJ, MMMM, NNNN, QQQQ, SSSS, TTTT, VVVV, WWWW, XXXXX, ZZZZZ, AAAAAA, DDDDD, EEEEE, and HHHHHH; and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, May 14, 2020

**SECTION 155 - STATE ENVIRONMENTAL POLICY ACT**

155.1 Authority

(A) NWCAA adopts these policies and procedures under State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA Rules, Washington Administrative Code (WAC) 197-11-904, with respect to its performance of or participation in environmental review.

(B) The SEPA Rules set forth in Chapter 197-11 WAC must be used in conjunction with these policies and procedures.

155.2 Purpose and Adoption by Reference.

(A) NWCAA adopts the following sections of Chapter 197-11 WAC by reference in effect as of February 19, 2020:

WAC 197-11-040: Definitions

- 050: Lead Agency
- 055: Timing of the SEPA Process
- 060: Content of Environmental Review
- 070: Limitations on Actions During SEPA Process
- 080: Incomplete or Unavailable Information
- 090: Supporting Documents
- WAC 197-11-100: Information Required of Applicants
- 250: SEPA/Model Toxics Control Act Integration
- 253: SEPA Lead Agency for MTCA Actions
- 256: Preliminary Evaluation
- 259: Determination of Nonsignificance for MTCA Remedial Action
- 262: Determination of Significance and EIS for MTCA Remedial Action
- 265: Early Scoping for MTCA Remedial Actions
- 268: MTCA Interim Actions
- WAC 197-11-300: Purpose of This Part
- 305: Categorical Exemptions
- 310: Threshold Determination Required
- 315: Environmental Checklist
- 330: Threshold Determination Process
- 335: Additional Information
- 340: Determination of Non-Significance (DNS)
- 350: Mitigated DNS
- 360: Determination of Significance (DS)/Initiation of Scoping
- 390: Effect of Threshold Determination
- WAC 197-11-400: Purpose of EIS
- 402: General Requirements
- 405: EIS Types
- 406: EIS Timing
- 408: Scoping
- 410: Expanded Scoping
- 420: EIS Preparation
- 425: Style and Size

- 430: Format
- 435: Cover Letter or Memo
- 440: EIS Contents
- 442: Contents of EIS on Non-Project Proposals
- 443: EIS Contents When Prior Non-Project EIS
- 444: Elements of the Environment
- 448: Relationship of EIS to Other Considerations
- 450: Cost-Benefit Analysis
- 455: Issuance of DEIS
- 460: Issuance of FEIS
- WAC 197-11-500: Purpose of This Part
  - 502: Inviting Comment
  - 504: Availability and Cost of Environmental Documents
  - 508: SEPA Register
  - 510: Public Notice
  - 535: Public Hearings and Meetings
  - 545: Effect of No Comment
  - 550: Specificity of Comments
  - 560: FEIS Response to Comments
  - 570: Consulted Agency Costs to Assist Lead Agency
- WAC 197-11-600: When to Use Existing Environmental Documents
  - 610: Use of NEPA Documents
  - 620: Supplemental Environmental Impact Statement - Procedures
  - 625: Addenda - Procedures
  - 630: Adoption - Procedures
  - 635: Incorporation by Reference - Procedures
  - 640: Combining Documents
- WAC 197-11-650: Purpose of This Part.
  - 655: Implementation.
  - 660: Substantive Authority and Mitigation.
  - 680: Appeals.
- WAC 197-11-700: Definitions
  - 702: Act
  - 704: Action
  - 706: Addendum
  - 708: Adoption
  - 710: Affected Tribe
  - 712: Affecting
  - 714: Agency
  - 716: Applicant
  - 718: Built Environment
  - 720: Categorical Exemption
  - 722: Consolidated Appeal
  - 724: Consulted Agency
  - 726: Cost-Benefit Analysis
  - 728: County/City
  - 730: Decision-Maker
  - 732: Department
  - 734: Determination of Non-Significance (DNS)
  - 736: Determination of Significance (DS)
  - 738: EIS
  - 740: Environment
  - 742: Environmental Checklist
  - 744: Environmental Document
  - 746: Environmental Review
  - 750: Expanded Scoping
  - 752: Impacts
  - 754: Incorporation by Reference
  - 756: Lands Covered by Water
  - 758: Lead Agency
  - 760: License
  - 762: Local Agency
  - 764: Major Action
  - 766: Mitigated DNS
  - 768: Mitigation
  - 770: Natural Environment
  - 772: NEPA
  - 774: Non-Project
  - 776: Phased Review
  - 778: Preparation
  - 780: Private Project
  - 782: Probable
  - 784: Proposal
  - 786: Reasonable Alternative
  - 788: Responsible Official
  - 790: SEPA
  - 792: Scope
  - 793: Scoping
  - 794: Significant

- 796: State Agency
- 797: Threshold Determination
- 799: Underlying Governmental Action
- WAC 197-11-800: Categorical Exemptions
- 880: Emergencies
- 890: Petitioning DOE to Change Exemptions
- WAC 197-11-900: Purpose of This Part
- 902: Agency SEPA Policies
- 904: Agency SEPA Procedures
- 916: Application to Ongoing Actions
- 920: Agencies with Environmental Expertise
- 922: Lead Agency Rules
- 924: Determining the Lead Agency
- 926: Lead Agency for Governmental Proposals
- 928: Lead Agency for Public and Private Proposals
- 930: Lead Agency for Private Projects With One Agency With Jurisdiction
- 932: Lead Agency for Private Projects Requiring Licenses From More Than One Agency, When One of the Agencies Is a County/City
- 934: Lead Agency for Private Projects Requiring Licenses From A Local Agency, Not a City/County, and One or More Than One State Agency
- 936: Lead Agency for Private Projects Requiring Licenses From More Than One State Agency
- 938: Lead Agencies for Specific Proposals
- 940: Transfer of Lead Agency Status to a State Agency
- 942: Agreements on Lead Agency Status
- 944: Agreements on Division of Lead Agency Duties
- 946: DOE Resolution of Lead Agency Disputes
- 948: Assumption of Lead Agency Status
- WAC 197-11-960: Environmental Checklist
- 965: Adoption Notice

- 970: Determination of Non-Significance (DNS)
- 980: Determination of Significance and Scoping Notice (DS)
- 985: Notice of Assumption of Lead Agency Status
- 990: Notice of Action

(B) In addition to the definitions contained in WAC 197-11-700 through WAC 197-11-799, when used in these policies and procedures the following terms shall have the following meanings, unless the context indicates otherwise:

SEPA Rules. "SEPA Rules" means Chapter 197-11 WAC.

#### 155.3 Responsible Official Designation and Responsibilities

(A) For all proposals for which NWCAA is the lead agency, the responsible official shall be the Control Officer of NWCAA or the NWCAA employee designated by the Control Officer.

(B) For all proposals for which NWCAA is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to "NWCAA," the "lead agency," or "responsible official" by these policies and procedures.

(C) NWCAA shall retain all documents required by these policies and procedures and make them available in accordance with applicable law.

#### 155.4 Lead Agency Determination and Responsibilities

(A) When the NWCAA receives an application for or initiates a proposal that involves a nonexempt action, the NWCAA shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the NWCAA is aware that another agency is in the process of determining the lead agency. When the NWCAA is the lead agency for a proposal, the responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

(B) When NWCAA is not the lead agency for a proposal, it shall use and consider, as appropriate, the environmental documents of the lead agency in making decisions on the proposal. NWCAA shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the Agency may conduct supplemental environmental review under WAC 197-11-600.

(C) If NWCAA receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination and take such action as authorized by the SEPA Rules.

(D) NWCAA may make agreements as to lead agency status or shared lead agency duties for a proposal as described in WAC 197-11-942 and 197-11-944.

(E) When making a lead agency determination for a private project, NWCAA shall require sufficient information from the applicant to identify which other agencies (if any) have jurisdiction over the proposal.

#### 155.5 Time Limits and Other Considerations Applicable to SEPA Rules

(A) For nonexempt proposals, the DNS, FEIS, and/or such other environmental documentation as the responsible official deems appropriate shall accompany NWCAA's staff recommendation to any appropriate advisory body.

#### 155.6 Use of Exemptions

(A) When NWCAA receives an application for a permit or, in the case of governmental proposals, NWCAA initiates the proposal, NWCAA shall determine whether the permit and/or the proposal is exempt. NWCAA's determination that a permit or proposal is exempt shall be final and not subject to administrative review. If a permit or proposal is exempt, none of the procedural requirements of these policies and procedures apply to the proposal. NWCAA shall not require completion of an environmental checklist for an exempt permit or proposal.

(B) In determining whether or not a proposal is exempt, NWCAA shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, NWCAA shall determine the lead agency, even if the license application that triggers NWCAA's consideration is exempt.

(C) If a proposal includes both exempt and nonexempt actions, NWCAA may authorize exempt actions prior to compliance with the procedural requirements of these policies and procedures, except that:

(1) NWCAA shall not give authorization for:

(a) Any nonexempt action;

(b) Any action that would have an adverse environmental impact; or

(c) Any action that would limit the choice of alternatives.

(2) NWCAA may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

(3) NWCAA may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

#### 155.7 Environmental Checklist

(A) A completed environmental checklist (or a copy) shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in these policies and procedures; notwithstanding the preceding, a checklist is not needed if NWCAA and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The environmental checklist shall be in the

form provided in WAC 197-11-960, except that Section B.2.a. Air, of the checklist shall state: "What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke, greenhouse gases) during construction and when the project is completed? If any, generally describe and give approximate quantities, if known." As used throughout these policies and procedures, environmental checklist means the environmental checklist required by these policies and procedures.

(B) NWCAA shall use the environmental checklist to determine the lead agency and, if NWCAA is the lead agency, for determining the responsible official and for making the threshold determination.

(C) For private proposals, NWCAA will require the applicant to complete the environmental checklist, providing assistance as necessary. For Agency proposals, NWCAA shall complete the environmental checklist. NWCAA may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

(1) NWCAA has technical information on a question or questions that is unavailable to the private applicant; or

(2) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

#### 155.8 Mitigated DNS

(A) As provided in these policies and procedures and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

(B) An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. "Early notice" means NWCAA's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal. The request must:

(1) Follow submission of a complete permit application and environmental checklist for a nonexempt proposal for which NWCAA is lead agency; and

(2) Precede NWCAA's actual threshold determination for the proposal.

(C) The responsible official should respond to the request for early notice within 30 working days. The response shall:

(1) Be written;

(2) State whether NWCAA currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading NWCAA to consider a DS; and

(3) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

(D) As much as possible, NWCAA should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

(E) When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, NWCAA shall base its threshold determination on

the changed or clarified proposal and shall make the determination within 15 days of receiving the changed or clarified proposal:

(1) If NWCAA indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, NWCAA shall issue and circulate a DNS under WAC 197-11-340(2).

(2) If NWCAA indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, NWCAA shall make the threshold determination, issuing a DNS or DS as appropriate.

(3) The applicant's proposed mitigation measures (clarifications, changes, or conditions) must be in writing and must be specific.

(4) Mitigation measures that justify issuance of a mitigated DNS may be incorporated in the DNS by reference to NWCAA staff reports, studies, or other documents.

(F) A mitigated DNS is issued under WAC 197-11-340(2), requiring a fourteen-day comment period and public notice.

(G) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by NWCAA.

(H) If NWCAA's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, NWCAA should evaluate the threshold determination to ensure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).

(I) NWCAA's early notice under NWCAA 155.8(C) above shall not be construed as determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind NWCAA to consider the clarifications or changes in its threshold determination.

#### 155.9 Preparation of EIS—Additional Considerations

(A) Preparation of a draft and final EIS (DEIS and FEIS) and draft and final supplemental EIS (SEIS) is the responsibility of the responsible official. Before NWCAA issues an EIS, the responsible official shall be satisfied that it complies with these policies and procedures and Chapter 197-11 WAC.

(B) The DEIS and FEIS or draft and final SEIS may be prepared by NWCAA, by outside consultants selected by NWCAA, or by such other person as NWCAA may so direct consistent with the SEPA Rules. The NWCAA retains sole authority to select persons or firms to author, co-author, provide special services, or otherwise participate in preparing required environmental documents. If the NWCAA requires an EIS for a proposal and determines that someone other than the NWCAA will prepare the EIS, the responsible official shall notify the applicant after completion of the threshold determination. The responsible official shall also notify the applicant of the NWCAA's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

(C) NWCAA may require an applicant to provide information NWCAA does not possess, including specific investigations or research. However, the applicant may not be required to supply information that is not required under these policies and procedures or that is being requested from another agency. (This does not apply to information NWCAA may request under other authority.) Additional information may be required as set forth in WAC 197-11-100.

#### 155.10 Additional Elements To Be Covered In An EIS

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determination or perform any other function or purpose under these policies and procedures:

- (A) Economy
- (B) Social policy analysis
- (C) Cost-benefit analysis

#### 155.11 Public Notice

(A) Whenever the NWCAA issues a DNS under WAC 197-11-340(2)(b) or a DS under WAC 197-11-360(3), the NWCAA shall give public notice as follows:

(1) If public notice is required for a nonexempt permit or decision document, the notice shall state whether a DS or DNS has been issued and when comments are due.

(2) If no public notice is required for the permit or approval, the NWCAA shall give notice of the DNS or DS by:

- (a) Written or electronic (email) notice to public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered, and
- (b) Posting notice on the NWCAA website.

(3) Whenever the NWCAA issues a DS under WAC 197-11-360(3), the NWCAA shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

(B) Whenever the NWCAA issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

(1) Indicating the availability of the DEIS in any public notice required for a nonexempt permit or decision document; and at least one of the following methods:

- (2) Posting the property, for site-specific proposals;
- (3) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;
- (4) Notifying public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered;
- (5) Notifying the news media;
- (6) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals;
- (7) Publishing notice in NWCAA newsletters and/or sending notice to NWCAA mailing lists (general lists or specific lists for proposals or subject areas); and/or
- (8) Posting notice on the NWCAA website.

(C) Whenever possible, the NWCAA shall integrate the public notice required under these policies and procedures

with existing notice procedures for the NWCAA's nonexempt permit(s) or approval(s) required for the proposal.

(D) The NWCAA may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

#### 155.12 Designation of Official to Perform Consulted Agency Responsibilities for NWCAA

(A) The responsible official shall be responsible for the preparation of written comments for NWCAA in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

(B) The responsible official shall be responsible for the NWCAA's compliance with WAC 197-11-550 whenever the NWCAA is a consulted agency. The responsible official is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from the NWCAA. If the nature of the proposal is such that it involves significant impacts on NWCAA's facilities or property, or will require a significant amount of time to provide the information requested to the lead agency, NWCAA may request that the lead agency impose fees upon the applicant to cover the costs of NWCAA's SEPA compliance.

#### 155.13 SEPA Substantive Authority

(A) The policies and goals set forth in this ordinance are supplementary to those in NWCAA's existing authorities.

(B) NWCAA may attach conditions to a permit or approval for a proposal so long as the NWCAA determines that:

(1) Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this ordinance; and

(2) Such conditions are in writing; and

(3) The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

(4) NWCAA has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

(5) Such conditions are based on one or more policies in subsections (D) through (F) of this section and cited in the permit or other decision document.

(C) The NWCAA may deny a permit or approval for a proposal on the basis of SEPA so long as the NWCAA determines that:

(1) The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental EIS prepared pursuant to these policies and procedures; and

(2) Reasonable mitigation measures are insufficient to mitigate the identified impact.

(3) The denial is based on one or more policies identified in subsections (D) through (F) of this section and identified in writing in the decision document.

(D) NWCAA designates and adopts by reference the following policies, plans, rules, and regulations as the potential bases for NWCAA's exercise of substantive authority under SEPA, pursuant to this section:

(1) NWCAA shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) Ensure for all people of Washington, safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) Preserve important historic, cultural, and natural aspects of our national heritage;

(e) Maintain, wherever possible, an environment that supports diversity and variety of individual choice;

(f) Achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and

(g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(2) NWCAA recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(E) NWCAA adopts by reference the policies in the following laws and NWCAA resolutions, regulations, and plans:

(1) Federal and state Clean Air Acts, and regulations adopted thereunder.

(2) The Regulation of the Northwest Clean Air Agency

(3) Resolutions adopted by NWCAA Board of Directors.

(4) Maintenance plans.

(5) Washington State Implementation Plan.

(F) NWCAA establishes the following additional policies:

(1) Air quality

(a) Policy Background

(i) Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality of life.

(ii) NWCAA is responsible for monitoring air quality in the three-county area, setting standards, and regulating certain development activities with the objective of meeting all applicable air quality standards.

(iii) Federal, state, and regional regulations and programs cannot always anticipate or adequately mitigate adverse air quality impacts.

(b) Policies

(i) To minimize or prevent adverse air quality impacts.

(ii) To secure and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and to property, foster the comfort and convenience of its inhabitants, seek public participation in policy planning and implementation, promote the economic and social development of the area within our jurisdiction, and facilitate the enjoyment of the natural attractions of the Puget Sound area.

(iii) To eliminate emissions of ozone-depleting chlorofluorocarbons, in the interests of national and global environmental protection; to consider energy efficiency and conservation to reduce greenhouse gases and in addition, to recognize other existing relevant regulatory requirements.

(iv) To reduce woodstove emissions by educating the public about the effects of woodstove emissions, other heating alternatives, and the desirability of achieving better emission performance and heating efficiency from woodstoves pursuant to standards adopted by State and Federal Agencies; and to encourage replacing uncertified woodstoves with cleaner sources of heat.

(v) To reduce outdoor burning to the greatest extent practical.

(vi) To develop and adopt strategies for effectively reducing or eliminating impacts from toxic air contaminants.

(vii) To control volatile organic compound (VOC) emissions in order to meet National Ambient Air Quality Standard for ozone.

(viii) If the responsible official makes a written finding that the applicable federal, state, and/or regional regulations did not anticipate or are inadequate to address the particular impact(s) of a project, the responsible official may condition or deny the proposal to mitigate its adverse impacts.

#### (2) Land Use

##### (a) Policy Background

(i) Adverse land use impacts may result when a proposed project or land use policy includes uses that may be consistent with applicable zoning requirements but inconsistent with air quality objectives or regulations.

(ii) Adverse cumulative impacts may result when particular land uses permitted under the zoning code occur in an area to such an extent that they expose sensitive populations to air quality related health and environmental adverse impacts.

##### (b) Policies

(i) To ensure that proposed uses in projects are reasonably compatible with surrounding uses and are consistent with applicable air quality regulations.

(ii) To reduce regional air pollution emissions associated with land uses by promoting clean alternative forms of domestic use fuels, including natural gas, in new single and multifamily housing developments within urban growth areas. In addition, to discourage wood as a source of heat for residential development in low-lying areas susceptible to pollution accumulations.

(iii) To encourage municipal curbside solid and compostable waste collection services at reasonable costs.

#### (3) Transportation

##### (a) Policy Background

(i) Excessive traffic can adversely affect regional air quality.

(ii) Substantial traffic volumes associated with major projects may adversely impact air quality in surrounding areas.

##### (b) Policies

(i) To minimize or prevent adverse traffic impacts that would undermine the air quality of a neighborhood or surrounding areas.

(ii) To promote transportation demand and systems management actions designed to reduce vehicle emissions by reducing the use of single occupancy vehicles, reducing traffic congestion, and increasing public transportation services.

(iii) To encourage integrating land use and transportation planning.

(iv) To emphasize the importance of air quality conformity determinations required for proposed transportation plans, programs, and projects.

(v) To pursue and support alternative and clean fuels projects and programs.

(vi) To promote and support land use plans and projects designed to reduce vehicle emissions by reducing the use of single occupant vehicles, number of vehicle miles traveled, and traffic congestion; and supporting the use of public transportation.

(vii) In determining the necessary air quality impact mitigation, the responsible official will examine the mitigation proposed by the local jurisdiction.

#### (4) Cumulative Effects

(a) The analysis of cumulative effects shall include a reasonable assessment of:

(i) The capacity of natural systems, such as air, water, light, and land, to absorb the direct and reasonably anticipated indirect impacts of the proposal, and

(ii) The demand upon facilities, services, and natural systems of present, simultaneous, and known future development in the area of the project or action.

(b) An action or project may be conditioned or denied to lessen or eliminate its cumulative effects on the environment:

(i) When considered together with prior, simultaneous, or induced future development; or

(ii) When, taking into account known future development under established zoning or other regulations, it is determined that a project will use more than its share of present and planned facilities, services, and natural systems.

#### 155.14 Administrative Appeals

(A) NWCAA hereby eliminates, pursuant to WAC 197-11-680(2), appeals to its legislative body of determinations relating to SEPA; and

(B) NWCAA hereby elects, pursuant to WAC 197-11-680(3), not to provide for administrative appeals of determinations relating to SEPA.

#### 155.15 Notice/Statute of Limitations

(A) NWCAA, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

(B) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the NWCAA, the city clerk or county auditor, applicant, or proponent pursuant to RCW 43.21C.080.

#### 155.16 Fees

(A) In addition to the fees set forth in Section 324 of the NWCAA Regulation, the following fees apply:

(1) Threshold Determination - NWCAA may contract directly with a consultant for preparation of an environmental checklist or other information needed for NWCAA to make a

threshold determination, and may bill such costs and expenses directly to the applicant. NWCAA may require the applicant to post bond or otherwise ensure payment of such costs and expenses. In addition, NWCAA may charge a calculated fee from any applicant to cover the costs incurred by NWCAA in preparing an environmental checklist or other information needed for NWCAA to make a threshold determination.

(2) Environmental Impact Statement

(a) When NWCAA is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of NWCAA, NWCAA may charge and collect a reasonable fee from any applicant to cover costs incurred by NWCAA in preparing the EIS.

(b) The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

(c) The responsible official may determine that NWCAA will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than NWCAA and may bill such costs and expenses directly to the applicant. NWCAA may require the applicant to post bond or otherwise ensure payment of such costs.

(d) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under NWCAA 155.16 (A)(1) and (2) of these policies and procedures that remain after incurred costs are paid.

(e) NWCAA may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of these policies and procedures relating to the applicant's proposal.

(f) NWCAA shall not collect a fee for performing its duties as a consulted agency, except as provided in WAC 197-11-570.

(g) NWCAA may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by chapter 42.56 RCW.

155.17 Severability

(A) If any provision of these policies and procedures or their application to any person or circumstance is held invalid, the remainder of these policies and procedures, or the application of such invalid provision to other persons or circumstances, shall not be affected.

PASSED: June 10, 2010 AMENDED: August 13, 2015, May 14, 2020

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

**SECTION 580 - VOLATILE ORGANIC COMPOUND CONTROL**

580.1 The Board of Directors has noted the measurement of ozone concentrations (one hour ave.) nearing the Federal ambient standard at the northern and southern boundaries of the NWCAA jurisdiction. The expanding population and the presence of four large refineries contribute volatile organic

compound (VOC) emissions to the atmosphere. Photochemically reactive VOC's are precursors to ozone formation. In order to maintain the current attainment status for ozone, the Board has adopted specific measures to control VOC emissions. Reasonable Available Control Technology (RACT) is required for existing refinery operations, gasoline marketing, and in the use of cutback asphalt. RACT is defined as the lowest emission limit that a particular source is capable of meeting by the application of control that is reasonably available considering technological and economic feasibility.

~~((SECTION 580 - DEFINITIONS~~

~~BOTTOM LOADING—means the filling of a tank through a submerged fill line.~~

~~BULK GASOLINE PLANT—means a gasoline storage and transfer facility that receives more than ninety percent of its annual gasoline throughput by transport tank, and reloads gasoline into transport tanks. See also "gasoline station" and "gasoline loading terminal."~~

~~CERTIFIED VAPOR RECOVERY SYSTEM—means a stage II vapor recovery system which has been certified by the California Air Resources Board.~~

~~CLOSED REFINERY SYSTEM—means a disposal system that will process or dispose of those VOC collected from another system.~~

~~CUTBACK ASPHALT—means an asphalt that has been blended with more than seven percent petroleum distillates by weight.~~

~~DISPOSAL SYSTEM—means a process or device that reduces the mass quantity of the uncontrolled VOC emissions by at least ninety percent.~~

~~GASOLINE—Means a petroleum distillate having a true vapor pressure greater than 28.0 kilopascals (kPa) (4 pounds per square inch absolute p.s.i.a.) at 20 degrees Celsius (20 C) temperature, that is a liquid at standard conditions of 102.9 Kpa (14.7 psi) and 20 C, and is used as a fuel for internal combustion engines.~~

~~GASOLINE STATION—means any facility dispensing gasoline into fuel tanks of motor vehicles, from stationary storage tanks. See also "bulk gasoline plant" and "gasoline loading terminal."~~

~~GASOLINE LOADING TERMINAL—means a gasoline transfer facility that receives more than ten percent of its annual gasoline throughput solely or in combination by pipeline, ship or barge, and loads gasoline into transport tanks. See also "bulk gasoline plant" and "gasoline station."~~

~~LEAK FREE—means a liquid leak of less than four drops per minute.~~

~~PETROLEUM REFINERY—means a facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products by distilling crude oils or redistilling, cracking, extracting or reforming unfinished petroleum derivatives.~~

~~PROCESS UNIT—means all the equipment essential to a particular production process.~~

~~PROPER ATTACHMENT FITTINGS—means connecting hardware for the attachment of fuel transfer or vapor lines which meets or exceeds industrial standards or specifications and the standards of other agencies or institutions responsible for health and safety.~~

~~REID VAPOR PRESSURE—means the true vapor pressure of volatile organic compounds at 37.8 degrees Celsius (100 degrees Fahrenheit) temperature.~~

~~STAGE II—means gasoline vapor recovery during motor vehicle refueling operations from stationary tanks.~~

~~SUBMERGED FILL LINE—means a pipe, tube, fitting or other hardware for loading liquid into a tank either a discharge opening flush with the tank bottom; or with a discharge opening entirely below the lowest normal operating drawoff level or that level determined by a liquid depth two and one half times the fill line diameter when measured in the main portion of the tank, but not in sumps or similar protrusions.~~

~~SUBMERGED LOADING—means the filling of a tank with a submerged fill line.~~

~~SUITABLE CLOSURE or SUITABLE COVER—means a door, hatch, cover, lid, pipe cap, pipe blind, valve or similar device that prevents the accidental spilling or emitting of VOC. Pressure relief valves, aspirator vents or other devices specifically required for safety and fire protection are not included.~~

~~TRANSPORT TANK—means a container with a capacity greater than one thousand liters (260 gallons) used for transporting gasoline, including but not limited to, tank truck, tank trailer, railroad car, and metallic or nonmetallic tank or cell conveyed on a flatbed truck, trailer or railroad car.~~

~~THROUGHPUT—means the amount of material passing through a facility.~~

~~TRUE VAPOR PRESSURE—means the equilibrium partial pressure of an organic liquid (determined with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks," 1962).~~

~~TURNAROUND or PROCESS UNIT TURNAROUNDS—means the shutting down and starting up of process units for periodic major maintenance and repair of equipment, or other planned purpose.~~

~~UPGRADED—means the replacement or modification gasoline storage tank(s) and/or piping system(s) that exceeds 50% of the replacement cost.~~

~~VAPOR BALANCE SYSTEM—means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and receiving tank such that the vapors displaced from the receiving tank are transferred to the tank being unloaded.~~

~~VAPOR BALANCING—means use of a vapor balance system.~~

~~VAPOR RECOVERY SYSTEM—means a process which prevents emission to the atmosphere of volatile organic compounds released by the operation of any transfer, storage, or process equipment.~~

~~VOLATILE ORGANIC COMPOUND or VOC—means an organic compound that participates in atmospheric photochemical reactions. This excludes all compounds determined to have negligible photochemical reactivity by the U.S. Environmental Protection Agency and listed in 40 CFR 51.100(s).~~

~~WAXY, HEAVY POUR CRUDE OIL—means a crude oil with a pour point of 10 C or higher (determined by the American Society for Testing and Materials Standard D97 66, "Test for Pour Point of Petroleum Oils".)~~

~~PASSED: December 13, 1989 AMENDED: April 14, 1993, October 13, 1994, February 8, 1996, May 14, 2020~~

**WSR 20-11-053**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed May 19, 2020, 9:12 a.m., effective July 1, 2020]

Effective Date of Rule: July 1, 2020.

Purpose: The purpose of this rule making is to adopt changes to the electrical rules in chapter 296-46B WAC, Electrical safety standards, administration, and installation.

Labor and industries' (L&I) electrical program reviewed the existing rules and new safety codes from the 2020 edition of the National Fire Protection Agency (NFPA) 70, the National Electrical Code (NEC) to update rules for consistency with the national safety standards and to consider other rule changes. The 2020 NEC (NFPA 70-2020) replaces the current 2017 NEC (NFPA 70-2017) standards, effective July 1, 2020.

Washington's electrical stakeholders were invited to participate in the review of the existing rules, submit proposals for changes to the rules, and provide recommendations to the department on possible rule changes. The state's electrical board reviewed proposals and provided advice to the department on adoption of the rules.

This rule making will adopt changes to the new safety codes, update and clarify existing rules, make housekeeping and other rule changes identified during the review process and recommended by stakeholders, a technical advisory committee, and the state's electrical board to improve public safety.

This rule making will:

- Amend, clarify, and reorganize requirements for consistency with the 2020 edition of the NEC.
- Adopt the 2019 edition of the American National Standards Institute standards/InterNational Electrical Testing Association (ANSI/NETA) maintenance test specifications for existing installations pertaining to solidly grounded neutral systems over 1,000 volts.
- Align the rules with state building code requirements for nonmetallic-sheathed cable to reflect changes in building construction types.
- Adopt proposals requested by stakeholders, such as:
  - Expanding the scope of work for HVAC/refrigeration (06A) and (06B) specialty electricians to allow the replacement of an HVAC unit and flexible supply whip using the same size conductors;
  - Expanding the scope of work for HVAC/refrigeration (06A) specialty electricians to allow the installation of new low-voltage HVAC cable regardless of the number of stories in a building if in a previously occupied and wired space;
  - Expanding the scope of work for nonresidential maintenance (07) specialty electricians to allow the replacement of a circuit breaker, set of fuses, or overload heaters having lower ampere ratings to protect the replacement unit;
  - Allowing the use of long radius sweep elbows to connect water pipe enclosing circulation lines for underground geothermal systems; and

- Allowing Class B permits for replacement of AFCI/GFCI dual function receptacles.
- Adopt the department's existing policies into rule. For example:
  - Newly adopted standards would apply to electrical permits issued on or after the adoption date. Adds new exceptions for new one- and two-family dwellings and multifamily dwellings when the building permit was issued before the adoption date and new installations when plans were received and accepted before the adoption date;
  - Allowing pump installers to test a well without having to hire an electrical contractor; and
  - Requiring training programs to send a completion roster to L&I in electronic format with certain information for a student's successful completion of a training program.
- Adopt amendments to the electrical continuing education and classroom education requirements. For example:
  - Clarifying the content of electrical theory classes for basic trainee classes and industry related continuing education classes;
  - Increasing the completion timeframe of basic trainee classes from two months to six months; and
  - Requiring industry-related classes for electrical theory and basic trainee classes to be based on original copyrighted material, instead of currently published documents, to align with the allowance for original copyrighted material during open book electrician examinations.
- Exempt the like-in-kind replacement of line-voltage smoke alarms or carbon monoxide alarms from permit and inspection requirements.
- Allow Class B permits for replacement of electric vehicle cords.
- Eliminate the requirement for training schools to send enrollment rosters for students enrolled in an accredited training program to L&I.
- Adopt amendments to the suspension or revocation of electrical license and certification requirements to classify a serious noncompliance as a violation where it can be proven a violator willfully or intentionally violates the law.
- Adopt amendments to rules for clarity, consistency, and ease of use. For example:
  - Clarifying the definition of "training school" applies to "Washington" public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the workforce training and education coordinating board;
  - Clarifying that GFCI protection for personnel is not required for receptacles other than 125-volt single phase, 15- or 20 ampere used for recreational vehicle supply equipment or for attachment of a mobile home supply cord;
  - Clarifying that low voltage wiring exemptions for built-in vacuum systems and garage doors applies only to residential installations;

- Clarifies that replacement of lamps in luminaires is exempt from the electrical licensing requirements; and
- Clarifying the term "ancillary" applies to structures on other property owned by others.
- Adopt amendments for general housekeeping, such as typographical and reference corrections, formatting, removal of obsolete language, etc.

Citation of Rules Affected by this Order: Repealing WAC 296-46B-553; and amending WAC 296-46B-010, 296-46B-100, 296-46B-110, 296-46B-210, 296-46B-220, 296-46B-225, 296-46B-250, 296-46B-334, 296-46B-555, 296-46B-705, 296-46B-901, 296-46B-906, 296-46B-908, 296-46B-915, 296-46B-920, 296-46B-925, 296-46B-935, 296-46B-940, 296-46B-970, 296-46B-971, and 296-46B-990.

Statutory Authority for Adoption: Chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.031 and 19.28.251.

Adopted under notice filed as WSR 20-06-059 on March 3, 2020.

A final cost-benefit analysis is available by contacting Alicia Curry, Department of Labor and Industries, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, website <https://www.lni.wa.gov/rulemaking-activity/?query=electrical>.

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 21, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 21, 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 21, Repealed 1.

Date Adopted: May 19, 2020.

Joel Sacks  
Director

**AMENDATORY SECTION** (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-010 General.**

**Adopted standards.**

(1) The ~~((2017))~~ 2020 edition of the National Electrical Code (NFPA 70 - ~~((2017))~~ 2020) published August, 2019 including Annex A, B, ~~((and))~~ C, and subsequent Errata and Tentative Interim Amendments issued by the National Fire Protection Association; Commercial Building Telecommunications Cabling Standard (ANSI/TIA-568-C series, February 2009); Commercial Building Standard for Telecommunications Pathway and Spaces (TIA-569-B, October 2004); Com-

mercial Building Grounding and Bonding Requirements for Telecommunications (ANSI-TIA-607-B, August 2011); Residential Telecommunications Cable Standard (ANSI/TIA/EIA 570-B-2004); and the National Electrical Safety Code (NESC C2-2017 excluding Appendixes A and B) are hereby adopted by reference as part of this chapter.

~~((On July 1, 2020, the 2020 edition of the National Electrical Code (NEPA 70-2020 including Annex A, B, and C is hereby adopted by reference as part of this chapter and replaces the 2017 edition.))~~

This chapter will be followed where there is any conflict between this chapter and the above adopted standards.

The National Electrical Code will be followed where there is any conflict between the National Electrical Code and, ANSI/TIA/EIA 568-C, ANSI/TIA/EIA 569-B, ANSI/TIA/EIA 607-B, ANSI/TIA/EIA 570-B, or the NESC C2.

Adopted standards apply to installations when issue dates of electrical permits are on and after adoption dates except for:

(a) New one- and two-family dwellings, or multifamily dwellings where the issue date of building permits for the premises is before the adoption date; or

(b) New installations where plan review is required by WAC 296-46B-900 when plans are received and accepted for review before the adoption date.

#### **Inspections - General.**

(2) Electrical inspectors will give information as to the interpretation or application of the standards in this chapter, but will not lay out work or act as consultants for contractors, owners, or users.

(3) A variance from the electrical installation requirements of chapter 19.28 RCW or this chapter may be granted by the department or the city that has electrical inspection jurisdiction when it is assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

(a) Any electrical permit holder may request a variance.

(b) The permit holder must make the request in writing, using a form provided by the department, to the chief electrical inspector or to the city that has electrical inspection jurisdiction. The request must include:

(i) A description of the installation as installed or proposed;

(ii) A detailed list of the applicable code violations;

(iii) A detailed list of safety violations;

(iv) A description of the proposal for meeting equivalent objectives for code and/or safety violations; and

(v) Appropriate variance application fee as listed in chapter 296-46B WAC, Part C.

(4) Electrical wiring or equipment subject to this chapter must be sufficiently accessible, at the time of inspection, to allow the inspector to visually inspect the installation to verify conformance with the NEC and any other electrical requirements of this chapter with the exception of not more than 8 feet of electrical conduit in a foundation of a one- or two-family dwelling or residential outbuilding for use as service entrance raceway.

(5) All required equipment grounding conductors installed in concealed cable or flexible conduit systems must be completely installed and made up at the time of the rough-in cover inspection.

(6) The installation of all structural elements and mechanical systems (e.g., framing, plumbing, ducting, etc.) must be complete in the area(s) where electrical inspection is requested. Prior to completion of an exterior wall cover inspection, either:

(a) The exterior shear panel/sheathing nail inspection must be completed by the building code inspector and, where siding nails or fasteners which penetrate into the wall cavity are to be used, all siding must be installed; or

(b) All wiring and device boxes must be a minimum of 2 1/2 inches from the exterior surface of the framing member; or

(c) All wiring and device boxes must be protected by a steel plate a minimum of 1/16 inch thick and of appropriate width and height installed to cover the area of the wiring or box.

(7) In order to meet the minimum electrical safety standards for installations, all materials, devices, appliances, and equipment, not exempted in chapter 19.28 RCW, must conform to applicable electrical product standards recognized by the department, be listed, or field evaluated. For any equipment that requires an amusement operating permit under chapter 67.42 RCW, the operating permit is prima facie evidence of an appropriate standard. Other than as authorized by the chief electrical inspector or a city authorized to do electrical inspection, equipment must not be energized until such standards are met.

(8) The state department of transportation is recognized as the inspection authority for telecommunications systems installations within the rights of way of state highways provided the department of transportation maintains and enforces an equal, higher or better standard of construction, and of materials, devices, appliances, and equipment than is required for telecommunications systems installations by chapter 19.28 RCW and this chapter.

#### **Inspection move on buildings and structures.**

(9) All buildings or structures relocated into or within the state:

(a) Other than residential, wired inside the United States (U.S.) must be inspected to ensure compliance with current requirements of chapter 19.28 RCW and the rules developed by the department.

(b) Wired outside the U.S. or Canada must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department.

(10) Residential buildings or structures wired in the U.S., to NEC requirements, and moved into or within a county, city, or town must be inspected to ensure compliance with the NEC requirements in effect at the time and place the original wiring was made. The building or structure must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department if:

(a) The original occupancy classification of the building or structure is changed as a result of the move; or

(b) The building or structure has been substantially remodeled or rehabilitated as a result of the move.

(11) Residential buildings or structures wired in Canada to Canadian Electrical Code (CEC) standards and moved into or within a county, city, or town, must be inspected to ensure

compliance with the following minimum safety requirements:

(a) Service, service grounding, and service bonding must comply with the current chapter 19.28 RCW and rules adopted by the department.

(b) Canadian Standards Association (CSA) listed Type NMD cable is allowed with the following qualifications:

(i) CSA listed Type NMD cable, American Wire Gauge #10 and smaller installed after 1964 utilizing an equipment grounding conductor smaller than the phase conductors, must be:

(A) Replaced with a cable utilizing a full-size equipment grounding conductor; or

(B) Protected by a ground fault circuit interrupter protection device.

(ii) CSA listed Type NMD cable, #8 AWG and larger, must:

(A) Utilize an equipment grounding conductor sized according to the requirements of the NEC in effect at the time of the installation;

(B) Be protected by a ground fault circuit interrupter protection device; or

(C) Be replaced.

(c) Other types of wiring and cable must be:

(i) Replaced with wiring listed or field evaluated in accordance with U.S. standards by a laboratory approved by the department; or

(ii) Protected by a ground fault circuit interrupter protection device and arc fault circuit protection device.

(d) Equipment, other than wiring or panelboards, manufactured and installed prior to 1997 must be listed and identified by laboratory labels approved by the department or CSA labels.

(e) All panelboards must be listed and identified by testing laboratory labels approved by the department with the following qualifications:

(i) CSA listed panelboards labeled "suitable for use as service equipment" will be considered to be approved as "suitable for use only as service equipment."

(ii) CSA listed panelboards used as panelboards as described in the NEC, must meet all current requirements of the NEC and this chapter.

(f) Any wiring or panelboards replaced or changed as a result of the move must meet current requirements of chapter 19.28 RCW and this chapter.

(g) The location, type, and ground fault circuit interrupter protection of receptacles and equipment in a bathroom, kitchen, basement, garage, or outdoor area must meet the Washington requirements in effect at the time the wiring was installed.

(h) 4, 15-ampere, kitchen small appliance circuits will be accepted in lieu of 2, 20-ampere, kitchen small appliance circuits. Receptacles will not be required to be added on kitchen peninsular or island counters.

(i) Spacing requirements for all other receptacles must meet the Washington requirements in effect at the time the wiring was installed.

(j) Receptacles installed above baseboard or fixed wall space heaters must be removed and the outlet box covered

with a blank cover. The receptacle is required to be relocated as closely as possible to the existing location.

(k) Lighting outlet and switch locations must meet the Washington requirements in effect at the time the wiring was installed.

(l) Dedicated 20-ampere small appliance circuits are not required in dining rooms.

(m) Electric water heater branch circuits must be adequate for the load.

(n) The location, type, and circuit protection of feeders must meet the Washington requirements in effect at the time the wiring was installed.

#### **Wiring methods for designated building occupancies.**

(12) Wiring methods in educational or institutional facilities as defined in this chapter must be metallic or nonmetallic raceways, MI, MC, or AC cable. Places of assembly located within these facilities must comply with NEC 518.4(A).

(13) Assisted living facility generator systems may be wired and installed per NEC 517.

(14) Lawfully installed existing electrical installations that do not comply with the provisions of this chapter and remain in compliance with the code at the time of the installation, will be permitted to be continued without change (i.e., without circuitry or occupancy change). Additions, alterations, modifications, or repairs to the electrical system must conform to the current requirements of this chapter.

(15) See WAC 296-46B-406R for tamper-resistant receptacle requirements in psychiatric patient care facilities.

#### **Traffic management systems.**

(16) The department or city authorized to do electrical inspections will perform the electrical inspection and acceptance of traffic management systems within its jurisdiction. A traffic management system includes:

(a) Traffic illumination systems;

(b) Traffic signal systems;

(c) Traffic monitoring systems;

(d) The electrical service cabinet and all related components and equipment installed on the load side of the service cabinet supplying electrical power to the traffic management system; and

(e) Signalization system(s) necessary for the operation of a light rail system.

A traffic management system can provide signalization for controlling vehicular traffic, pedestrian traffic, or rolling stock.

(17) The department or city authorized to do electrical inspections recognizes that traffic signal conductors, pole and bracket cables, signal displays, traffic signal controllers/cabinets and associated components used in traffic management systems are acceptable for the purpose of meeting the requirements of chapter 19.28 RCW provided they conform with the following standards or are listed on the Washington state department of transportation (WSDOT) qualified products list.

(a) WSDOT/APWA standard specifications and plans;

(b) WSDOT *Design Manual*;

(c) International Municipal Signal Association (IMSA);

(d) National Electrical Manufacturer's Association (NEMA);

(e) Federal Standards 170/Controller Cabinets;

(f) Manual for *Uniform Road, Bridge, and Municipal Construction*;

(g) Institute of Transportation Engineers (ITE); or

(h) Manual of *Uniform Traffic Control Devices (MUT CD)*.

(18) Associated induction detection loop or similar circuits will be accepted by the department or city authorized to do electrical inspections without inspection.

(19) For the licensing requirements of chapter 19.28 RCW, jurisdictions will be considered owners of traffic management systems when doing electrical work for another jurisdiction(s) under a valid interlocal agreement, as permitted by chapter 39.34 RCW. Interlocal agreements for traffic management systems must be filed with the department or city authorized to do electrical inspections prior to work being performed for this provision to apply.

(20) Jurisdictions, with an established electrical inspection authority, and WSDOT may perform electrical inspection on their rights of way for each other by interlocal agreement. They may not perform electrical inspection on other rights of way except as allowed in chapter 19.28 or 39.34 RCW.

(21) Underground installations.

(a) In other than open trenching, raceways will be considered "fished" according to the NEC and do not require visual inspection.

(b) The department or city authorized to do electrical inspections will conduct inspections in open trenching within its jurisdiction. The electrical work permit purchaser must coordinate the electrical inspection. A written request (e.g., letter, email, fax, etc.) for inspection, made to the department or city authorized to do electrical inspections office having the responsibility to perform the inspection, must be made a minimum of two working days prior to the day inspection is needed (e.g., two working days 10:00 a.m. Tuesday request for a 10:00 a.m. Thursday inspection, excluding holidays and weekends).

If, after proper written request, the department or city authorized to do electrical inspections fails to make an electrical inspection at the time requested, underground conduit may be covered after inspection by the local government jurisdiction's project inspector/designee. Written documentation of a local government jurisdiction inspection must be provided to the department or city authorized to do electrical inspections when requested. Written documentation will include:

(i) Date and time of inspection;

(ii) Location;

(iii) Installing firm;

(iv) Owner;

(v) Type of conduit;

(vi) Size of conduit;

(vii) Depth of conduit; and

(viii) Project inspector/designee name and contact information.

(22) Identification of traffic management system components. Local government jurisdictions or WSDOT may act as the certifying authority for the safety evaluation of all components.

(a) An electrical service cabinet must contain only listed components. The electrical service cabinet enclosure is not required to be listed but will conform to the standards in subsection (17) of this section.

(b) The local government jurisdiction must identify, as acceptable, the controller cabinet or system component(s) with an identification plate. The identification plate must be located inside the cabinet and may be attached with adhesive.

(23) Conductors of different circuits in same cable, enclosure, or raceway. All traffic management system circuits will be permitted to occupy the same cable, enclosure, or raceway without regard to voltage characteristics, provided all conductors are insulated for the maximum voltage of any conductor in the cable, enclosure, or raceway.

**AMENDATORY SECTION** (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-100 General definitions.** All definitions listed in the National Electrical Code and chapter 19.28 RCW are recognized in this chapter unless other specific definitions are given in this chapter and chapter 19.28 RCW. The definitions in this section apply to all parts of this chapter. Some sections may have definitions specific to that section.

"Accreditation" is a determination by the department that a laboratory meets the requirements of this chapter and is therefore authorized to evaluate electrical products that are for sale in the state of Washington.

"Administrative law judge" means an administrative law judge (ALJ) appointed pursuant to chapter 34.12 RCW and serving in board proceedings pursuant to chapter 19.28 RCW and this chapter.

"ANSI" means American National Standards Institute. Copies of ANSI standards are available from the National Conference of States on Building Codes and Standards, Inc.

"Appeal" is a request for review of a department action by the board as authorized by chapter 19.28 RCW.

"Appellant" means any person, firm, partnership, corporation, or other entity that has filed an appeal or request for board review.

"Appliance" means household appliance.

"ASTM" means the American Society for Testing and Materials. Copies of ASTM documents are available from ASTM International.

"AWG" means American Wire Gauge.

"Basement" means that portion of a building that is partly or completely below grade plane. A basement will be considered as a story above grade plane and not a basement where the finished surface of the floor above the basement is:

(a) More than 6 feet above grade plane;

(b) More than 6 feet above the finished ground level for more than 50% of the total building perimeter; or

(c) More than 12 feet above the finished ground level at any point. Also see "mezzanine" and "story."

"Board" means the electrical board established and authorized under chapter 19.28 RCW.

"Category list" is a list of manufacturing safety standards or product types determined by the department.

A "certified electrical product" is an electrical product to which a laboratory, accredited by the state of Washington, has the laboratory's certification mark attached.

A "certification mark" is a specified laboratory label, symbol, or other identifying mark that indicates the manufacturer produced the product in compliance with appropriate standards or that the product has been tested for specific end uses.

"Certificate of competency" includes the certificates of competency for master journey level electrician, master specialty electrician, journey level, and specialty electrician.

A laboratory "certification program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority, regulating the evaluation of electrical products for certification marking by an electrical products certification laboratory.

A "complete application" includes the submission of all appropriate fees, documentation, and forms.

"Chapter" means chapter 296-46B WAC unless expressly used for separate reference.

"Construction," for the purposes of chapter 19.28 RCW, means electrical construction.

"Coordination (selective)" as defined in NEC 100 must be determined and documented by a professional engineer registered under chapter 18.43 RCW.

"Department" means the department of labor and industries of the state of Washington.

"Director" means the director of the department, or the director's designee.

"Egress - Unobstructed (as applied to NEC 110.26 (C)(2) (a))" means an egress path that allows a worker to travel to the exit from any other area in the room containing the equipment described in NEC 110.26 (C)(2) without having to pass through that equipment's required working space.

"Electrical equipment" includes electrical conductors, conduit, raceway, apparatus, materials, components, and other electrical equipment not exempted by RCW 19.28.006 (9). Any conduit/raceway of a type listed for electrical use is considered to be electrical equipment even if no wiring is installed in the conduit/raceway at the time of the conduit/raceway installation.

An "electrical products certification laboratory" is a laboratory or firm accredited by the state of Washington to perform certification of electrical products.

An "electrical products evaluation laboratory" is a laboratory or firm accredited by the state of Washington to perform on-site field evaluation of electrical products for safety.

"Field evaluated" means an electrical product to which a field evaluation mark is attached. Field evaluation must include job site inspection unless waived by the department, and may include component sampling and/or laboratory testing.

"Field evaluation mark" is a specified laboratory label, symbol, or other identifying mark indicating the manufacturer produced the product in essential compliance with appropriate standards or that the product has been evaluated for specific end uses.

A "field evaluation program" is a specified set of testing, inspection, and quality assurance procedures, including

appropriate implementing authority regulating the testing and evaluation of electrical products for field evaluation marking.

The "filing" is the date the document is actually received in the office of the chief electrical inspector.

"Final judgment" means any money that is owed to the department under this chapter, including fees and penalties, or any money that is owed to the department as a result of an individual's or contractor's unsuccessful appeal of a citation.

"Fished wiring" is when cable or conduit is installed within the finished surfaces of an existing building or building structure (e.g., wall, floor or ceiling cavity).

"Household appliance" means utilization equipment installed in a dwelling unit that is built in standardized sizes or types and is installed or connected as a unit to perform one or more household functions such as food preparation, cooking, and cleaning. Includes appliances typically installed in a dwelling unit kitchen, clothes washing, drying, and water heating appliances, portable room air conditioning units and portable heaters, etc. Fixed electric space-heating equipment covered in NEC 424 (furnaces, baseboard and wall heaters, electric heat cable, etc.) and fixed air-conditioning/heat pump equipment (NEC 440) are not household appliances. Household appliance does not mean any utilization equipment that:

(a) Supplies electrical power, other than Class 2, to other utilization equipment; or

(b) Receives electrical power, other than Class 2, through other utilization equipment.

HVAC/refrigeration specific definitions:

(a) "HVAC/refrigeration" means heating, ventilation, air conditioning, and refrigeration.

(b) "HVAC/refrigeration component" means electrical power and limited energy components within the "HVAC/refrigeration system," including, but not limited to: Pumps, compressors, motors, heating coils, controls, switches, thermostats, humidistats, low-voltage damper controls, outdoor sensing controls, outside air dampers, stand-alone duct smoke detectors, air monitoring devices, zone control valves and equipment for monitoring of HVAC/refrigeration control panels and low-voltage connections. This definition excludes equipment and components of non-"HVAC/refrigeration control systems."

(c) "HVAC/refrigeration control panel" means an enclosed, manufactured assembly of electrical components designed specifically for the control of a HVAC/refrigeration system. Line voltage equipment that has low voltage, NEC Class 2 control or monitoring components incidental to the designed purpose of the equipment is not an HVAC/refrigeration control panel (e.g., combination starters).

(d) "HVAC/refrigeration control system" means a network system regulating and/or monitoring a HVAC/refrigeration system. Equipment of a HVAC/refrigeration control system includes, but is not limited to: Control panels, data centers, relays, contactors, sensors, and cables related to the monitoring and control of a HVAC/refrigeration system(s).

(e) "HVAC/refrigeration equipment" means the central unit primary to the function of the "HVAC/refrigeration system." HVAC/refrigeration includes, but is not limited to: Heat pumps, swamp coolers, furnaces, compressor packages, and boilers.

(f) "HVAC/refrigeration system" means a system of HVAC/refrigeration: Wiring, equipment, and components integrated to generate, deliver, or control heated, cooled, filtered, refrigerated, or conditioned air. This definition excludes non-HVAC/refrigeration control systems (e.g., fire alarm systems, intercom systems, building energy management systems, and similar non-HVAC/refrigeration systems).

"IBC" means the International Building Code. Copies of the IBC are available from the International Code Council.

An "individual" or "party" or "person" means an individual, firm, partnership, corporation, association, government subdivision or unit thereof, or other entity.

An "installation" includes the act of installing, connecting, repairing, modifying, or otherwise performing work on an electrical system, component, equipment, or wire except as exempted by WAC 296-46B-925. An installation is not the passive testing or operational programming of an electrical system, component, equipment, or wire. See "passive testing."

An "identification plate" is suitable for the environment and is a printed or etched adhesive label approved by the department or a phenolic or metallic plate or other similar material engraved in block letters at least 1/4 inch high unless specifically required to be larger by this chapter, suitable for the environment and application. The letters and the background must be in contrasting colors. Screws, rivets, permanent adhesive, or methods specifically described in this chapter must be used to affix an identification plate to the equipment or enclosure.

"Job site" means a specific worksite having a single address or specific physical location (e.g., a single-family residence, a building, a structure, a marina, an individual apartment building with a specific address, etc.).

"Journey level electrician" means a person who has been issued a journey level electrician certificate of competency by the department. The terms "journey level" and "journey-person" in chapter 19.28 RCW are synonymous.

"Labeled" means an electrical product that bears a certification mark issued by a laboratory accredited by the state of Washington.

A "laboratory" may be either an electrical product(s) certification laboratory or an electrical product(s) evaluation laboratory.

A "laboratory operations control manual" is a document to establish laboratory operation procedures and may include a laboratory quality control manual.

"License" means a license required under chapter 19.28 RCW.

"Like-in-kind" means having the same overcurrent protection requirements and similar characteristics such as voltage requirement, current draw, short circuit characteristics, and function within the system and being in the same location. Like-in-kind also includes any equipment component authorized by the manufacturer as a suitable component replacement part.

For the purpose of WAC 296-46B-940, a "lineworker" is a person employed by a serving electrical utility or employed by a licensed general electrical contractor who carries, on their person, evidence that they:

(a) Have graduated from a department-approved line-worker's apprenticeship course; or

(b) Are currently registered in a department-approved lineworker's apprenticeship course and are working under the direct one hundred percent supervision of a journey level electrician or a graduate of a lineworker's apprenticeship course approved by the department. The training received in the lineworker's apprenticeship program must include training in applicable articles of the currently adopted National Electrical Code.

"Listed" means equipment has been listed and identified by a laboratory approved by the state of Washington for the appropriate equipment standard per this chapter.

"Low voltage" means:

(a) NEC, Class 1 power limited circuits at 30 volts maximum.

(b) NEC, Class 2 circuits powered by a Class 2 power supply as defined in NEC 725.121(A).

(c) NEC, Class 3 circuits powered by a Class 3 power supply as defined in NEC 725.121(A).

(d) Circuits of telecommunications systems as defined in chapter 19.28 RCW.

"Member of the firm" means the member(s) on file with the department of licensing for sole proprietorships/partnerships or with the secretary of state for corporations.

"Mezzanine" is the intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room or space in which the level or levels are located. Also see "basement" and "story."

"NEC" means National Electrical Code. Copies of the NEC are available from the National Fire Protection Association.

"NEMA" means National Electrical Manufacturer's Association. Copies of NEMA standards are available from the National Electrical Manufacturer's Association.

"NESC" means National Electrical Safety Code. Copies of the NESC are available from the Institute of Electrical and Electronics Engineers, Inc.

"NETA" means International Electrical Testing Association, Inc. Copies of the NETA standards and information are available from the International Electrical Testing Association, Inc.

"NFPA" means the National Fire Protection Association. Copies of NFPA documents are available from the National Fire Protection Association.

"NRTL" means Nationally Recognized Testing Laboratory accredited by the federal Occupational Safety and Health Administration (OSHA) after meeting the requirements of 29 C.F.R. 1910.7.

A "new building" for the purposes of RCW 19.28.261 includes the setting of a manufactured, mobile, or modular building.

"Passive testing" (e.g., pressing of test buttons, use of testing equipment like voltage testers, clamp-on meters, removal of a device head where the wiring is terminated on a separate base plate, etc.) means testing that does not require any:

(a) Physical modification to the electrical system wiring; or

(b) Wiring to be disconnected or terminated, except as necessary for an approved electrical testing laboratory or approved engineer performing an equipment evaluation.

"Point of contact" or "point of connection" means the service point.

"Proceeding" means any matter regarding an appeal before the board including hearings before an administrative law judge.

"Public area or square" is an area where the public has general, clear, and unrestricted access.

A "quality control manual" is a document to maintain the quality control of the laboratory's method of operation. It consists of specified procedures and information for each test method responding to the requirements of the product standard. Specific information must be provided for portions of individual test methods when needed to comply with the standard's criteria or otherwise support the laboratory's operation.

"RCW" means the Revised Code of Washington. Copies of electrical RCW are available from the department and the office of the code reviser.

"Readily accessible" means the definition as defined in NEC 100. In addition, it means that, except for keys, no tools or other devices are necessary to gain access (e.g., covers secured with screws, etc.).

"Service" or "served" means that as defined in RCW 34.05.010(19) when used in relation to department actions or proceedings.

A "sign," when required by the NEC, for use as an identification method (e.g., legibly marked, legible warning notice, marked, field marked, permanent plaque/directory, etc.) means "identification plate."

A "stand-alone amplified sound or public address system" is a system that has distinct wiring and equipment for audio signal generation, recording, processing, amplification, and reproduction. This definition does not apply to telecommunications installations.

"Story" is that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. Next above means vertically and not necessarily directly above. Also see "basement" and "mezzanine."

"Structure," for the purposes of this chapter and in addition to the definition in the NEC, means something constructed either in the field or factory that is used or intended for supporting or sheltering any use or occupancy as defined by the IBC.

"Supervision" for the purpose of supervising electrical trainees, means that the appropriately certified supervising electrician is on the same job site as the trainee being supervised. The trainee is not considered to be on the same job site if the supervising electrician and the trainee are working:

(a) In separate buildings at a single address (e.g., a campus, multibuilding industrial complex, multibuilding apartment complex, etc.) except for a single-family residence; or

(b) On an outdoor project (e.g., irrigation system, farm, street lighting, traffic signalization, etc.) where the trainee is more than 1000 feet from the supervising electrician or where the trainee is more than 200 feet from the supervising electrician and out of sight.

"System design review" means a set of design documents that include the manufacturer's installation information, a legible one-line diagram of the system design, and calculations used to determine voltage and current within the system. The one-line diagram must show the system equipment, devices, overcurrent protection, conductor sizing, grounding, ground fault protection if required, and any system interconnection points. The review must be available to the inspector during all inspections.

A "telecommunications local service provider" is a regulated or unregulated (e.g., by the Federal Communications Commission or the utilities and transportation commission as a telephone or telecommunications provider) firm providing telecommunications service ahead of the telecommunications network demarcation point to an end-user's facilities.

"TIA/EIA" means the Telecommunications Industries Association/Electronic Industries Association which publishes the TIA/EIA Telecommunications Building Wiring Standards. Standards and publications are adopted by TIA/EIA in accordance with the American National Standards Institute (ANSI) patent policy.

A "training school" is a Washington public community or technical college or not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW.

"Under the control of a utility" for the purposes of RCW 19.28.091 and 19.28.101 is when electrical equipment is not owned by a utility and:

(a) Is located in a vault, room, closet, or similar enclosure that is secured by a lock or seal so that access is restricted to the utility's personnel; or

(b) The utility is obligated by contract to maintain the equipment and the contract provides that access to the equipment is restricted to the utility's personnel or other qualified personnel.

"UL" means Underwriters Laboratory.

"Utility" means an electrical utility.

"Utility system" means electrical equipment owned by or under the control of a serving utility that is used for the transmission or distribution of electricity from the source of supply to the point of contact and is defined in section 90.2 (b)(5) of the National Electrical Code, 1981 edition (see RCW 19.28.010(1)).

"Utilization voltage" means the voltage level employed by the utility's customer for connection to lighting fixtures, motors, heaters, or other electrically operated equipment other than power transformers.

"Variance" is a modification of the electrical requirements as adopted in chapter 19.28 RCW or any other requirements of this chapter that may be approved by the chief electrical inspector if assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

"WAC" means the Washington Administrative Code. Copies of this chapter of the WAC are available from the department and the office of the code reviser.

AMENDATORY SECTION (Amending WSR 17-12-021, filed 5/30/17, effective 7/1/17)

**WAC 296-46B-110 General—Requirements for electrical installations.**

**003 Examination, identification, installation, and use of equipment.**

(1) Listed electrical conduit can only be installed and used in accordance with its listing (i.e., as an electrical raceway for electrical conductors). If used as a sleeve for electrical conductors or other listed electrical conduits, the installation of a listed electrical conduit will be assumed to be for use as an electrical raceway and must be installed as allowed by chapter 19.28 RCW and this chapter (e.g., owner exemption, electrical contractor, etc.).

EXCEPTION: Electrical nonmetallic elbow fittings may be connected to piping other than electrical conduit for the purposes of enclosing mechanical piping systems provided the elbows are distinctively marked to indicate their use as nonelectrical fittings prior to installation. For underground installations outside of buildings, elbows used for purposes other than electrical must be substantially painted to match the color of piping to which they are connected.

**011 Deteriorating agents.**

(2) Electrical equipment and wiring that has been submerged or exposed to water must comply with the following:

(a) All breakers, fuses, controllers, receptacles, lighting switches/dimmers, electric heaters, and any sealed device/equipment (e.g., relays, contactors, etc.) must be replaced.

(b) All other electrical equipment (e.g., wiring, breaker panelboards, disconnect switches, switchgear, motor control centers, boiler controls, HVAC/R equipment, electric motors, transformers, appliances, water heaters, and similar appliances) must be replaced or reconditioned by the original manufacturer or by its approved representative.

**022 Identification of disconnecting means.**

(3) For the purposes of legibly marking a disconnecting means, as required in NEC 110.22, an identification plate is required unless the disconnect is a circuit breaker/fused switch installed within a panelboard and the circuit breaker/fused switch is identified by a panelboard schedule. In other than dwelling units, the identification plate must include the identification designation of the circuit source panelboard that supplies the disconnecting means.

**030 Over 1000 volts - General.**

(4) Each cable operating at over 1000 volts and installed on customer-owned systems must be legibly marked in a permanent manner at each termination point and at each point the cable is accessible. The required marking must use phase designation, operating voltage, and circuit number if applicable.

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-210 Wiring and protection—Branch circuits.**

**008(A) Dwelling units GFCI requirements.**

(1) In a garage or unfinished basement, a red receptacle, with a red cover plate, supplying a fire alarm system is not required to have ground-fault circuit-interrupter protection. The receptacle must be identified for use only with the fire alarm system by an identification plate or engraved cover with letters at least 1/4 inch high.

(2) All fixed electrical equipment with exposed grounded metal parts within an enclosed shower area or within 5 feet of the top inside edge of a bathtub must have ground fault circuit interrupter protection.

**008(B) Other than dwelling units - GFCI requirements.**

(3) GFCI requirements. GFCI protection for personnel will not be required for:

(a) Three-phase receptacles unless specifically required elsewhere in the NEC; or

(b) Receptacles other than 125-volt, single phase, 15- or 20-ampere used for: Recreational vehicle supply equipment or for attachment of a mobile home supply cord ((~~other than 125-volt, single phase, 15- or 20-ampere receptacles~~)).

For the purposes of NEC 210.8(B), kitchen means any area where utensils, dishes, etc., are cleaned or where food or beverages are prepared or cooked.

**011 Branch circuits.**

(4) A raceway system or one dedicated 15-ampere minimum, 120 volt circuit must be taken to all unfinished space areas adaptable to future dwelling unit living areas that are not readily accessible to the service or branch circuit panelboard. One circuit or raceway is required for each 480 square feet or less of unfinished space area. If the total adjacent unfinished space area is less than 480 square feet, the circuit can be an extension of an existing circuit. The circuits must terminate in a suitable box(es). The box must contain an identification of the intended purpose of the circuit(s). The branch circuit panelboard must have adequate space and capacity for the intended load(s).

**013 Ground fault protection of equipment.**

(5) Equipment ground fault protection systems required by the NEC must be tested prior to being placed into service to verify proper installation and operation of the system as determined by the manufacturer's published instructions. A firm having qualified personnel and proper equipment must perform the tests required. A copy of the manufacturer's performance testing instructions and a written performance acceptance test record signed by the person performing the test must be available at the time of inspection. The performance acceptance test record must include test details including, but not limited to, all trip settings and measurements taken during the test.

**025 Common area branch circuits.**

(6) For the purpose of NEC 210.25, loads for septic or water well systems that are shared by no more than two dwelling units may be supplied from either of the two dwelling units if approved by the local building official and local health department.

**052 (A)(2) Dwelling unit receptacle outlets.**

(7) For the purpose of NEC 210.52 (A)(2)(1), "similar openings" include the following configurations that are a permanent part of the dwelling configuration or finish:

(a) Window seating; and

(b) Bookcases or cabinets that extend from the floor to a level at least 5 feet 6 inches above the floor.

Any outlets eliminated by such window seating, bookcases, or cabinets must be installed elsewhere within the room.

~~((052(C) Countertops.~~

~~(8) A receptacle in a wall countertop space shall be permitted to serve as the receptacle for a peninsular countertop space where the spaces are contiguous and the receptacle is located within 8 feet of the outside edge of the peninsular countertop.))~~

AMENDATORY SECTION (Amending WSR 17-12-021, filed 5/30/17, effective 7/1/17)

**WAC 296-46B-220 Wiring and protection—Branch circuit, feeder, and service calculations.**

**012 Lighting load calculations.**

In determining feeder and service entrance conductor sizes and equipment ratings, a building that is designed and constructed to comply with the currently adopted Washington state energy code unit lighting power allowance table and footnotes may be used in lieu of NEC 220.12. The requirements of NEC 220.12 ~~((Exception No. 1))~~ (B), items 1, 2, and 3 do not apply.

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-225 Wiring and protection—Outside branch circuits and feeders.**

**019 Clearances from buildings for conductors.**

(1) Add the following exception to NEC 225.19(A): Where the voltage between conductors does not exceed 300 and the roof area is guarded or isolated, a reduction in clearance to 3 feet shall be permitted.

~~((030 Number of supplies.~~

~~(2) For the purposes of NEC 225.30(A) and this section, a building/structure that is supplied from a remote service, may be supplied by no more than six feeders originating from the service equipment and with each feeder terminating in a single disconnecting means at the building/structure. The service equipment must contain overcurrent protection appropriate to each feeder. The building disconnecting means required by NEC 225.32 must be grouped, within sight, and all be within 10' of each other.))~~

**032 Location of outside feeder disconnecting means.**

~~((3))~~ (2) The disconnecting means required by NEC 225.32 must be provided to disconnect all ungrounded conductors that supply or pass through a building/structure in accordance with the requirements of NEC 225.32 with the following exceptions.

(a) Outside location: A feeder disconnecting means, including that required by NEC 700, 701, or 702 for a generator, is considered in the building if installed on the outside of the building/structure or within sight and within fifteen feet of the building/structure. The building disconnecting means may supply only one building/structure unless the secondary building(s)/structure(s) has a separate building disconnecting

means meeting the requirements of the NEC and this subsection. The disconnecting means must have an identification plate with at least one-half-inch high letters identifying:

- (i) The building/structure served; and
- (ii) Its function as the building/structure main disconnect(s).

(b) Inside location: The feeder disconnecting means may be installed anywhere inside a building or structure when there is a feeder disconnecting means, located elsewhere on the premises, with overcurrent protection sized for the feeder conductors.

**036 Suitable for use as service equipment.**

~~((4))~~ (3) A generator disconnecting means installed per subsection ~~((3))~~ (2)(a) or (b) of this section, is not required to be suitable for use as service equipment.

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-250 Wiring and protection—Grounding and bonding.**

**028 (D)(3) Separately derived system with more than one enclosure.**

(1) NEC 250.28 (D)(3) is amended to read: Where a separately derived system supplies more than a single enclosure, the system bonding jumper for each enclosure shall be sized in accordance with 250.28 (D)(1) based on the largest ungrounded feeder/tap conductor serving that enclosure, or a single system bonding jumper shall be installed at the source and sized in accordance with 250.28 (D)(1) based on the equivalent size of the largest supply conductor determined by the largest sum of the areas of the corresponding conductors of each set.

**052 Grounding electrodes.**

(2) Except for mobile/manufactured homes, a concrete encased grounding electrode must be installed and used at each new building or structure that is built upon a permanent concrete foundation. The electrode must comply with NEC 250.52 (A)(3). Inspection of the electrode may be accomplished by the following methods:

(a) At the time of inspection of other work on the project, providing the concrete encased electrode is accessible for a visual inspection;

(b) At the time of the service inspection providing the installer has provided a method so the inspector can verify the continuity of the electrode conductor along its entire length, with a minimum 20 foot linear span between testing points (e.g., attaching a length of copper wire to one end of the electrode that reaches the location of the grounding electrode conductor that will enable the inspector to measure the resistance with a standard resistance tester). The concrete encased electrode does not have to be accessible for a visual inspection; or

(c) Other method when prior approval, on a job site basis, is given by the inspector.

If a special inspection trip is required to inspect a grounding electrode conductor, a trip fee will be charged for that inspection in addition to the normal permit fee.

**Exception:** If the concrete encased grounding electrode is not available for connection, a ground ring must be installed per NEC 250 or other grounding electrode installed per NEC 250 verified to measure 25 ohms or less to ground. Resistance verification testing must be performed by an independent firm having qualified personnel and proper equipment. A copy of the testing procedures used and a written resistance test record signed by the person performing the test must be available at the time of inspection. The resistance test record must include test details including, but not limited to, the type of test equipment used, the last calibration date of the test equipment, and all measurements taken during the test.

**053 (A)(2) Resistance of rod, pipe, and plate electrodes.**

(3) For rod, pipe, and plate electrodes other than those installed in accordance with the exception in subsection (2) of this section, if a ground resistance test is not performed to ensure a resistance to ground of 25 ohms or less, two or more electrodes as specified in NEC 250.52 must be installed a minimum of 6 feet apart. A temporary construction service is not required to have more than one made electrode.

(4) For services only, when multiple buildings or structures are located adjacent, but structurally separate from each other, any installed rod, pipe, or plate electrodes used for those services must be installed so that each building's or structure's electrodes are not less than 6 feet apart from the adjacent building's or structure's electrodes.

**064 Grounding electrode conductor installation - Physical protection.**

(5) Grounding electrode conductors will be considered to be not exposed to physical damage when the conductor(s) are:

- (a) Buried more than 12 inches deep in the earth outside the building's footprint;
- (b) Encased or covered by 2 inches of concrete or asphalt;
- (c) Located inside the building footprint and protected by the building's structural elements or when inside and determined, by the inspector, to not be subject to physical damage; or
- (d) Enclosed by a metal or nonmetallic raceway or enclosure. The raceway or enclosure must be approved to protect from severe physical damage if it is not protected by appropriate physical barriers from contact with vehicles, lawn mowers, and other equipment that might damage the conductor or enclosure.

**068 Accessibility.**

(6) The termination point of a grounding electrode conductor tap to the grounding electrode conductor must be accessible unless the connection is made using an exothermic or irreversible compression connection.

**090 Bonding.**

(7) Metallic stubs or valves used in nonmetallic plumbing systems are not required to be bonded to the electrical system unless required by an electrical equipment manufacturer's instructions.

(8) Hot and cold water plumbing lines are not required to be bonded together if, at the time of inspection, the inspector can determine the lines are mechanically and electrically joined by one or more metallic mixing valves.

**104(B) Bonding - Other metal piping.**

(9) For flexible metal gas piping, installed new or extended from an existing rigid metal piping system, either:

(a) Provide a copy of the manufacturer's bonding instructions to the inspector at the time of inspection and follow those instructions; or

(b) The bonding conductor for the gas system must:

(i) Be a minimum 6 AWG copper; and

(ii) Terminate at:

(A) An accessible location at the gas meter end of the gas piping system on either a solid iron gas pipe or a cast flexible gas piping fitting using a listed grounding connector; and

(B) Either the service equipment enclosure, service grounding electrode conductor or electrode, or neutral conductor bus in the service enclosure.

**184 Solidly grounded neutral systems over 1000 volts.**

(10) In addition to the requirements of NEC 250.184(A), the following applies for:

(a) Existing installations.

(i) The use of a concentric shield will be allowed for use as a neutral conductor for extension, replacement, or repair, if all of the following are complied with:

(A) The existing system uses the concentric shield as a neutral conductor;

(B) Each individual conductor contains a separate concentric shield sized to no less than thirty-three and one-half percent of the ampacity of the phase conductor for three-phase systems or one hundred percent of the ampacity of the phase conductor for single-phase systems;

(C) The new or replacement cable's concentric shield is enclosed inside an outer insulating jacket; and

(D) Existing cable (i.e., existing cable installed directly in the circuit between the work and the circuit's overcurrent device) successfully passes the following tests:

- A cable maintenance high potential dielectric test. The test must be performed in accordance with the cable manufacturer's instruction or the ((2011)) 2019 ANSI/NETA maintenance test specifications; and

- A resistance test of the cable shield. Resistance must be based on the type, size, and length of the conductor used as the cable shield using the conductor properties described in NEC Table 8 Conductor Properties.

An electrical engineer must provide a specific certification to the electrical plan review supervisor in writing that the test results of the maintenance high potential dielectric test and the resistance test have been reviewed by the electrical engineer and that the cable shield is appropriate for the installation. The electrical engineer must stamp the certification document with the engineer's stamp and signature. The document may be in the form of a letter or electrical plans.

Testing results are valid for a period of seven years from the date of testing. Cable will not be required to be tested at a shorter interval.

(ii) A concentric shield used as a neutral conductor in a multigrounded system fulfills the requirements of an equipment grounding conductor.

(b) New installations.

(i) New installations do not include extensions of existing circuits.

(ii) The use of the concentric shield will not be allowed for use as a neutral conductor for new installations. A listed separate neutral conductor meeting the requirements of NEC 250.184(A) must be installed.

AMENDATORY SECTION (Amending WSR 17-12-021, filed 5/30/17, effective 7/1/17)

**WAC 296-46B-334 Wiring methods and materials—Nonmetallic-sheathed cable.**

**010 Nonmetallic-sheathed cable.**

(1) The building classification, for subsections (2), (3), and (4) of this section, will be as determined by the building official. For the purposes of this section, Type III, IV-HT and V may be as defined in the International Building Code adopted in the state of Washington. The installer must provide the inspector documentation substantiating the type of building construction and finish material rating(s) prior to any electrical inspection.

(2) This section replaces NEC 334.10(2). In multifamily dwellings, Type NM, Type NMC, and Type NMS cable(s) may be used in structures of Types III, IV-HT, and V construction except as prohibited in NEC 334.12.

(3) This section replaces NEC 334.10(3). In all other structures, Type NM, Type NMC, and Type NMS cable(s) may be used in structures of Types III, IV-HT, and V construction except as prohibited in NEC 334.12. All cable(s) must be concealed within walls, floors, or ceilings that provide a thermal barrier of material that has at least a 15-minute finish rating as identified in listings of fire-rated assemblies.

(4) This section replaces NEC 334.10(4). Cable trays in structures of Types III, IV-HT, and V construction, where the cable(s) is identified for the use, except as prohibited in NEC 334.12.

**015 Exposed work.**

(5) Where Type NMC cable is installed in shallow chases in plaster, masonry, concrete, adobe or similar material, the cable must be protected against nails or screws by:

(a) A steel plate at least 1/16 inch thick and covered with plaster, adobe, or similar finish; or

(b) Being recessed in a chase at least 2 3/4 inches deep, as measured from the finished surface, and covered with plaster, adobe, or similar finish. The cable(s) must be at least 1/2 inches from the finished surface.

(6) The requirements for nonmetallic sheathed cable protection in NEC 334.15(C) do not apply in crawl spaces.

AMENDATORY SECTION (Amending WSR 18-11-115, filed 5/22/18, effective 7/1/18)

**WAC 296-46B-555 Special occupancies—Marinas, boatyards, floating buildings, and commercial and non-commercial docking facilities.** (1) ~~((Until September 1, 2019, the ground-fault protection level specified in 2017 NEC 555.3 is amended to allow a maximum of: 100 mA for overcurrent devices supplying feeder conductors not supplying primary windings of transformers; and 30 mA for overcurrent devices supplying branch circuit conductors, outlets, and feeder conductors supplying primary windings of transformers. On September 1, 2019, ground-fault protection for~~

~~marinas, boatyards, and commercial and noncommercial docking facilities will be as published in the 2020 NEC.~~

~~((2))~~ (2) For the purposes of NEC ~~((555.5))~~ 555.7, transformer terminations must be located a minimum of 12 inches above the deck of a dock (datum plane requirements do not apply for this section).

~~((3))~~ (2) For the purposes of NEC ~~((555.7))~~ 555.4, adjacent means within sight.

~~((4))~~ (3) For the purposes of NEC ~~((555.9))~~ 555.30, all electrical connections must be installed a minimum of 12 inches above the deck of a pier unless the connections are ~~((approved for wet locations))~~ within junction boxes identified for wet locations, utilizing sealed wire connector systems listed and identified for submersion (datum plane requirements do not apply for this section).

~~((5))~~ (4) For the purposes of NEC ~~((555.10))~~ 555.31, all enclosures must be corrosion resistant. All gasketed enclosures must be arranged with a weep hole to discharge condensation.

~~((6))~~ (5) For the purposes of NEC ~~((555.14))~~ 555.32, gasketed enclosures are only required for wet locations.

~~((7))~~ (6) For the purposes of NEC ~~((555.13))~~ 555.34, the following wiring methods are allowed:

(a) All wiring installed in a damp or wet location must be suitable for wet locations.

(b) Extra-hard usage portable power cables rated not less than 75°C, 600 volts, listed for wet locations and sunlight resistance and having an outer jacket rated for the environment are permitted. Portable power cables are permitted as a permanent wiring method under or within docks and piers or where provided with physical protection. The requirements of NEC ~~((555.13 (B)(4)(b)))~~ 555.34 (B)(3)(b) do not apply.

(c) Overhead wiring must be installed at the perimeter of areas where boats are moored, stored, moved, or serviced to avoid possible contact with masts and other parts of boats. NEC Article 398 open wiring on insulators is not an approved wiring method in or above any portion of a marina or docking facility.

~~((8))~~ (4) For the purposes of NEC ~~((555.13 (B)(5)))~~ 555.34 (B)(4), the wiring methods of Chapter 3 NEC will be permitted.

~~((9))~~ (7) For the purposes of NEC ~~((555.19))~~ 555.33, receptacles must be mounted not less than 12 inches above the deck surface of the pier or dock (datum plane requirements do not apply for this section). Shore power receptacles that provide shore power for boats must be rated not less than 20 amperes and must be single outlet type and must be of the locking and grounding type or pin and sleeve type.

**Floating buildings.**

(8) Where shore power is provided, a disconnecting means must be located within sight of each floating building or similar facility. The disconnecting means must be installed adjacent to but not in or on the floating building or similar facility.

(9) NEC 555.53 is amended to read: The overcurrent protective device(s) that supply the floating building shall have ground-fault protection not exceeding 30 mA.

(10) Conductors operating in excess of 600 volts, nominal may not be installed on floating portions of a floating building or similar facility.

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-705 Interconnected electric power production sources.** (1) For utility interactive systems, any person making interconnections between a power production source and the utility distribution network must consult the serving utility and is required to meet all additional utility standards.

~~((031 Location of overcurrent protection.))~~ **011 Supply side source connections.**

(2) In addition to the requirements of NEC ~~((705.31))~~ 705.11, electric power production source conductors connected to the supply side of the service disconnecting means must be installed using wiring methods specified for service conductors in WAC 296-46B-230(7). The disconnecting means providing overcurrent protection for the electric power production source conductors must comply with NEC 230.82(6). This disconnect is not required to be grouped with the service disconnecting means for the building or structure. Grounding and bonding must be in accordance with ~~((all applicable requirements for an additional service disconnect))~~ NEC 250.25.

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-901 General—Electrical work permits and fees.**

**General.**

(1) When an electrical work permit is required by chapter 19.28 RCW or this chapter, inspections may not be made, equipment must not be energized, or services connected unless:

(a) A valid electrical work permit is obtained and posted per subsection (5) of this section;

(b) The classification or type of facility to be inspected and the exact scope and location of the electrical work to be performed are clearly shown on the electrical work permit;

(c) The address where the inspection is to be made is clearly identifiable from the street, road or highway that serves the premises; and

(d) Driving directions are provided for the inspectors' use.

(2) Except as allowed for annual permits and two-family dwellings, an electrical work permit is valid for only one specific job site address.

**Permit - Responsibility for.**

(3) Each person, firm, partnership, corporation, or other entity must furnish a valid electrical work permit for the installation, alteration, or other electrical work performed or to be performed solely by that entity. When the original purchaser is replaced, another entity may request, in writing, written approval from the chief electrical inspector to take responsibility for the work of the original installing entity under the original permit. If permission is not granted the entity must obtain a new permit for the remaining work.

Two or more entities may never work under the same permit. Each electrical work permit application must be signed by the electrical contractor's administrator (or disig-

nee) or the person, or authorized representative of the firm, partnership, corporation, or other entity that is performing the electrical installation or alteration. Permits purchased electronically do not require a handwritten signature. An entity designated to sign electrical permits must provide written authorization of the purchaser's designation when requested by the department or city that is authorized to do electrical inspections.

(4) Permits to be obtained by customers. Whenever a serving electrical utility performs work for a customer under one of the exemptions in WAC 296-46B-925 and the work is subject to inspection, the customer is responsible for obtaining all required permits.

(5) Except as allowed for Class B permits, where an electrical work permit is required, the work permit must be obtained and posted at the job site or the electrical work permit number must be conspicuously posted and identified as the electrical work permit number on or adjacent to the electrical service or feeder panel supplying power to the work prior to beginning any electrical work and at all times until the electrical inspection process is completed.

Exceptions:

(a) For an owner, an electrical work permit for emergency like-in-kind repairs to an existing electrical system(s) must be obtained no later than the next business day after the work is begun.

(b) For an electrical contractor, in a city's jurisdiction where the city is authorized to do electrical inspections and does not have a provisional permit system, an electrical work permit for emergency like-in-kind repairs to an existing electrical system(s) must be obtained and posted, per the city's requirements at the job site no later than the next business day after the work is begun.

(6) Fees must be paid in accordance with the inspection fee schedule in Part C of this chapter. The amount of the fee due is calculated based on the fee effective at the date payment is made. If the project is required to have an electrical plan review, the plan review fees will be based on the fees effective at the date the plans are received by the department for review. In a city where the department is doing inspections as the city's contractor, a supplemental fee may apply.

**Permit - Requirements for.**

(7) As required by chapter 19.28 RCW or this chapter, an electrical work permit is required for the installation, alteration, or maintenance of all electrical systems or equipment except for:

(a) Travel trailers;

(b) Class A basic electrical work which includes:

(i) The **like-in-kind replacement** of lamps; a single set of fuses; a single battery smaller than 150 amp hour; contactors, relays, timers, starters, circuit boards, or similar control components; one household appliance; circuit breakers; single-family residential luminaires and line voltage smoke or carbon monoxide alarms; a maximum of five snap switches, dimmers, receptacle outlets, thermostats, heating elements, luminaire ballasts or drivers/power supplies for single LED luminaires with an exact same ballast or driver/power supply; component(s) of electric signs, outline lighting, or skeleton neon tubing when replaced on-site by an appropriate electrical contractor and when the sign, outline lighting or skeleton

neon tubing electrical system is not modified; one ten horsepower or smaller motor.

For the purposes of this section, "circuit breaker" means a circuit breaker that is used to provide overcurrent protection only for a branch circuit, as defined in NEC 100.

(ii) Induction detection loops described in WAC 296-46B-300(2) and used to control gate access devices;

(iii) Heat cable repair; and

(iv) Embedding premanufactured heat mats in tile grout where the mat is listed by an approved testing laboratory and comes from the manufacturer with preconnected lead-in conductors. All listing marks and lead-in conductor labels must be left intact and visible for evaluation and inspection by the installing electrician and the electrical inspector.

(v) The disconnection of electrical circuits from their overcurrent protection device for the specific purpose of removing the electrical wiring or equipment for disposal.

Unless specifically noted, the exemptions listed do not include: The replacement of an equipment unit, assembly, or enclosure that contains an exempted component or combination of components (e.g., an electrical furnace/heat pump, industrial milling machine, etc.) or any appliance/equipment described in this section for Class B permits.

In the department's jurisdiction, a provisional electrical work permit label may be posted in lieu of an electrical work permit. If a provisional electrical work permit label is used, an electrical work permit must be obtained within two working days after posting the provisional electrical work permit label. See WAC 296-46B-907(2) for provisional label requirements.

(c) The following types of systems and circuits are considered exempt from the requirements for licensing and permitting described in chapter 19.28 RCW. The electrical failure of these systems does not inherently or functionally compromise safety to life or property.

(i) Low-voltage thermocouple derived circuits;

(ii) Low-voltage circuits for residential: Garage doors and built-in vacuum systems;

(iii) Low-voltage circuits for underground: Landscape sprinkler systems, landscape lighting, and antennas for wireless animal containment fences.

For these types of systems and circuits to be considered exempt, the following conditions must be met:

(A) The power supplying the installation must be derived from a listed Class 2 power supply;

(B) The installation and termination of line voltage equipment and conductors supplying these systems is performed by appropriately licensed and certified electrical contractors and electricians;

(C) The conductors of these systems do not pass through fire-rated walls, fire-rated ceilings or fire-rated floors in other than residential units; and

(D) Conductors or luminaires are not installed in installations covered by the scope of Article 680 NEC (swimming pools, fountains, and similar installations).

(8) An electrical work permit is required for all installations of telecommunications systems on the customer side of the network demarcation point for projects greater than ten telecommunications outlets. All backbone installations regardless of size and all telecommunications cable or equip-

ment installations involving penetrations of fire barriers or passing through hazardous locations require permits and inspections. For the purposes of determining the inspection threshold for telecommunications projects greater than ten outlets, the following will apply:

(a) An outlet is the combination of jacks and mounting hardware for those jacks, along with the associated cable and telecommunications closet terminations, that serve one workstation. In counting outlets to determine the inspection threshold, one outlet must not be associated with more than six standard four-pair cables or more than one twenty-five-pair cable. Therefore, installations of greater than sixty standard four-pair cables or ten standard twenty-five-pair cables require permits and inspections. (It is not the intent of the statute to allow large masses of cables to be run to workstations or spaces serving telecommunications equipment without inspection. Proper cable support and proper loading of building structural elements are safety concerns. When considering total associated cables, the telecommunications availability at one workstation may count as more than one outlet.)

(b) The installation of greater than ten outlets and the associated cables along any horizontal pathway from a telecommunications closet to work areas during any continuous ninety-day period requires a permit and inspection.

(c) All telecommunications installations within the residential dwelling units of single-family, duplex, and multifamily dwellings do not require permits or inspections. In residential multifamily dwellings, permits and inspections are required for all backbone installations, all fire barrier penetrations, and installations of greater than ten outlets in common areas.

(d) No permits or inspections are required for installation or replacement of cord and plug connected telecommunications equipment or for patch cord and jumper cross-connected equipment.

(e) Definitions of telecommunications technical terms will come from chapter 19.28 RCW, this chapter, TIA/EIA standards, and NEC.

#### **Inspection and approval.**

(9) Requests for inspections.

(a) Requests for inspections must be made no later than three working days after an entity completes its electrical/telecommunications installation or one working day after any part of the installation has been energized, whichever occurs first.

(b) Requests for after hours, weekend inspections, or temporary installations that will be energized for less than 48 hours must be made by contacting the local electrical inspection supervisor at least three working days prior to the requested date of inspection. The portal-to-portal inspection fees required for after hours or weekend inspections are in addition to the cost of the original electrical work permit.

(c) Inspections for annual electrical maintenance permits and annual telecommunications permits may be done on a regular schedule arranged by the permit holder with the department.

(10) Inspections will not be made until all permit fees are paid in full.

**Permit - Duration/refunds.**

(11) Electrical work permits will expire one year after the date of purchase unless permission is granted by the chief electrical inspector or when the permit is closed or completed by the inspector. Refunds are not available for:

- (a) Expired electrical work permits;
- (b) Electrical work permit fee items, within the department's jurisdiction, where the electrical installation has begun or an inspection requested for that work; or
- (c) The first twenty-five dollars of each permit purchase - Application fee.

All refund requests must be made using the Request for Refund application form.

**Permit - Annual telecommunications.**

(12) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of telecommunications installations to be purchased by a building owner or licensed electrical/telecommunications contractor. The owner's full-time telecommunications maintenance staff, or a licensed electrical/telecommunications contractor(s) can perform the work done under this annual permit. The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all the telecommunications work performed and the valid electrical or telecommunications contractor's license numbers for all contractors working under the permit. Upon request, the chief electrical inspector may allow the annual permit to be used for multiple worksites or addresses.

**Permit - Annual electrical.**

(13) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of electrical installations to be purchased by a building owner or licensed electrical contractor. This type of permit is available for commercial/industrial locations employing a full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Upon request, the chief electrical inspector may allow the annual permit to be used for multiple worksites or addresses.

The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all electrical work performed.

This type of electrical permit may be used for retrofit, replacement, maintenance, repair, upgrade, and alterations to electrical systems at a plant or building location. This type of permit does not include new or increased service or new square footage.

**Permit - Temporary construction project installations.**

(14) For temporary electrical installations, the department will consider a permit applicant to be the owner per RCW 19.28.261 under the conditions below:

Any person, firm, partnership, corporation, or other entity registered as a general contractor under chapter 18.27 RCW will be permitted to install a single electrical service per address for the purposes of temporary power during the construction phase of a project, when all of the following conditions are met:

(a) The installation is limited to the mounting and bracing of a preassembled pole or pedestal mounted service, the installation of a ground rod or ground plate, and the connection of the grounding electrode conductor to the ground rod or plate;

(b) The total service size does not exceed 200 amperes, 250 volts nominal;

(c) The service supplies no feeders;

(d) Branch circuits not exceeding 50 amperes each are permitted, provided such branch circuits supply only receptacles that are either part of the service equipment or are mounted on the same pole;

(e) The general contractor owns the electrical equipment;

(f) The general contractor has been hired by the property owner as the general contractor for the project;

(g) The general contractor must purchase an electrical work permit for the temporary service, request inspection, and obtain approval prior to energizing the service.

**Posting of corrections.**

(15) Electrical installations found to be not in compliance with approved standards must be corrected within fifteen calendar days of notification by the department as required in RCW 19.28.101(3). The notifications will be posted electronically on the electrical permit inspection results. A printed copy of the correction notification will be posted by the inspector at the job site for permits not purchased electronically.

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-906 Inspection fees.** To calculate inspection fees, the amperage is based on the conductor ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) of this section, PROGRESS INSPECTIONS.

The amount of the fee due is calculated based on the fee effective at the date of a department assessed fee (e.g., plan review or fee due) or when the electrical permit is purchased.

(1) **Residential.**

(a) **Single- and two-family residential (New Construction).**

**Notes:**

- (1) Square footage is the area included within the surrounding exterior walls of a building exclusive of any interior courts. (This includes any floor area in an attached garage, basement, or unfinished living space.)
- (2) "Inspected with the service" means that a separate service inspection fee is included on the same electrical work permit.
- (3) "Inspected at the same time" means all wiring is to be ready for inspection during the initial inspection trip.
- (4) An "outbuilding" is a structure that serves a direct accessory function to the residence, such as a pump house or storage building. Outbuilding does not include buildings used for commercial type occupancies or additional dwelling occupancies.

(i) First 1300 sq. ft.	\$94.20
Each additional 500 sq. ft. or portion of	\$30.10
(ii) Each outbuilding or detached garage - Inspected at the same time as a dwelling unit on the property	\$39.20

(iii) Each outbuilding or detached garage - Inspected separately	\$62.00
(iv) Each swimming pool - Inspected with the service	\$62.00
(v) Each swimming pool - Inspected separately	\$94.20
(vi) Each hot tub, spa, or sauna - Inspected with the service	\$39.20
(vii) Each hot tub, spa, or sauna - Inspected separately	\$62.00
(viii) Each septic pumping system - Inspected with the service	\$39.20
(ix) Each septic pumping system - Inspected separately	\$62.00

**(b) Multifamily residential and miscellaneous residential structures, services and feeders (New Construction).**

Each service and/or feeder

Ampacity	Service/Feeder	Additional Feeder
0 to 200	\$101.60	\$30.10
201 to 400	\$126.30	\$62.00
401 to 600	\$173.50	\$86.30
601 to 800	\$222.70	\$118.60
801 and over	\$317.60	\$238.20

**(c) Single or multifamily altered services or feeders including circuits.**

(i) Each altered service and/or altered feeder

Ampacity	Service/Feeder
0 to 200	\$86.30
201 to 600	\$126.30
601 and over	\$190.40

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) \$46.70

**(d) Single or multifamily residential circuits only (no service inspection).**

**Note:**

Altered or added circuit fees are calculated per panelboard. Total cost of the alterations in an individual panel should not exceed the cost of a complete altered service or feeder of the same rating, as shown in subsection (1) RESIDENTIAL (c) (table) of this section.

- (i) 1 to 4 circuits (see note above) \$62.00
- (ii) Each additional circuit (see note above) \$6.60

**(e) Mobile homes and modular homes.**

- (i) Mobile home or modular home service or feeder only \$62.00
- (ii) Mobile home service and feeder \$101.60

**(f) Mobile home park sites and RV park sites.**

**Note:**

For master service installations, see subsection (2) COMMERCIAL/INDUSTRIAL of this section.

- (i) First site service or site feeder \$62.00
- (ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder \$39.20

**(2) Commercial/industrial.**

(a) **New service or feeder, and additional new feeders inspected at the same time (includes circuits).**

**Note:**

For large COMMERCIAL/INDUSTRIAL projects that include multiple feeders, "inspected at the same time" can be interpreted to include additional inspection trips for a single project. The additional inspections must be for electrical work specified on the permit at the time of purchase. The permit fee for such projects must be calculated using this section. However, the total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS of this section.

Ampacity	Service/Feeder	Additional Feeder
0 to 100	\$101.60	\$62.00
101 to 200	\$123.70	\$79.00
201 to 400	\$238.20	\$94.20
401 to 600	\$277.60	\$110.80
601 to 800	\$359.10	\$151.00
801 to 1000	\$438.40	\$182.70
1001 and over	\$478.30	\$255.00

**(b) Altered services/feeders (no circuits).**

(i) Service/feeder

Ampacity	Service/Feeder
0 to 200	\$101.60
201 to 600	\$238.20
601 to 1000	\$359.10
1001 and over	\$398.90

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) \$86.30

**(c) Circuits only.**

**Note:**

Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (2)(a)(table) above.

- (i) First 5 circuits per branch circuit panel \$79.00
- (ii) Each additional circuit per branch circuit panel \$6.60
- (d) Over 600 volts surcharge per permit.** \$79.00

**(3) Temporary service(s).**

**Notes:**

- (1) See WAC 296-46B-590 for information about temporary installations.
- (2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections will be the greater of the fee from this subsection or the portal-to-portal fee.

**Temporary services, temporary stage or concert productions.**

Ampacity	Service/Feeder	Additional Feeder
0 to 60	\$54.30	\$27.80
61 to 100	\$62.00	\$30.10
101 to 200	\$79.00	\$39.20
201 to 400	\$94.20	\$46.80
401 to 600	\$126.30	\$62.00
601 and over	\$143.30	\$71.30

**(4) Irrigation machines, pumps, and equipment.**

**Irrigation machines.**

- (a) Each tower - When inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL \$6.60
- (b) Towers - When not inspected at the same time as a service and feeder - 1 to 6 towers \$94.20
- (c) Each additional tower \$6.60

**(5) Miscellaneous - Commercial/industrial and residential.**

(a) **A Class 2 low-voltage thermostat** and its associated cable controlling a single piece of utilization equipment or a single furnace and air conditioner combination.

- (i) First thermostat \$46.80
- (ii) Each additional thermostat inspected at the same time as the first \$14.50

(b) **Class 2 or 3 low-voltage systems and telecommunications systems.** Includes all telecommunications installations, fire alarm, nurse call, energy management control systems, industrial and automation control systems, lighting control systems, and similar Class 2 or 3 low-energy circuits and equipment not included in WAC 296-46B-908 for Class B work.

- (i) First 2500 sq. ft. or less \$54.30
- (ii) Each additional 2500 sq. ft. or portion thereof \$14.50

**(c) Signs and outline lighting.**

- (i) First sign (no service included) \$46.80
- (ii) Each additional sign inspected at the same time on the same building or structure \$22.10

**(d) Berth at a marina or dock.**

**Note:**

Five berths or more will be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/INDUSTRIAL above.

- (i) Berth at a marina or dock \$62.00
- (ii) Each additional berth inspected at the same time \$39.20

**(e) Yard pole, pedestal, or other meter loops only.**

- (i) Yard pole, pedestal, or other meter loops only \$62.00
- (ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations \$14.50

**(f) Inspection appointment requested for outside of normal working hours.**

Regular fee plus surcharge of: \$118.60

**(g) Generators.**

**Note:**

Permanently installed generators: Refer to the appropriate residential or commercial new/altered service or feeder section.

Portable generators: Permanently installed transfer equipment for portable generators \$86.30

**(h) Electrical - Annual permit fee.**

**Note:**

See WAC 296-46B-901(13).

For commercial/industrial location employing full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Note, all yearly maintenance contracts must detail the number of contractor electricians necessary to complete the work required under the contract. This number will be used as a basis for calculating the appropriate fee. Each inspection is based on a 2-hour maximum.

	Inspections	Fee
1 to 3 plant electricians	12	\$2,284.20
4 to 6 plant electricians	24	\$4,571.00
7 to 12 plant electricians	36	\$6,856.20

13 to 25 plant electricians	<del>((52))</del> 48	\$9,143.00
More than 25 plant electricians	52	\$11,429.80

**(i) Telecommunications - Annual permit fee.**

**Notes:**

(1) See WAC 296-46B-901(12).

(2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor.

2-hour minimum \$188.80

Each additional hour, or portion thereof, of portal-to-portal inspection time \$94.20

**(j) Permit requiring ditch cover inspection only.**

Each 1/2 hour, or portion thereof \$46.80

**(k) Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor.** \$79.00

**(6) Carnival inspections.**

**(a) First carnival field inspection each calendar year.**

(i) Each ride and generator truck \$22.10

(ii) Each remote distribution equipment, concession, or gaming show \$6.60

(iii) If the calculated fee for first carnival field inspection above is less than \$100.50, the minimum inspection fee will be: \$118.60

**(b) Subsequent carnival inspections.**

(i) First ten rides, concessions, generators, remote distribution equipment, or gaming show \$118.60

(ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show \$6.60

**(c) Concession(s) or ride(s) not part of a carnival.**

(i) First field inspection each year of a single concession or ride, not part of a carnival \$94.20

(ii) Subsequent inspection of a single concession or ride, not part of a carnival \$62.00

**(7) Trip fees.**

(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.) \$94.20

(b) Submitter notifies the department that work is ready for inspection when it is not ready. \$46.80

(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection. \$46.80

(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work. \$46.80

(e) Each trip necessary to remove a noncompliance notice. \$46.80

(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted. \$46.80

(g) Installations that are covered or concealed before inspection. \$46.80

**(8) Progress inspections.**

**Note:**

The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.

**On partial or progress inspections, each 1/2 hour.** \$46.80

**(9) Plan review.**

(a) Plan review fee is 35% of the electrical work permit fee as determined by WAC 296-46B-906. 35%

(b) Plan review submission fee. \$79.00

(c) Supplemental submissions of plans per hour or fraction of an hour of review time. \$94.20

(d) Plan review handling fee. \$22.10

**(10) Out-of-state inspections.**

(a) Permit fees will be charged according to the fees listed in this section.

(b) Travel expenses:

All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.

**(11) Other inspections.**

Inspections not covered by above inspection fees must be charged portal-to-portal per hour: \$94.20

**(12) Variance request processing fee.**

Variance request processing fee. This fee is nonrefundable once the transaction has been validated. \$94.20

**(13) Class B basic electrical work labels.**

(a) Block of twenty Class B basic electrical work labels (not refundable). \$258.70

(b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour timed from leaving the previous inspection until the reinspection is completed). See WAC 296-46B-908(5). \$46.80

(c) Reinspection of Class B basic electrical work because of a failed inspection of another Class B label (per 1/2 hour from previous inspection until the reinspection is completed). See WAC 296-46B-908(5). \$46.80

**(14) Provisional electrical work permit labels.**

Block of twenty provisional electrical work permit labels. \$258.70

**AMENDATORY SECTION** (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-908 Class B permits.**

**Class B electrical work permit - Use.**

(1) The Class B basic electrical random inspection process (Class B process) may only be used by:

(a) Licensed electrical/telecommunication contractors; or

(b) Health care, commercial, or industrial facilities using an employee(s) who is an appropriately certified electrician(s) after requesting, in writing, and receiving permission from the chief electrical inspector.

Each entity doing work must use a separate label.

(2) The Class B random inspection process is only available if the label is validated and the label or label number is posted before beginning the work.

(a) For Class B labels obtained after February 28, 2013:

(i) Prior to, or immediately upon posting the Class B label/number, the purchaser must use the department's online Class B system to enter the job site information for an unused Class B label obtained by the purchaser. If the posting occurs on a weekend or a federal/state holiday, the purchaser must use the online system to enter the information no later than the first business day after posting the label/number;

(ii) The person identified as the installer on the Class B label must post the Class B label or label number, in a conspicuous permanent manner, at the:

(A) Main service/feeder location supplying the structure or system; or

(B) Purchaser's equipment, or on the equipment conductors if the equipment is not in place.

(iii) The Class B label is valid immediately upon the purchaser completing the job site information in the department's online Class B system, and posting of the Class B label or label number per (a)(ii) of this subsection.

(b) For Class B labels obtained before March 1, 2013:

(i) The purchaser must fully enter the job site information on the job site and contractor portions of the Class B label.

(ii) The person identified as the installer on the Class B label must post the completed job site copy, in a conspicuous permanent manner, at the:

(A) Main service/feeder location supplying the structure or system;

(B) Purchaser's equipment, or on the conductors if the equipment is not available.

(iii) The purchaser must return the contractor copy to the Department of Labor and Industries, Electrical Section, Chief Electrical Inspector, P.O. Box 44460, Olympia, WA 98504-4460 within fifteen working days after the job site portion of the Class B installation label is affixed.

(iv) The Class B label is valid immediately upon posting on the job site.

(3) Class B labels will be sold in blocks and are nonrefundable and nontransferable.

(4) Class B label installations will be inspected on a random basis as determined by the department.

(5) A progress inspection fee is required for any inspection required when a correction(s) is issued as a result of the inspection of a Class B label.

(6) Any entity using the Class B process may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.

(7) A separate label is required for each line item listed below in subsection (10) of this section. For example, if the work includes an item under subsection (10)(a) and (b)(i) of this section, two labels are required.

(8) An entity using a Class B basic inspection label is restricted to using no more than two labels per week per job site.

(9) All Class B work must be completed within fifteen days after the label is validated. If the work is not completed, another Class B may be posted.

Except that, in a one- or two-family residential structure, a label is valid for ninety days after the label is validated, so long as all work described on the label is performed by the purchaser.

(10) Class B work includes the following:

(a) Extension of not more than one branch electrical circuit limited to 120 volts and 20 amps each where:

(i) No cover inspection is necessary. For the purposes of this section, cover inspection does not include work covered by any surface that may be removed for inspection without damaging the surface; and

(ii) The extension does not supply more than two outlets as defined by the NEC.

(b) Single like-in-kind replacement of:

(i) A motor larger than 10 horsepower; or

(ii) The internal wiring of a furnace, air conditioner, refrigeration unit or household appliance; or

(iii) An electric/gas/oil furnace not exceeding 240 volts and 100 amps and associated Class 2 low voltage wiring (i.e., altered and/or new low-voltage control wiring from the furnace to an existing and/or new thermostat, heat pump, air conditioner, condenser, etc.), when the furnace is connected to an existing branch circuit. For the purposes of this section, a boiler is not a furnace; or

(iv) An individually controlled electric room heater (e.g., baseboard, wall, fan forced air, etc.), air conditioning unit, heat pump unit, or refrigeration unit not exceeding 240 volts, 40 minimum circuit amps and associated Class 2 low voltage wiring when the unit is connected to an existing branch circuit; or

(v) Circuit modification required to install not more than five residential load control devices in a residence where installed as part of an energy conservation program sponsored by an electrical utility and where the circuit does not exceed 240 volts and 40 amps; or

(vi) A single, line-voltage flexible supply whip associated with (b)(i), (iii), or (iv) of this subsection, not over 6 feet in length, provided there are no modifications to the branch circuit/feeder load being supplied by the whip. May be done on the same Class B label with the replacement unit if done at the same time.

(c) The following low voltage systems:

(i) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in one- and two-family dwellings; or

(ii) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in other buildings, provided the equipment is not for fire alarm or nurse call systems and is not located in an area classified as hazardous by the NEC; or

(iii) The installation of Class 2 or 3 device(s) or wiring for thermostat, audio, security, burglar alarm, intercom, amplified sound, public address, or access control systems where the installation does not exceed twenty devices or five thousand square feet. This does not include fire alarm, nurse call, lighting control, industrial automation/control or energy management systems; or

(iv) Telecommunications cabling and equipment requiring inspection in RCW 19.28.470 where the installation does not exceed twenty devices or five thousand square feet;

(d) The replacement of not more than ten standard receptacles with GFCI ((⊕)), AFCI, or dual function AFCI/GFCI receptacles;

(e) The conversion of not more than ten snap switches to dimmers or occupancy sensors for the use of controlling a luminaire(s) conversion;

(f) The like-in-kind replacement of a maximum of twenty: Paddle fans, luminaires not exceeding 277 volts and 20 amperes; snap switches, dimmers, receptacle outlets, line voltage thermostats, heating elements, luminaire ballasts, or drivers/power supplies for single LED luminaires;

(g) The replacement of not more than two luminaires with paddle fans if a listed fan box has been previously installed to support the luminaires;

(h) The replacement of not more than four batteries rated not larger than 150 amp hours each that supply power to a single unit of equipment (e.g., uninterruptible power supply, photovoltaic storage system, control panel, etc.);

(i) The installation or repair of equipment powered by a stand-alone solar photovoltaic source where the:

(i) Electrical equipment requires no field assembly except for the attachment and electrical connection of the solar photovoltaic source to the equipment, the installation and attachment to a grounding electrode, and the placement of the equipment on a pad, pole, or other structure;

(ii) Solar photovoltaic source and the equipment operates at less than 15 volts DC;

(iii) Solar photovoltaic source is the only source of external power; and

(iv) Equipment and the solar photovoltaic source are appropriately labeled as a single unit. The label must be by an approved electrical testing laboratory or for equipment used for traffic control labeled according to WAC 296-46B-010(21).

(j) The installation or replacement of a single electric sign on an existing single 120-volt, 20-amp maximum branch circuit;

(k) The like-in-kind replacement of output cables consisting of a length of flexible EV cable and an electric vehicle connector when connected to fixed in place electric vehicle supply equipment.

(11) Class B basic electrical work does not include any work in:

(a) Areas classified as Class I, Class II, Class III, or Zone locations per NEC 500; or

(b) Areas regulated by NEC 517 or 680; or

(c) Any work where electrical plan review is required; or

(d) Fire alarm, nurse call, lighting control, industrial automation/control or energy management systems.

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-915 Civil penalty schedule.**

**Notes:** Each day that a violation occurs on a job site may be a separate offense.

Once a violation of chapter 19.28 RCW or chapter 296-46B WAC becomes a final judgment, any additional violation within three years becomes a "second" or "additional" offense subject to an increased penalty as set forth in the following tables.

In case of serious noncompliance or a serious violation of the provisions of chapter 19.28 RCW or as described in WAC 296-46B-990, the department may double the penalty amount, up to ten thousand dollars shown in subsections (1) through ((13)) (14) of this section.

A person, firm, partnership, corporation or other entity who violates a provision of chapter 19.28 RCW or chapter 296-46B WAC is liable for a civil penalty based upon the following schedule.

**(1) Offering to perform, submitting a bid for, advertising, installing or maintaining cables, conductors or equipment:**

(a) That convey or utilize electrical current without having a valid electrical contractor's license; or

(b) Used for information generation, processing, or transporting of signals optically or electronically in telecommunications systems without having a valid telecommunications contractor's license.

First offense:	\$1,000
Second offense:	\$2,000
Third offense:	\$3,000
Each offense thereafter:	\$10,000

**(2) Employing an individual for the purposes of chapter 19.28 RCW who does not possess a valid certificate of competency or training certificate to do electrical work.**

First offense:	\$250
Each offense thereafter:	\$500

**(3) Performing electrical work without having a valid certificate of competency or electrical training certificate.**

(a) Failing to visibly display a certificate (must possess a valid, active certificate).

First offense:	\$50
Each offense thereafter:	\$100

(b) Performing electrical work while not possessing a valid certificate or working outside the scope of a certificate.

First offense:	\$250
Each offense thereafter:	\$500

**(4) Employing electricians and electrical trainees for the purposes of chapter 19.28 RCW in an improper ratio. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.**

First offense:	\$250
Each offense thereafter:	\$500

**(5) Failing to provide proper supervision to an electrical trainee as required by chapter 19.28 RCW. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.**

First offense:	\$250
Each offense thereafter:	\$500

**(6) Working as an electrical trainee without proper supervision as required by chapter 19.28 RCW.**

First offense:	\$50
Second offense:	\$250
Each offense thereafter:	\$500

**(7) Offering, bidding, advertising, or performing electrical or telecommunications installations, alterations or maintenance outside the scope of the firm's specialty electrical or telecommunications contractors license.**

First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000

**(8) Selling or exchanging electrical equipment associated with spas, hot tubs, swimming pools or hydromassage bathtubs which are not listed by an approved laboratory.**

First offense:	\$500
Second offense:	\$1,000
Each offense thereafter:	\$2,000

**Definition:**

The sale or exchange of electrical equipment associated with hot tubs, spas, swimming pools or hydromassage bathtubs includes to: "Sell, offer for sale, advertise, display for sale, dispose of by way of gift, loan, rental, lease, premium, barter or exchange."

**(9) Covering or concealing installations prior to inspection.**

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

**(10) Failing to make corrections within fifteen days of notification by the department.**

**Exception:**

Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

**(11) Failing to get an inspection or obtain an electrical/telecommunications work permit or post a provisional electrical work permit label prior to beginning the electrical/telecommunications installation or alteration.**

**Exception:**

In cases of emergency repairs, for owners, to existing electrical/telecommunications systems, this penalty will not be charged if the permit is obtained and posted no later than the business day following beginning work on the emergency repair.

(a) Standard/provisional permit offenses:

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

(b) Class B offenses:

Failure to post a Class B label or number for Class B eligible work:

First offense:	\$100
Second offense:	\$250
Each offense thereafter:	\$1,000

(c) For other Class B offenses:

First offense:	\$100
Second offense:	\$250
Each offense thereafter:	\$1,000

**(12) Violating chapter 19.28 RCW duties of the electrical/telecommunications administrator or master electrician.**

(a) Failing to be a member of the firm or a supervisory employee and must be available during working hours to carry out the duties of an administrator or master electrician.

First offense:	\$1,000
Second offense:	\$1,500
Each offense thereafter:	\$3,000

(b) Failing to ensure that all electrical work complies with the electrical installation laws and rules of the state.

First offense:	\$100
Second offense:	\$250
Third offense:	\$1,000
Each offense thereafter:	\$3,000

(c) Failing to ensure that the proper electrical safety procedures are used.

First offense:	\$500
Second offense:	\$1,500
Each offense thereafter:	\$3,000

(d) Failing to ensure that inspections are obtained and that all electrical labels, permits, and certificates required to perform electrical work are used.

Standard/provisional permit offenses:

First offense:	\$250
Each offense thereafter:	\$500

Class B offenses:

First offense:	\$100
Second offense:	\$250
Each offense thereafter:	\$1,000

(e) Failing to ensure that all electrical licenses, required to perform electrical work are used (i.e., work performed must be in the allowed scope of work for the contractor).

First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000

(f) Failing to see that corrective notices issued by an inspecting authority are complied with within fifteen days.

Exception: Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

(g) Failing to notify the department in writing within ten days if the master electrician or administrator terminates the relationship with the electrical contractor.

First offense:	\$500
Second offense:	\$1,000
Each offense thereafter:	\$3,000

**(13) Causing or failing to correct a serious violation.**

A serious violation is a violation of chapter 19.28 RCW or 296-46B WAC that creates a hazard of fire or a danger to life safety.

First offense:	\$1,000
Second offense:	\$3,000
Each offense thereafter:	\$5,000

**(14) Violating any of the provisions of chapter 19.28 RCW or chapter 296-46B WAC which are not identified in subsections (1) through (12) of this section.**

(a) RCW 19.28.161 through 19.28.271 and the rules developed pursuant to them.

First offense:	\$250
Each offense thereafter:	\$500

(b) All other chapter 19.28 RCW provisions and the rules developed pursuant to them.

First offense:	\$250
Second offense:	\$750
Each offense thereafter:	\$2,000

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-920 Electrical/telecommunications license/certificate types and scope of work. (1) General electrical (01):**

A general electrical license and/or certificate encompasses all phases and all types of electrical and telecommunications installations and minor plumbing under RCW 18.106.150. For the purposes of RCW 18.106.150, the like-in-kind replacement includes the appliance or any component part of the appliance (e.g., such as, but not limited to, the thermostat in a water heater).

**Specialties.**

(2) All specialties listed in this subsection may perform the electrical work described within their specific specialty as allowed by the occupancy and location described within the specialty's scope of work. Except for residential (02), the scope of work for these specialties does not include plumbing work regulated under chapter 18.106 RCW. See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty. For the purposes of RCW 18.106.150, the like-in-kind replacement includes the appliance or any component part of the appliance (e.g., such as, but not limited to, the thermostat in a water heater). **Specialty** (limited) electrical licenses and/or certificates are as follows:

(a) **Residential (02):** Limited to the telecommunications, low voltage, and line voltage wiring of one- and two-family dwellings, or multifamily dwellings of types III, IV or V construction when there are not more than six stories of multifamily dwellings of types III, IV or V construction above grade or above types I or II construction. All wiring is limited to nonmetallic sheathed cable, except for services and/or feeders, exposed installations where physical protection is required, and for wiring buried below grade.

(i) This specialty also includes the wiring for ancillary structures located on the same property and under the same ownership as the dwelling structure(s) such as, but not limited to: Appliances, equipment, swimming pools, septic pumping systems, domestic water systems, limited energy systems (e.g., doorbells, intercoms, fire alarm, burglar alarm, energy control, HVAC/refrigeration, etc.), multifamily complex offices/garages, site lighting when supplied from the residence or ancillary structure, and other structures directly associated with the functionality of the residential units.

(ii) This specialty does not include wiring of:

(A) Any portion of any occupancy of types I or II construction; or

(B) Occupancies defined in WAC 296-46B-900(1), or commercial occupancies such as: Motels, hotels, offices, assisted living facilities, or stores; or

(C) Services, generators, HVAC/refrigeration equipment, fire pumps or other equipment that serve other than one- and two-family dwellings, or multifamily dwellings of types III, IV, or V construction or ancillary structures; or

(D) Interconnected electric power production sources not connected to equipment that supplies one- and two-family dwellings, or multifamily dwellings of types III, IV or V construction, or ancillary structures; or

(E) Any portion of wiring for conveyances regulated under chapter 70.87 RCW serving more than one residential dwelling unit.

(iii) For the purposes of this section, classification of types of construction are as determined by the local building official.

(iv) See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty.

(b) **Pump and irrigation (03):** Limited to the electrical connection of circuits, feeders, controls, low voltage, related telecommunications, and services to supply: Domestic water systems and public water systems include but are not limited to pumps, pressurization, filtration, treatment, or other equipment and controls, and irrigation water pumps, circular irrigating system's pumps and pump houses.

This specialty may also perform the work defined in (c) of this subsection.

Also see RCW 18.106.010 (10)(c).

(c) **Domestic pump (03A):** Limited to the extension of a branch circuit, which is supplied and installed by others, to signaling circuits, motor control circuits, motor control devices, and pumps which do not exceed 7 1/2 horsepower at 250 volts AC single phase input power, regardless of motor controller output or motor voltage/phase, used in residential potable water or residential sewage disposal systems. Domestic water systems and public water systems include but are not limited to pumps, pressurization, filtration, treatment, or other equipment and controls.

Also see RCW 18.106.010 (10)(c).

(d) **Signs (04):** Limited to placement and connection of signs and outline lighting, the electrical supply, related telecommunications, controls and associated circuit extensions thereto; and the installation of a maximum 60 ampere, 120/240 volt single phase service to supply power to a remote sign only. This specialty may service, maintain, repair, or install retrofit kits within housings of existing exterior luminaires that are mounted on a pole or other structure with like-in-kind or retrofit kit components.

(i) Electrical licensing/certification is not required to:

(A) Clean the nonelectrical parts of an electric sign;

(B) Form or pour a concrete pole base used to support a sign;

(C) Operate machinery used to assist an electrician in mounting an electric sign or sign supporting pole; or

(D) Assemble the structural parts of a billboard.

(ii) Electrical licensing/certification is required to: Install, modify, or maintain a sign, sign supporting pole, sign face, sign ballast, lamp socket, lamp holder, disconnect switch, or any other part of a listed electric sign.

(e) **Limited energy system (06):** Limited to the installation of signaling and power limited circuits and related equipment. This specialty is restricted to low-voltage circuits. This specialty includes the installation of telecommunications, HVAC/refrigeration low-voltage wiring, fire protection signaling systems, intrusion alarms, energy management and control systems, industrial and automation control systems, lighting control systems, commercial and residential amplified sound, public address systems, and such similar low-energy circuits and equipment in all occupancies and locations.

(i) For the purposes of this section, when a line voltage connection is removed and reconnected to a replacement component located inside the control cabinet, the replacement must be like-in-kind or replaced using the equipment manufacturer's authorized replacement component. The line voltage circuit is limited to 120 volts 20 amps maximum and must have a means of disconnect.

(ii) The limited energy systems (06) specialty may repair or replace line voltage connections terminated inside the cabinet to power supplies internal to the low voltage equipment provided there are no modifications to the characteristics of the branch circuit/feeder load being supplied by the circuit.

(iii) The limited energy systems (06) specialty may not replace or modify the line voltage circuit or cabling or alter the means of connection of the line voltage circuit to the power supply or to the control cabinet.

Limited energy electrical contractors may perform all telecommunications work under their specialty (06) electrical license and administrator's certificate.

(f) **HVAC/refrigeration systems:**

(i) See WAC 296-46B-100 for specific HVAC/refrigeration definitions.

(ii) For the purposes of this section when a component is replaced, the replacement must be like-in-kind or made using the equipment manufacturer's authorized replacement component.

(iii) The HVAC/refrigeration specialties described in (f) (v) and (vi) of this subsection may:

(A) Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in all residential occupancies;

(B) Install, repair, replace, and maintain line voltage components within HVAC/refrigeration equipment. Such line voltage components include product illumination luminaires installed within and powered from the HVAC/refrigeration system (e.g., reach-in beverage coolers, frozen food cases, produce cases, etc.) and new or replaced factory authorized accessories such as internally mounted outlets;

(C) Repair, replace, or maintain the internal components of the HVAC/refrigeration equipment disconnecting means or controller so long as the disconnecting means or controller is not located within a motor control center or panelboard;

(D) Install, repair, replace, and maintain short sections of raceway to provide physical protection for low-voltage cables. For the purposes of this section a short section cannot mechanically interconnect two devices, junction boxes, or other equipment or components; and

(E) Repair, replace, or maintain line voltage flexible supply whips not over six feet in length, provided there are no

modifications to the characteristics of the branch circuit/feeder load being supplied by the whip other than a reduction in the HVAC unit's rated maximum overcurrent protection size. There is no limitation on the whip raceway method (e.g., metallic replaced by nonmetallic).

(iv) The HVAC/refrigeration specialties described in (f) (v) and (vi) of this subsection may not:

(A) Install line voltage controllers or disconnect switches external to HVAC/refrigeration equipment;

Exception: If HVAC/R equipment is being replaced, this specialty may remove and replace a disconnecting means enclosure mounted on the surface of the HVAC/R equipment with a like-in-kind disconnecting means enclosure rated not more than 20 amperes and 120 volts using the existing wiring method. When performing this work, this specialty may install up to ten feet of raceway to provide physical protection for nonmetallic cables, but the raceway may not terminate in a panelboard.

(B) Install, repair, replace, or maintain:

- Integrated building control systems, other than HVAC/refrigeration systems;
- Single stand-alone line voltage equipment or components (e.g., heat cable, wall heaters, radiant panel heaters, baseboard heaters, contactors, motor starters, and similar equipment) unless the equipment or component:

Is exclusively controlled by the HVAC/refrigeration system and requires the additional external connection to a mechanical system(s) (e.g., connection to water piping, gas piping, refrigerant system, ducting for the HVAC/refrigeration system, gas fireplace flume, ventilating systems, etc. (i.e., as in the ducting connection to a bathroom fan)). The external connection of the equipment/component to the mechanical system must be required as an integral component allowing the operation of the HVAC/refrigeration system; or

Contains a HVAC/refrigeration mechanical system(s) (e.g., water piping, gas piping, refrigerant system, etc.) within the equipment (e.g., "through-the-wall" air conditioning units, self-contained refrigeration equipment, etc.);

• Luminaires that serve as a building or structure lighting source, even if mechanically connected to a HVAC/refrigeration system (e.g., troffer luminaire used as a return air device, lighting within a walk-in cooler/freezer used for personnel illumination);

• Raceway/conduit systems;

• Line voltage: Service, feeder, or branch circuit conductors. However, if a structure's feeder/branch circuit supplies HVAC/refrigeration equipment containing a supplementary overcurrent protection device(s), this specialty may install the conductors from the supplementary overcurrent device(s) to the supplemental HVAC/refrigeration equipment if the supplementary overcurrent device and the HVAC/refrigeration equipment being supplied are located within sight of each other; or

• Panelboards, switchboards, or motor control centers external to HVAC/refrigeration system.

(v) HVAC/refrigeration **(06A)**:

(A) This specialty is not limited by voltage, phase, or ampage.

(B) No unsupervised electrical trainee can install, repair, replace, or maintain any part of a HVAC/refrigeration system that contains any circuit rated over 600 volts whether the circuit is energized or deenergized.

(C) This specialty may:

• Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies:

That have no more than three stories on/above grade; or Regardless of the number of stories above grade if the installation:

~~(• Does not pass between stories;)~~

• Is made in a previously occupied and wired space; and  
• Is restricted to the HVAC/refrigeration system;  
• Repair, replace, and maintain HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in all occupancies regardless of the number of stories on/above grade.

• Install a bonding conductor for metal gas piping to an existing accessible grounding electrode conductor or grounding electrode only when terminations can be made external to electrical panelboards, switchboards, or other distribution equipment.

(D) This specialty may not install, repair, replace, or maintain: Any electrical wiring governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations) located outside the HVAC/refrigeration equipment.

(vi) HVAC/refrigeration - Restricted **(06B)**:

(A) This specialty may not perform any electrical work where the primary electrical power connection to the HVAC/refrigeration system exceeds: 250 volts, single phase, or 120 amps.

(B) This specialty may install, repair, replace, or maintain HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies that have no more than three stories on/above grade.

(C) This specialty may not install, repair, replace, or maintain:

• The allowed telecommunications/low-voltage HVAC/refrigeration wiring in a conduit/raceway system; or

• Any electrical work governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).

(g) **Nonresidential maintenance (07)**: Limited to maintenance, repair and replacement of like-in-kind existing electrical equipment and conductors. This specialty does not include maintenance activities in residential dwellings defined in (a) of this subsection for the purposes of accumulating training experience toward qualification for the residential **(02)** specialty electrician examination.

(i) This specialty includes the installation and connections of temporary conductors and equipment for the purpose of load testing, not to exceed 600 volts.

(ii) For the purposes of replacement of electrical equipment, where the new equipment has a lower ampere rating than the equipment being replaced and there are no modifications to the ampacity rating of the existing conductors, this specialty may replace a device(s) that provides overcurrent or

overload protection for the new equipment with a device(s) having a lower ampere rating in accordance with the nameplate rating of the new equipment.

(iii) This specialty may perform the work defined in (h), (i), (j), (k), and (l) of this subsection.

(h) **Nonresidential lighting maintenance and lighting retrofit (07A):** Limited to working within the housing of existing nonresidential luminaires for work related to repair, service, maintenance of luminaires and installation of energy efficiency lighting retrofit upgrades. This specialty includes replacement of ((lamps,)) ballasts, sockets, and the installation of listed lighting retrofit reflectors and kits. All work is limited to the luminaire body, except remote located ballasts may be replaced or retrofitted with approved products. This specialty does not include installing new luminaires or branch circuits; moving or relocating existing luminaires; or altering existing branch circuits.

(i) **Residential maintenance (07B):** This specialty is limited to residential dwellings as defined in WAC 296-46B-920 (2)(a), multistory dwelling structures with no commercial facilities, and the interior of dwelling units in multistory structures with commercial facilities. This specialty may maintain, repair, or replace (like-in-kind) existing electrical utilization equipment, and all permit exempted work as defined in WAC 296-46B-901.

This specialty is limited to equipment and circuits to a maximum of 250 volts, 60 amperes, and single phase maximum.

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit or whip.

For the purpose of this specialty, "electrical equipment" does not include electrical conductors, raceway or conduit systems external to the equipment or whip. This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(j) **Restricted nonresidential maintenance (07C):** This specialty may maintain, repair, or replace (like-in-kind) existing electrical utilization equipment, and all permit exempted work as defined in WAC 296-46B-901 except for the replacement or repair of circuit breakers.

This specialty is limited to equipment and circuits to a maximum of 277 volts and 20 amperes for lighting branch circuits only and/or maximum 250 volts and 60 amperes for other circuits.

The replacement of luminaires is limited to in-place replacement required by failure of the luminaire to operate. Luminaires installed in suspended lay-in tile ceilings may be relocated providing: The original field installed luminaire supply whip is not extended or relocated to a new supply point; or if a manufactured wiring assembly supplies luminaire power, a luminaire may be relocated no more than eight feet providing the manufactured wiring assembly circuiting is not changed.

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit. For the purpose of this specialty, "electrical equipment" does not include electrical conductors,

raceway or conduit systems external to the equipment or whip.

This specialty may perform the work defined in (h) and (i) of this subsection.

This specialty cannot perform any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations). This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(k) **Appliance repair (07D):** Servicing, maintaining, repairing, or replacing household appliances, small commercial/industrial appliances, and other small electrical utilization equipment.

(i) For the purposes of this subsection:

(A) The appliance or electrical utilization equipment must be self-contained and built to standardized sizes or types. The appliance/equipment must be connected as a single unit to a single source of electrical power limited to a maximum of 250 volts, 60 amperes, single phase.

(B) Appliances and electrical utilization equipment include, but are not limited to: Ovens, office equipment, vehicle repair equipment, commercial kitchen equipment, self-contained hot tubs and spas, grinders, and scales.

(C) Appliances and utilization equipment do not include systems and equipment such as: Alarm/energy management/similar systems, luminaires, furnaces/heaters/air conditioners/heat pumps, sewage disposal equipment, door/gate/similar equipment, or individual components installed so as to create a system (e.g., pumps, switches, controllers, etc.).

(ii) This specialty includes:

(A) The in-place like-in-kind replacement of the appliance or equipment if the same unmodified electrical circuit is used to supply the equipment being replaced. This specialty also includes the like-in-kind replacement of electrical components within the appliance or equipment;

(B) The disconnection and reconnection of low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit; and

(C) The installation of an outlet box and outlet at an existing appliance or equipment location when converting the appliance from a permanent electrical connection to a plug and cord connection. Other than the installation of the outlet box and outlet, there can be no modification to the existing branch circuit supplying the appliance or equipment.

(iii) This specialty does not include:

(A) The installation, repair, or modification of branch circuits conductors, services, feeders, panelboards, disconnect switches, or raceway/conductor systems interconnecting multiple appliances, equipment, or other electrical components.

(B) Any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).

(C) Any plumbing work regulated under chapter 18.106 RCW.

(l) **Equipment repair (07E):** Servicing, maintaining, repairing, or replacing utilization equipment.

See RCW 19.28.095 for the equipment repair scope of work and definitions. This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(m) **Telecommunications (09):** Limited to the installation, maintenance, and testing of telecommunications systems, equipment, and associated hardware, pathway systems, and cable management systems.

(i) This specialty includes:

(A) Installation of open wiring systems of telecommunications cables.

(B) Surface nonmetallic raceways designated and used exclusively for telecommunications.

(C) Optical fiber innerduct raceway.

(D) Underground raceways designated and used exclusively for telecommunications and installed for additions or extensions to existing telecommunications systems not to exceed fifty feet inside the building.

(E) Incidental short sections of circular or surface metal raceway, not to exceed ten feet, for access or protection of telecommunications cabling and installation of cable trays and ladder racks in telecommunications service entrance rooms, spaces, or closets.

(F) Audio or paging systems where the amplification is integrated into the telephone system equipment.

(G) Audio or paging systems where the amplification is provided by equipment listed as an accessory to the telephone system equipment and requires the telephone system for the audio or paging system to function.

(H) Closed circuit video monitoring systems if there is no integration of line or low-voltage controls for cameras and equipment. Remote controlled cameras and equipment are considered (intrusion) security systems and must be installed by appropriately licensed electrical contractors and certified electricians.

(I) Customer satellite and conventional antenna systems receiving a telecommunications service provider's signal. All receiving equipment is on the customer side of the telecommunications network demarcation point.

(ii) This specialty does not include horizontal cabling used for fire protection signaling systems, intrusion alarms, access control systems, patient monitoring systems, energy management control systems, industrial and automation control systems, HVAC/refrigeration control systems, lighting control systems, and stand-alone amplified sound or public address systems. Telecommunications systems may interface with other building signal systems including security, alarms, and energy management at cross-connection junctions within telecommunications closets or at extended points of demarcation. Telecommunications systems do not include the installation or termination of premises line voltage service, feeder, or branch circuit conductors or equipment. Horizontal cabling for a telecommunications outlet, necessary to interface with any of these systems outside of a telecommunications closet, is the work of the telecommunications contractor.

(n) **Door, gate, and similar systems (10):** This specialty may install, service, maintain, repair, or replace door/gate/similar systems electrical operator wiring and equipment.

(i) For the purposes of this subsection, door/gate/similar systems electrical operator systems include electric gates,

doors, windows, awnings, movable partitions, curtains and similar systems. These systems include, but are not limited to: Electric gate/door/similar systems operators, control push buttons, key switches, key pads, pull cords, air and electric treadle, air and electric sensing edges, coil cords, take-up reels, clocks, photo electric cells, loop detectors, motion detectors, remote radio and receivers, antenna, timers, lock-out switches, stand-alone release device with smoke detection, strobe light, annunciator, control panels, wiring and termination of conductors.

(ii) This specialty includes:

(A) Low-voltage, NEC Class 2, door/gate/similar systems electrical operator systems where the door/gate/similar systems electrical operator system is not connected to other systems.

(B) Branch circuits originating in a listed door/gate/similar systems electric operator control panel that supplies only door/gate/similar systems system components providing: The branch circuit does not exceed 600 volts, 20 amperes and the component is within sight of the listed door/gate/similar systems electric operator control panel.

(C) Reconnection of line voltage power to a listed door/gate/similar systems electric operator control panel is permitted provided:

- There are no modifications to the characteristics of the branch circuit/feeder;

- The circuit/feeder does not exceed 600 volts, 20 amperes; and

- The conductor or conduit extending from the branch circuit/feeder disconnecting means or junction box does not exceed six feet in length.

(iii) This specialty does not include any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations). This specialty may not install, repair, or replace branch circuit (line voltage) conductors, services, feeders, panelboards, or disconnect switches supplying the door/gate/similar systems electric operator control panel.

(3) A specialty electrical contractor, other than the **(06)** limited energy specialty electrical contractor, may only perform telecommunications work within the equipment or occupancy limitations of their specialty electrical contractor's license. Any other telecommunications work requires a telecommunications contractor's license.

**AMENDATORY SECTION** (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-925 Electrical/telecommunications contractor's license.**

**General.**

(1) The department will issue an electrical/telecommunications contractor's license that will expire twenty-four months following the date of issue to a person, firm, partnership, corporation or other entity that complies with requirements for such license in chapter 19.28 RCW. An electrical/telecommunications contractor's license will not be issued to or renewed for a person, firm, or partnership unless the Social Security number, date of birth, and legal address of each member(s) (see WAC 296-46B-100 definition for member),

are submitted with the application. The department may issue an electrical/telecommunications contractor's license for a period greater or less than twenty-four months for the purpose of equalizing the number of electrical contractor's licenses that expire each month. The department may prorate the electrical/telecommunications contractor's license fee according to the license period.

The applicant, upon application and renewal, must provide the department with the Social Security number, date of birth, and legal address of each member(s).

(2) Combination specialty contractor's license. The department may issue a combination specialty contractor's license to a firm that qualifies for more than one specialty electrical contractor's license. The assigned administrator must be certified in all specialties applicable to the combination specialty contractor's license. The license will plainly indicate the specialty licenses' codes included in the combination license. An administrator assigned to a telecommunications contractor must be certified as a telecommunications administrator. A combination license will not be issued for telecommunications (09).

(3) See RCW 19.28.041(7) for a contractor doing domestic pumping work as defined in RCW 18.106.010 (10)(c).

(4) The department may deny application, renewal, change of assignment of administrator/master electrician, reinstatement, or issuance of an electrical/telecommunications contractor's license if a firm, an owner, partner, member, or corporate officer owes money as a result of an outstanding final judgment(s) under chapter 19.28 RCW.

#### **Electrical/telecommunications contractor bond, cash or securities deposit.**

(5) Bond, cash, or securities deposit.

(a) The electrical/telecommunications contractor may furnish the department with a cash or security deposit to meet the bond requirements in lieu of posting a bond. A cash or security deposit assigned to the department for bond requirements will be held in place for one year after the contractor's license is expired, revoked, or the owner notifies the department in writing that the company is no longer doing business in the state of Washington as an electrical/telecommunications contractor. Upon written request, the cash or security deposit will then be released by the department providing there is no pending legal action against the contractor under chapter 19.28 RCW of which the department has been notified.

(b) See RCW 19.28.041(7) for a contractor doing domestic pumping work as defined in RCW 18.106.010 (10)(c).

#### **Telecommunications contractor insurance.**

(6) To obtain a telecommunications contractor's license, the applicant must provide the department with an original certificate of insurance naming the department of labor and industries, electrical section as the certificate holder. Insurance coverage must be no less than twenty thousand dollars for injury or damages to property, fifty thousand dollars for injury or damage including death to any one person, and one hundred thousand dollars for injury or damage including death to more than one person. The insurance will be considered a continuing obligation unless canceled by the insurance company. The insurance company must notify the depart-

ment in writing ten days prior to the effective date of said cancellation or failure to renew.

(7) The telecommunications contractor may furnish the department with an assigned account to meet the insurance requirements in lieu of a certificate of insurance. An account assigned to the department for insurance requirements will be held in place for three years after the contractor's license is expired, revoked, or the owner notifies the department in writing that the company is no longer doing business in the state of Washington as a telecommunications contractor. Upon written request, the account then will be released by the department providing there is no pending legal action against the contractor under chapter 19.28 RCW of which the department has been notified.

#### **Electrical/telecommunications contractor exemptions.**

(8) The following types of systems and circuits are considered exempt from the requirements for licensing and permitting described in chapter 19.28 RCW. The electrical failure of these systems does not inherently or functionally compromise safety to life or property.

Low-voltage thermocouple derived circuits and low-voltage circuits for:

(a) (~~Built-in~~) Residential: Garage doors and built-in vacuum systems (~~and garage doors~~); and

(b) Underground: Landscape sprinkler systems, landscape lighting, and antennas for wireless animal containment fences.

For these types of systems and circuits to be considered exempt, the following conditions must be met:

(c) The power supplying the installation must be derived from a listed Class 2 power supply;

(d) The installation and termination of line voltage equipment and conductors supplying these systems is performed by appropriately licensed and certified electrical contractors and electricians;

(e) The conductors of these systems do not pass through fire-rated walls, fire-rated ceilings or fire-rated floors in other than residential units; and

(f) Conductors or luminaires are not installed in installations covered by the scope of Article 680 NEC (swimming pools, fountains, and similar installations).

(9) Firms who clean and/or replace lamps in luminaires are not included in the requirements for licensing in chapter 19.28 RCW. This exemption does not apply to electric signs as defined in the NEC.

(10) Firms who install listed plug and cord connected utilization equipment are not included in the requirements for licensing in chapter 19.28 RCW. The plug and cord must be a single listed unit consisting of a molded plug and cord and not exceeding 250 volt 60 ampere single phase. The plug and cord can be field installed per the manufacturer's instructions and the product listing requirements. The utilization equipment must be a single manufactured unit, including the plug and cord, that does not require any electrical field assembly except for the installation of the plug and cord and is allowed to be plug and cord connected by the NEC. Firms who perform field electrical servicing, maintaining, or repairing of plug and cord connected utilization equipment other than household appliances are not included in this exemption.

(11) Firms regulated by the Federal Communications Commission or the utilities and transportation commission, supplying telecommunications service to an end-user's property, are not required to be licensed as a telecommunications contractor under chapter 19.28 RCW for telecommunications installations made ahead of the telecommunications network demarcation point.

(12) Unregulated firms, supplying telecommunications service to an end-user's property, are not required to be licensed as a telecommunications contractor under chapter 19.28 RCW for telecommunications installations made ahead of the telecommunications network demarcation point.

(13) Leaseholders. For electrical installations, maintenance, or alterations to existing buildings only, any person, firm, partnership, corporation, or other entity holding a valid, signed lease from the property owner authorizing the leaseholder to perform electrical work, on the property the leaseholder occupies, will be allowed to purchase an electrical permit(s) and do electrical work on or within the property described in the lease. The lessee and/or his or her regularly employed employees must perform the electrical installation, maintenance and alteration.

The lessee who performs the electrical maintenance or installation work must be the sole occupant of the property or space. Property owners or leaseholders cannot perform electrical work on new buildings for rent, sale, or lease, without the proper electrical licensing and certification. For the purposes of this section, electrical work associated with setting a manufactured, mobile, or modular building is considered electrical work on a new building. Refer to RCW 19.28.261 for exemptions from licensing and certification.

(14) Assisting a householder. A friend, neighbor, relative, or other person (including a certified electrician) may assist a householder, at his/her residence in the performance of electrical work on the condition that the householder is present when the work is performed and the person assisting the householder does not accept money or other forms of compensation for the volunteer work. For the purposes of this subsection, a residence is a single-family residence.

(15) Volunteering to do electrical work. There are no exceptions from the electrical contractor's license or electrician certification requirements to allow persons to perform volunteer electrical work for anyone other than a householder or a nonprofit organization as allowed by RCW 19.28.091(7). For the purpose of this section, volunteer means that there is no remuneration or receiving of goods or services in return for electrical installations performed.

(16) Farms or place of business. See RCW 19.28.261 for licensing/certification exemptions allowed for the owner(s) of a farm or other place of business and for the employees of the owner.

(17) The licensing and certification requirements of chapter 19.28 RCW do not apply to persons or firms who remove electrical wiring and/or equipment for the purpose of disposal when all conductors, raceways, and equipment to be disposed of have been physically separated from the source of power by a properly certified electrician employed by a licensed electrical contractor, or person(s) meeting the exemptions listed in RCW 19.28.261. Removal of a component or only a portion of an equipment unit is considered

electrical maintenance and does not qualify for this exemption.

#### **Exemptions - Electrical utility and electrical utility's contractor.**

(18) Electrical utility exemptions.

(a) Utility system exemption - RCW 19.28.010(1) and 19.28.091(1).

(i) Neither a serving electrical utility nor a contractor or subcontractor employed by the serving electrical utility is required to have an electrical contractor's license for work on the "utility system" or on service connections or on meters or other apparatus used to measure the consumption of electricity.

(ii) Exemption from inspection. The work of a serving electrical utility and its contractor(s) on the work exempted by NEC 90.2 (b)(5), 1981 edition, is not subject to inspection.

(b) Street/area lighting exemption - RCW 19.28.091 (2)

(a).

(i) On:

(A) Publicly owned streets, parks, athletic/play fields, beaches, and similar areas where the public has general, clear, and unrestricted access; or

(B) Outside area lighting installed on a utility owned pole(s) that is used to support the utility's electric distribution wiring or equipment that supplies a private property owner's property, the serving electrical utility is considered to be an owner and is not required to have an electrical contractor's license or electrical permit to install or work on wiring or equipment, owned by the utility and used in the lighting of those streets/areas.

(ii) On other privately or publicly owned property (e.g., private streets, parking lots, businesses, schools, etc.), the serving utility is not required to have an electrical contractor's license or electrical permit to install or work on outside street/area lighting where the light(s) is supplied directly from the utility system and installed according to the NESC or NEC.

This work is considered to be utility type work.

An electric utility is not allowed to install or work on street/area lighting:

(A) When the area is privately or publicly owned and the public does not have general, clear, and otherwise unrestricted access such as: Industrial property, residential property, or other property where the public's access is restricted in any manner.

(B) Where the lighting is supplied from a source of power derived from a customer-owned electrical system.

(C) Where the lighting or wiring is attached to a building or other customer-owned structure.

(D) If the utility does not directly perform the installation or work, it may only contract the work to an appropriately licensed electrical contractor(s). See RCW 19.28.091(3).

(c) Customer-owned equipment exemption - RCW 19.28.091 (2)(b). A serving electrical utility is not required to have an electrical contractor's license to work on electrical equipment owned by a commercial, industrial, or public institution customer if:

(i) The utility has not solicited such work; and

(ii) Such equipment:

(A) Is located outside a building or structure; and

(B) The work performed is ahead of the secondary side of the customer's transformer(s) which supplies power at the customer's utilization voltage.

If the utility does not directly perform the installation or work, it may only contract the work to an appropriately licensed electrical contractor(s). See RCW 19.28.091(3).

This work is considered to be utility type work.

The owner will provide the electrical work permit and be responsible for requesting inspections and for ensuring the work is installed per chapter 19.28 RCW and this chapter.

**Exemptions - Electrical utility telecommunications transition equipment installations, maintenance and repair.**

(19) No license, inspection or other permit will be required by the department of any electric utility or, of any person, firm, partnership or corporation or other entity employed or retained by an electric utility or its contractor, because of work in connection with the installation, maintenance, or repair of telecommunications transition equipment located ahead of the utility's telecommunications network demarcation point on the outside of a building or other structure when the work is performed by a qualified person consistent with the requirements of the National Electric Code (NEC) except as provided in (a) and (b) of this subsection:

(a) The following exceptions to the NEC will be permitted:

(i) An additional service disconnect supplying power to the transition equipment can be connected on the supply side of the main service disconnect supplying general power to the building;

(ii) Service entrance disconnects may be separated when clearly labeled;

(iii) The service disconnect used for supplying power to the transition equipment must be connected to the grounding electrode system using:

(A) #8 AWG copper or larger grounding electrode conductor if protected from physical damage; or

(B) #6 AWG copper or larger grounding electrode conductor if not protected from physical damage;

(iv) Use of equipment or materials that have been listed/field evaluated by a recognized independent testing laboratory or the department;

(v) Low-voltage circuits do not require a separate disconnecting means and may be grounded to the transition equipment grounding system;

(vi) Any other variance to the NEC must be approved by the department.

(b) A variance recommended by a joint utility standards group composed of representatives of both public and private utilities or certified by a professional engineer will be approved by the department unless the recommendation is inconsistent with meeting equivalent objectives for public safety.

(c) For the purposes of this section, a qualified worker is employed by a utility or its contractor and is familiar with the construction or operation of such lines and/or equipment that concerns his/her position and who is proficient with respect to the safety hazards connected therewith, or, one who has passed a journey status examination for the particular branch of the electrical trades with which he/she may be connected

or is in a recognized training or apprenticeship course and is supervised by a journey level person.

(d) Although the utility is responsible for inspection and approval of the installation, including the selection of material and equipment, the department reserves the right to audit worker qualifications and inspect such installations semiannually for conformance with the requirements of (a), (b) and (c) of this subsection but will not collect a permit fee for such inspection or audit.

(e) If a utility fails to meet the requirements of this section, the department may require the utility to develop and submit a remedial action plan and schedule to attain compliance with this section which may be enforced by the department.

(f) This exemption will be in addition to any other exemption provided in chapter 19.28 RCW, this chapter or other applicable law.

**Exemptions - Independent electrical power production equipment exemption.**

(20) An independent electrical power production entity is not required to have an electrical contractor's license to work on electrical equipment used to produce or transmit electrical power if:

(a) The entity is:

(i) The owner or operator of the generating facility is regulated by the Federal Energy Regulatory Commission (FERC);

(ii) A municipal utility, or other form of governmental electric utility, or by an electrical cooperative or mutual corporation; or

(iii) The owner or operator of the generating facility is an independent electrical power producer and the facility generates electrical power only for sale to one or more:

(A) Electrical utilities regulated by FERC, municipal utility, or other form of governmental utility, or to an electric cooperative or mutual corporation; and

(B) The electrical power generated by the facility is not used for self-generation or any other on- or off-site function other than sale to one or more utilities regulated by FERC or by one or more state public utilities commissions, or to a PUD, municipal utility, or other form of governmental electric utility, or to an electric cooperative or mutual corporation.

(b) The entity must supply the chief electrical inspector a valid master business license issued by the department of licensing, state of Washington so that the entity's status as a revenue generating business can be confirmed.

(c) The entity has entered into an agreement to sell electricity to a utility or to a third party; and

(d) The electrical equipment is used to transmit electricity from the terminals of an electrical generating unit located on premises to the point of interconnection with a utility system.

(e) The electrical power production facility's generation capacity exceeds 100 KVA.

(f) Notwithstanding that a generating facility may be granted an exemption pursuant to this section, the facility will be subject to all the requirements of chapter 19.28 RCW if the facility at any time in the future ceases to comply with the requirements for exemption. All site facilities not exclusively

and directly required to generate and/or distribute the electrical power generated on the site are subject to all the licensing and inspection requirements of chapter 19.28 RCW. All facility services, feeders, and circuits not exclusively and directly required to generate and/or distribute the electrical power (e.g., lights, outlets, etc.) must comply with all requirements of chapter 19.28 RCW for licensing and inspection. Facility circuits supplied to equipment required for the function of generation equipment (e.g., block heaters, power supplies, wind generator tower circuits, etc.) must comply with all requirements of chapter 19.28 RCW for licensing and inspection up to and including the equipment termination point.

(g) The generation equipment must not be mounted on or in any building or structure not required for generation of power (e.g., schools, offices, residences, apartment buildings, hospitals, etc.).

**Exemptions - Telegraph and telephone utility and telegraph and telephone utility's contractor.**

(21) Telegraph and telephone utility exempted equipment and installations. No person, firm, partnership, corporation, or other entity is required to have an electrical contractor's license for work on electrical equipment and installations thereof that are exempted by RCW 19.28.151. For the purposes of this exemption, "building or buildings used exclusively for that purpose" may mean any separate building or space of a building where the space is separated from the remainder of the building by a two-hour fire wall. The telecommunications or telegraph equipment within such a space must supply telephone or telegraph service to other customer's buildings (i.e., telecommunications or telegraph equipment cannot solely supply the building containing the telephone/telegraph space).

**Exemptions - Manufacturers of electrical/telecommunications products.**

(22) Manufacturers of electrical/telecommunications systems products will be allowed to utilize a manufacturer's authorized factory-trained technician to perform initial calibration, testing, adjustment, modification incidental to the startup and checkout of the equipment, or replacement of components within the confines of the specific product, without permit or required licensing:

(a) Provided the product:

(i) Has not been previously energized;

(ii) Has been recalled by the Consumer Product Safety Commission;

(iii) Is within the manufacturer's written warranty period, a period not to exceed one year from date of original installation of the new product; or

(iv) The manufacturer is working under the written request and supervision of an appropriately licensed electrical contractor.

(b) Except for the replacement of individual components, as allowed above, this exemption does not include the on-site assembly, installation, removal, or replacement of the electrical product. Modifications to the equipment, as designated above, must not include any changes to the original intended configuration nor changes or contact with external or field-connected components or wiring.

(c) The manufacturer will be responsible for obtaining any required reapproval/recertification from the original listing or field evaluation laboratory.

(d) The manufacturer must notify the department if any modifications have been made or reapproval/recertification is required.

**Premanufactured electric power generation equipment assemblies and control gear.**

(23) Premanufactured electric power generation equipment assemblies and control gear.

(a) Manufacturers of premanufactured electric power generation equipment assemblies and control gear will be allowed to utilize a manufacturer's authorized factory-trained technician to perform initial calibration, testing, adjustment, modification incidental to the startup and checkout of the equipment, or replacement of components within the confines of the specific product, without permit or required licensing, provided:

(i) For transfer equipment, the product has not been previously energized or is within the manufacturer's written warranty period;

(ii) Modifications to the equipment, as designated above, must not include any changes to the original intended configuration nor changes or contact with external or field-connected components or wiring;

(iii) The manufacturer will be responsible for obtaining any required reapproval/recertification from the original listing or field evaluation laboratory; or

(iv) The manufacturer must notify the department if any modifications have been made or reapproval/recertification is required.

(b) Premanufactured electric power generation equipment assemblies are made up of reciprocating internal combustion engines and the associated control gear equipment. Control gear equipment includes control logic, metering, and annunciation for the operation and the quality of power being generated by the reciprocating internal combustion engine and does not have the function of distribution of power.

(c) Modifications of a transfer switch must not include changes to the original intended configuration or changes or contact with externally field-connected components.

(d) For the purposes of this subsection, the following work on premanufactured electric power generation equipment assemblies is not exempt from the requirements of chapter 19.28 RCW:

(i) Installation or connection of conduit or wiring between the power generation unit, transfer switch, control gear;

(ii) Installation of the transfer switch;

(iii) Connections between the power generation unit, transfer switch, control gear, and utility's transmission or distribution systems;

(iv) Connections between the power generation unit, transfer switch, control gear, and any building or structure;

(v) Test connections with any part of:

(A) The utility's transmission or distribution system; or

(B) The building or structure.

(24) The installation, maintenance, or repair of a medical device deemed in compliance with chapter 19.28 RCW is exempt from licensing requirements under RCW 19.28.091,

certification requirements under RCW 19.28.161, and inspection and permitting requirements under RCW 19.28.101. This exemption does not include work providing electrical feeds into the power distribution unit or installation of conduits and raceways. This exemption covers only those factory engineers or third-party service companies with equivalent training who are qualified to perform such service.

(25) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption. For the purposes of RCW 19.28.091(8), the like-in-kind replacement includes the appliance or any component part of the appliance such as, but not limited to, the thermostat in a water heater.

(26) Nothing in this section will alter or amend any other exemptions from or requirement for licensure or inspection, chapter 19.28 RCW or this chapter.

#### **Photovoltaic equipment.**

(27) See WAC 296-46B-690 for specific exemptions related to photovoltaic installations.

#### **Submersible well pump installers.**

(28) Firms that install submersible pumps and associated wiring in well casings, (excluding connection of pump wiring at the top of the wellhead) are not included in the requirements for licensing in chapter 19.28 RCW.

**EXCEPTION:** For testing purposes of a new submersible pump, well drillers and submersible pump installers registered under chapter 18.27 RCW may temporarily connect a submersible well pump to a portable generator with cord and plug output. All temporary wiring and equipment must be removed immediately upon completion of testing.

**AMENDATORY SECTION** (Amending WSR 17-12-021, filed 5/30/17, effective 7/1/17)

### **WAC 296-46B-935 Administrator certificate.**

#### **General.**

(1) The department will deny application, renewal, change of assignment, reinstatement, or issuance of an administrator or master electrician certificate if an individual owes money as a result of an outstanding final judgment(s) under chapter 19.28 RCW.

(2) For special accommodation see WAC 296-46B-960.

(3) An applicant will not be issued a specialty administrator certificate that is a subspecialty of a certificate the applicant currently holds (i.e., the applicant is not eligible to take the domestic well administrator examination if the applicant currently possesses a pump and irrigation administrator certificate).

#### **Qualifying for examination.**

(4) There are no qualification requirements for taking an administrator certificate examination. Applicants should contact the testing agency directly.

#### **Original - Administrator certificates.**

(5) The scope of work for electrical administrators is described in WAC 296-46B-920. The department will issue an original administrator certificate to a general administrator, or specialty administrator who:

(a) Successfully completes the appropriate administrator examination; and

(b) Submits the appropriate examination passing report from the testing agency with the applicant's: Date of birth, mailing address, and Social Security number; and

(c) Pays all appropriate fees as listed in WAC 296-46B-909.

For an examination report to be considered, all the above must be submitted within ninety days after the completion of the examination. After ninety days, the applicant will be required to successfully retake the complete examination. An individual's original administrator certificate will expire on their birth date at least one year, and not more than three years, from the date of original issue.

#### **Combination - Specialty administrator certificate.**

(6) The department may issue a combination specialty administrator certificate to an individual who qualifies for more than one specialty administrators' certificate. The combination specialty administrators' certificate will plainly indicate the specialty administrator's certificate(s) the holder has qualified for. Telecommunications cannot be issued a combination because the renewal requirements are different from those required for electrical administrators.

#### **Renewal - Administrator certificate.**

(7) An individual must apply for renewal of their administrator certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years, with the exception of telecommunications administrators, who will be renewed for two years.

(8) An individual may renew their administrator certificate within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(9) All renewals received more than ninety days after the expiration date of the certificate will be denied. The administrator will be required to pass the appropriate administrator examination before being recertified.

(10) All applicants for certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees as listed in WAC 296-46B-909; and

(c) Complete the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed.

Telecommunications administrators are not required to provide continuing education information.

Continuing education for pump and irrigation (03) and domestic pump (03A) administrators may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew an administrator's certificate if the individual applies for renewal on or before the certificate expires and pays the appropriate renewal fee. However, the certificate will be placed in an inactive status.

When the certificate is placed in inactive status, an assigned administrator will be automatically unassigned from

the electrical contractor. The electrical contractor will be notified of the unassignment and has ninety days to replace the administrator. An assignment fee will then be required per WAC 296-46B-909.

The inactive certificate will be returned to current status upon validation, by the department, of the required continuing education requirements. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended administrator's certificate by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period. Before the suspended administrator's certificate can be activated, the holder must pass the appropriate administrator examination in accordance with RCW ((19.28.211(2))) 19.28.061 (2)(a).

(13) An individual may not renew a revoked administrator's certificate.

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-940 Electrician/certificate of competency required.**

**General.**

(1) The department will deny application, renewal, reinstatement, or issuance of a certificate or permit if an individual owes money as a result of an outstanding final judgment(s) under chapter 19.28 RCW.

(2) The scope of work for electricians is described in WAC 296-46B-920.

**Electrician - Certificate of competency required.**

(3) To work in the electrical construction trade, an individual must possess, wear, and visibly display on the front of the upper body, a current valid:

(a) Master journey level electrician certificate of competency issued by the department;

(b) Journey level electrician certificate of competency issued by the department;

(c) Master specialty electrician certificate of competency issued by the department;

(d) Specialty electrician certificate of competency issued by the department; or

(e) Electrical training certificate, learning the trade in the proper ratio, per RCW 19.28.161, under the supervision of a certified master journey level electrician, journey level electrician, master specialty electrician working in their specialty, or specialty electrician working in their specialty.

The certificate may be worn inside the outer layer of clothing when outer protective clothing (e.g., rain gear when outside in the rain, arc flash, welding gear, etc.) is required. The certificate must be worn inside the protective clothing so that when the protective clothing is removed, the certificate is visible. A cold weather jacket or similar apparel is not protective clothing.

The certificate may be worn inside the outer layer of clothing when working in an attic or crawl space or when operating equipment (e.g., drill motor, conduit threading machine, etc.) where wearing the certificate may pose an unsafe condition for the individual.

The certificate must be immediately available for examination at all times.

When working as a certified electrician, the electrician must not display a training certificate.

When supervising a trainee(s), the supervising electrician's certificate must be appropriate for the work being performed by the trainee(s). For the purposes of this section, supervising a trainee is considered to be working in the electrical construction trade.

Any person working as an electrician or trainee must also possess a government issued photo identification and immediately present that identification when requested by the inspector.

(4) The department issues master electrician and electrician certificates of competency in the following areas of electrical work:

(a) General journey level **(01)**;

(b) Specialties:

(i) Residential **(02)**;

(ii) Pump and irrigation **(03)**;

(iii) Domestic pump **(03A)**;

(iv) Signs **(04)**;

(v) Limited energy system **(06)**;

(vi) HVAC/refrigeration **(06A)**;

(vii) HVAC/refrigeration - Restricted **(06B)**;

(viii) Nonresidential maintenance **(07)**;

(ix) Nonresidential lighting maintenance and lighting retrofit **(07A)**;

(x) Residential maintenance **(07B)**;

(xi) Restricted nonresidential maintenance **(07C)**;

(xii) Appliance repair **(07D)**;

(xiii) Equipment repair **(07E)**; and

(xiv) Door, gate, and similar systems **(10)**.

**Original certificates of competency.**

(5) The department will issue an original certificate of competency to master, journey level, or specialty electricians who meet the eligibility requirements listed in:

(a) RCW 19.28.191 (1)(a) or (b) and chapter 19.28 RCW; and

(i) Submit an application for an original master electrician certificate including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909;

(b) RCW 19.28.191 (1)(d) and (e);

(i) Submit an original master electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909; or

(c) RCW 19.28.191 (1)(f) through (g);

(i) Submit an original electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909.

(6) An individual's original electrician certificate of competency will expire on their birth date at least two years, and not more than three years, from the date of original issue.

**Renewal - Master electrician, journey level, and specialty electrician certificates of competency.**

(7) An individual must apply for renewal of their electrician certificate of competency on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years.

(8) An individual may renew their certificate of competency within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(9) All applications for renewal received more than ninety days after the expiration date of the certificate of competency require that the electrician pass the appropriate competency examination before being recertified.

(10) All applicants for certificate of competency renewal must:

- (a) Submit a complete renewal application;
- (b) Pay all appropriate fees; and
- (c) Complete the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed.

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** electricians may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew a certificate of competency if the individual applies for renewal before the certificate of competency expires and pays the appropriate renewal fee. However, the certificate of competency will be placed in an inactive status. The inactive certificate of competency will be returned to current status upon validation, by the department, of the required continuing education. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period. Before the suspended certificate of competency can be activated, the holder must pass the appropriate electrician or master electrician competency examination in accordance with RCW 19.28.211(2).

(13) An individual may not renew a revoked certificate of competency.

**Exemptions - Lineworker.**

(14) When performing the work described and allowed in WAC 296-46B-925 (18)(a) or (b)(i), when employed by the serving utility or its contractor or subcontractor(s), a lineworker is exempt from the requirements of chapter 19.28 RCW.

(15) When performing the work described and allowed in WAC 296-46B-925 (18)(b)(ii) or (c), when employed by the serving utility or its licensed electrical contractor or subcontractor(s), a lineworker must meet the requirements of RCW 19.28.261 (5)(b) or be an appropriately certified electrician. See the definition of a lineworker in WAC 296-46B-100.

**Exemptions - Plumbers.**

(16) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption. For the purposes of RCW 19.28.091(8), the like-in-kind replacement includes the appliance or any component part of the appliance such as, but not limited to, the thermostat in a water heater.

**Exemptions - Submersible well pump installers.**

(17) When performing the work described and allowed in WAC 296-46B-925(28), regular employees of well drillers or pump installers registered under chapter 18.27 RCW are exempt from the electrician certification requirements of chapter 19.28 RCW.

**Reciprocal agreements between Washington and other states.**

~~((17))~~ (18) The department may negotiate reciprocal agreements with states that have equivalent requirements for certification of journey level or specialty electricians. These agreements allow electricians from those reciprocal states to become certified in the state of Washington without examination and allow Washington certified electricians to become certified in the other states without taking competency examinations. An individual may only apply for reciprocity from another state(s) one time in Washington.

~~((18))~~ (19) An individual will be issued a reciprocal electrician certificate of competency if all the following conditions are met:

(a) The department has a valid reciprocal agreement with the other state in the journey level or specialty category requested;

(b) The individual makes a complete application for a reciprocal certificate on the form provided by the department. A complete application includes:

- (i) Application for reciprocal certificate of competency;
- (ii) Evidence that the individual meets the eligibility requirements listed in RCW 19.28.191, by presenting a current, valid journey person or specialty electrician certificate or certified letter from the issuing state attesting to possession of such certificate by the applicant:

(A) Evidence from an apprenticeship training director that any journey level category applicant has successfully completed an apprenticeship program that is equivalent to an apprenticeship program approved under chapter 49.04 RCW approved by the department for the electrical construction trade in which the applicant worked in the electrical construction trade for a minimum of eight thousand hours; or

(B) Evidence that any journey level category applicant has worked in the electrical construction trade for a minimum of sixteen thousand hours.

(iii) All appropriate fees as listed in WAC 296-46B-909.

(c) The individual obtained the reciprocal state's certificate of competency as a journey level or specialty electrician

by examination and the individual held the reciprocal state's certificate for a period of at least one year.

~~((19))~~ (20) An individual is not eligible for a reciprocal electrician certificate of competency if the individual:

- (a) Has failed to renew a similar Washington electrician certificate of competency as required in RCW 19.28.211; or
- (b) Has a similar Washington electrician certificate of competency in suspended, revoked, or inactive status under this chapter; or
- (c) Owes money as a result of an outstanding final judgment(s) to the department; or
- (d) Has ever taken and failed a Washington exam for the certificate being applied for; or
- (e) Was a resident of the state of Washington at the time the examination was taken in the other state.

**AMENDATORY SECTION** (Amending WSR 17-12-021, filed 5/30/17, effective 7/1/17)

**WAC 296-46B-970 Continuing education and classroom education requirements.** (1) **DEFINITIONS** - For purposes of this section.

"Applicant" means the entity submitting an application for review.

"Application" means a submittal made by an applicant seeking instructor or class approval.

"Calendar day" means each day of the week, including weekends and holidays.

"Class" means continuing education or basic trainee class.

"Currently adopted code," for this section means the code adopted in WAC 296-46B-010(1) or any more recently published National Electric Code.

"Date of notification" means the date of a request for additional information from the department or the approval/denial letter sent to the applicant by the department.

"Electrical theory" means basic principles of electricity such as: Magnetism, ohm's law, and circuit properties such as voltage, current, power, resistance, inductance, capacitance, reactance, impedance, etc., in series, parallel, and combination AC and DC circuits.

"Examination" is any examination required by this section. Each examination must be unique and must provide randomized questions, except for classroom training. Each examination question bank must be at least two times larger than the number of questions in any individual examination. Examinations must not direct or point the individual to a correct answer or reference. Individuals must be responsible to determine the correct answer without the assistance of the sponsor. No more than twenty percent of an examination's questions may have a true/false answer. Competency is demonstrated by scoring at least seventy-five percent on the examination.

"Individual" means a master electrician, administrator or electrician seeking credit for continuing education or a trainee seeking credit for basic trainee class for renewal or certification.

"Instructor" means an individual who is authorized to instruct an approved continuing education or basic trainee class.

"Working day" means Monday through Friday, excluding state of Washington holidays.

(2) GENERAL.

(a) The department and the electrical board have the right to monitor all approved classes without notice and at no charge.

If the department or electrical board determines that the class or instructor does not meet or exceed the minimum requirements for approval, course length, or instructor qualifications, the department may revoke the class and/or instructor approval and/or reduce the number of credited hours for the class.

(b) Department-offered classes and the instructors used for department classes are automatically approved.

(c) Instructors who meet the minimum requirements using subsection (5)(d)(iv) of this section may only instruct classes sponsored by the manufacturer(s) who verified the instructors' qualifications.

(d) An individual will not be given credit for the same approved continuing education class taken more than once. A course sponsor may not submit an individual's name on a roster(s) for multiple classes (i.e., multiple class numbers) when the classes are given simultaneously (e.g., code update, industry related, and/or basic trainee class that have similar class content given during the same class session). Credit will not be granted for a class that is not approved per this section.

(e) Electrical administrators, master electricians, and electricians:

(i) To be eligible for renewal of an administrator certificate, master electrician or electrician certificate of competency, the individual must have completed at least eight hours of approved continuing education for each year of the prior certification period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the currently adopted code.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and/or its related WAC.

(ii) An individual changing an electrical administrator and an electrician certificate of competency into a master electrician's certificate of competency as allowed in RCW 19.28.191 (1)(a) or (b) must have completed at least eight hours of approved continuing education for each year of the electrician's prior certificate period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the currently adopted code.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and/or its related WAC.

(iii) Any portion of a year of a prior administrator or electrician certificate period is equal to one year for the purposes of the required continuing education.

(iv) An individual who has both an electrician certificate and an administrator certification may use the same class to fulfill the requirements for continuing education.

(f) Training certificates: To be eligible for renewal of a training certificate, the individual must have completed:

(i) At least forty-eight hours of approved basic trainee classes. The individual cannot use a basic trainee class as credit for the continuing education requirements for renewing an electrician or administrator certificate(s) when the class is also used to satisfy the training certificate renewal requirements; or

(ii) Equivalent electrical training classes taken as a part of an approved:

- Apprenticeship program under chapter 49.04 RCW; or
- Electrical training program under RCW 19.28.191 (1)

(h).

Equivalent classes must be submitted to and approved by the chief electrical inspector thirty calendar days prior to offering the class.

(g) A continuing or basic trainee class attended or completed by an individual before the class's effective date cannot be used to meet the certificate renewal/certification requirements.

(3) CLASS AND INSTRUCTOR - GENERAL APPROVAL PROCESS.

(a) The department will review the application for completeness and conformance with the requirements in this section.

(b) The department will deny approval of applications that do not meet the minimum requirements.

(c) All applications will be considered to be new applications (i.e., Classes and instructors may not be renewed. All applications must include all information necessary to show conformance with the minimum requirements).

(d) Application process:

(i) The applicant must submit a complete application to the department at least thirty calendar days prior to offering or instructing a class.

(ii) The department will only consider material included with the application when reviewing an application.

(iii) All applications must include:

(A) Applicant's name, address, contact name, email address, and telephone number;

(B) All required fees.

(e) Review process:

(i) When the application is received:

(A) The department must review the application for completeness within seven working days after receipt.

(B) If the application is incomplete, the department must, within two working days, notify the applicant of the status of the review and what additional information is required.

- The applicant must provide any additional information requested by the department within five working days after the date of notification.

- The department will deny the application if the additional required information is not received within the five working days after the date of notification for additional information.

(C) The department must complete the review and approval/denial process within fifteen working days upon receipt of a complete application or additional requested information and within two working days notify the applicant of the approval/denial in writing or electronically.

(ii) A notification of denial must include:

(A) Applicant's name and telephone number;

(B) Date of denial;

(C) Sponsor's name and class title if applicable;

(D) Instructor's name if applicable; and

(E) The reason for denial.

(iii) A notification of approval:

(A) For classes must include:

- Applicant's name and telephone number;

- Sponsor's name and telephone number;

- Sponsor number;

- Class title;

- Class number;

- Number of hours approved for the class. The department may reduce the hours requested in the application if the review shows that the requested number of hours is excessive;

- Effective date for this class;

- Expiration date of class;

- Category for which the class is approved (i.e., code update, RCW/WAC update, industry related, basic trainee class, or pumping industry);

- Type of class (i.e., classroom, correspondence, internet); and

- Whether the class is open to the public.

(B) For instructors, must include:

- Applicant's name and telephone number;

- Instructor's name and telephone number;

- Effective date for the approval; and

- Expiration date of the approval.

(iv) The applicant may request a review, by the electrical board, of the department's denial or modification of the application. The applicant must submit a written request for review to the Secretary of the Electrical Board - Chief Electrical Inspector - Within twenty days of notification of the denial/modification. The request must include a review fee of one hundred nine dollars and fifty cents. The review fee is nonrefundable.

(4) CLASS APPROVAL PROCESS.

(a) Class applications must include:

(i) Sponsor's name, address, contact name, email address, telephone number, and sponsor's number (if a class was previously approved);

(ii) Class title;

(iii) Number of education hours requested for the class;

(iv) Category of class for which approval is sought (e.g., code update, RCW/WAC update, industry related, basic trainee class, or pumping industry);

(v) Statement that all requirements of this section will be complied with;

(vi) Statement of whether the class is open to the public;

(vii) Class syllabus (e.g., presentation method(s), description of the training, specific NEC/RCW/WAC articles taught, theory subjects, time allowed for various subject matter components, examination question samples, etc.) describing how the class meets the minimum requirements, described below, for the type of class being offered;

(viii) The applicant must show that the sponsor regularly employs at least one staff member who meets the requirements for instructors in this section;

(ix) List of resources (e.g., texts, references, etc.).

(b) Class approval will be valid for three years except:

(i) If the class is "code update" and a new NEC is adopted by the department within the class approval period, the class approval will be considered automatically revoked; or

(ii) If the class is modified after the application is approved, the class approval will be considered automatically revoked (i.e., change in syllabus, hours, examination, etc.).

(c) Minimum requirements:

(i) Class length:

(A) The minimum allowed length of a class is two hours; however, the minimum length for a basic trainee class is four hours that may be delivered in multiple classroom components of not less than two hours each.

(B) Class length must be based on two-hour increments (e.g., 2, 4, 6, 8, etc.)

(C) Class length must be based on the following:

- Classroom instruction will be based on the total hours the individual is in the classroom. A continuing education class may be divided into multiple components so long as each component is not less than two hours in length and all components are completed within a one-month period. A basic trainee class may be divided into multiple components so long as each component is not less than two hours in length and all components are completed within a ~~((two))~~ six-month period.

- Distance learning continuing education classes (i.e., correspondence and internet continuing education classes) will be based on clock hours necessary to complete the class if it was presented in a classroom setting.

(ii) Class content:

(A) Industry-related classes must be based on:

- Codes or rules included in the currently adopted National Electrical Code (see definition of currently adopted), the electrical law/rule;

- Electrical theory based on ~~((currently published documents that are))~~ original copyrighted material that is readily available for retail purchase; and/or

- Materials and methods that pertain to electrical construction, building management systems, electrical maintenance, or workplace electrical safety such as *NFPA 70E - ((Handbook)) Standard for Electrical Safety in the Workplace*. First aid type classes must be approved and will be limited to four hours of credit towards the individual's total continuing education requirement.

(B) Code update classes must be based on the currently adopted (see definition) National Electrical Code and must specify the code articles to be addressed in the class presentation.

(C) RCW/WAC update classes must be based on the latest adopted versions of chapter 19.28 RCW and/or chapter 296-46B WAC.

(D) All basic trainee classes must be classroom instruction only and based upon basic electrical theory based on original copyrighted material that is readily available for retail purchase, currently adopted (see definition for currently adopted) National Electrical Code, and/or use of the electrical laws or rules. Correspondence and internet classes are not allowed. All basic trainee classes must include an appropriate

written competency examination(s) to ensure the participant has mastered the basic concepts of the class. The examination must consist of at least five questions per two hours of class credit.

(E) For all pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction.

(F) The sponsor of any distance learning class (e.g., correspondence/internet continuing education) must provide the following additional information with the application:

- How the sponsor will provide an orientation session with the instructor or an affiliated representative of the sponsor.

- The application must include a complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the class material.

- In the case of internet based continuing education classes, describe how the class software addresses automatic shutdown after a period of inactivity.

- How will the sponsor provide security to ensure that the student who receives credit for the class is the student who enrolled in and completed the class. The approved sponsor and the student must certify that the student has completed the class and the required number of clock hours.

- The application must describe the process and the acceptable methods of how students can contact approved instructors to answer questions regarding the class.

- The application must describe the consistent and regular interactive events appropriate to the delivery method. The interactive elements must be designed to promote student involvement in the learning process and must directly support the student's achievement of the class learning objectives.

- The application must demonstrate that the class includes the same or reasonably similar information content as a course that would otherwise qualify for the requisite number of clock hours of classroom-based instruction.

- The application must demonstrate how the sponsor determined the number of clock hours requested.

- The application must demonstrate how mastery of the material is evaluated (e.g., describing how the material is divided into major learning units and describing how these learning units are divided into modules of instruction, describing how the student's progress toward completion of the mastery requirement will be measured, and describing how the class will provide a mechanism of individual remediation to correct any deficiencies in each module of instruction).

(5) INSTRUCTOR APPROVAL PROCESS:

(a) Except first-aid training, all instructors must be approved per this section.

(b) The instructor application will include:

(i) Instructor's name, address, telephone number, email address;

(ii) Copies of credentials or other information showing conformance with the instruction minimum qualifications.

(c) Instructor approval will be valid for three years except:

(i) If the instructor's credentials are invalidated (e.g., suspension or revocation by the issuing entity) for any reason, approval will be automatically revoked.

(ii) When the instructor approval expires or is revoked, a new application must be submitted to regain approved instructor status.

(d) Minimum requirements:

The application must show that the instructor meets one of the following:

(i) Has a valid Washington administrator, master electrician, or electrician's certificate and has appropriate knowledge of and experience working as an electrical/electronic trainer; or

(ii) Is currently an instructor in a two-year program in the electrical construction trade licensed by the Washington work force training and education coordinating board. The instructor's normal duties must include providing electrical/electronic education; or

(iii) Is a high school vocational teacher, community college, college, qualified instructor with a state of Washington approved electrical apprenticeship program, or university instructor. The instructor's normal duties must include providing electrical/electronic education; or

(iv) Works for and is approved by a manufacturer of electrical products to teach electrical continuing education; or

(v) Is an electrical engineer registered under chapter 18.43 RCW; or

(vi) Subject matter experts approved by the chief electrical inspector who can demonstrate appropriate knowledge of, and experience in the electrical construction trade and working as an electrical/electronic trainer.

(6) FORMS:

(a) The department will develop an appropriate form(s) for the applicant's use when submitting for instructor or class approval;

(b) Applicants must use the department's form when submitting an application for review.

(7) CLASS ATTENDANCE:

(a) The department is not responsible for providing verification of an individual's continuing education or basic trainee classroom training history with the class sponsor;

(b) Electrical approved classes offered in Washington:

(i) The sponsor must provide the department with an accurate online course attendance/completion roster for each class given. Class attendance will only be verified based on the online attendance/completion roster provided by the sponsor.

(A) Within seven days of a student completing the class, the course sponsor must provide the attendance/completion roster in an internet format provided by the department.

(B) The attendance/completion roster must show each individual's name, Washington certificate number, class number, and date of completion.

(ii) Individuals will not be granted credit for a class unless the sponsor's online attendance/completion roster shows the individual successfully completed the class.

(c) For classes approved under chapter 18.106 RCW for the pumping industry, a class number will be created for electrical continuing education. Sponsors for these classes must

verify attendance for the electrical credit using the format described in subsection (b) of this section.

(8) Noncompliance with this section by a course sponsor or instructor.

(a) Before a course sponsor or instructor is revoked or suspended for noncompliance with this section, the course sponsor or instructor will be given written notice of the department's intention to suspend or revoke. The notification will describe the allegations and provide the necessary procedures to request a hearing before the electrical board as described in RCW 19.28.341.

(b) The department may also file a civil penalty action under chapter 19.28 RCW for fraudulent, inaccurate, or material misrepresentation activity.

**AMENDATORY SECTION** (Amending WSR 17-12-021, filed 5/30/17, effective 7/1/17)

**WAC 296-46B-971 Training schools.** (1) The department must evaluate and approve training school programs in the electrical trade as regulated by chapter 19.28 RCW for equivalency to hours of supervised work experience. Approved training programs must be from a Washington state public community or technical college, or a not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW.

(2) The minimum total hours for an electrical technical training program must be determined per RCW 19.28.191.

(3) Training school programs must be approved before their graduates may request credit for equivalent work experience hours toward journey level or specialty electrician certification. Until December 31, 2003, existing electrical training programs, in effect after January 1, 2000, may apply for retroactive approval of their program to determine the number of hours that will be credited for the program graduates. After December 31, 2003, all training programs must be approved by the department prior to beginning instruction.

(4) Training schools must submit the curriculum of each journey level or specific specialty electrical training program to the department for approval. The curriculum must include a detailed description of each course that is included in the total training hours required by RCW 19.28.191. The curriculum must be reviewed by the department whenever significant changes in program content or course length are implemented or at an interval not to exceed three years. After department review, the program may be renewed. In evaluating the relevance of the curriculum, the department will consider the following criteria:

(a) Scope of work for the appropriate electrician certification.

(b) Understanding whole systems related to and integrated with electrical equipment installation, maintenance, troubleshooting, and appliance repair (e.g., refrigeration, pumps, hydraulics, thermodynamics, compressed air, and similar systems).

(c) Courses not directly related to electrical technical instruction or specific scope of work, but required to complete the specific training program (i.e., mathematics, technical writing, business, safety, first aid, ergonomics, etc.), must

not exceed ten percent of the total student/instructor contact time of the program.

(5) Within thirty days after ~~((beginning a program, the program sponsor must supply the department with a roster of individuals enrolled in the program. The roster must show each student's name, date of enrollment, Washington training or electrician certificate number, and the training program number. Within thirty days after each graduation cycle, approved training school programs must provide the department with a roster of individuals that have successfully completed the program. The roster must show each student's name, date of completion, Washington training or electrician certificate number, and the training program title))~~ one or more students successfully completes an accredited training school program, the program must provide the department with a completion roster in an electronic table format. Each roster must include all of the following:

(a) Name of the accredited training school;

(b) Name of the accredited training school program as referred to in the department's letter of accreditation;

(c) Submitter information:

(i) Name;

(ii) Title;

(iii) Email address; and

(iv) Telephone number.

(d) Student information:

(i) Full name;

(ii) Date of first instruction;

(iii) Date of completion; and

(iv) Washington electrical training certificate number.

(6) All school training activities involving electrical work or appliance repair done outside of in-school lab facilities must be done under a valid Washington electrical contractor's license. All students performing such work must have a valid training certificate and work under a supervising journey level or specialty electrician in a ratio, per RCW 19.28.161, in compliance with RCW 19.28.161.

(7) Individuals in a two-year electrical construction trade training program for journey level electrician must obtain the additional two years of work experience required in new industrial or commercial installation prior to the beginning, or after the completion, of the technical school program.

All student electrical training hours obtained when working for contractors or other employers in intern programs arranged by the school must be evaluated as part of the training program hours. Additional work experience credit gained in an intern program is not allowed.

This does not prohibit trainees in a training program for specialty electricians from having concurrent employment and obtaining additional specialty work experience while attending school. All such concurrent work must be documented in an affidavit of experience per WAC 296-46B-942 (8).

The following supervision requirements must be met when working as an intern or student:

(a) Intern when working for contractors or other employers as a:

(i) General electrician, there must be not more than one noncertified individual for every certified master journey level electrician or journey level electrician.

(ii) Specialty electrician, there must be not more than two noncertified individuals for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journey level electrician, or journey level electrician.

(b) Student when working for a public community or technical college, or not-for-profit nationally accredited trade or technical school licensed by the work force training and education coordinating board under chapter 28C.10 RCW as a journey level or specialty electrician in the training program, the ratio requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journey level electrician, or journey level electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction program. All such work will be considered to be an integral part of the training program and work experience credit will not be allowed except as a part of the program.

When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

(i) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and

(ii) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

The public community or technical colleges, or not-for-profit nationally accredited trade or technical schools must be an appropriately licensed electrical contractor when performing work outside the classroom.

(8) The department will use the criteria in this section to evaluate the hours of credit that may be allowed for United States armed forces experience and training in the electrical construction, electrical maintenance, and appliance repair trades. See WAC 296-46B-945.

**AMENDATORY SECTION** (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-990 Failure to comply with the electrical contractor licensing, administrator certification, or electrician certification laws.**

**General.**

(1) If the compliance officer or electrical inspector/auditor determines that an individual, employer, or employee has violated chapter 19.28 RCW or this chapter, the department will issue a citation that describes the violation.

**Suspension or revocation - Of an electrical contractor's license, administrator's certificate, master electrician's certificate of competency, electrician's certificate of competency, or training certificate.**

(2) The department may revoke or suspend, for such time as it determines appropriate, an electrical contractor's license, administrator's certificate, master electrician's certificate of competency, electrician's certificate of competency, or training certificate if:

(a) The license, certificate, or permit was obtained through error or fraud;

(b) The license, certificate, or permit holder is judged to be incompetent to work in the electrical construction trade as an electrical contractor, administrator, master electrician, journey level electrician, specialty electrician, electrical technician, or electrical trainee;

(c) For serious noncompliance as described below. See RCW 19.28.241 and 19.28.341 for other grounds and procedures.

(d) The license or certificate holder incompletely or inaccurately reported continuing or basic trainee class education units on an application for renewal; or

(e) The certificate holder falsely, incompletely, or inaccurately reported previous work experience.

The department will deny an application for any license/certificate during the period of revocation or suspension of the same or another license/certificate under chapter 19.28 RCW.

(3) For the purposes of this section, serious noncompliance includes, but is not limited to, any of the following:

(a) Causing or failing to correct a serious violation. A serious violation is a violation of chapter 19.28 RCW or chapter 296-46B WAC that creates a hazard of fire or a danger to life safety. A serious violation is also a violation that presents imminent danger to the public. Imminent danger to the public is present when installations of wire and equipment that convey or utilize electric current have been installed in such a condition that a fire-hazard or a life-safety hazard is present. Imminent danger to the public is also present when unqualified, uncertified, or fraudulently certified electricians or administrators; or unlicensed or fraudulently licensed contractors are continuously or repeatedly performing or supervising the performance of electrical work covered under chapter 19.28 RCW. For the purposes of this section, a certified electrician is considered qualified, provided the electrician is working within his or her certification;

(b) The license or certificate was obtained, used, or allowed to be used through error or fraud;

(c) Submitting a fraudulent document to the department;

(d) Willful, intentional, or continuous noncompliance with the provisions of chapter 19.28 RCW or this chapter. For the purposes of this section, continuous noncompliance will be defined as three or more citations demonstrating a disregard of the electrical law, rules, or regulations within a period of three years, or where it can be otherwise demonstrated that the contractor, master electrician, electrician, or administrator has continuously failed to comply with the applicable electrical standards;

(e) Failure to make any books or records, or certified copies thereof, available to the department for an audit to verify the hours of experience submitted by an electrical trainee;

(f) Making a false statement or material misrepresentation on an application, statement of hours, or signed statement required by the department;

(g) The certificate holder falsely or inaccurately reported continuing or basic trainee class education units on an application for renewal;

(h) Installing a shortened rod/pipe grounding electrode, improper splicing of conductors in conduits/raceways or concealed within walls, or installing a fake equipment grounding conductor;

(i) Refusing to present a government issued photo identification when requested by an electrical inspector while working as an electrician or trainee as required by WAC 296-46B-940(3);

(j) Cheating on an electrical certification examination.

For any act of serious noncompliance, the person, firm, partnership, corporation, or other entity may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

(4) Before a license or certificate is revoked or suspended, the certificate holder will be given written notice of the department's intention to suspend or revoke. Notification will be sent by registered mail to the certificate holder's last known address. The notification will list the allegations against the certificate holder, and provide the certificate holder with the procedures necessary to request a hearing before the electrical board as described in WAC 296-46B-995.

**Confiscation - Of an electrical contractor's license, administrator certificate, electrician certificate of competency, or training certificate.**

(5) The department may confiscate a license or certificate that is counterfeit, revoked, expired, suspended, or altered. The individual may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 296-46B-553 Special occupancies—Floating buildings.

**WSR 20-11-063**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

[Filed May 19, 2020, 2:31 p.m., effective June 19, 2020]

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

Purpose: WAC 246-915A-010 physical therapists and physical therapist assistants, the board of physical therapy (board) is updating the effective date in WAC 246-915A-010 for the physical therapy compact (PTC) per RCW 18.74.500, Article IX(2). The purpose of the adopted rule is to comply with RCW 18.74.500, Article IX(2), which mandates that in order to participate in the PTC in the state of Washington the board of physical therapy must adopt PTC rules. The adopted rule complies with the statute by incorporating by reference to the physical therapy compact commission's rules as of October 27, 2019.

Citation of Rules Affected by this Order: Amending WAC 246-915A-010.

Statutory Authority for Adoption: RCW 18.74.023 and 18.74.500, Article IX(2).

Adopted under notice filed as WSR 20-06-030 [20-07-109] on February 26, 2020 [March 18, 2020].

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

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

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

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

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

Date Adopted: April 20, 2020.

Renee Compton, PTA  
Board Chair

AMENDATORY SECTION (Amending WSR 19-12-056, filed 5/31/19, effective 7/1/19)

**WAC 246-915A-010 Physical therapy licensure compact—Compact commission rules.** (1) The physical therapy licensure compact (compact) is established in Washington under RCW 18.74.500. Its purpose is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services.

(2) The rules of the physical therapy compact commission, in effect as of October (~~(28, 2018)~~) 27, 2019, are adopted and incorporated by reference.

(3) A copy of the rules is available for public inspection from the department of health at <https://www.doh.wa.gov/LicensesPermitsandCertificates/ProfessionsNewReneworUpdate/PhysicalTherapyLicensureCompact/RulesInProgress> or by calling the department of health's office of customer service at 360-236-4700.

(4) A licensee may exercise a compact privilege as provided in RCW 18.74.500, Article IV. Applicable fees are set forth in WAC 246-915A-990.