

**WSR 20-15-038**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed July 8, 2020, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-03-027.

Title of Rule and Other Identifying Information: Amending WAC 308-125-010 Definitions, 308-125-080 Application for certification, 308-125-090 Continuing education required 308-125-120 Fees and charges; and new WAC 308-125-250 Inactive licenses.

Hearing Location(s): On August 25, 2020, at 9:00 a.m.

Telephonic public hearing. Call in number: 360-407-3780. Pin Code: 447041#.

Date of Intended Adoption: August 26, 2020.

Submit Written Comments to: Dee Sharp, Department of Licensing, Real Estate Appraiser Program, P.O. Box 9021, Olympia, WA 98507-9021, email [reappraisers@dol.wa.gov](mailto:reappraisers@dol.wa.gov), fax 360-570-4981, by August 24, 2020.

Assistance for Persons with Disabilities: Contact Dee Sharp, phone 360-664-6504, fax 360-570-4981, TTY 771 [711], email [reappraisers@dol.wa.gov](mailto:reappraisers@dol.wa.gov), by August 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are necessary to update the WAC to incorporate changes required by ESSB 5480 to establish an inactive status, establish rules for inactive status, and establish rules for reactivation process for real estate appraisers. ESSB 5480 is effective September 1, 2020, and was passed by the 2019 legislature which requires the ability for an appraiser license to go inactive and the department of licensing (DOL) to establish rules to clarify inactive status and reactivation processes.

Reasons Supporting Proposal: Rule modifications and adoptions are proposed to comply with the state legislature's intent to provide an inactive status for real estate appraisers.

Statutory Authority for Adoption: RCW 18.140.030 (1) and (15).

Statute Being Implemented: None.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dee Sharp, 2000 4th Avenue West, Olympia, WA 98507, 360-664-6504.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under subsections (5)(b)(ii) and (v) of RCW 34.05.328 as these rules relate to business and professional licensing application processes and are dictated by statute.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant

to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

July 8, 2020

Damon Monroe  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-17-016, filed 8/8/08, effective 9/8/08)

**WAC 308-125-010 Definitions.** (1) Words and terms used in these rules shall have the same meaning as each has in the Certified Real Estate Appraiser Act, (chapter 18.140 RCW) and the Uniform Standards of Professional Appraisal Practice (USPAP).

(2) "Appraisal foundation" means a private association of appraiser professional organizations. The appraisal foundation develops appraisal standards which the regulatory agencies must use as minimum standards for federally related transactions and it develops qualification criteria for appraisers.

(3) "Appraisal subcommittee" means a committee created by Title XI. It monitors all activities related to the implementation of Title XI.

(4) "Appraisal standards board" means a board established by the appraisal foundation for the purpose of developing, publishing, interpreting and amending the *Uniform Standards of Professional Appraisal Practice*.

(5) "The *Uniform Standards of Professional Appraisal Practice* (USPAP)" means the current edition of the publication in force of the appraisal standards board (ASB) of the appraisal foundation. USPAP is the applicable standard for all appraisal practice in the state of Washington regulated under the provisions of chapter 18.140 RCW.

(6) "Appraiser qualifications board" means a board of the appraisal foundation for the purpose of developing, publishing, interpreting and amending the real property appraiser qualification criteria.

(7) "Real property appraiser qualification criteria" means the minimum criteria establishing the minimum education, experience and examination requirements for real property appraisers to obtain a state certification as established by the appraiser qualifications board (AQB) of the appraisal foundation under the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989, and any additional qualifying criteria established by the director in accordance with chapter 18.140 RCW.

(8) "Classroom hour" means fifty minutes out of each sixty minute hour.

(9) "Full-time" means the equivalent twelve-month period in which an applicant works at least one thousand hours in real estate appraisal.

(10) "Required core curriculum" means a set of appraiser subject matter areas (known as "modules") that require a specified number of educational hours at each credential level as established by the appraiser qualifications board.

(11) "Module" means an appraisal subject matter area (and required hours of coverage) as identified in the required core curriculum.

(12) "Residential properties" means one to four single family residential units and lots where the highest and best use is for one to four family purposes.

(13) "Significant professional appraisal assistance" shall include but not be limited to the work contributed or performed toward the completion of an appraisal report by either a trainee, state-licensed, or state-certified appraiser, while under the direct supervision of a certified residential appraiser or certified general appraiser as required by the department as qualifying appraisal experience for licensing. Significant professional appraisal assistance shall consist of identifying and analyzing the scope of work, collection of data, analyzing data to derive an opinion of value, or writing the appraisal report in accordance with the *Uniform Standards of Professional Appraisal Practice*.

(14) "Inactive status" means the status of an appraiser license or certification that is not expired and is eligible for reinstatement or renewal. An appraiser license in inactive status is not eligible to provide real estate appraisal services.

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

**WAC 308-125-080 Application for certification.** (1)

Upon receipt of notice of passage of the examination, applicants must submit a complete original certification application with the certification fee to the department of licensing, business and professions division, at its official address. The department will verify qualifications under chapter 18.140 RCW and the rules promulgated thereunder.

(2) Each original and renewal and reinstated certificate issued under RCW 18.140.130 shall expire on the applicant's second birthday following issuance of the certificate.

AMENDATORY SECTION (Amending WSR 13-17-002, filed 8/7/13, effective 9/7/13)

**WAC 308-125-090 Continuing education required.**

(1) As a prerequisite to renewal of an active or inactive certification, licensure, or registration, the holder of a certificate, license, or registration shall present evidence satisfactory to the director of successful completion of the continuing education requirements of this section.

(2) The continuing education requirements for renewal of an active or inactive certification, licensure, or registration shall be the completion by the applicant of twenty-eight hours of instruction in courses or seminars which have received the approval of the director. Courses must be completed within the term of certification, licensure, or registration immediately preceding renewal. An applicant shall not receive credit in consecutive renewals for courses that have the same or very similar content and are deemed comparable by the department. The holder of a certificate, license, or registration will present evidence of successful completion of the seven-hour National USPAP update course or its equivalent.

(3) In order for courses or seminars to be accepted under subsection (2) of this section, the course or seminar must be a minimum of two hours in length and be directly related to real estate appraising. However, a maximum of one-half of

the continuing education hours required for renewal can be in two-hour seminars or courses.

(4) An examination is not required for courses or seminars taken for continuing education classroom hours.

(5) Up to one-half of the requirement under subsection (2) of this section may be met by participation other than as a student in educational process and programs approved by the director including teaching, program development, and authorship of textbooks and other written instructional materials. A licensee or certificate holder may receive continuing education credit for teaching an approved real estate appraisal course. Once a licensee or certificate holder has received credit for teaching an approved real estate appraiser course, the credential holder shall not receive credit for teaching that course or any substantially similar course on any subsequent occasion, with the exception of the Uniform Standards of Professional Appraisal Practice, USPAP, 7-hour update.

(6) Courses or seminars taken to satisfy the continuing education requirement for real estate appraisers, should include coverage of real estate appraisal related topics, such as:

- (a) Ad valorem taxation.
- (b) Arbitrations, dispute resolution.
- (c) Business courses related to practice of real estate appraisal and consulting.
- (d) Construction estimating.
- (e) Ethics and standards of professional practice, USPAP.
- (f) Land use planning, zoning, and taxation.
- (g) Management, leasing, brokerage, timesharing.
- (h) Property development, partial interests.
- (i) Real estate appraisal (valuations/evaluations).
- (j) Real estate financing and investment.
- (k) Real estate law, easements and legal interests.
- (l) Real estate litigation, damages and condemnation.
- (m) Real estate related computer applications.
- (n) Real estate securities and syndication.
- (o) Real property exchange.
- (p) Appraisal and consulting report writing.
- (q) Green buildings.
- (r) Seller concessions.
- (s) Developing opinions of real property value in appraisals that also include personal property and/or business value.
- (t) Such other presentations approved by the director.

(7) The director may approve continuing education credit for attendance at one real estate appraiser commission meeting of no more than seven hours.

(8) The director may defer completion of continuing education for the holder of a certificate, license, or registration returning from military service active duty and place the registration, license, or certificate in an active status for a period of ninety days pending completion of education. If the holder of a certificate, license, or registration fails to comply with the continuing education requirement within said ninety days, the registration, license, or certificate will revert to an expired status.

(9) A licensee or certificate holder may receive continuing education credit for teaching an approved real estate

appraisal course. One hour of education credit for each hour of teaching an approved real estate appraisal course shall be given. Once a licensee or certificate holder has received credit for teaching an approved real estate appraisal course, the credential holder shall not receive credit for teaching that course or any substantially similar course on any subsequent occasion.

AMENDATORY SECTION (Amending WSR 11-19-103, filed 9/21/11, effective 10/22/11)

**WAC 308-125-120 Fees and charges.** The following fees shall be paid under the provisions of chapter 18.140 RCW:

Title of Fee	Fee
(1) Application for examination	\$370.00
(2) Examination	120.00**
(3) Reexamination	120.00**
(4) Original certification	250.00*
(5) <del>((Certification))</del> <u>Active license renewal</u>	530.00*
(6) <u>Inactive license renewal</u>	<u>110.00</u>
(7) <u>Reinstatement</u>	<u>530.00</u>
(8) Late renewal <del>((penalty))</del>	38.00
<del>((7)) Duplicate certificate</del>	<del>30.00</del>
<del>((8)) Certification history record</del>	<del>30.00</del>
(9) Application for reciprocity	370.00
<u>(10)</u>	
<del>((10))</del> Original certification via reciprocity	250.00*
<u>(11)</u>	
<del>((11))</del> Temporary practice	150.00
<u>(12)</u>	
<del>((12))</del> Trainee registration	200.00
<u>(13)</u>	
<del>((13))</del> Trainee registration renewal	200.00
<u>(14)</u>	
(15) <u>DOL license print</u>	<u>5.00</u>

\* Fees for these categories marked with an asterisk include a national registry fee in an amount determined by the appraisal subcommittee to be submitted by the state. Title XI, SEC. 1109 requires each state to submit a roster listing of state licensed and certified appraisers to the Appraiser Subcommittee.

\*\* Charges for categories marked with a double asterisk are determined by contract with an outside testing service.

NEW SECTION

**WAC 308-125-250 Inactive licenses.** (1) Any license issued under this chapter and not otherwise revoked is deemed "inactive" at any time it is delivered to the director. Until reinstated under this chapter, the holder of an inactive

license is prohibited from conducting real estate appraisal services.

(2) An inactive license may be renewed on the same terms and conditions as an active license, except that a person with an inactive license shall pay a reduced renewal fee. Failure to renew shall result in cancellation in the same manner as an active license.

(3) An inactive license may be placed in an active status upon submission of a reinstatement application to include proof of successful completion within one hundred eighty days of application of a fifteen hour course in the uniform standards of professional appraisal practice.

(4) If an appraiser license is inactive for more than eight years, the license shall be canceled in the same manner as an active license.

**WSR 20-15-067**

**PROPOSED RULES**

**EMPLOYMENT SECURITY DEPARTMENT**

[Filed July 13, 2020, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-129.

Title of Rule and Other Identifying Information: Eligibility for relief from benefit charges from the COVID-19 Unemployment Account, implementing section 5, chapter 7, Laws of 2020.

Hearing Location(s): On August 27, 2020, at 10:00 a.m.

Telephone conference, Call 360-407-3790. When prompted for the Conference ID number, press 51750 and then the # key. Hearing is being held remotely due to the COVID-19 pandemic.

Date of Intended Adoption: September 4, 2020.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by August 26, 2020.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teckstein@es.wa.gov [teckstein@esd.wa.gov], by August 20, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In the 2020 regular session, the legislature passed EHB 2965 (chapter 7, Laws of 2020), which, among other things, creates a COVID-19 unemployment account and appropriates funds into the account for the purposes of reducing specified benefit charges to eligible employers. Rules are necessary in order to establish which employers are eligible to apply for benefit charge reduction, which benefit charges are eligible to be reduced, and the process for how employers can apply for benefit charge reduction.

Reasons Supporting Proposal: EHB 2965 (chapter 7, Laws of 2020) directs the employment security department (ESD) to adopt rules regarding applications for reimbursements from the COVID-19 Unemployment Account.

Statutory Authority for Adoption: EHB 2965, section 5, chapter 7, Laws of 2020.

Statute Being Implemented: EHB 2965, section 5, chapter 7, Laws of 2020.

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

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, 360-890-3448; Implementation and Enforcement: Julie Lord, Olympia, 360-890-3635.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, email Rules@esd.wa.gov, <https://esd.wa.gov/newsroom/ui-rule-making/>.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rule imposes no costs on employers. Instead, the rules result in financial benefits to small businesses through lower unemployment tax rates in future years. The only cost to small businesses is the requirement to submit an application, however, this requirement is expressly dictated by statute (section 5(1), chapter 7, Laws of 2020).

July 13, 2020  
Dan Zeitlin  
Policy Director

#### NEW SECTION

**WAC 192-320-066 Eligibility for relief from benefit charges from the COVID-19 unemployment account—Section 5, chapter 7, Laws of 2020.** (1) **Application for relief.** The department will consider an employer's application to have a portion of unemployment benefits paid to an approved employee paid by the COVID-19 unemployment account instead of charged to its experience rating account if the employer:

(a) Submits an application on a form approved by the department.

(i) Electronic application forms can be accessed on the department's website.

(ii) Paper application forms can be accessed by either downloading them from the department's website or calling the accounts management center and asking for a copy of the form to be sent via mail.

(b) Timely submits the application.

(i) An electronically submitted form is submitted timely if the department's information technology system receives the form on or before 11:59 p.m. on September 30, 2020.

(ii) A form sent via mail is submitted timely if it has a postmark date of September 30, 2020.

(c) Attests that the information provided on the application is true and accurate.

(i) Employers must retain documents sufficient to substantiate the information provided on the application.

(ii) After the application is submitted, the department may ask employers for documents substantiating the information provided on the application.

(ii) The department may deny relief of benefit charges from the COVID-19 unemployment account if the department requests documentation from an employer and the employer fails to provide documentation sufficient to substantiate the information provided on the application.

(2) **Definition of approved employee.** For purposes of this section, an "approved employee" is an employee who:

(a) Became temporarily unemployed as a direct or indirect consequence of COVID-19. For purposes of (a) of this subsection, an employee became temporarily unemployed as a direct or indirect consequence of COVID-19 if either:

(i) The individual's employer was required to close or severely curtail operations due to a state or federal executive order adopted in order to prevent the spread of COVID-19; or

(ii) The individual left employment due to a request from a medical professional, local health official, or the secretary of health in order to be isolated or quarantined as a consequence of COVID-19, even if the employee or the employee's immediate family member was not actually diagnosed with COVID-19.

(b) Spent at least one week of their unemployment described in (a) of this subsection on standby pursuant to WAC 192-110-015; and

(c)(i) Prior to September 26, 2020, worked at least four weeks with their employer in suitable work with a rate of weekly pay at least ninety percent of the rate of weekly pay the employee had prior to becoming unemployed as described in (a) of this subsection.

(ii) Worked less than four weeks with their employer if, after working at least one day, the employee:

(A) Was discharged for misconduct; or

(B) Voluntarily quit for reasons not attributable to the employer.

(3) **Benefits not eligible for relief.** In calculating the amount of benefits eligible for full or partial payment by the COVID-19 unemployment account, the department will not include:

(a) Benefits paid on or before February 29, 2020;

(b) Benefits charged to the third quarter of 2020 or after;

(c) Benefits subject to federal reimbursement or payment under Public Law 116-136, Title II, Subtitle A (Relief for Workers Affected by Coronavirus Act) or other federal law;

(d) Benefits for which the department granted relief of benefit charges pursuant to RCW 50.29.021;

(e) Benefits that the employer would have been eligible to receive relief of benefit charges pursuant to RCW 50.29.021 but for which the employer failed to timely request relief; or

(f) Benefits paid for weeks where the approved employee was not on standby pursuant to WAC 192-110-015.

(4) **Ineligible employers.** The following employers are not eligible to apply for relief of benefit charges under this section:

(a) Employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions;

(b) Employers who are required to make payments in lieu of contributions;

Michele K. Culver  
Rules Coordinator

(c) Taxable local government employers as described in RCW 50.44.035;

(d) Any employer that has not submitted all quarterly reports for the second quarter of 2020 and all prior quarters by September 30, 2020; and

(e) Any employer that has not paid all contributions, penalties and interest due by September 30, 2020, or has not entered into a department-approved deferred payment contract by September 30, 2020.

**(5) Appeal rights.**

(a) If the department denies all or part of an employer's application for relief of benefit charges from the COVID-19 unemployment account, the department will provide the employer with the reasons for the denial.

(b) An employer may not appeal the denial of an application for relief of benefit charges from the COVID-19 unemployment account.

(c) Independent of the right to request relief of charges from the COVID-19 unemployment account pursuant to this section, an employer still retains the right to request relief of the underlying benefit charges pursuant to WAC 192-320-065 and appeal any denial of that request under WAC 192-04-060.

**WSR 20-15-068**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
[Filed July 13, 2020, 11:02 a.m.]

Continuance of WSR 20-10-116.

Preproposal statement of inquiry was filed as WSR 20-07-046.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 220-500-140 Firearms and target practice.

Hearing Location(s): On July 31-August 1, 2020, at 8:00 a.m.

Webinar and/or conference call.

This meeting will take place by webinar and/or conference call. The public may participate in the meeting. Visit our website at <https://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267 or [commission@dfw.wa.gov](mailto:commission@dfw.wa.gov) for instructions on how to join the meeting.

Date of Intended Adoption: August 21, 2020.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504-3200, email [wildthing@dfw.wa.gov](mailto:wildthing@dfw.wa.gov), <https://wdfw.wa.gov/about/wdfw-lands/public-conduct#firearms>, by July 28, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is filing a continuance to extend the written public comment period, change the hearing date, and date of intended adoption. This will provide an additional avenue to comment on the proposed rule making for those who may not want to attend the public hearing.

July 13, 2020

**WSR 20-15-074**  
**WITHDRAWAL OF PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

(By the Code Reviser's Office)

[Filed July 14, 2020, 9:43 a.m.]

WAC 182-530-7900, proposed by the health care authority in WSR 20-02-073, appearing in issue 20-02 of the Washington State Register, which was distributed on January 15, 2020, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

**WSR 20-15-075**  
**WITHDRAWAL OF PROPOSED RULES**  
**BUILDING CODE COUNCIL**

(By the Code Reviser's Office)

[Filed July 14, 2020, 9:44 a.m.]

WAC 51-51-0202, proposed by the building code council in WSR 20-02-057, appearing in issue 20-02 of the Washington State Register, which was distributed on January 15, 2020, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

**WSR 20-15-078**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

[Filed July 14, 2020, 4:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-03-109.

Title of Rule and Other Identifying Information: WAC 182-506-0015 Medical assistance units for non-MAGI-based Washington apple health programs, and 182-512-0950 SSI-related medical—Child-related resource exclusions and allocations.

Hearing Location(s): On August 25, 2020, at 10:00 a.m.

As the Governor's Safe Start plan progresses, it is yet unknown whether by the date of this public hearing restrictions of meeting in public places will be eased. To continue to be safe, this hearing is being scheduled as a virtual only hearing. This will not be an in-person hearing and there is not a physical location available.

To attend the virtual public hearing, please register prior to the event at <https://attendee.gotowebinar.com/register/3388771111368337931>.

After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than August 26, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by August 25, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay services 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by August 7, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to include resource standard requirements and to add a new subsection that identifies rules used to determine the allocation of resources. These requirements are defined under the supplemental security income (SSI) methodology used to determine eligibility. The agency anticipates no impact to eligibility or the amount of income or resources a client must pay or may keep. These rules:

- Add the requirement that SSI-related rules already test for resources in addition to income when determining eligibility.
- State that financial responsibility also applies when one or both spouses receive home and community-based services to the extent described in WAC 182-512-0960 and chapters 182-513 and 182-515 WAC.
- Remove income deeming and allocation rules already described in sections of chapter 182-512 WAC and not necessary for rules regarding medical assistance units.

Reasons Supporting Proposal: See purpose of proposal.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Steve Kozak, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1343.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to health care authority rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule making does not impose any costs on businesses.

July 14, 2020  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-20-094, filed 9/29/14, effective 10/30/14)

**WAC 182-506-0015 Medical assistance units for non-MAGI-based Washington apple health programs.** This section explains how medical assistance units (MAUs) are constructed for programs not based on modified adjusted gross income (MAGI) methodologies. (MAGI-based programs are described in WAC 182-503-0510.)

(1) An MAU is a person or group of people who must be included together when determining eligibility. MAUs are established based on each person's relationship to other family members and the person's financial responsibility for the other family members. MAUs for non-MAGI-based programs include an applicant and persons financially responsible for the applicant as described in subsection (2) of this section (as limited by subsection (3) of this section).

(2) Financial responsibility applies (~~only to spouses and to parents;~~) as follows:

(a) Married persons(~~(s)~~) living together are financially responsible for each other;

(b) Natural, adoptive, or step-parents are financially responsible for their unmarried, minor children living in the same household;

(c) Minor children are (~~(not)~~) financially responsible for (~~(their parents or for their siblings)~~) only themselves;

(d) Married persons(~~(financial responsibility)~~) not living together are financially responsible for each other to the extent described in WAC 182-512-0960 and chapters 182-513 and 182-515 WAC when ((not living together because one or both are residing in a medical institution is described in chapter 182-513 WAC)) one or both are residing in a medical institution, or one or both are applying for or receiving home and community-based services.

(3) The number of persons in the MAU is increased by one for each verified unborn child for each pregnant (~~(woman))~~ person already included in the MAU under this section.

(4) A separate SSI-related MAU is required for:

(a) SSI recipients, except for spouses who both receive SSI;

(b) SSI-related persons, except spouses whose eligibility is determined as a couple in chapters 182-511, 182-512, and 182-513 WAC;

(c) Institutionalized persons;

(d) The purpose of applying medical income and resource standards for an:

(i) SSI-related applicant whose spouse is not relatable to SSI or is not applying for SSI-related medical; and

(ii) Ineligible spouse of an SSI recipient.

~~((5) When determining eligibility for an SSI-related medical program, the agency determines how household income is allocated and deemed to the SSI-related person according to the rules described in WAC 182-512-0820 and 182-512-0900 through 182-512-0960.))~~

#### NEW SECTION

**WAC 182-512-0950 SSI-related medical—Child-related resource exclusions and allocations.** The agency considers resources of financially responsible people to

determine if a portion of the resources must be regarded as available to other household members.

(1) A portion of the resources of a parent or parents is available to the SSI-related child when the child is age seventeen or younger and the parent or parents are:

(a) Financially responsible for the SSI-related child as described in WAC 182-506-0015;

(b) The natural, adoptive, or step-parent of the child;

(c) Living in the same household with the child;

(d) Not receiving a needs-based payment such as temporary assistance to needy families (TANF), state-funded cash assistance (SFA) or SSI; and

(e) Not related to SSI or not applying for medical assistance.

(2) Resources that are deemed to the child are that child's resources.

(3) When determining whether a parent's resources are countable, the agency:

(a) Follows the resource rules described in WAC 182-512-0200 through 182-512-0300; and

(b) Excludes resources described in WAC 182-512-0350 through 182-512-0550, except for WAC 182-512-0550(16), where instead, the pension funds excluded are those owned by either parent.

(4) In determining eligibility of an SSI-related child, the child's resources include the value of the countable resources of the parent or parents that exceed the resource limit in WAC 182-512-0010 for:

(a) A person, if one parent lives in the household; or

(b) A couple, if two parents (or one parent and the spouse of that parent) live in the household.

(5) The SSI-related child is allowed all applicable resource exclusions and disregards described in this chapter from their own resources.

(6) If there is more than one child living in the household, the value of the deemed resources is divided equally among the children.

(7) An SSI-related child's total countable resources are the combination of the value of the deemed resources and the nonexcluded resources of the child.

(8) A child's countable resources are compared with the one-person resource standard under WAC 182-512-0010.

Submit Written Comments to: Paraeducator Board, 600 Washington Street S.E., Room 400, Olympia, WA 98504, email [paraboard@k12.wa.us](mailto:paraboard@k12.wa.us), by September 20, 2020.

Assistance for Persons with Disabilities: Contact professional educator standards board, phone 360-725-6275, email [pesb@k12.wa.us](mailto:pesb@k12.wa.us), by September 20, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC regarding the in-person training requirement. This amendment will allow school districts to train paraeducators on the fundamental course of study through online synchronous learning. This rule will remain in effect until September 1, 2021.

Reasons Supporting Proposal: COVID-19 has made the in-person training requirement a severe challenge for school districts to meet. In addition, there are the health considerations of students and educators that must be in consideration. Allowing online synchronous learning to meet the in-person training requirement will permit districts to meet state mandated training.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Statute Being Implemented: Chapter 28A.413 RCW.

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

Name of Proponent: Paraeducator board, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Busbee, 600 Washington Street S.E., Olympia, WA 98504, 360-867-8034.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

July 15, 2020

Jack Busbee

Rules Coordinator

### WSR 20-15-101

#### PROPOSED RULES

#### PARAEDUCATOR BOARD

[Filed July 15, 2020, 3:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-118.

Title of Rule and Other Identifying Information: WAC 179-09-040 Fundamental course of study, in-person training requirement.

Hearing Location(s): On September 23, 2020, at 8:00 a [a.m.], at the Ruby River Hotel, Spokane, 700 North Division Street, Spokane, WA 99202.

Date of Intended Adoption: September 23, 2020.

AMENDATORY SECTION (Amending WSR 19-21-070, filed 10/11/19, effective 11/11/19)

#### WAC 179-09-040 Fundamental course of study. (1)

School districts must implement this section only in school years for which state funding is appropriated specifically for the purposes of this section and only for the number of days that are funded by the appropriation.

(2)(a) School districts must provide a fundamental course of study on the state standards of practice, as defined by the board in WAC 179-09-050 of this chapter, to paraeducators who have not completed the course, either in the district or in another district within the state. At least one day of the fundamental course of study must be provided in person. School districts must use best efforts to provide the fundamental course of study before the paraeducator begins to

work with students and their families, and at a minimum by the deadlines provided in subsection (3) of this section.

(b) Beginning March 1, 2020, through September 1, 2021, virtual learning environments that use synchronous learning with an instructor will meet the one day in-person training requirement of the fundamental course of study.

(3) Except as provided in (b) of this subsection, school districts must provide the fundamental course of study required in subsection (2) of this section by the deadlines provided in (a) of this subsection:

(a)(i) For paraeducators hired on or before September 1st, the first two days of the fundamental course of study must be provided by September 30th of that year and the second two days of the fundamental course of study must be provided within six months of the date of hire, regardless of the size of the district; and

(ii) For paraeducators hired after September 1st:

(A) For districts with ten thousand or more students, the first two days of the fundamental course of study must be provided within four months of the date of hire and the second two days of the fundamental course of study must be provided within six months of the date of hire or by September 1st of the following year, whichever is sooner; and

(B) For districts with fewer than ten thousand students, no later than September 1st of the following year.

(b)(i) For paraeducators hired for the 2018-19 school year, by September 1, 2020; and

(ii) For paraeducators not hired for the 2018-19 school year, but hired for the 2019-20 school year, by September 1, 2021.

(4) School districts may collaborate with other school districts or educational service districts to meet the requirements of this section.

(5)(a) Providers of the fundamental course of study must provide to the paraeducator written documentation of each unit completed by a paraeducator. The documentation is as published by the professional educator standards board.

(b) Upon request, if such request is made within seven calendar years of unit completion, the provider shall provide the paraeducator with documentation of unit completion.

(6) The fundamental course of study must include the training competencies that align with the standards of practice in chapter 179-07 WAC.

(7) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the fundamental course of study.

**WSR 20-15-120**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed July 17, 2020, 2:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-09-137.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-400-0055 Who is eligible for the pregnant women assistance (PWA) program?, 388-400-0060 Who is eligible for aged, blind or disabled (ABD) cash assistance?, and 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program?

Hearing Location(s): On August 25, 2020, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see the department of social and health services (DSHS) website for most up-to-date information.

Date of Intended Adoption: Not earlier than August 26, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., August 25, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by August 11, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will extend ABD and HEN referral to individuals on home monitoring or home detention by removing language that prohibits individuals on home monitoring or home detention from being eligible for ABD and HEN referral benefits. Proposed amendments will also implement recent state legislation extending a referral to the HEN program for PWA program recipients.

Reasons Supporting Proposal: The proposed language is necessary to implement SSB 6495 (chapter 322, Laws of 2020) and supports Executive Order 16-05 in reducing recidivism and assisting incarcerated individuals as they return to the community.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.805, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.62.030.

Statute Being Implemented: Chapter 322, Laws of 2020.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Daisha Gomillion, P.O. Box 45470, Olympia, WA 98504-5770, 360-725-4781.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."



This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small business. They only impact DSHS clients.

July 16, 2020

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-400-0055 Who is eligible for the pregnant women assistance (PWA) program?** (~~Effective November 1, 2014~~.)

(1) The pregnant women assistance (PWA) program provides a state-funded cash stipend and a referral to the housing and essential needs (HEN) program under WAC 388-400-0065 to eligible low-income individuals. A referral to the HEN program is valid for twenty-four consecutive months from the date the department determines PWA eligibility.

(2) You can get pregnant women assistance (PWA), if you:

- (a) Are pregnant as verified by a medical professional;
- (b) Meet the citizenship/alien status requirements of WAC 388-424-0010;
- (c) Live in the state of Washington per WAC 388-468-0005;
- (d) Do not live in a public institution unless specifically allowed under RCW 74.08.025;
- (e) Meet TANF/SFA:
  - (i) Income requirements under chapter 388-450 WAC;
  - (ii) Resource requirements under chapter 388-470 WAC; and
  - (iii) Transfer of property requirements under chapter 388-488 WAC.
- (f) Tell us your Social Security number as required under WAC 388-476-0005;
- (g) Report changes of circumstances as required under WAC 388-418-0005; and

~~((2))~~ (3) If you are an unmarried pregnant minor your living arrangements must meet the requirements of WAC 388-486-0005.

~~((3))~~ (4) You cannot get PWA if you:

- (a) Are eligible for temporary assistance for needy families (TANF) benefits;
- (b) Are eligible for state family assistance (SFA) benefits;
- (c) Refuse or fail to meet a TANF or SFA eligibility rule;
- (d) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220 without good cause; or
- (e) Are eligible for supplemental security income (SSI) benefits.

AMENDATORY SECTION (Amending WSR 18-18-007, filed 8/23/18, effective 9/23/18)

**WAC 388-400-0060 Who is eligible for aged, blind or disabled (ABD) cash assistance?** (1) The aged, blind, or disabled (ABD) cash assistance program provides a state-funded cash stipend and a referral to the housing and essential needs (HEN) program under WAC 388-400-0065 to eligible low-income individuals.

(2) You are eligible for ABD if you:

- (a) Are:
    - (i) At least sixty-five years old;
    - (ii) Blind as defined by the Social Security Administration (SSA); or
    - (iii) Likely to be disabled as defined in WAC 388-449-0001 through 388-449-0100; and
  - (b) Are at least eighteen years old or, if under eighteen, a member of a married couple;
  - (c) Are in financial need according to ABD cash income and resource rules in chapters 388-450, 388-470 and 388-488 WAC. We determine who is in your assistance unit according to WAC 388-408-0060;
  - (d) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;
  - (e) Meet the citizenship/alien status requirements under WAC 388-424-0015;
  - (f) Provide a Social Security number as required under WAC 388-476-0005;
  - (g) Reside in the state of Washington as required under WAC 388-468-0005;
  - (h) Sign an interim assistance reimbursement authorization agreeing to repay the monetary value of general assistance, disability lifeline, or aged blind or disabled benefits subsequently duplicated by supplemental security income benefits as described under WAC 388-449-0200, 388-449-0210 and 388-474-0020;
  - (i) Report changes of circumstances as required under WAC 388-418-0005; and
  - (j) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.
- (3) You aren't eligible for ABD if you:
- (a) Are eligible for temporary assistance for needy families (TANF) benefits;
  - (b) Are eligible for state family assistance (SFA) benefits;
  - (c) Refuse or fail to meet a TANF or SFA eligibility rule;
  - (d) Refuse or fail to pursue federal aid assistance, including but not limited to medicaid, without good cause;
  - (e) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220 without good cause;
  - (f) Refuse or fail to follow through with the SSI application as required in WAC 388-449-0200 without good cause;
  - (g) Refuse or fail to participate in vocational rehabilitation services as required in WAC 388-449-0225 without good cause;
  - (h) Are eligible for supplemental security income (SSI) benefits;
  - (i) Are an ineligible spouse of an SSI recipient; or

(j) Failed to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.

(4) If you reside in a public institution and meet all other requirements, your eligibility for ABD depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for ABD if you are:

- (i) A patient in a public medical institution; or
- (ii) A patient in a public mental institution and:
  - (A) Sixty-five years of age or older; or
  - (B) Twenty years of age or younger.

(5) You aren't eligible for ABD when you are in the custody of or confined in a public institution such as a state penitentiary or county jail including placement ~~((a))~~ in a work release program ~~((b))~~ Outside of the institution including home detention).

**AMENDATORY SECTION** (Amending WSR 18-18-007, filed 8/23/18, effective 9/23/18)

**WAC 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program?** (1) You are eligible for referral to the housing and essential needs (HEN) program if you:

(a) Apply for cash assistance as detailed in WAC 388-406-0010;

(b) Complete an interview with the department;

(c) Are incapacitated as defined in WAC 388-447-0001 through 388-447-0100;

(d) Are at least eighteen years old or, if under eighteen, legally emancipated or a member of a married couple;

(e) Are in financial need according to income rules in chapter 388-450 WAC and resource requirements in RCW 74.04.005 and chapter 388-470 WAC. We determine who is in your assistance unit according to WAC 388-408-0070;

(f) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;

(g) Meet the citizenship/alien status requirement for ABD cash assistance under WAC 388-424-0015;

(h) Meet the Social Security number verification requirement for cash assistance under WAC 388-476-0005;

(i) Meet the residency requirement for cash assistance under WAC 388-468-0005;

(j) Meet verification requirements for cash assistance detailed in WAC 388-490-0005.

(k) To remain eligible for HEN referral, you must also:

(i) Report changes in your circumstances as required for cash assistance under WAC 388-418-0007; and

(ii) Complete and return eligibility reviews we send you under WAC 388-434-0005.

(2) You are not eligible for referral to the HEN program if you:

(a) ~~((Are eligible for the pregnant women assistance (PWA) program;~~

~~((b))~~ Are eligible for temporary assistance for needy families (TANF) program;

~~((c))~~ (b) Refuse or fail to meet a TANF rule without good cause;

~~((d))~~ (c) Refuse or fail to cooperate in obtaining federal aid assistance, including but not limited to medicaid, without good cause;

~~((e))~~ (d) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-447-0120;

~~((f))~~ (e) Are eligible for supplemental security income (SSI) benefits and receiving a state supplemental payment (SSP) under WAC 388-474-0012;

~~((g))~~ (f) Are an ineligible spouse of an SSI recipient;

~~((h))~~ (g) Refuse or fail to follow a Social Security Administration (SSA) program rule or application requirement without good cause and SSA denied or terminated your benefits;

~~((i))~~ (h) Are terminated from ABD for refusing or failing to sign an interim assistance reimbursement authorization agreement under WAC 388-400-0060;

~~((j))~~ (i) Are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony as described in WAC 388-442-0010; or

~~((k))~~ (j) Are disqualified from receiving cash assistance due to a conviction related to unlawful practices in obtaining cash assistance as described in WAC 388-446-0005.

(3) If you reside in a public institution and meet all other requirements, your eligibility for referral to the HEN program depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for referral to the HEN program if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and are sixty-five years of age or older.

(b) You aren't eligible for referral to the HEN program if you are in the custody of or confined in a public institution such as a state penitentiary or county jail, including placement ~~((c))~~

~~((d))~~ in a work release program ~~((e))~~

~~((f))~~ Outside of the institution including home detention).

## WSR 20-15-137

### PROPOSED RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed July 21, 2020, 12:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-16-085.

Title of Rule and Other Identifying Information: Data privacy, the rule making is adding WAC 192-15-500 Purpose, 192-15-510 Access to records or information by government agencies, 192-15-520 Response to subpoenas, 192-15-530 Access to records—Operation and management, 192-15-540 Consent to release of records or information, and 192-15-550 Disclosure related to employment security programs.

The rule making is repealing WAC 192-15-010 Purpose, 192-15-020 Definitions, 192-15-030 Description of central and field organization of employment security department, 192-15-040 Procedures for obtaining public records—Designation of departmental employees responsible for public records, 192-15-050 Commissioner's review of denials of public records requests, 192-15-060 Access to individual or employing unit records or information by government agencies—RCW 50.13.060, 192-15-070 Response to subpoenas—RCW 50.13.070, 192-15-080 Access to public records for operation and management purposes—RCW 50.13.080, 192-15-090 Consent to release of records or information—RCW 50.13.100, 192-15-100 Disclosure related to employment security programs, 192-15-110 Public records available, 192-15-120 Office hours, 192-15-130 Copying, 192-15-140 Protection of public records, 192-15-150 Records index—Available material, 192-15-160 Responsible addressee, and 192-15-170 Forms.

Hearing Location(s): On August 27, 2020, at 10:00 a.m.

Telephone conference, call 360-407-3790. When prompted for the Conference ID number, press 51750 and then the # key. Hearing is being held remotely due to the COVID-19 pandemic.

Date of Intended Adoption: August 28, 2020.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by August 27, 2020.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teckstein@es.wa.gov [teckstein@esd.wa.gov], by August 20, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The employment security department (ESD) is seeking to implement public disclosure and privacy rules in accordance with requirements determined by ESB 5439 (chapter 81, Laws of 2019). The rule making repeals WAC 192-15-101, 192-15-020, 192-15-030, 192-15-040, 192-15-050, 192-15-060, 192-15-070, 192-15-080, 192-15-090, 192-15-100, 192-15-110, 192-15-120, 192-15-130, 192-15-140, 192-15-150, 192-15-160, and 192-15-170 regarding public disclosure and privacy of information. Public record disclosure is the subject of a separate rule making, as filed in WSR 19-18-010.

Reasons Supporting Proposal: ESB 5439 (chapter 81, Laws of 2019) directed the department to update data privacy rules.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to ESD. RCW 50.13.030 provides the department with specific rule-making authority regarding the privacy of the department's records.

Statute Being Implemented: RCW 50.13.030, 50.13.040, 50.13.060, 50.13.070, 50.13.100, 50.13.110, and 50.13.120.

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

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, Washington, 360-890-3448; Implementation: Robert Page, Olympia, Washington, 360-890-

3504; and Enforcement: Rebekah O'Hara, Olympia, Washington, 360-890-3755.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, email Rules@esd.wa.gov, <https://esd.wa.gov/newsroom/ui-rule-making/>.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rule imposes no costs on employers. Instead, the rules provide clarity surrounding data privacy standards as directed by the legislature (chapter 81, Laws of 2019).

July 21, 2020

Dan Zeitlin

Policy Director

## Chapter 192-15 WAC

### ~~((PUBLIC DISCLOSURE AND PRIVACY OF INFORMATION))~~ DATA PRIVACY

#### NEW SECTION

**WAC 192-15-500 Purpose.** Interpret and implement the provisions of chapter 50.13 RCW concerning the privacy and confidentiality of information or records held by the employment security department.

#### NEW SECTION

**WAC 192-15-510 Access to records or information by government agencies.** (1) Applications by government agencies for information or records deemed private and confidential by chapter 50.13 RCW shall be made:

(a) To the public records officer as defined in WAC 192-02-020(2); and

(b) Pursuant to WAC 192-02-060.

(2) If the public records officer:

(a) Is reasonably satisfied that the application meets the requirements of RCW 50.13.060, the department will provide access to the information or records.

(b) Is not reasonably satisfied that the application meets the requirements of RCW 50.13.060, the department may refuse to provide access. The department will provide notification of the denial as prescribed in WAC 192-02-130.

(3) The department shall establish procedures for providing records used for detection of fraud by claimants under various social programs administered by government agencies pursuant to RCW 50.13.060(5). Further investigation of department files concerning these individuals may be accomplished only if the normal requirements of RCW 50.13.060 are met.

(4) The term "other official of the agency" as used in RCW 50.13.060 (1)(b) means an employee who has substantial responsibility for the operation of the requesting agency or for one or more of its programs or administrative units.

NEW SECTION

**WAC 192-15-520 Response to subpoenas.** An employee called to testify in a judicial or administrative proceeding shall not disclose information or records deemed private and confidential under chapter 50.13 RCW, unless:

(1) The presiding officer makes a finding that the need for the disclosure outweighs any reasons for the privacy and confidentiality of the records or information; or

(2) The employee is responding to a subpoena or other compulsory process containing a finding by the presiding officer that the need for the disclosure outweighs any reasons for the privacy and confidentiality of the records or information.

NEW SECTION

**WAC 192-15-530 Access to records—Operation and management.** (1) The department may provide incidental access to private or confidential information and records by private parties who are assisting the department in such areas as data processing and collection of employment security contributions pursuant to RCW 50.13.080.

(2) Persons provided incidental access to private and confidential records:

(a) Are bound by the rules of confidentiality and privacy applicable to departmental employees;

(b) Will be monitored by the department to ensure that private and confidential information or records are being handled correctly; and

(c) Are subject to any penalties provided under state or federal law for the breach of any confidentiality provision.

NEW SECTION

**WAC 192-15-540 Consent to release of records or information.** (1) Consent to release of information or records deemed private and confidential under RCW 50.13.100 shall be liberally interpreted so that the department may release information or records to third parties who supply the department with reasonable written or oral assurances of their identity and the department already has a release on file that meets the requirements of subsection (2) of this section.

(2) The release provided by a third party must include:

(a) Specifically identifying information of the data to be disclosed;

(b) Acknowledgment that department information will be accessed to obtain the information;

(c) The specific purpose or purposes for which the information is sought and a statement that information obtained under the release will only be used for that purpose or purposes;

(d) The parties who may receive the information disclosed;

(e) A written or electronic signature by the individual or employer being represented;

(f) A statement that provides the purpose of the release, which shall be limited to:

(i) Providing a service or benefit to the individual signing the release; or

(ii) Carrying out the administration or evaluation of a public program.

(3) In cases where a certain record contains information about more than one individual or employing unit:

(a) All individuals or employing units concerned must give consent before a record may be released or disclosed to other than the individuals or employing units;

(b) Records for individuals or employing units that give consent may be provided if the records for individuals or employing units that do not give consent are redacted; or

(c) The request may be denied if all individuals and employing units do not provide consent and records are not able to be redacted in order to protect the privacy of individuals or employing units that do not give consent.

(4) An attorney who can provide reasonable written assurance that they represent an interested party, as defined by WAC 192-04-040, in a proceeding before the appeal tribunal or commissioner, may have access to confidential information or records that are material to the issues in that proceeding.

NEW SECTION

**WAC 192-15-550 Disclosure related to employment security programs.** Chapter 50.13 RCW shall not be interpreted to prevent the employment security department from:

(1) Disclosing information in carrying out the department's duties under Title 50 RCW or under any other program for which the department is responsible;

(2) Disclosing information to the unemployment insurance agencies of other states when such disclosure relates to the administration of the unemployment insurance law of the requesting state; or

(3) Disclosing information when such disclosure is required by the federal government in connection with or as a condition of funding for a program being administered by the department.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-15-010 Purpose.

WAC 192-15-020 Definitions.

WAC 192-15-030 Description of central and field organization of employment security department.

WAC 192-15-040 Procedures for obtaining public records—Designation of departmental employees responsible for public records.

WAC 192-15-050 Commissioner's review of denials of public records requests.

WAC 192-15-060 Access to individual or employing unit records or information by government agencies—RCW 50.13.060.

- WAC 192-15-070 Response to subpoenas—RCW 50.13.070.
- WAC 192-15-080 Access to public records for operation and management purposes—RCW 50.13.080.
- WAC 192-15-090 Consent to release of records or information—RCW 50.13.100.
- WAC 192-15-100 Disclosure related to employment security programs.
- WAC 192-15-110 Public records available.
- WAC 192-15-120 Office hours.
- WAC 192-15-130 Copying.
- WAC 192-15-140 Protection of public records.
- WAC 192-15-150 Records index—Available material.
- WAC 192-15-160 Responsible addressee.
- WAC 192-15-170 Forms.

**WSR 20-15-138**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed July 21, 2020, 12:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-06-070.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and recordkeep-

Proposed amendments include:

WAC Numbers	WAC description	What is changing	Reason for Change
296-17-31004	Coverage requirements	Eliminating statement that we will give you a confirmation number you can keep as proof that you verified "in good standing" status. Replace with "the departments" website (verify) will state "account is current."	We don't provide a confirmation number to customers. It's unknown if this was ever done in the past.
296-17-31006	Application process	Correcting website links.	Some links have changed since the rule was written due to website redesigns.
296-17-31007	Owner/officer coverage and coverage for exempt employments	Correcting website links.	Some links have changed since the rule was written due to website redesigns.

ing, rates and rating system for Washington workers' compensation insurance; and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): On August 25, 2020, at 10:00 a.m.

Telephonic hearing only. Please call 1-866-715-6499.

When prompted for the passcode, enter 3584348178# (pound sign must be entered). The telephonic hearing starts at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: October 6, 2020.

Submit Written Comments to: Jo Anne Attwood, P.O. Box 44148, Olympia, WA 98504-4148, email JoAnne.Attwood@Lni.wa.gov, fax 360-902-4988, by August 25, 2020 by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-4988, TTY 360-902-5797, email JoAnne.Attwood@Lni.wa.gov, by August 20, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Classification development's goal is to implement clear rule writing to ensure staff and customers can easily understand and apply the workers' compensation insurance classification and reporting rules. Classification development studied some subclassifications for potential reduction in number; and reviewed classification and reporting rules for improvement and clarification.

The purpose of this rule making is not to make substantive changes to how employers are classified and amendments will not impact employer rates.

As part of this rule making, the department of labor and industries (L&I) reviewed these chapters for need, clarity, and consistency to make changes where possible to reduce the regulatory burden on employers insured with the state fund.

296-17-31021	Units of exposure	Changing race driver reporting from ten hours per race heat to actual hours per race/heat.	Analysis of those assigned classification 6708 for race driving showed that no one is reporting correctly. They are reporting actual hours instead of ten hours per race heat. Actuary supports changing the reporting method to actual hours worked. We are codifying current practice.
296-17-31023	Premium reporting	Correct language referring to written quarterly reports.	The majority of quarterly reporting is done online now, so instructing customers to "write across the face of the report" is obsolete.
296-17-35201	Recordkeeping and retention	Updating penalty for failure to keep records from \$250 to \$500. Adding: Beginning July 2, 2023, these penalties will be adjusted for inflation every three years based on the consumer price index.	SHB 2409 increased penalties and added that the penalty will be adjusted for inflation every three years based on the consumer price index (CPI).
296-17-35203	Special reporting instructions	Correcting website links.	Some links have changed since the rule was written due to website redesigns.
296-17-35204	Penalty assessments for employers who fail to register under Title 51 RCW	Updating penalty for failure to register under Title 51 RCW from \$500 to \$1000. Adding: Beginning July 2, 2023, these penalties will be adjusted for inflation every three years based on the consumer price index.	SHB 2409 increased penalties and added that the penalty will be adjusted for inflation every three years based on the CPI.
We are combining subclassifications as part of our plan to reduce the overall number of subclassifications in the Classification plan to ease administrative burden for customers and staff. 296-17A-0101; 296-17A-2903; 296-17A-3701; 296-17A-3902; 296-17A-4802; 296-17A-4808	Land clearing; Wood products mfg; Chemical mfg; Food sundries mfg; Farms, berry; Farms, diversified crops	Employer rates will not change.	<ul style="list-style-type: none"> <li>• Low number of employers/hours reporting in subclassification (low credibility from actuarial view);</li> <li>• Subclassification does not represent separate risks from overall risk classification;</li> <li>• Due to low loss data;</li> <li>• No longer need to track these subclassifications separately.</li> </ul>
296-17A-0301	Landscape construction operations, N.O.C.	Correct "paving" to "paver" in the Example.	Correct incorrect word.

296-17A-1002	1002-08 Shake and shingle mills - Automated process	Correct reference in the Special note from: Classification 1005 shake and shingle mills N.O.C.; to: Classification 1005 shake and/or shingle mills. 1005 is not a N.O.C. classification.	Correct reference.
296-17A-1007	Geophysical exploration, N.O.C.	Correct from "seismatic" to "seismic."	Correct typographical error.
296-17A-1108-03 296-17A-1108-05	Flat glass merchants - No tempering Combined auto and flat glass merchants - No tempering	Correcting from "Plexiglas" to "plexiglass."	Correct from product tradename to generic name of material as classifications don't typically use product trade-names.
296-17A-2008	Warehouses - Field bonded	Correcting to make possessive: "customers" to "customer's."	Correct typographical error.
296-17A-3101	Ready mix concrete dealers	Correct from "metal shoot" to "metal chute" Also, separate into two sentences for better readability as pit and crusher operations are not relevant to the sales of tools, etc: "This classification also includes the related sale of tools, equipment, and building materials such as bricks or concrete blocks, and pit and crusher operations <u>provided all sand and gravel produced</u> is used by the dealer to manufacture concrete mix."	Correct typographical error. Improve readability.
296-17A-3102	Rock wool insulation: Manufacturing	Correcting title from "Rock wool insulation: manufacturing" to "Stone wool insulation: manufacturing."	Correct from product tradename to generic name of material as classifications don't typically use product trade-names.
296-17A-3402	Pump, safe, scale, auto jack, water meter, air compressor and elevator: Manufacturing or assembly	Correcting subclassification number from 00 to 02.	When we collapsed subclassifications last year in Classification 3402, sub 00 was inadvertently left and not changed to sub 02. Typographical error.
296-17A-3506-03	Concrete pump truck service	Correct from "metal shoot" to "metal chute."	Correct typographical error.
296-17A-4910-01	Chimney cleaning - Residential buildings	Remove "commercial" from the exclusion and add to heading; add "such as restaurants, hotels, motels, and office buildings"; remove "house."	We are clarifying how the classification has been interpreted and applied for not only residential, but for business operations like restaurants, hotels, motels, and office buildings with chimney cleaning needs. In the classification's exclusion, the word "commercial" has caused confusion with staff when classifying accounts. The exclusion specifies "industrial," which is clear without including "commercial." It refers to 0508 Smokestack: construction or erection, dismantling, maintenance or repair, which is a heavy industrial

			classification. Only businesses providing services to this type of heavy industrial facility are classified in 0508. There are currently 68 accounts with 4910-01, one also has 0508-01 and performs heavy industrial services for industrial customers. There are eight accounts with 0508-01 and all provide heavy industrial-related services for industrial customers.
296-17A-5307	State government employees - N.O.C.	Change department of social and health services (DSHS) to department of children, youth, and families.	Update agency title due to recent change.
296-17A-6411-24	Tobacco and marijuana products, vaporizers and liquids, and smoking accessories	Remove "and marijuana" from the classification title.	The title currently creates staff confusion when assigning the classification as it seems to lead staff to believe that selling marijuana is in Classification 6411 and not in the correct classification, Classification 6403.
296-17A-6501	Barbers, salons, tattoo shops	Change from "this classification includes all employees" to "this classification includes clerical office and sales employees."	To help customers and staff understand that the standard exclusion activities are included. This is consistent with how other classifications are written.
296-17A-6601-06	6601-06 Crowd control	Change spelling from "theatre" to "theater."	To ensure consistent spelling of the word throughout all classifications.
296-17A-6708	Professional motor vehicle or watercraft race drivers	Changing race driver reporting from 10 hours per race heat to actual hours worked.	Analysis of those assigned Classification 6708 for race driving showed that no one is reporting correctly. They are reporting actual hours instead of ten hours per race heat. Actuary supports changing the reporting method to actual hours worked.

Reasons Supporting Proposal: L&I is required by law to establish and maintain a workers' compensation classification plan that classifies all occupations or industries in accordance with their degree of hazard and in a manner consistent with recognized insurance principles (RCW 51.16.035). We will propose amending some classifications to increase ease of reporting, and ensure consistent and equitable treatment to businesses.

This rule making will potentially benefit all state fund employers by making it easier to do business with L&I. This rule making will also allow department staff to provide more consistent service to our customers.

Statutory Authority for Adoption: RCW 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, 360-902-4777; Implementation:

Keith Bingham, Tumwater, 360-902-4826; and Enforcement: Victoria Kennedy, Tumwater, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b)(vi), as the proposed rules adjust rates pursuant to legislative standards.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

July 21, 2020



Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 13-11-128, filed 5/21/13, effective 7/1/13)

**WAC 296-17-31004 Coverage requirements.** (1) **I own a business. Am I required to have workers' compensation insurance coverage for my employees?** Nearly every employer doing business in the state of Washington is required to have workers' compensation insurance for his/her employees. Washington law (*RCW 51.12.020*) does exempt certain types of employment from coverage. If you employ only individuals who are excluded from mandatory workers' compensation insurance coverage, you are not required to have workers' compensation insurance coverage.

(2) **I hire contractors to perform work for me. Do I need to be concerned about premiums on their work?** Yes. There are two ways you may be liable for premiums on the work they do.

First, they may be "workers" for whom you are required to report and pay premiums. The law defines worker to include both your employees and independent contractors you hire, when the essence of the contract is personal labor. See *RCW 51.08.070, 51.08.180, 51.08.181, and 51.08.195* for more guidance about when independent contractors will be considered workers.

Second, the Industrial Insurance Act imposes premium liability on anyone who contracts with another to have work performed. Even if the contractor you hire is not your worker (for example, if the contractor uses one or more workers on the job), you could be liable for their premiums if they fail to pay.

(3) **Is there any way for me to protect myself from being held liable for premiums owed by construction contractors I hire?** Yes, if you are a registered construction contractor or licensed electrical contractor, and you hire a registered construction contractor or a licensed electrical contractor to do construction work that requires licensing or registration, you can protect yourself from being found liable for the premiums on the work that contractor does for you if:

(a) They have a principal place of business eligible for IRS deduction;

(b) They keep books and records that reflect all items of income and all expenses of the business; and

(c) You have verified that they have an industrial insurance account in good standing, or are a self-insured employer approved by the department.

(4) **What does "in good standing" mean?** For someone's account to be in good standing, they must:

(a) Be registered with the department of labor and industries for industrial insurance coverage with the state fund;

(b) Have a certificate of coverage, also known as a liability certificate, that has not been revoked or canceled;

(c) Have submitted all reports and supplements required by the department within the past year; and

(d) Be current with all payments due to the state fund, or are current with an approved written payment agreement with the department regarding all unpaid amounts due the state fund.

(5) **How do I know that someone's account is considered to be "in good standing"?** You can find out whether someone's account is in good standing by visiting the department's website or calling your account manager. If the account is in good standing, ~~((we will give you a confirmation number you can keep as proof that you verified their status.))~~ the website will state "account is current."

(6) **I use the same subcontractors over and over. Do I have to verify that they have an industrial insurance account in good standing every time I use them?** No. In *RCW 51.12.070* protection for construction contractors only requires that you have confirmed a subcontractor's account within a year prior to letting a contract. When you check out your subcontractors on the department's website or by calling your account manager, a confirmation number will be provided as proof you checked them out. This confirmation number is valid for one year from the time it is issued.

If you are notified by the department of labor and industries that a subcontractor's account is no longer in good standing, you may be liable for their industrial insurance premiums from the date of notification forward.

(7) **Can I, as a construction contractor, be held liable if I verify that the accounts of construction contractors I hire are in good standing, but they fail to confirm the accounts of the construction subcontractors they hire?** No. If you make sure you and your construction subcontractors meet the requirements of *RCW 51.12.070*, you cannot be held liable if they fail to make sure their construction subcontractors meet the requirements.

AMENDATORY SECTION (Amending WSR 19-11-109, filed 5/21/19, effective 7/1/19)

**WAC 296-17-31006 Application process.** (1) **Where can I buy workers' compensation insurance?** Washington law requires that you:

- Purchase your workers' compensation insurance through labor and industries. You will need to complete a *business license application* to obtain workers' compensation insurance from us; or

- Be certified as a self-insured employer by the self-insurance certification services section of the department of labor and industries. For more information on the self-insurance program go to [www.lni.wa.gov/selfinsurance](http://www.lni.wa.gov/selfinsurance), additional resources and contact information are listed under "Contact Us."

Employers engaged exclusively in interstate or foreign commerce are permitted to purchase workers' compensation insurance from a private carrier in another state if they do business in that state. The workers' compensation laws of the other state must allow the Washington drivers to be covered in that state.

(2) **Where can I get a business license application?**

You can file and print a business license application online at ~~(([www.business.wa.gov/BLS](http://www.business.wa.gov/BLS)))~~ [www.dor.wa.gov](http://www.dor.wa.gov). You can pick up a paper business license application from:

- Any office of the department of labor and industries;
- Employment security;
- Department of revenue business licensing service office;

- The corporations division of the office of the secretary of state;
- For your convenience you can call us at 360-902-4817 and we will mail you one.

**(3) Where do I send my completed business license application?**

You can mail your completed business license application to the department of revenue address shown on the form, or you can return it to your local department of labor and industries office, or department of employment security district tax office. Be sure to include the appropriate fees indicated on the form.

AMENDATORY SECTION (Amending WSR 19-11-109, filed 5/21/19, effective 7/1/19)

**WAC 296-17-31007 Owner/officer coverage and coverage for exempt employments. (1) As a business owner, can I buy workers' compensation insurance to cover myself or to cover workers who are exempt from mandatory coverage as defined in RCW 51.12.020, 51.12.035, or 51.12.170?**

Yes. Coverage is not required, but is available for sole proprietors, partners, qualifying corporate officers, qualifying members of a limited liability company, and for exempt employments defined in **RCW 51.12.020, 51.12.035, or 51.12.170**. We refer to this coverage as optional coverage. For owner optional coverage, you must meet certain conditions and requirements which are detailed on the *application for owner/officer optional coverage*. These requirements include:

- Completing an application for optional owner/officer coverage;
- Reporting owner/officer hours in the classification assigned to your business that is applicable to the work being performed by the owner/officer;
- Submitting a supplemental report which lists the name of each covered owner/officer; and
- Reporting four hundred eighty hours or actual hours worked each quarter for each covered owner/officer and in the applicable workers' compensation classification code.

**(2) When will my owner/officer coverage or coverage for exempt employments become effective?**

Your coverage will become effective the day after we receive your completed and signed application for optional coverage, unless you indicate that optional coverage should begin at a later date. Coverage cannot begin before the day after we receive your completed application.

**(3) How does cancellation work?** You may cancel your optional owner/officer coverage or elective coverage for exempt employments by notifying the department in writing. For sole proprietors, partners, and LLC partnership model, we will cancel your coverage either the same day we receive your written notice to cancel or on the future date you indicate. For corporations, LLC corporate model, or elective coverage for exempt employment, we will cancel the coverage thirty days from the date we receive your written request to cancel.

The department may cancel optional coverage if any required payments have not been made. Cancellation will

become effective no later than thirty days from the date of the cancellation notice the department sent to the employer.

When your account balance is paid, if you want to reestablish owner/officer coverage, you must **submit a new application** for owner/optional coverage.

**(4) Where can I get an application for owner/officer coverage, or coverage for exempt employments?** There are separate applications for owner/officer optional coverage and coverage for exempt employments. To get these applications, go to (<http://www.lni.wa.gov/FormPub>) [www.lni.wa.gov](http://www.lni.wa.gov), contact your local labor and industries office, or you can call the employer services division at 360-902-4817.

AMENDATORY SECTION (Amending WSR 12-24-067, filed 12/4/12, effective 1/4/13)

**WAC 296-17-31021 Units of exposure. (1) What is a "unit of exposure"?**

A unit of exposure is the measure which is used to help determine the premium you will pay. For most businesses the unit of exposure is the *hours* worked by their employees. Because not all employees are compensated based on the hours they work, we have developed reporting alternatives to make reporting to us easier. Those alternatives are outlined in subsection (2) of this section. In other cases, the department may authorize some other method in assuming workers hours for premium calculation purposes.

**(2) What are the alternatives to actual hours worked?**

The exceptions are:

- **Apartment house managers, caretakers, domestic, home care or similar employees:** To determine the number of hours you need to report to us, divide an employee's total compensation, including housing and utility allowances, by the average hourly wage for the classification. The total number of work hours to be reported for each employee is not to exceed 520 hours per quarter. You will need to call us at 360-902-4817 to obtain average hourly wage information.
- **Commission employees - Outside (such as, but not limited to, real estate and insurance sales):** You must select one of the following methods to report your commission employees - Outside:
  - Actual hours worked; or
  - Assumed hours of eight hours per day for part-time employees or one hundred-sixty hours per month for full-time employees.

All outside commission employees of an employer must be reported by the same method. You cannot report some outside commission employees based on the actual hours they work and others using the eight hours per day for part-time employees or one hundred-sixty hours per month for full-time employees method.

- **Drywall - Stocking, installation, scrapping, taping, and texturing:** Premiums are based on material installed/finished rather than the hours it took to install/finish the drywall.

- **Horse racing - Excluding jockeys:** Employers in the horse racing industry pay premiums on a monthly or daily rate on employees based on a type of license their employees hold rather than the hours the employees work. Premiums are collected by the Washington horse racing commission.
- **Jockeys:** Report ten hours for each race/mount or for any day in which duties are reported.
- **Pilots and flight crew members:** Pilots and flight crew members having flight duties during a work shift including preflight time shall have premium calculated by utilizing daily readings logged per federal requirements of the aircraft tachometer time: Provided, That if the total tachometer time for any day includes a fraction of an hour, the reportable time will be increased to the next full hour: Provided further, That pilots and flight crew members who assume nonflying duties during a work shift will have premium calculated in accordance with the appropriate rules and classifications applicable to nonflight duties.
- ~~(• **Race car drivers:** Report ten hours for each race/heat.))~~
- **Salaried employees:** You must select one of the following methods to report your salaried employees:
  - Actual hours worked; or
  - Assumed hours of one hundred-sixty hours per month.

All salaried employees of an employer must be reported by the same method. You cannot report some salaried employees based on the actual hours they work and others using the one hundred sixty hours per month method. Provided further, as in the case of contract personnel employed by schools and/or school districts, the school or school district shall report actual hours worked for each employee, one hundred sixty hours per month for each employee, or the department *may* authorize some other method in assuming workers hours for premium calculation purposes.

**(3) Can I use assumed work hours for piece workers?**

No, if you employ piece workers you must report the actual hours these individuals work for you unless another unit of exposure is required.

*Example: If you have employees engaged in drywall work you would report and pay premiums on the basis of the square footage of the material they installed not the hours they worked.*

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

**WAC 296-17-31023 Premium reporting. How often will I need to report and pay premiums?** Most employers will report and pay premiums once every three months. We refer to these three-month periods as quarters. For example, the months of January, February, and March represent the first quarter of a calendar year. In some cases employers report at more frequent intervals.

*Example: Reforestation contractors report on a contract basis for any project over ten thousand dollars. Since contracts may last only a few days, reforestation contractors may file reports daily, weekly, and monthly.*

If you do not have employees during a quarter, you must ~~((return your premium))~~ report by the due date and indicate "no payroll" or "no employees" ~~((across the face of the report))~~. If you do not submit reports when required, we will estimate premiums and initiate legal action against you to collect premiums due.

AMENDATORY SECTION (Amending WSR 16-18-085, filed 9/6/16, effective 10/7/16)

**WAC 296-17-35201 Recordkeeping and retention.** Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums due to the state for workers' compensation insurance for their covered workers. In the administration of Title 51 RCW, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums due to the state fund. The records so specified and required, shall be provided at the time of audit to any authorized representative of the department who has requested them.

Failure to produce the requested records within thirty days of the request, or within an agreed upon time period shall constitute prima facie evidence of noncompliance with this rule and shall invoke the statutory bar to challenge found in RCW 51.48.030 and/or 51.48.040. See WAC 296-17-925, 296-17-930, and 296-17-935 for additional reporting and recordkeeping requirements for qualifying volunteers, student volunteers, and unpaid students.

(1) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which employment occurred:

- (a) The name of each worker;
- (b) The Social Security number of each worker;
- (c) The beginning date of employment for each worker and, if applicable, the separation date of employment of each such worker;
- (d) The basis upon which wages are paid to each worker;
- (e) The number of units earned or produced for each worker paid on a piecework basis;
- (f) The risk classification applicable to each worker whenever the worker hours of any one employee are being divided between two or more classifications;
- (g) The number of actual hours worked (WAC 296-17-31002) by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021 or 296-17-935;
- (h) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;
- (i) The workers' total gross pay period earnings;
- (j) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;

(k) The net pay earned by each such worker.

(2) Business, financial records, and record retention. Every employer is required to keep and preserve all original employment time records for three full calendar years following the calendar year in which employment occurred. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve all check registers and bank statements. Employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(3) Recordkeeping - Estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in subsections (1) and (2) of this section, who fails to make, keep, and preserve such records, shall for the purpose of premium calculation assume worker hours using the average hourly wage rate for each classification, and also will be subject to penalties prescribed in subsection (4) of this section. The records compiled by the department shall be the basis for determining the average hourly wage rate: Provided, That the average hourly wage rate shall be no less than the state minimum wage existing at the time such assumed hours are worked. Notwithstanding any other provisions of this section, workers employed in a work activity center subject to Classification 7309 shall be reported on the basis of the average hourly wage.

(4) Failure to maintain records - Penalties. Any employer required by this section to make, keep, and preserve records containing the information as specified in subsections (1) and (2) of this section, who fails to make, keep, and preserve such record, shall be liable, subject to RCW 51.48.030, to a penalty (~~in the amount of two hundred fifty~~) not to exceed five hundred dollars or two hundred percent of the quarterly tax for each such offense, whichever is greater. Beginning July 1, 2023, this penalty will be adjusted for inflation every three years based on the consumer price index (Seattle, Washington area for urban wage earners and clerical workers, all items compiled by the Bureau of Labor Statistics of the United States Department of Labor). Failure to make, keep, and preserve records containing the information as specified in subsections (1) and (2) of this section, for a single employee shall constitute one offense, for two employees two offenses, and so forth. The department may waive penalties for the first-time or de minimis violations of this section. Any penalty that is waived under this section may be reinstated and imposed in addition to any additional penalties associated with a subsequent violation or failure within a year to correct the previous violation as required by the department.

AMENDATORY SECTION (Amending WSR 15-19-081, filed 9/15/15, effective 10/16/15)

**WAC 296-17-35203 Special reporting instruction. (1) Professional and semiprofessional athletic teams.** Athletes assigned and under contract to a Washington-domiciled sports team are mandatorily covered by Washington industrial insurance. Athletes assigned to a Washington-domiciled

sports team but under contract with a parent team domiciled outside of the state are mandatorily covered by Washington industrial insurance unless the player is eligible for coverage in another state, and there is a valid coverage agreement as described below.

A player is eligible for coverage in another state only when both the player and the employer agree in writing that the employment is principally localized in that state.

**Example:** If the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they cannot agree to be under California coverage since California doesn't qualify as a state in which the player competes in regularly scheduled games.

(a) Upon request, the department will provide forms to the owners of professional and semiprofessional sports teams for entering into agreements for both the sport player and the sport team. These agreements are referred to as "coverage agreements." Unless coverage is refused in the alternative state, the coverage agreement will determine the worker's home state for workers' compensation coverage.

(b) When a sport team and a player agree to workers' compensation coverage in another state, the following rules apply:

Sport player coverage agreement:

(i) A sport player coverage agreement must be signed by the team (employer) and each individual player (worker) covered out-of-state. Workers' compensation premiums for any work performed by the player before the agreement was signed must be paid to the department. To be valid, an agreement must be:

- Signed by both parties, dated, and show the name of the state where coverage is provided.
- Agree that the player's employment is principally located in that state.
- Kept as part of the employer's records for at least three years after the player is released from the team.

(ii) The employer must provide the department a copy of a sport player coverage agreement when requested. Employers who do not provide the department copies of a sport player coverage agreement when requested are considered not to have secured payment of compensation as required and all premiums and penalties allowed for in Title 51 RCW will apply.

(iii) If the employers' out-of-state workers' compensation insurer rejects an injury claim because the player is a Washington worker, the employer is considered not to have secured payment of compensation as required and all premium and penalties allowed for in Title 51 RCW apply.

Sport team coverage agreement:

(c) A sport team coverage agreement must be signed by the employer (team) and the qualifying out-of-state workers' compensation insurer. Workers' compensation premiums for work performed before the agreement was signed must be paid to the department. To be valid, an agreement must:

- Be signed by both parties, dated, and show the name of the state where coverage is provided.
- Specify that the team's players are principally localized in that state.

- Specify the insurer agreeing to provide coverage for a team based in Washington.

(d) The sport team coverage agreement must be signed annually. Copies of the agreement along with a current copy of the team's out-of-state insurance policy must be submitted to the department of labor and industries every year the out-of-state coverage is provided.

Premium payments are required for any work performed by Washington players prior to the date the department receives copies of any year's current sports teams' coverage agreement and proof of out-of-state coverage.

(2) **Excluded employments.** Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.-095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried, part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried, part time, percentage of profits or piece basis, the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

(3) **Special trucking industry rules.** The following subsection shall apply to all trucking industry employers as applicable.

(a) Insurance liability. Every trucking industry employer operating as an intrastate carrier or a combined intrastate and interstate carrier must insure their workers' compensation insurance liability through the Washington state fund or be self-insured with the state of Washington.

Washington employers operating exclusively in interstate or foreign commerce or any combination of interstate and foreign commerce must insure their workers' compensation insurance liability for their Washington employees with the Washington state fund, be self-insured with the state of Washington, or provide workers' compensation insurance for their Washington employees under the laws of another state when such other state law provides for such coverage.

Interstate or foreign commerce trucking employers who insure their workers' compensation insurance liability under the laws of another state must provide the department with copies of their current policy and applicable endorsements upon request.

Employers who elect to insure their workers' compensation insurance liability under the laws of another state and who fail to provide updated policy information when requested to do so will be declared an unregistered employer and subject to all the penalties contained in Title 51 RCW.

(b) Reporting. Trucking industry employers insuring their workers' compensation insurance liability with the Washington state fund shall keep and preserve all original time records/books including supporting information from

drivers' logs for a period of three calendar years plus three months.

Employers are to report actual hours worked, including time spent loading and unloading trucks, for each driver in their employ. For purposes of this section, actual hours worked does not include time spent during lunch or rest periods or overnight lodging.

Failure of employers to keep accurate records of actual hours worked by their employees will result in the department estimating work hours by dividing gross payroll wages by the state minimum wage for each worker for whom records were not kept. However, in no case will the estimated or actual hours to be reported exceed five hundred twenty hours per calendar quarter for each worker.

(c) Exclusions. Trucking industry employers meeting all of the following conditions are exempted from mandatory coverage.

(i) Must be engaged exclusively in interstate or foreign commerce.

(ii) Must have elected to cover their Washington workers on a voluntary basis under the Washington state fund and must have elected such coverage in writing on forms provided by the department.

(iii) After having elected coverage, withdrew such coverage in writing to the department on or before January 2, 1987.

If all the conditions set forth in (i), (ii), and (iii) of this subsection have not been met, employers must insure their workers' compensation insurance liability with the Washington state fund or under the laws of another state.

(d) Definitions. For purposes of interpretation of RCW 51.12.095(1) and administration of this section, the following terms shall have the meanings given below:

(i) "Agents" means individuals hired to perform services for the interstate or foreign commerce carrier that are intended to be carried out by the individual and not contracted out to others but does not include owner operators as defined in RCW 51.12.095(1).

(ii) "Contacts" means locations at which freight, merchandise, or goods are picked up or dropped off within the boundaries of this state.

(iii) "Doing business" means having any terminals, agents or contacts within the boundaries of this state.

(iv) "Employees" means the same as the term "worker" as contained in RCW 51.08.180.

(v) "Terminals" means a physical location wherein the business activities (operations) of the trucking company are conducted on a routine basis. Terminals will generally include loading or shipping docks, warehouse space, dispatch offices and may also include administrative offices.

(vi) "Washington" shall be used to limit the scope of the term "employees." When used with the term "employees" it will require the following test for benefit purposes (all conditions must be met).

- The individual must be hired in Washington or must have been transferred to Washington; and

- The individual must perform some work in Washington (i.e., driving, loading, or unloading trucks).

(4) **Forest, range, or timber land services—Industry rule.** Washington law (RCW 51.48.030) requires every

employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums due to the state for workers' compensation insurance coverage for their covered workers. In the administration of Title 51 RCW, and as it pertains to the forest, range, or timber land services industry, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums due to the state fund. The records so specified and required, shall be provided at the time of audit to any representative of the department who has requested them.

Failure to produce these required records within thirty days of the request, or within an agreed upon time period, shall constitute noncompliance of this rule and RCW 51.48.030 and 51.48.040. Employers whose premium computations are made by the department in accordance with (d) of this subsection are barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department on any period for which such records have not been kept, preserved, or produced for inspection as provided by law.

(a) General definitions. For purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Actual hours worked" means each workers' composite work period beginning with the starting time of day that the employees' work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by the employee.

(ii) "Work day" shall mean any consecutive twenty-four-hour period.

(b) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which the employment occurred:

(i) The name of each worker;

(ii) The Social Security number of each worker;

(iii) The beginning date of employment for each worker and, if applicable, the separation date of employment for each such worker;

(iv) The basis upon which wages are paid to each worker;

(v) The number of units earned or produced for each worker paid on a piece-work basis;

(vi) The risk classification(s) applicable to each worker;

(vii) The number of actual hours worked by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021. For purposes of chapter 296-17 WAC, this record must clearly show, by work day, the time of day the employee commenced work, and the time of day work ended;

(viii) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;

(ix) In the event a single worker's time is divided between two or more risk classifications, the summary contained in (b)(viii) of this subsection shall be further broken

down to show the actual hours worked in each risk classification for the worker;

(x) The workers' total gross pay period earnings;

(xi) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;

(xii) The net pay earned by each such worker.

(c) Business, financial records, and record retention.

Every employer is required to keep and preserve all original time records completed by their employees for a three-year period. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve a record of all check registers and canceled checks; and employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(d) Recordkeeping - Estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in (b) and (c) of this subsection, who fails to make, keep, and preserve such records, shall have premiums calculated as follows:

(i) Estimated worker hours shall be computed by dividing the gross wages of each worker for whom records were not maintained and preserved, by the state's minimum wage, in effect at the time the wages were paid or would have been paid. However, the maximum number of hours to be assessed under this provision will not exceed five hundred twenty hours for each worker, per quarter for the first audited period. Estimated worker hours computed on all subsequent audits of the same employer that disclose a continued failure to make, keep, or preserve the required payroll and employment records shall be subject to a maximum of seven hundred eighty hours for each worker, per quarter.

(ii) In the event an employer also has failed to make, keep, and preserve the records containing payroll information and wages paid to each worker, estimated average wages for each worker for whom a payroll and wage record was not maintained will be determined as follows: The employer's total gross income for the audit period (earned, received, or anticipated) shall be reduced by thirty-five percent to arrive at "total estimated wages." Total estimated wages will then be divided by the number of employees for whom a record of actual hours worked was not made, kept, or preserved to arrive at an "estimated average wage" per worker. Estimated hours for each worker will then be computed by dividing the estimated average wage by the state's minimum wage in effect at the time the wages were paid or would have been paid as described in (d)(i) of this subsection.

(e) Reporting requirements and premium payments.

(i) Every employer who is awarded a forest, range, or timber land services contract must report the contract to the department promptly when it is awarded, and prior to any work being commenced, except as provided in (e)(iii) of this subsection. Employers reporting under the provisions of (e)(iii) of this subsection shall submit the informational report with their quarterly report of premium. The report shall include the following information:

(A) The employers' unified business identification account number (UBI).

(B) Identification of the landowner, firm, or primary contractor who awarded the contract, including the name, address, and phone number of a contact person.

(C) The total contract award.

(D) Description of the forest, range, or timber land services work to be performed under terms of the contract.

(E) Physical location/site where the work will be performed including legal description.

(F) Number of acres covered by the contract.

(G) Dates during which the work will be performed.

(H) Estimated payroll and hours to be worked by employees in performance of the contract.

(ii) Upon completion of every contract issued by a landowner or firm that exceeds a total of ten thousand dollars, the contractor primarily responsible for the overall project shall, in addition to the required informational report described in (e)(i) of this subsection, report the payroll and hours worked under the contract, and submit payment for required industrial insurance premiums. In the event that the contracted work is not completed within a calendar quarter, interim quarterly reports and premium payments are required for each contract for all work done during the calendar quarter. The first such report and payment is due at the end of the first calendar quarter in which the contract work is begun. Additional interim reports and payments will be submitted each quarter thereafter until the contract is completed. This will be consistent with the quarterly reporting cycle used by other employers. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter.

(iii) A contractor may group contracts issued by a landowner, firm, or other contractor that total less than ten thousand dollars together and submit a combined quarterly report of hours, payroll, and the required premium payment in the same manner and periods as nonforestation, range, or timber land services employers.

(f) Out-of-state employers. Forest, range, or timber land services contractors domiciled outside of Washington state must report on a contract basis regardless of contract size for all forest, range, or timber land services work done in Washington state. Out-of-state employers will not be permitted to have an active Washington state industrial insurance account for reporting forest, range, or timber land services work in the absence of an active Washington forest, range, or timber land services contract.

(g) Work done by subcontract. Any firm primarily responsible for work to be performed under the terms of a forest, range, or timber land services contract, that subcontracts out any work under a forest, range, or timber land services contract must send written notification to the department prior to any work being done by the subcontractor. This notification must include the name, address, Social Security number, farm labor contractor number, (UBI) of each subcontractor, and the amount and description of contract work to be done by subcontract.

(h) Forest, range, or timber land services contract release - Verification of hours, payroll, and premium. The depart-

ment may verify reporting of contractors by way of an on-site visit to an employer's work site. This on-site visit may include close monitoring of employees and employee work hours. Upon receipt of a premium report for a finished contract, the department may conduct an audit of the firm's payroll, employment, and financial records to validate reporting. The entity that awarded the contract can verify the status of the contractors' accounts online at the department's website ([www.lni.wa.gov](http://www.lni.wa.gov)) or by calling the account manager. The landowner, firm, or contractor will not be released from premium liability until the final report for the contract from the primary contractor and any subcontractors has been received and verified by the department.

(i) Premium liability - Work done by contract. Washington law (RCW 51.12.070) places the responsibility for industrial insurance premium payments primarily and directly upon the person, firm, or corporation who lets a contract for all covered employment involved in the fulfillment of the contract terms. Any such person, firm, or corporation letting a contract is authorized to collect from the contractor the full amount payable in premiums. The contractor is in turn authorized to collect premiums from any subcontractor they may employ his or her proportionate amount of the premium payment.

To eliminate premium liability for work done by contract permitted by Title 51 RCW, any person, firm, or corporation who lets a contract for forest, range, or timber land services work must submit a copy of the contract they have let to the department and verify that all premiums due under the contract have been paid.

Each contract submitted to the department must include within its body, or on a separate addendum, all of the following items:

(i) The name of the contractor who has been engaged to perform the work;

(ii) The contractor's UBI number;

(iii) The contractor's farm labor contractor number;

(iv) The total contract award;

(v) The date the work is to be commenced; a description of the work to be performed including any pertinent acreage information;

(vi) Location where the work is to be performed;

(vii) A contact name and phone number of the person, firm, or corporation who let the contract;

(viii) The total estimated wages to be paid by the contractor and any subcontractors;

(ix) The amount to be subcontracted out if such subcontracting is permitted under the terms of the contract;

(x) The total estimated number of worker hours anticipated by the contractor and his/her subcontractors in the fulfillment of the contract terms;

(j) Reports to be mailed to the department. All contracts, reports, and information required by this section are to be sent to:

The Department of Labor and Industries  
Reforestation Team 8  
P.O. Box 44168  
Olympia, Washington 98504-4168

(k) Rule applicability. If any portion of this section is declared invalid, only that portion is repealed. The balance of the section shall remain in effect.

(5) **Logging and/or tree thinning—Mechanized operations—Industry rule.** The following subsection shall apply to all employers assigned to report worker hours in risk classification 5005, WAC 296-17A-5005.

(a) Every employer having operations subject to risk classification 5005 "logging and/or tree thinning - Mechanized operations" shall have their operations surveyed by labor and industries insurance services staff prior to the assignment of risk classification 5005 to their account. Annual surveys may be required after the initial survey to retain the risk classification assignment.

(b) Every employer assigned to report exposure (work hours) in risk classification 5005 shall supply an addendum report with their quarterly premium report which lists the name of each employee reported under this classification during the quarter, the Social Security number of such worker, the piece or pieces of equipment the employee operated during the quarter, the number of hours worked by the employee during the quarter, and the wages earned by the employee during the quarter.

(6) **Special drywall industry rule.**

(a) **What is the unit of exposure for drywall reporting?** Your premiums for workers installing and finishing drywall (reportable in risk classifications 0540, 0541, 0550, and 0551) are based on the amount of material installed and finished, not the number of hours worked.

The amount of material installed equals the amount of material purchased or taken from inventory for a job. No deduction can be made for material scrapped (debris). A deduction is allowed for material returned to the supplier or inventory.

The amount of material finished for a job equals the amount of material installed. No deduction can be made for a portion of the job that is not finished (base layer of double-board application or unfinished rooms).

Example: Drywall installation firm purchases 96 4' x 8' sheets of material for a job which includes some double-wall installation. The firm hangs all or parts of 92 sheets, and returns 4 sheets to the supplier for credit. Drywall finishing firm tapes, primes and textures the same job. Both firms should report 2,944 square feet (4 x 8 x 92) for the job.

(b) **I do some of the work myself. Can I deduct material I as an owner install or finish?** Yes. Owners (sole proprietors, partners, and corporate officers) who have not elected coverage may deduct material they install or finish.

When you as an owner install (including scrap) or finish (including tape and prime or texture) only part of a job, you may deduct an amount of material proportional to the time you worked on the job, considering the total time you and your workers spent on the job.

To deduct material installed or finished by owners, you must report to the department by job, project, site or location the amount of material you are deducting for this reason. You must file this report at the same time you file your quarterly report:

Total owner hours ÷ (owner hours + worker hours) = % of owner discount.

% of owner discount x (total footage of job – subcontracted footage, if any) = Total owner deduction of footage.

(c) **Can I deduct material installed or finished by subcontractors?** You may deduct material installed or taped by subcontractors you are not required to report as your workers. You may not deduct for material only scrapped or primed and textured by subcontractors.

To deduct material installed or taped by subcontractors, you must report to the department by job, project, site or location the amount of material being deducted. You must file this report at the same time you file your quarterly report. You must have and maintain business records that support the number of square feet worked by the subcontractor.

(d) **I understand there are discounted rates available for the drywall industry. How do I qualify for them?** To qualify for discounted drywall installation and finishing rates, you must:

(i) Have an owner attend two workshops the department offers (one workshop covers claims and risk management, the other covers premium reporting and recordkeeping);

(ii) Provide the department with a voluntary release authorizing the department to contact material suppliers directly about the firm's purchases;

(iii) Have and keep all your industrial insurance accounts in good standing (including the accounts of other businesses in which you have an ownership interest), which includes fully and accurately reporting and paying premiums as they come due, including reporting material deducted as owner or subcontractor work;

(iv) Provide the department with a supplemental report (filed with the firm's quarterly report) showing by employee the employee's name, Social Security number, the wages paid them during the quarter, how they are paid (piece rate, hourly, etc.), their rate of pay, and what work they performed (installation, scrapping, taping, priming/texturing); and

(v) Maintain accurate records about work you subcontracted to others and materials provided to subcontractors (as required by WAC 296-17-31013), and about payroll and employment (as required by WAC 296-17-35201).

The discounted rates will be in effect beginning with the first quarter your business meets all the requirements for the discounted rates.

**Note:** If you are being audited by the department while your application for the discounted classifications is pending, the department will not make a final decision regarding your rates until the audit is completed.

(e) **Can I be disqualified from using the discounted rates?** Yes. You can be disqualified from using the discounted rates for three years if you:

(i) Do not file all reports, including supplemental reports, when due;

(ii) Do not pay premiums on time;

(iii) Underreport the amount of premium due; or

(iv) Fail to maintain the requirements for qualifying for the discounted rates.

Disqualification takes effect when a criterion for disqualification exists.



Example: A field audit in 2002 reveals that the drywall installation firm underreported the amount of premium due in the second quarter of 2001. The firm will be disqualified from the discounted rates beginning with the second quarter of 2001, and the premiums it owed for that quarter and subsequent quarters for three years will be calculated using the nondiscounted rates.

If the drywall underwriter learns that your business has failed to meet the conditions as required in this rule, your business will need to comply to retain using the discounted classifications. If your business does not comply promptly, the drywall underwriter may refer your business for an audit.

If, as a result of an audit, the department determines your business has not complied with the conditions in this rule, your business will be disqualified from using the discounted classifications for three years (thirty-six months) from the period of last noncompliance.

**(f) If I discover I have made an error in reporting or paying premium, what should I do?** If you discover you have made a mistake in reporting or paying premium, you should contact the department and correct the mistake. Firms not being audited by the department that find errors in their reporting and paying premiums, and that voluntarily report their errors and pay any required premiums, penalties and interest promptly, will not be disqualified from using the discounted rates unless the department determines they acted in bad faith.

**(7) Safe patient handling rule.** The following subsection will apply to all hospital industry employers as applicable.

(a) Definitions. For the purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Hospital" means an "acute care hospital" as defined in (a)(ii) of this subsection, a "mental health hospital" as defined in (a)(iii) of this subsection, or a "hospital, N.O.C. (not otherwise classified)" as defined in (a)(iv) of this subsection.

(ii) "Acute care hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this rule does not include:

- Hotels, or similar places furnishing only food and lodging, or simply domiciliary care;
- Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more;
- Nursing homes, as defined and which come within the scope of chapter 18.51 RCW;
- Birthing centers, which come within the scope of chapter 18.46 RCW;
- Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW;
- Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from men-

tal illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(iii) "Mental health hospital" means any hospital operated and maintained by the state of Washington for the care of the mentally ill.

(iv) "Hospitals, N.O.C." means health care facilities that do not qualify as acute care or mental health hospitals and may be privately owned facilities established for purposes such as, but not limited to, treating psychiatric disorders and chemical dependencies or providing physical rehabilitation.

(v) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistance devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring and repositioning health care patients.

(vi) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(vii) "Department" means the department of labor and industries.

(b) Hospitals will report worker hours in the risk classification that describes the nature of their operations and either their level of implementation of, or need for, the safe patient handling program.

(c) A fully implemented safe patient handling program must include:

(i) Acquisition of at least the minimum number of lifts and/or appropriate equipment for use by lift teams as specified in chapters 70.41 and 72.23 RCW.

(ii) An established safe patient handling committee with at least one-half of its membership being front line, nonmanagerial direct care staff to design and recommend the process for implementing a safe patient handling program.

(iii) Implementation of a safe patient handling policy for all shifts and units.

(iv) Conducting patient handling hazard assessments to include such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas.

(v) Developing a process to identify appropriate use of safe patient handling policy based on a patient's condition and availability of lifting equipment or lift teams.

(vi) Conducting an annual performance evaluation of the program to determine its effectiveness with results reported to the safe patient handling committee.

(vii) Consideration, when appropriate, to incorporate patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date during new construction or remodeling.

(viii) Development of procedures that allow employees to choose not to perform or participate in patient handling activities that the employee believes will pose a risk to him/herself or to the patient.

(d) Department staff will conduct an on-site survey of each acute care and mental health hospital before assigning a risk classification. Subsequent surveys may be conducted to confirm whether the assigned risk classification is still appropriate.

(e) To remain in classification 6120-00 or 7200-00, a hospital must submit a copy of the annual performance evaluation of their safe patient handling program, as required by chapters 70.41 and 72.23 RCW, to the Employer Services Program, Department of Labor and Industries, P.O. Box 44140, Olympia, Washington, 98504.

**(8) Rules concerning work by Washington employers outside the state of Washington (extraterritorial coverage).**

(a) **General definitions.** For purposes of this section, the following terms mean:

(i) "Actual hours worked" means the total hours of each Washington worker's composite work period during which work was performed by the worker beginning with the time the worker's work day commenced, and ending with the quitting time each day excluding any nonpaid lunch period.

(ii) "Work day" means any consecutive twenty-four-hour period.

(iii) "Temporary and incidental" means work performed by Washington employers on jobs or at job sites in another state for thirty or fewer consecutive or nonconsecutive full or partial work days within a calendar year. Temporary and incidental work days are calculated on a per state basis. The thirty-day temporary and incidental period begins on January 1 of each year.

(iv) "Proof of out-of-state coverage" means a copy of a valid certificate of liability insurance for workers' compensation issued by:

(A) An insurer licensed to write workers' compensation insurance coverage in that state; or

(B) A state workers' compensation fund in the state in which the employer will be working.

**Note:** Most certificates are written for a one-year period. The employer must provide the department with a current certificate of liability insurance for workers' compensation covering all periods the employer works in another state. If the policy is canceled, the employer must provide the department with a current in-force policy.

(v) "Worker" means every person in this state who is engaged in the employment of an employer under Title 51 RCW whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer whether by way of manual labor or otherwise.

(vi) "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of Title 51 RCW, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers.

**(b) Does a Washington employer have to pay premiums in both states while Washington workers are tempo-**

**rarily working in another state?** A Washington employer must continue to pay Washington premiums for Washington workers performing temporary and incidental work in another state. If the Washington employer has Washington workers who work for more than thirty days in another state, that employer will not need to pay premiums in Washington for work in the other state during the calendar year, as long as that employer fulfills the following requirements:

(i) Provides the department with proof of out-of-state coverage for the Washington workers working out-of-state.

(ii) Keeps the policy continuously in force from the date the Washington employer's work exceeds the temporary and incidental period until the date the Washington employer no longer has Washington workers working in the other state. Failure to maintain a policy at the required level of workers' compensation coverage for the number of Washington workers working out-of-state may subject the Washington employer to payment of all premiums, penalties, and interest dues in the state of Washington.

(iii) For the first quarterly reporting period and all subsequent quarters during the same calendar year following the date the Washington employer's work exceeds the temporary and incidental period in the other state, the Washington employer must file a supplemental report of out-of-state work with their workers' compensation employer's quarterly report with the department. This supplemental report is available at (~~http://www.LNI.wa.gov/ClaimsIns/Insurance/File/ExtraTerritorial/Default.asp~~) [www.lni.wa.gov/OutofState](http://www.lni.wa.gov/OutofState).

(iv) Subitems (b)(i), (ii), and (iii) of this subsection must be met in each state in which the Washington employer has Washington workers working in excess of the temporary and incidental period.

**Note:** Workers' compensation coverage requirements vary widely among states. Washington employers should contact the regulatory agency in other states to determine the appropriate premium and coverage obligations in those states.

**(c) What if a Washington employer knows the Washington workers' work in another state will exceed the temporary and incidental period?** If the Washington employer knows their Washington workers will be working in another state in excess of the temporary and incidental period, the employer must immediately provide the department with proof of out-of-state coverage in order to avoid Washington premium liability for hours worked during the temporary and incidental period.

Reminder: The temporary and incidental period applies separately to each state in which the Washington employer worked.

**(d) What if a Washington employer anticipates its out-of-state work will exceed the temporary and incidental period, but that does not occur?** If a Washington employer did not pay workers' compensation premium to Washington during the temporary and incidental period, and at the end of the calendar year Washington workers of the Washington employer had worked fewer than thirty consecutive or nonconsecutive days in another state, by the filing of the fourth quarter report, the Washington employer must file amended reports for the calendar year. The employer may be required to pay Washington premiums, penalties, and inter-

est. The fourth quarter report is due by January 31 of the following year.

(e) **What records must the employer keep while employing Washington workers in another state?** In addition to filing the supplemental report of out-of-state work, the Washington employer is required to keep the same records that are kept for Washington workers working in Washington. The records are listed in WAC 296-17-35201 and must be provided at the time of audit to any authorized representative of the department who has requested them.

(f) **What reports does a Washington employer file to avoid paying Washington workers' compensation premiums when employing Washington workers in another state for work that exceeds temporary and incidental?** A Washington employer must submit the workers' compensation employer's quarterly report and a supplemental report of out-of-state work to the department for each state in which that employer has Washington workers performing work. The supplemental report must include the following information:

(i) The Washington employer's unified business identification number (UBI).

(ii) The Washington employer's department account identification number.

(iii) The Social Security numbers for those Washington worker(s) performing work out-of-state.

(iv) The last name, first name, and middle initial of those Washington worker(s) performing work out-of-state.

(v) The gross payroll paid during the quarter for those Washington worker(s) performing work out-of-state.

(vi) The Washington workers' compensation risk classification(s) that would have applied for each Washington worker performing work out-of-state.

(vii) The total number of hours that each Washington worker performed work out-of-state during the quarter.

(viii) In addition to completing the supplemental report of out-of-state work, the Washington employer must keep a record of all contracts awarded and worked under each state. Copies of pertinent records must be made available to auditors in the event of an audit.

(g) **Where do Washington workers file their workers' compensation claims if injured in the course of employment outside of Washington state?** Washington workers may file their claim in the state where they were injured or in Washington state.

Washington employers must inform their Washington workers of their right to file for workers' compensation benefits in Washington or the state of injury.

The cost of these claims, if accepted by the department and assigned to the Washington employer's account, will be used in the calculations that determine the employer's experience factor and the appropriate risk classification base rate.

(h) **If the Washington employer's work in another state exceeds the temporary and incidental period, may the Washington employer obtain a credit or refund for the temporary and incidental period that workers' compensation premiums were paid to Washington?** Yes, but only if the Washington employer:

(i) Obtained workers' compensation insurance for all hours worked in the other state during the calendar year;

(ii) Provides proof of out-of-state coverage;

(iii) Filed the appropriate quarterly reports with the department when due; and

(iv) Otherwise complied with all statutory and regulatory requirements of Washington state.

(9) **Horse racing industry rules.** These rules apply to persons licensed by the Washington horse racing commission (WHRC) and governed by WAC 260-36-250.

(a) **Who is responsible for paying industrial insurance premiums?**

(i) The trainer will be responsible to pay the industrial insurance premiums owed. Premiums will be paid to the WHRC monthly, at the end of the coverage month or before the trainer leaves the track taking his/her horses when leaving before the end of the coverage month. WHRC will submit premiums to the department of labor and industries on a quarterly basis. The employee must be properly licensed by the WHRC for the duties being performed. This includes all exercise riders and pony riders who need steward approval of their license application, whether at the track or at the farm.

(ii) Licensed trainers shall be assessed:

(A) One unit of premiums in classification 6625 for each licensed groom or assistant trainer employed at any one time;

(B) One unit of premiums in classification 6626 for licensed exercise riders and pony riders charged per stall for each day the trainer has a horse housed in a stall at a licensed track during a licensed meet; and

(C) One unit of premiums in classification 6627 for licensed exercise riders and pony riders for each calendar day a licensed exercise rider or pony rider works under contract for the trainer at a location other than at a licensed track during a licensed meet.

(b) **What does the trainer do when an employee leaves the job?** Trainers must notify the WHRC within forty-eight hours when any employee leaves their employ. If a trainer fails to notify the WHRC timely, the trainer will be responsible for the full premium payment until notification is made.

(c) **When are track employees covered under horse racing classifications?**

(i) Track employees are only covered on the grounds of a Washington race track during its licensed race meet and periods of training. The licensed race meet and periods of training apply to that period of time when the WHRC has authority on the grounds, including the period before the live race meet begins, when horses are exercised in preparation for competition, and through the end of the licensed race meet.

(ii) Covered track employees who are licensed exercise riders or pony riders may work off the grounds of a Washington race track, but only after obtaining a farm employee license. The trainer must notify the WHRC when the employee will be working off the grounds, so that the additional per-day farm employee premium can be calculated and assessed to the trainer for each day the track employee works off the grounds.

(iii) Employees working on the grounds of a Washington race track prior to or after this period must be covered as farm employees (classification 6627) to be able to make a claim against the horse racing industry account, or the trainer can

cover such employees under another account (classification 7302).

**(d) Who can be covered under the farm employee classification (6627)?**

(i) Licensed exercise riders and pony riders working at the farm must be assigned to a trainer and not the farm. Such employees cannot be assigned to the owner of the farm or training center unless the owner is licensed as a trainer.

(ii) Covered farm employees who are licensed exercise riders or pony riders may come to the Washington race track to assist the trainer during the live race meet and periods of training. As long as a farm employee is covered at the farm, and the trainer notifies the WHRC when the employee will be working at the track, the farm employee may work at the track without additional premium being owed.

**(e) Are employees covered while working in another state?**

(i) Trainers with employees from Washington may continue coverage when they are at another recognized race track in another state if the other jurisdiction has a reciprocal agreement with the state of Washington. The trainer must pay the premiums for grooms and assistant trainers in classification 6625, and for exercise riders and pony riders at the farm in the farm classification, 6627. For a list of states with reciprocal agreements with the state of Washington, see WAC 296-17-31009.

(ii) Trainers will need to continue to report Washington employees to the WHRC prior to the start of each month so an assessment can be made.

(iii) Failure to report, or to report correctly, may result in the trainer being referred to the stewards or the executive secretary of the WHRC for action.

(iv) Track employees hired in another state or jurisdiction are not Washington employees. They are to be covered in the state or jurisdiction they were hired in. It is the trainer's responsibility to obtain coverage in the other state or jurisdiction.

**(f) Must horse owners pay industrial insurance premiums in Washington?** Licensed owners shall be assessed one hundred fifty dollars per year for one hundred percent ownership of one or more horses. Partial owners shall be assessed prorated amounts of the one hundred fifty dollar fee. In no event shall a licensed owner be required to pay more than one hundred fifty dollars. This fee helps fund workers' compensation coverage for injured workers. It does not extend any coverage to owners.

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

**WAC 296-17-35204 Penalty assessments for employers who fail to register under Title 51 RCW.** (1) Any employer who has failed to secure payment of compensation for their workers covered under this title will be liable, subject to RCW 51.48.010, to a maximum penalty in a sum of ~~((five hundred))~~ one thousand dollars or in a sum double the amount of premiums due for the four quarters prior to securing payment of compensation under this title, whichever is greater, for the benefit of the medical aid fund. Beginning July 1, 2023, this penalty will be adjusted for inflation every

three years based on the consumer price index (Seattle, Washington area for urban wage earners and clerical workers, all items compiled by the Bureau of Labor Statistics of the United States Department of Labor).

(2) If an injury or occupational disease is sustained by a worker of an employer who has failed to secure payment of compensation under this title, that employer may also be liable for the cost of such an injury or occupational disease at the time the claim for benefits is accepted by the department.

For the purposes of this section only the cost of such claim will be determined as follows:

The case reserve value shall be determined by the nature of the injury or occupational disease, the part of the body affected and other factors which will impact the cost((;-)) including, but not limited to, age, education and work experience. The case reserve value will include actual costs paid to date and estimated future claim costs. No further adjustments or evaluations of the cost of the claim will be made for the purposes of this subsection after assessment for the cost of an injury or occupational disease is made by the department.

AMENDATORY SECTION (Amending WSR 14-24-049, filed 11/25/14, effective 1/1/15)

**WAC 296-17A-0101 Classification 0101.**

~~((0101-00 Land clearing: Highway, street and road construction, N.O.C.~~

~~Applies to contractors engaged in clearing right of ways for subsurface construction on a new or existing highway, street, or roadway project that is not covered by another classification (N.O.C.). The subsurface is the roadbed foundation consisting of dirt, sand, gravel and/or ballast which has been leveled and compressed. Unless the finished project is a compressed gravel road, the subsurface or sub base is constructed prior to any asphalt or concrete paving activities. Work contemplated by this classification involves the excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, earth excavation, cut and fill work, and bringing the roadbed to grade. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders, rollers, and dump trucks.~~

~~This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210; construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; bridge or tunnel construction including the abutments and approaches which is to be reported separately in classification 0201; felling of trees which is to be reported separately in the applicable logging classification; and logging road construction which is to be reported separately in classification 6902.~~

~~**0101-01 Land clearing: Airport landing strips, runways and taxi ways; alleys and parking lots**~~

~~Applies to contractors primarily engaged in clearing right of ways for subsurface construction on a new or existing airport landing strip, runway, and taxi way. This classification also includes clearing of right of ways for alley and park-~~

ing lot projects. The subsurface is the foundation consisting of dirt, sand, gravel and/or ballast which has been leveled and compressed. Unless the finished project is compressed gravel, the subsurface or sub base is constructed prior to any asphalt or concrete paving activities. Work contemplated by this classification involves the excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, earth excavation, cut and fill work, and bringing the roadbed or project site to grade. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders, rollers, and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210; construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; and felling of trees which is to be reported separately in the applicable logging classification.

#### **0101-02 Excavation work, N.O.C.**

Applies to contractors engaged in general excavation work for others that is not covered by another classification (N.O.C.). Work contemplated by this classification involves excavating or digging of earth to form the foundation hole such as for a wood frame or nonwood frame building and side sewer hookups (street to house) when performed as part of the excavation contract. Activities include, but are not limited to, excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, piling or pushing of earth, earth excavation, cut and fill work, backfilling, etc. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210 and felling of trees which is to be reported separately in the applicable logging classification.

#### **0101-03 Grading work, N.O.C.**

Applies to contractors engaged in various forms of grading work for others that are not covered by another classification (N.O.C.). Typical equipment used is a grader, but other equipment such as a bulldozer and a front end loader may also be used. Work contemplated by this classification includes, but is not limited to, leveling and grading lands, spreading dirt, sand, gravel and/or ballast to desired contour on farm lands or other tracts of land.

#### **0101-04 Land clearing, N.O.C.**

Applies to contractors engaged in general land clearing work that is not covered by another classification (N.O.C.). This classification includes, but is not limited to, excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, piling or pushing of earth to rearrange the terrain, earth excavation, cut and fill work, backfilling, and slope grooming. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders and dump trucks.

This classification excludes felling of trees which is to be reported separately in the applicable logging classification.

#### **0101-16 Railroad line: Construction, maintenance and repair, N.O.C.**

Applies to contractors engaged in the construction, maintenance and repair of railroad tracks not covered by another classification (N.O.C.), including the dismantling of track and the sale of salvaged track metal and ties. Work contemplated by this classification includes all operations on new or existing main lines, side tracks and spurs to industrial properties. This classification includes, but is not limited to, the laying of rock or ballast, laying of ties and track, installation of crossover frogs and switches, erection of switch stands and switch mechanism, erection of cattle guards, the placing of grade crossing planks, and similar activities related to the laying or relaying of railroad lines and also includes the dismantling of railroad main lines, side tracks and spurs to include track, ties, etc., and the subsequent storage and sale of salvaged material after the railroad line is dismantled.

This classification excludes asphalt surfacing/resurfacing and all concrete construction work which is to be reported separately in the applicable asphalt or concrete construction classification; logging railroad construction which is to be reported separately in classification 6902; and the construction, maintenance, or repair of an elevated railway which is to be reported separately in classification 0508.

#### **0101-17 Retaining wall: Construction or repair when done in connection with road, street and highway construction, N.O.C.**

Applies to contractors engaged in the construction or repair of retaining walls in connection with highway, street, or roadway projects that are not covered by another classification (N.O.C.). Retaining walls are often constructed to protect against potential problems such as earth slides or erosion of banks alongside a roadway or overpass. Work contemplated by this classification involves large scale excavation to contour a specific area of earth serving as a retaining wall. Activities include, but are not limited to, excavation, clearing, cut and fill work, backfilling, grading and slope grooming. Fill material used may include dirt, sand, stone or boulder. Equipment used by contractors subject to this classification includes, but is not limited to, scrapers, bulldozers, graders, backhoes and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210; concrete construction which is to be reported separately in the applicable concrete construction classification; construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; bridge or tunnel construction including the abutments and approaches which is to be reported separately in classification 0201; felling of trees by chain saw which is to be reported separately in classification 5001; logging road construction which is to be reported separately in classification 6902; and tunnels and approaches including lining, cofferdam work, shaft sinking and well digging with caissons which is to be reported separately in classification 0201.

#### **0101-37 Soil remediation**

Applies to establishments engaged in various types of remediation of soil contaminated with hazardous or toxic materials. Soil remediation can take place at the site of the contamination, or the contaminated soil may be hauled to another area for remediation. This classification also includes oil spill cleanup on land. Equipment used will include backhoes and front end loaders, as well as other types of dirt moving equipment.

The methods used for soil remediation include, but are not limited to:

— Bio-remediation: Contaminated soil is mixed with nutrients, sawdust, and various other additives. Naturally occurring bacteria in the soil break down the pollutants.

— Encapsulation: Contaminated soil is enclosed in some type of protective material to prevent drainage into surrounding soil.

— Excavation and hauling to an approved disposal site.

— Hot air vapor extraction: A burner unit is mounted on a trailer. Contaminated soil is arranged in layers on which an aluminum perforated pipe system is placed at 2' intervals, with a return pipe on the top layer. The soil stack is enclosed in visqueen, then hot air is pumped into the piping system which creates the steam that is recycled through the system and carries the contaminants back through the catalytic burner. Because of the catalytic action there are virtually no contaminants exhausted into the atmosphere.

— Soil vapor extraction: A series of holes are bored in the ground and vacuum pumps are used to suck the trapped gases which are drawn through carbon filters for decontamination.

— In situ vitrification: Graphite electrodes are fed into contaminated soil at a specified rate, where high voltage "melts" the organic and inorganic materials in the soil and forms a solid, glasslike substance.

— Land farming: Contaminated soil is deposited and spread out by a farm type spreader on an area of ground dedicated for this purpose. Chemical or manure fertilizer is added to provide a medium for naturally occurring bacteria to thrive. (This part is similar to bio remediation.) The soil is turned frequently by tillers or rototillers to assist in the aeration of the soil and in the growth of the bacteria. It may take anywhere from a month to two years to cleanse the soil, depending on the volatility of the contaminants. This method is used particularly with soil that is heavily contaminated with oil.

— Mobile incineration: Contaminated soil is loaded onto a conveyor belt which carries it into the hopper of a mobile unit mounted on a lowboy trailer. The unit is heated to burn off the contaminants in the soil. The mobile unit contains a type of dust collecting mechanism which filters out gases and other nondesirable elements so only clean air enters the atmosphere as the refreshed soil is produced. There are various methods of mobile incineration, but the general process and the end result are similar.

— Thermal desorption: A process similar to mobile incineration.

— Stabilization: Concrete landfill cells are created by mixing cement with refuse or other contaminated soil to stabilize the material and reduce the seepage into the surrounding soil.

This classification excludes oil spill cleanup involving diking or ditching work which is to be reported separately in classification 0201.

#### **0101-39 Pool or pond excavation Placement of pool or pond liners**

Applies to contractors engaged in the excavation of pools or ponds. Work contemplated by this classification involves excavating or digging of earth to form the hole such as for a swimming pool or pond. Work contemplated by this classification includes excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, piling or pushing of earth, earth excavation, cutting, filling or backfilling, etc. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, bulldozers, backhoes and dump trucks. This classification includes the placement of plastic pool and pond liners provided it is not in connection with concrete work.

This classification excludes concrete construction which is to be reported separately in the applicable concrete construction classification.

#### **0101-40 Mowing or chemical spraying of roadway median strips, roadsides, and/or power line right of ways**

Applies to contractors engaged in mowing, grooming, picking up litter, and chemical spraying of roadway median strips and edges, roadsides, and power line right of ways. Work contemplated by this classification includes spraying chemicals to control weeds and unwanted vegetation, tall grass, brush, brambles and tree seedlings as part of a roadway, roadside or right of way maintenance contract. Equipment used by contractors subject to this classification includes, but is not limited to, a variety of equipment such as backhoes, tractors, push mowers, brush mowers, weed eaters, as well as hand tools such as machetes, sickles, and pruners.

This classification excludes mowing and/or grooming of roadway median strips, roadsides, and power line right of ways when performed by employees of cities, counties, state agencies, or other municipalities which is to be reported in the classification applicable to the type of municipality performing the work; forest, timber or range land contract work which is to be reported separately in the classification applicable to the work being performed; and the felling and removal of trees by chain saw which is to be reported separately in classification 5001.

**Special note:** Classification 0301, "landscape construction," and classification 0308, "landscape maintenance," are not to be assigned to mowing and/or grooming of roadway median strips, roadsides, and power line right of ways.)

#### **0101-02 Excavation work and land clearing, N.O.C.: Pool or pond excavation, and placement of pool or pond liners**

##### **Applies to:**

Contractors engaged in general excavation work for other that is not covered by another classification (N.O.C.);

Clearing right of ways for subsurface construction on a new or existing highway, street or roadway project that is not covered by another classification (N.O.C.);

Clearing right of ways for subsurface construction on a new or existing airport landing strip, runway, and taxi way;

Clearing right of ways for alley and parking lot projects;  
General land clearing work that is not covered by  
another classification (N.O.C.); and  
Contractors engaged in the excavation of pools or ponds.

Note: The subsurface is the foundation consisting of dirt, sand, gravel and/or ballast which has been leveled and compressed. Unless the finished project is compressed gravel, the subsurface or sub base is constructed prior to any asphalt or concrete paving activities.

**Work activities include, but are not limited to:**

- Backfilling;
- Bringing the roadbed or project site to grade;
- Clearing or scraping land of vegetation;
- Cut and fill work;
- Earth excavation;
- Excavation or digging of earth to form the hole for pools, ponds, building foundations, and side sewer hookups (street to house) when performed as part of the excavation contract;
- Excavation of rocks and boulders;
- Grubbing;
- Piling or pushing of earth;
- Placement of plastic pool and pond liners not in connection with concrete work;
- Removal of tree stumps; and
- Slope grooming.

**Equipment used include, but are not limited to:**

- Backhoes;
- Bulldozers;
- Dump trucks;
- Frontend loaders;
- Graders;
- Rollers;
- Shovels; and
- Scrapers.

**Exclusions:**

- Worker hours engaged in asphalt surfacing or resurfacing on roadways are reported separately in classification 0210;
- Worker hours engaged in construction specialty services such as the installation of guardrails, lighting standards, and striping are reported separately in classification 0219;
- Worker hours engaged in bridge or tunnel construction, including the abutments and approaches are reported separately in classification 0201;
- Worker hours engaged in logging road construction are reported separately in classification 6902;
- Worker hours engaged in concrete construction are reported separately in the applicable concrete construction classification; and
- Worker hours engaged in felling of trees which must be reported separately in the applicable logging classification.

**Notes:**

- For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.
- Classification 0101 is a construction industry classification (see WAC 296-17-31013).

**0101-03 Grading work, N.O.C.**

**Applies to:**

Contractors engaged in various forms of grading work for others that are not covered by another classification (N.O.C.).

**Work activities include, but are not limited to:**

- Leveling and grading lands; and
- Spreading dirt, sand, gravel, and ballast to desired contour.

**Equipment used include, but are not limited to:**

- Bulldozers;
- Backhoes;
- Dump trucks;
- Frontend loaders;
- Graders; and
- Rollers.

**Notes:**

Classification 0101 is a construction industry classification (see WAC 296-17-31013).

**0101-16 Railroad line: Construction, maintenance and repair, N.O.C.**

**Applies to:**

Contractors engaged in the construction, maintenance and repair of railroad tracks not covered by another classification (N.O.C.), including the dismantling of track and the sale of salvaged track metal and ties.

**Work activities include, but are not limited to:**

- Laying of rock and ballast;
- Laying of ties and track;
- Installing crossover frogs and switches;
- Erecting switch stands and switch mechanisms;
- Erecting cattle guards;
- Placing grade crossing planks;
- Similar activities related to laying or relaying railroad lines; and
- Dismantling railroad main lines, side tracks, and spurs and the subsequent storage and sale of salvaged material after the railroad line is dismantled.

**Equipment used include, but are not limited to:**

- Anchor spreaders;
- Grinders;
- Hi-Rail trucks and other vehicles that can operate both on rail tracks and conventional roads;
- New track construction (NTC) machines;
- Rail spikers; and
- Tie equipment.

**Exclusions:**

- Worker hours engaged in asphalt surfacing/resurfacing and all concrete construction work are reported separately in the applicable asphalt and concrete construction classifications;
- Worker hours engaged in logging railroad construction are reported separately in classification 6902; and

• Worker hours engaged in construction, maintenance, or repair of an elevated railway are reported separately in classification 0508.

**Notes:**

• For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

• Classification 0101 is a construction industry classification (see WAC 296-17-31013).

**0101-17 Retaining wall: Construction or repair when done in connection with road, street and highway construction, N.O.C.**

**Applies to:**

Contractors engaged in the construction or repair of retaining walls in connection with highway, street, or roadway projects that are not covered by another classification (N.O.C.).

Note: Work contemplated by this classification involves large scale excavation to contour a specific area of earth serving as a retaining wall. Retaining walls are often constructed to protect against potential problems such as earth slides or erosion of banks alongside a roadway or overpass.

**Work activities include, but are not limited to:**

- Backfilling;
- Clearing;
- Concrete pouring;
- Contouring;
- Cut and fill work;
- Excavation;
- Grading;
- Large block placement; and
- Slope grooming.

**Materials used include, but are not limited to:**

- Boulders;
- Dirt;
- Sand; and
- Stone.

**Equipment used include, but are not limited to:**

- Backhoes;
- Bulldozers;
- Dump trucks;
- Graders; and
- Scrapers.

**Exclusions:**

• Worker hours engaged in asphalt surfacing or resurfacing on roadways are reported separately in classification 0210;

• Worker hours engaged in concrete construction are reported separately in the applicable concrete construction classification;

• Worker hours engaged in construction specialty services such as the installation of guardrails, lighting standards, and striping are reported separately in classification 0219;

• Worker hours engaged in bridge or tunnel construction including abutments and approaches, lining, cofferdam work, shaft sinking, and well digging with caissons are reported separately in classification 0201;

• Worker hours engaged in felling of trees which must be reported separately in the applicable logging classification; and

• Worker hours engaged in logging road construction are reported separately in classification 6902.

**Notes:**

• For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

• Classification 0101 is a construction industry classification (see WAC 296-17-31013).

**0101-37 Soil remediation**

**Applies to:**

Businesses engaged in various types of remediation of soil contaminated with hazardous or toxic materials, including oil spill cleanup on land.

Note: Soil remediation can take place at the site of the contamination, or the contaminated soil may be hauled to another area for remediation.

**Equipment used include, but are not limited to:**

- Backhoes;
- Bulldozers;
- Dump trucks;
- Frontend loaders;
- Other dirt moving equipment;
- Tillers; and
- Incinerators.

**Soil remediation methods used include, but are not limited to:**

• Bio-remediation: Contaminated soil is mixed with nutrients, sawdust, and various other additives. Naturally occurring bacteria in the soil break down the pollutants;

• Encapsulation: Contaminated soil is enclosed in some type of protective material to prevent drainage into surrounding soil;

• Excavation and hauling to an approved disposal site;

• Hot air vapor extraction: A burner unit is mounted on a trailer. Contaminated soil is arranged in layers on which an aluminum perforated pipe system is placed at 2 foot intervals, with a return pipe on the top layer. The soil stack is enclosed in visqueen, then hot air is pumped into the piping system which creates the steam that is recycled through the system and carries the contaminants back through the catalytic burner. Because of the catalytic action there are virtually no contaminants exhausted into the atmosphere;

• In situ vitrification: Graphite electrodes are fed into contaminated soil at a specified rate, where high voltage "melts" the organic and inorganic materials in the soil and forms a solid, glasslike substance;

• Land farming: Contaminated soil is deposited and spread out by a farm type spreader on an area of ground dedicated for this purpose. Chemical or manure fertilizer is added to provide a medium for naturally occurring bacteria to thrive. (This part is similar to bio-remediation.) The soil is turned frequently by tillers or rototillers to assist in the aeration of the soil and in the growth of the bacteria. It may take anywhere from a month to two years to cleanse the soil,



depending on the volatility of the contaminants. This method is used particularly with soil that is heavily contaminated with oil;

• Mobile incineration: Contaminated soil is loaded onto a conveyor belt which carries it into the hopper of a mobile unit mounted on a lowboy trailer. The unit is heated to burn off the contaminants in the soil. The mobile unit contains a type of dust-collecting mechanism which filters out gases and other nondesirable elements so only clean air enters the atmosphere as the refreshed soil is produced. There are various methods of mobile incineration, but the general process and the end result are similar;

• Soil vapor extraction: A series of holes are bored in the ground and vacuum pumps are used to suck the trapped gases which are drawn through carbon filters for decontamination;

• Stabilization: Concrete landfill cells are created by mixing cement with refuse or other contaminated soil to stabilize the material and reduce the seepage into the surrounding soil; and

• Thermal disabsorption: A process similar to mobile incineration.

#### **Exclusions:**

• Worker hours engaged in oil spill cleanup involving diking or ditching work are reported separately in classification 0201.

#### **Notes:**

• For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

• Classification 0101 is a construction industry classification (see WAC 296-17-31013).

#### **0101-40 Mowing or chemical spraying of roadway median strips, roadsides, and/or power line right of ways**

#### **Applies to:**

Contractors engaged in mowing, grooming, picking up litter, and chemical spraying of roadway median strips and edges, roadsides, and power line right of ways.

Note: Classification 0301, "landscape construction," and classification 0308, "landscape maintenance," are not to be assigned for mowing and/or grooming of roadway median strips, roadsides, and power line right of ways.

#### **Work activities include, but are not limited to:**

- Chemical spraying;
- Grooming;
- Mowing; and
- Picking up litter.

#### **Equipment used include, but are not limited to:**

- Backhoes;
- Brush mowers;
- Chemical sprayers;
- Machetes;
- Mowers;
- Pruners;
- Push mowers;
- Sickles;
- Tractors; and
- Weed eaters.

#### **Exclusions:**

• Mowing and grooming of roadway median strips, roadsides, and power line right of ways when performed by employees of cities, counties, state agencies, or other municipalities are classified in the classification applicable to the type of municipality performing the work;

• Worker hours engaged in forest, timber, and range land contract work are reported separately in the classification applicable to the work being performed; and

• Worker hours engaged in felling of trees which must be reported separately in the applicable logging classification.

#### **Notes:**

• For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

• Classification 0101 is a construction industry classification (see WAC 296-17-31013).

AMENDATORY SECTION (Amending WSR 16-14-085, filed 7/5/16, effective 1/1/17)

**WAC 296-17A-2903 Classification 2903.** ((Classification ~~2903~~ operations often represent the manufacturing steps between cutting raw logs in sawmills and a finished wood product that is manufactured from the intermediary wood products produced in this classification.

#### **Equipment/machinery common to classification 2903:**

- Air compressors and brushes;
- Boring machines;
- Chippers;
- Chisels;
- Conveyance equipment: Forklifts, loaders, over-head cranes, pallet jacks, trolley systems;
- Debarkers;
- Delivery trucks;
- Drills;
- Dryers;
- Jointer;
- Kilns;
- Lathes;
- Mills;
- Molders;
- Planers;
- Pneumatic nail guns;
- Presses;
- Routers;
- Sanders and blasters;
- Saws;
- Sorting screens;
- Sprayers, coaters, and spreaders; paint and glue sorting screens;
- Staple and screw guns.

#### **Classification 2903 excludes:**

• Worker hours engaged in repair or installation work away from the employers' premises, *except where noted otherwise in this rule*, which are reported separately in the applicable installation classification;

• Worker hours engaged in cutting, cultivating, or gathering of wood from forestland or tree farms, which are reported separately in the applicable classifications;

• Worker hours engaged in cutting raw logs and all other sawmill activities, which are reported separately in classifications ~~1002~~ and ~~5001~~.

Note: If records are not maintained for dividing worker hours between classifications, you must report these hours in the highest rated classification as described in WAC 296-17-31017(4).

For administrative purposes, classification ~~2903~~ is divided into the following subclassifications:

### ~~2903-00 Manufacturing wood chips, hog fuel, bark, bark flour, fire logs and laths~~

Applies primarily to wood products made from log by-products, such as bark, sawdust, chips, or other mill waste.

Products reported in classification 2903-00 may include, but are not limited to:

• Wood chips—Small pieces of wood, generally uniform in size and larger and coarser than sawdust, commonly used to make pulp, particleboard, stuffing for products such as animal bedding, and as smoker/barbecue fuel;

• Hog fuel—Made by grinding waste wood in a hog machine. The bits are larger and coarser than wood chips. Hog fuel can be used to fire boilers or furnaces;

• Bark—The outermost covering of a tree which is chopped into pieces of varying sizes, and is commonly used for landscaping;

• Bark flour—Finely ground bark used as a filler or extender in adhesives;

• Fire logs—Made by forming sawdust into a log about fifteen inches long and used for fuel;

• Lath—A narrow strip of wood commonly used to support shingle, slate or tile roofing, and as a fencing material;

• Excelsior—The curled shreds of wood used as a packing and stuffing material, or as a raw material in making various board products;

• Particleboard—A panel made from discrete particles of wood which are mixed with resins and formed into a solid board under heat and pressure.

Note: In addition to operations taking place in a permanent yard or shop, this classification includes operating portable chipping or debarking mills close to the wood source. Also refer to the overall classification 2903 description at the beginning of this rule.

### ~~2903-06 Manufacturing wood furniture stock~~

Applies to the manufacturing of wood furniture stock. Wood furniture stock is used to make finished furniture. The wood stock is rough cut, planed, or sanded and banded and/or palletized for shipping. It is then sold to other manufacturers as unfinished and unassembled pieces of lumber.

Note: Subclassification ~~2903-26~~ can also be considered for employers cutting and sizing lumber stock for other uses in addition to furniture manufacturing. Also refer to the overall classification 2903 description at the beginning of this rule.

### ~~2903-08 Manufacturing and assembly of wood doors, jambs, windows, sashes, stairs, molding and other miscellaneous millwork~~

Manufacturers assigned this classification mill their products from presized stock lumber, plywood, veneer, and particle board, but materials may also include cardboard, plastic laminates, glue, hardware, glass or metal, stains, oils, and paints.

Products reported in classification 2903-08 may include, but are not limited to:

• Doors—This includes wood doors of all sizes and shapes, for commercial or residential uses;

• Door/window components and grilles;

• Jambs;

• Mantels;

• Moldings—This includes all types of wood molding: Picture rails, chair rails, baseboards, and other architectural molding;

• Pillars;

• Sashes;

• Shutters;

• Skylights;

• Stairs and component parts for stairs—Risers, tread, balusters, hand rails, and posts;

• Turnings;

• Wainscot;

• Windows.

### ~~Excluded from subclassification 2903-08:~~

• Firms engaged in manufacturing wood furniture or easels, which are classified in ~~2905~~;

• Firms engaged in manufacturing wood cabinets, countertops, and fixtures, which are classified in ~~2907~~;

• Worker hours engaged in manufacturing metal doors, jambs, windows and sashes, which are reported separately in classification ~~3402~~.

Note: Lumber yards and building materials centers subject to classification ~~2909~~ that prehang doors are to be assigned classification ~~2903-08~~ in addition to their basic classification. Also refer to the overall classification 2903 description at the beginning of this rule.

### ~~2903-10 Manufacturing, assembly, or repair of wood containers and pallets; wood pallet dealer and recycle operations: Including repairs of pallets~~

Applies to the manufacturing, assembly, and repair of wood pallets and all other types of wood containers using lumber, plywood, nails, staples, screws, glue, and paint. It also includes repairing, reconditioning, or rebuilding pallets or containers, whether at the employers' facilities or at the customer's location.

Products reported in classification 2903-10 may include, but are not limited to:

• Boxes;

• Bins;

• Crates;

• Shooks (a shook is a set of unassembled wood components for assembling a packing box or barrel);

• Shipping containers;

• Storage containers.

*Note: Also refer to the classification 2903 description at the beginning of this rule.*

### ~~2903-12 Manufacturing and assembly of wood products not otherwise classified (N.O.C.)~~

Applies to the manufacturing or assembly of miscellaneous wood products which are not described by nor included under another classification. Items manufactured are a variety of sizes and require varying degrees of manufacturing and assembly by machine and/or hand, and are primarily made from lumber, plywood, laths, and particle board, but materials may also include acrylic, staples, screws, nails, hardware, stains, paints, oils, and lacquers.

Products reported in classification 2903-12 may include, but are not limited to:

- Attic vents;
- Barricades;
- Beams;
- Cable spools;
- Cross arms;
- Decks;
- Ends for paper rolls;
- Floats;
- Gazebos;
- Ladders;
- Lattice panels;
- Log home shells from dimensional log lumber;
- Playground equipment;
- Ridge cap shingles;
- Saunas;
- Shims;
- Signs;
- Slugs;
- Solariums;
- Utility poles;
- Wall panels.

#### **Special notes for manufacturing ridge cap shingles or shims:**

• Classification 2903 can be assigned only after a site visit. If a classification must be assigned prior to the field inspection, the employer will be assigned classification **1005-02**;

• Employers manufacturing shakes and/or shingles in addition to ridge caps are to report the manufacture of ridge caps in classifications **1002** or **1005**, depending on the processes.

#### **Excluded from subclassification 2903-12:**

• Firms engaged in manufacturing log home shells in a permanent yard using the traditional method of peeling the logs, using chainsaws to notch logs, and assembling the logs together, which are classified in **1003**;

• Worker hours engaged in **sawmill operations**, which are reported separately in classification **1002**;

• Worker hours engaged in building log homes on-site, which are reported separately in the applicable construction classifications;

• Firms engaged in manufacturing wood household and sporting goods, which are classified in **2909**;

• Firms engaged in manufacturing wood furniture or easels, which are classified in **2905**;

• Firms engaged in manufacturing wood cabinets, countertops and fixtures, which are classified in **2907**;

• Worker hours engaged in installation or removal of signs outside of buildings, which are reported separately in classification **0403**;

• Worker hours engaged in installation or removal of signs inside of buildings, which are reported separately in classification **0513**;

• Worker hours engaged in sign painting or lettering on the inside of buildings, and/or painting on or applying lettering to sign "backings" that are manufactured by others, which are reported separately in classification **4109**;

• Worker hours engaged in manufacturing metal or plastic signs, which are reported separately in the classification applicable to the manufacturing process.

Note: Also refer to the overall classification 2903 description at the beginning of this rule.

#### **2903-13 Manufacturing veneer products**

Applies to establishments principally engaged in the application of veneer. Veneer is a thin layer of superior quality or excellent grained wood. Veneer products, in this classification, are manufactured by gluing veneer to a core made of plywood, some other lower quality wood, or nonwood-based material. The veneer is then covered with protective overlays. The product is generally sold as a lumber substitute to manufacturers or contractors.

#### **Excluded from subclassification 2903-13:**

• Firms engaged in veneer and plywood manufacturing, which are classified in **2904**.

*Note: Also refer to the classification 2903 description at the beginning of this rule.*

#### **2903-21 Manufacturing wooden roof trusses**

Applies to manufacturing wooden roof trusses, and/or ceiling and floor joists from wood or wood products, such as dimensional lumber (usually 2" x 4", 2" x 6", and 2" x 8"), plywood, various fasteners and other hardware.

Note: Incidental delivery by the manufacturer to the construction site often includes lifting trusses onto the roof top with a boom lift mounted on the delivery truck. This is included in this classification. Also refer to the overall classification 2903 description at the beginning of this rule.

#### **2903-26 Lumber remanufacturing**

Lumber remanufacturing is the process of converting green wood (unseasoned wood) and often rough-cut cants (large slabs of wood cut from logs), plywood, or lumber into a more specialized or higher grade product. The remanufactured lumber is then sold to other manufacturers or contractors, who use it to make their products.

Products reported in classification 2903-26 may include, but are not limited to:

- Countertops;
- Decking;
- Fencing;
- Framing studs;
- Molding;
- Paneling;
- Railroad ties;
- Siding.

#### **Excluded from subclassification 2903-26:**

• Firms engaged in only kiln drying and/or treatment of lumber with preservatives, fire retardants, or insecticides, which are classified in **1003**.

Note: Also refer to the overall classification 2903 description at the beginning of this rule.

**2903-28 Manufacturing, repairing, or refinishing wood boats**

Applies to businesses that manufacture, repair, or refinish wooden boats.

**Excluded from subclassification 2903-28:**

• Worker hours engaged in manufacturing or repairing fiberglass boats, which are classified in **3511**;

• Worker hours engaged in manufacturing or repairing metal boats, which are classified in the applicable metal manufacturing classification;

• Firms that do not manufacture boats but are engaged in mechanical, engine, electrical, vinyl and glass boat work or installation of boat accessories, as well as detailing of all types of boats, which are classified in **3414**.

Note: Also refer to the overall classification 2903 description at the beginning of this rule.)

**2903-00 Manufacturing wood chips, hog fuel, bark, bark flour, fire logs or laths**

**Applies to:**

Businesses that manufacture wood products primarily made from log by-products.

In addition to operations taking place in a permanent yard or shop, this classification includes operating portable chipping or debarking mills close to the wood source.

**Products manufactured include, but are not limited to:**

• Wood chips - Small pieces of wood, generally uniform in size and larger and coarser than sawdust, commonly used to make pulp, particleboard, stuffing for products such as animal bedding, and as smoker/barbecue fuel;

• Hog fuel - Made by grinding waste wood in a hog machine. The bits are larger and coarser than wood chips. Hog fuel can be used to fire boilers or furnaces;

• Bark - The outermost covering of a tree which is chopped into pieces of varying sizes, and is commonly used for landscaping;

• Bark flour - Finely ground bark used as a filler or extender in adhesives;

• Fire logs - Made by forming sawdust into a log about fifteen inches long and used for fuel;

• Lath - A narrow strip of wood commonly used to support shingle, slate or tile roofing, and as a fencing material;

• Excelsior - The curled shreds of wood used as a packing and stuffing material, or as a raw material in making various board products; and

• Particleboard - A panel made from discrete particles of wood which are mixed with resins and formed into a solid board under heat and pressure.

**Materials used include, but are not limited to:**

- Bark;
- Chips;
- Glue;
- Logs;

• Sawdust; and

• Other mill waste.

**Equipment used include, but are not limited to:**

• Chippers;

• Conveyance equipment: Forklifts, loaders, overhead cranes, pallet jacks, and trolley systems;

• Debarkers;

• Delivery trucks;

• Dryers;

• Kilns;

• Loaders;

• Mills;

• Molders;

• Presses;

• Saws; and

• Sorting screens.

**Exclusions:**

• Worker hours cutting, cultivating, or gathering wood from forestland or tree farms are reported separately in the applicable classifications.

• Worker hours cutting raw logs and other sawmill activities are reported separately in classifications 1002 and 5001.

**Notes:**

• For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**2903-08 Manufacturing or assembly of wood doors, jambs, windows, sashes, stairs, molding or other miscellaneous millwork**

**Applies to:**

Businesses that manufacture and assemble wood doors, jambs, windows, sashes, stairs, molding and other millwork.

**Products manufactured include:**

• Doors - This includes wood doors of all sizes and shapes, for commercial or residential uses;

• Door/window components and grilles;

• Jambs;

• Mantels;

• Moldings - This includes all types of wood molding: Picture rails, chair rails, baseboards, and other architectural molding;

• Pillars;

• Sashes;

• Shutters;

• Skylights;

• Stairs and component parts for stairs - Risers, tread, balusters, hand rails, and posts;

• Turnings;

• Wainscot; and

• Windows.

**Materials used include, but are not limited to:**

• Cardboard;

• Dimensional lumber;

• Glass;

• Glue;

• Hardware;

- Metal;
- Oils;
- Paints;
- Particle board;
- Plastic laminates;
- Plywood;
- Stains; and
- Veneer.

**Equipment used include, but are not limited to:**

- Air compressors and brushes;
- Boring machines;
- Chippers;
- Chisels;
- Conveyance equipment: Forklifts, loaders, overhead cranes, pallet jacks, and trolley systems;
- Delivery trucks;
- Drills;
- Dryers;
- Jointers;
- Kilns;
- Lathes;
- Mills;
- Molders;
- Planers;
- Pneumatic nail guns;
- Presses;
- Routers;
- Sanders and blasters;
- Saws;
- Sprayers, coaters, and spreaders; and
- Staple and screw guns.

**Exclusions:**

- Manufacturing wood furniture or caskets is classified in 2905.
- Manufacturing wood cabinets, countertops, and fixtures is classified in 2907.
- Worker hours manufacturing metal doors, jambs, windows and sashes are reported separately in classification 3402.
- Worker hours repairing or installing products manufactured or assembled in this class away from the business's premises are reported separately in the applicable installation or repair classification.
- Worker hours cutting, cultivating, or gathering wood from forestland or tree farms are reported separately in the applicable classifications.
- Worker hours cutting raw logs and other sawmill activities are reported separately in classifications 1002 and 5001.

**Notes:**

- For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.
- Lumber yards and building materials centers subject to classification 2009 that prehang doors are assigned classification 2903-08 in addition to their basic classification.

**2903-10 Manufacturing, assembly, or repair of wood containers or pallets; wood pallet dealer or recycle operations: Including repairs of pallets**

**Applies to:**

Businesses that manufacture, assemble, and repair wood pallets and all other types of wood containers.

Businesses that repair, recondition, or rebuild wood pallets or containers at the business's facilities or at the customer's location.

**Products manufactured include, but are not limited to:**

- Bins;
- Boxes;
- Crates;
- Shipping containers;
- Shooks (a shook is a set of unassembled wood components for assembling a packing box or barrel); and
- Storage containers.

**Materials used include, but are not limited to:**

- Glue;
- Lumber;
- Nails;
- Paint;
- Plywood;
- Screws; and
- Staples.

**Equipment used include, but are not limited to:**

- Air compressors and brushes;
- Chippers;
- Conveyance equipment: Forklifts, loaders, overhead cranes, pallet jacks, and trolley systems;
- Delivery trucks;
- Drills;
- Dryers;
- Jointers;
- Kilns;
- Mills;
- Planers;
- Pneumatic nail guns;
- Routers;
- Sanders and blasters;
- Saws;
- Sprayers, coaters, and spreaders; and
- Staple and screw guns.

**Exclusions:**

- Worker hours cutting, cultivating, or gathering wood from forestland or tree farms are reported separately in the applicable classifications.
- Worker hours cutting raw logs and other sawmill activities are reported separately in classifications 1002 and 5001.

**Notes:**

- For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**2903-12 Manufacturing or assembly of wood products not otherwise classified (N.O.C.)**

**Applies to:**

Businesses that manufacture or assemble miscellaneous wood products that are not described by or included in another classification. Items manufactured are a variety of

sizes and require varying degrees of manufacturing and assembly by machine or hand.

**Products manufactured include:**

- Attic vents;
- Barricades;
- Beams;
- Cable spools;
- Cross arms;
- Docks;
- Ends for paper rolls;
- Floats;
- Gazebos;
- Ladders;
- Lattice panels;
- Log home shells from dimensional-log lumber;
- Playground equipment;
- Remanufactured lumber - Lumber remanufacturing is the process of converting green wood (unseasoned wood), rough-cut cants (large slabs of wood cut from logs), plywood, or lumber into a more specialized or higher grade product;
  - Ridge cap shingles or shims;
  - Saunas;
  - Signs;
  - Slugs;
  - Solariums;
  - Utility poles;
  - Veneered products - Veneered products are made by gluing veneer to cores made of plywood, other lower quality wood, or nonwood based material and are generally sold as a lumber substitute;
    - Wall panels; and
    - Wood furniture stock - Wood furniture stock is sold to other manufacturers as unfinished and unassembled pieces of lumber used to make finished furniture.

**Materials used include, but are not limited to:**

- Acrylic;
- Hardware;
- Lacquers;
- Laths;
- Lumber;
- Nails;
- Oils;
- Paints;
- Particle board;
- Plastic laminates;
- Plywood;
- Screws;
- Stains;
- Staples; and
- Wood veneer.

**Equipment used include, but are not limited to:**

- Air compressors and brushes;
- Boring machines;
- Chippers;
- Chisels;
- Conveyance equipment: Forklifts, loaders, overhead cranes, pallet jacks, and trolley systems;
  - Delivery trucks;
  - Drills;

- Dryers;
- Jointers;
- Kilns;
- Lathes;
- Mills;
- Molders;
- Planers;
- Pneumatic nail guns;
- Presses;
- Routers;
- Sanders and blasters;
- Saws;
- Sprayers, coaters, and spreaders; and
- Staple and screw guns.

**Exclusions:**

- Manufacturing log home shells in a permanent yard using the traditional method of peeling the logs, using chain-saws to notch logs, and assembling the logs together is classified in 1003.
  - Worker hours engaged in sawmill operations are reported separately in classification 1002.
  - Worker hours building log homes on-site are reported separately in the applicable construction classifications.
  - Manufacturing wood household or sporting goods is classified in 2909.
  - Manufacturing wood furniture or caskets is classified in 2905.
  - Manufacturing wood cabinets, countertops, and fixtures is classified in 2907.
  - Manufacturing wood veneer or plywood is classified in 2904.
    - Worker hours installing or removing signs outside of buildings are reported separately in classification 0403.
    - Worker hours installing or removing signs inside of buildings are reported separately in classification 0513.
    - Worker hours painting or lettering signs on the inside of buildings or painting on or applying lettering to sign "backings" that are manufactured by others are reported separately in classification 4109.
    - Worker hours manufacturing metal or plastic signs are reported separately in the classification applicable to the manufacturing process.
    - Businesses only kiln drying and/or treating lumber with preservatives, fire retardants, or insecticides are classified in 1003.
    - Worker hours repairing or installing products manufactured or assembled in this class away from the business's premises are reported separately in the applicable installation or repair classification.
    - Worker hours cutting, cultivating, or gathering wood from forestland or tree farms are reported separately in the applicable classifications.
    - Worker hours cutting raw logs and other sawmill activities are reported separately in classifications 1002 and 5001.
- Notes:**
- For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

• Classification 2903 can only be assigned for ridge cap shingles or shims after a site visit. If a classification must be assigned prior to the site visit, the business will be assigned classification 1005-02. Businesses manufacturing shakes or shingles in addition to ridge caps report the manufacture of ridge caps in classification 1002 or 1005, depending on the processes.

### **2903-21 Manufacturing wooden roof trusses**

#### **Applies to:**

Businesses that manufacture wooden roof trusses, ceiling joists, or floor joists from wood or wood products.

#### **Products manufactured include:**

- Ceiling joists;
- Floor joists; and
- Roof trusses.

#### **Materials used include, but are not limited to:**

- Dimensional lumber (usually 2" x 4", 2" x 6", and 2" x 8");
- Hardware;
- Plywood; and
- Various fasteners.

#### **Equipment used include, but are not limited to:**

- Air compressors and brushes;
- Assembly tables;
- Conveyance equipment: Forklifts, loaders, overhead cranes, pallet jacks, and trolley systems;
- Delivery trucks;
- Mills;
- Planers;
- Pneumatic nail guns;
- Roller presses;
- Saws; and
- Staple and screw guns.

#### **Exclusions:**

• Worker hours repairing or installing products manufactured or assembled in this class away from the business's premises are reported separately in the applicable installation or repair classification.

• Worker hours cutting, cultivating, or gathering wood from forestland or tree farms are reported separately in the applicable classifications.

• Worker hours cutting raw logs and other sawmill activities are reported separately in classifications 1002 and 5001.

#### **Notes:**

• For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

### **2903-28 Manufacturing, repairing, or refinishing wooden boats**

#### **Applies to:**

Businesses that manufacture, repair, or refinish wooden boats.

#### **Products manufactured include:**

- Wooden boats.

#### **Materials used include, but are not limited to:**

- Dimensional lumber;
- Glue;
- Hardware;
- Lacquers;
- Oils;
- Paints;
- Plywood; and
- Stains.

#### **Equipment used include, but are not limited to:**

- Drills;
- Jointers;
- Lathes;
- Planers;
- Sanders; and
- Saws.

#### **Exclusions:**

• Worker hours manufacturing or repairing fiberglass boats are reported separately in classification 3511.

• Worker hours manufacturing or repairing metal boats are reported separately in the applicable metal manufacturing classification.

• Businesses that do not manufacture boats but do mechanical, engine, electrical, vinyl or glass work on boats, install boat accessories, or detail all types of boats are classified in 3414.

• Worker hours cutting, cultivating, or gathering wood from forestland or tree farms are reported separately in the applicable classifications.

• Worker hours cutting raw logs and other sawmill activities are reported separately in classifications 1002 and 5001.

#### **Notes:**

• For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

### **WAC 296-17A-3701 Classification 3701.**

#### **~~(3701-03 Ammonia, nitrogen and ammonium nitrate; Manufacturing~~**

Applies to establishments engaged in the manufacture of ammonia, nitrogen and ammonium nitrate. Ammonia is a colorless gas used as a component in fertilizer, medicines and cleaning compounds manufacturing. The manufacturing process involves combining hydrogen and nitrogen gases with a catalyst which causes a reaction between the two gases when heated in a generator. Ammonium nitrate is a crystalline compound used mainly in fertilizers, explosives and propellants. The manufacturing process involves combining ammonia and nitric acid in a reactor. Nitrogen is a colorless gas that is obtained from the air and processed by compressing air in a pressurized tank, removing impurities, and separating nitrogen and oxygen through heating.

#### **3701-04 Nitrate recovery from X-ray and photo films**

Applies to establishments engaged in recovering nitrate or silver from X-ray and photo films. The recovery process

involves placing the films in developing solutions, ionizing the solution and separating the elements.

### **3701-05 Dye and chemicals: Manufacturing**

Applies to establishments engaged in the manufacture of all types of dyes and in the manufacture of dyes and chemicals that are used exclusively for tinting candles. Organic and inorganic compounds such as, but not limited to, phenols, alcohols, caustics, acids, salts and gases are used in the manufacturing process. Manufacturing methods include, but are not limited to, weighing raw materials to specifications and pumping them into vats where they are heated, agitated and cooled. They are then filtered through presses, dried in ovens, ground into a powder, and then packaged. Liquid or paste forms of dye go through the same process with the exception of the drying and grinding operations.

### **3701-06 Chemicals, N.O.C.: Manufacturing by nitration, alkylation and oxidation processes**

Applies to establishments engaged in the manufacture of chemicals not covered by another classification (N.O.C.) using a nitration, alkylation or oxidation process. Nitration involves the combining of nitrate with an organic compound to produce nitrobenzenes used in solvents, fertilizers and acids. Alkylation involves combining alkyls with other substances to form products used in the production of paper pulp, hard soap and petroleum products. Oxidation involves the combining of oxygen with other substances to produce products such as, but not limited to, hydrogen peroxide, protective metal coatings, and pharmaceutical preparations.

This classification excludes the manufacture of ammonia or nitrogen which is to be reported separately in classification 3701-03 and the manufacture of oxygen, hydrogen, acetylene gas, carbonic acid gas, or acids which is to be reported separately in classification 3701-10.

### **3701-07 Chemical mixing, blending and repackaging only: Fireworks manufacturing**

Applies to establishments engaged exclusively in mixing, blending or repackaging chemicals; it does *not* apply to the manufacture of ingredients for the mixing operation. The product may be mixed by hand or through a mechanical process. The equipment used by establishments covered by this classification is limited to storage tanks, mixing or blending screens and vats, filling and packaging machines and miscellaneous equipment such as fork lifts and trucks. Fireworks are assembled by hand and using hand operated tools.

This classification excludes establishments involved in more than a mixing, blending or repackaging operation which are to be reported separately in the appropriate chemical manufacturing classification, and technicians who set up and carry out fireworks displays who are to be reported separately in classification 6207.

### **3701-08 Cosmetics: Manufacturing**

Applies to establishments engaged in the manufacture of cosmetics such as, but not limited to, soap, shampoo, hair conditioners, skin moisturizers, baby powder, lipstick, nail polish, bath oil, bath salts, and various personal care creams, gels or lotions. The process involves the mixing of premanufactured ingredients, using equipment such as storage tanks, mixers, heating devices, bottling/packaging/labeling equip-

ment, and laboratory equipment for product development and quality control.

This classification excludes the manufacturing of the ingredients used in the mixing of the cosmetics.

### **3701-09 Drug, medicine, or pharmaceutical preparation: Manufacturing**

Applies to establishments engaged in the manufacture of pharmaceuticals including drugs, medicines, and preparations such as, but not limited to, tablets, pills, ointments, liquids, and powders. Processes contemplated by this classification include mixing or blending of the base medicinal ingredients and additives such as, but not limited to, sugars, starches, flavorings, and waxes used for coating tablets. Compounds are then pulverized, distilled, heated and/or dried.

This classification excludes:

- The manufacture or harvest of the ingredients used in the manufacture of the pharmaceuticals;
- Retail compounding pharmacy stores which are to be reported in 6406-16.

### **3701-10 Oxygen, hydrogen, acetylene gas, carbonic acid gas: Manufacturing**

Applies to establishments engaged in the manufacture of oxygen, hydrogen, acetylene gas, carbonic acid gas, dry ice, or acid. The manufacture of oxygen and hydrogen involves the recovery of these gaseous elements from the air by compression, expansion and cooling operations until it liquefies. The liquid air then goes to a fractionator where the oxygen is separated from the hydrogen along with other gases such as neon and helium. Acetylene is a highly flammable but non-toxic gas that is manufactured by reacting calcium carbide with water in a pressure generator which combines carbon and lime to form the end product. Carbonic acid gas, also known as phenol, is a caustic poisonous gas used in manufacturing resins, plastics, and disinfectants. The manufacture of phenol involves a compression and refrigeration process.

### **3701-11 Alcohol: Manufacturing, distilling, N.O.C.**

Applies to establishments engaged in manufacturing or distilling nonspirituous alcohol not covered by another classification (N.O.C.). Types of alcohol include, but are not limited to, methanol (wood alcohol), ethanol (grain alcohol) or denatured alcohol (combination of methanol and ethanol). Products produced include, but are not limited to, solvents, processing materials, germicides, antiseptics, or materials intended to be used as an ingredient in other products such as varnish and shellac. The processes for the production are varied depending on the type of alcohol and end product but all use a distillation process which involves the heating of liquids and subsequent condensation of vapors to purify or separate a substance contained in the original wood or grain product.

This classification excludes the manufacture of spirituous liquor which is to be reported separately in classification 3702 and gasohol distilling or refining which is to be reported separately in classification 3407.

### **3701-13 Polish, dressing, or ink: Manufacturing**

Applies to establishments engaged in the manufacture of polish, dressings, or ink. Polish and dressing products



include, but are not limited to, polish or dressings for shoes, leather, furniture, automobiles or metal. The ingredients and processes for polish and dressing manufacturing vary, depending on the end product. Typical ingredients include but are not limited to oils, waxes, resins, detergents, methanol, solvents, water and coloring. The process may involve a simple mixing operation or a more involved process involving heating or cooking and molding into a cake or stick form. Typical equipment includes, but is not limited to, weighing and measuring scales, mixers, stoves, molding apparatus, automatic filling, labeling, wrapping and packaging machines. Ink manufacturing covers all types of ink including, but not limited to, newspaper, book, magazine, and writing ink. The process involves the cooking of oils and resins which produces a resin. Pigments and dyes are blended into the resin mixture and diluted to proper consistency.

This classification excludes the manufacture of candles, crayons, and adhesives which is to be reported separately in classification 3701-25.

### **3701-14 Extract: Manufacturing, including distillation of essential oils**

Applies to establishments engaged in the manufacture of extract including the distillation of essential oils. Extracts are concentrated forms of an essential component of a food or a plant. Extracts include, but are not limited to, flavorings, perfume oils, sachet powders, ingredients for skin conditioners and hop extracts used in the brewing of beer. The process involves extracting flavorings or oils from various plants, herbs or fruit peelings by pressing, cooking, steaming or distillation. The extracts may be mixed or blended with other extracts for strength, consistency or color and are then bottled or canned. Typical equipment includes, but is not limited to, steam cookers, presses, distillation apparatus, filters, grinders, tanks, vats and filling, packaging and labeling machines.

This classification excludes perfume manufacturing which is to be reported separately in classification 3701-15; mint distilling which is to be reported separately in classification 3701-17; and hop pellet manufacturing which is to be reported separately in classification 2101.

### **3701-15 Perfume: Manufacturing, including distillation of essential oils**

Applies to establishments engaged in the manufacture of perfumes including the distillation of essential oils. Perfumes may be used as a personal fragrance or by other manufacturers such as in the making of scented candles. The process typically involves the distillation, cooking, grinding, compounding, drying, blending, or liquidizing of ingredients. These ingredients may include, but not be limited to, extracts, oils, colors and binders.

This classification excludes the manufacture of candles which is to be reported separately in classification 3701-25.

### **3701-17 Mint distilling**

Applies to establishments engaged in the distillation of mint. The process may begin with mint oil that is purchased from others or with the distillation of the mint leaves into mint oil. The mint leaves are chopped and blown into a mint steamer which lifts the moisture and oils from the mint. The resultant steam then goes through a series of condensation lines. Water is added to force the oil to the top of the liquid.

The mint oil is heated for purification and to lessen the fragrance. Various mint oils may then be blended together to produce different types such as spearmint and peppermint. The product is then packaged in stainless steel or epoxy lined barrels.

This classification excludes the raising and harvesting of mint which is to be reported separately in classification 4811.

### **3701-20 Salt, borax or potash producing or refining**

Applies to establishments engaged in the production of or refining of salt, borax or potash. This classification includes the manufacture of common salt used in chemical and food processing, borax which is used in the manufacture of glass, glazes, soap, and boric acid, and potash which is used in fertilizer. Salt ores received from others are dissolved in water to produce a brine of the desired concentration. It is refined into common salt by adding caustic soda and soda ash. Potash is refined by adding an amine to the brine which causes the salts to float to the surface where they are skimmed off. Borax is made by separating it from the potash by a rapid cooling process. All three of these products are then fully evaporated by heating in a partial vacuum to produce crystals or granules which are then dried.

This classification excludes the production of raw materials used in the manufacture of these products.

### **3701-21 Serum, antitoxin or virus: Manufacturing**

Applies to establishments engaged in the manufacture of serums, antitoxins, or viruses. The process involves considerable microscopic laboratory work as well as working with animals. The animals are injected with bacteria and viruses, periodically bled and eventually killed. The killing of the animals is included in this classification as it is incidental and necessary to perform the operation to extract the serum from the glands and to separate the red blood cells from the blood.

This classification excludes the manufacture of other drugs or medicines which are to be reported separately in classification 3701-09.

### **3701-22 Paint, varnish or lacquer: Manufacturing**

Applies to establishments engaged in the manufacture of paint, varnish, lacquer, enamel, shellac, paint removers and thinners. The paint manufacturing process involves a series of mixing and grinding operations. The pigments (solids) are then blended with oils or resins (liquids). A paint extender may also be added at this point. The paint is then pumped into filling machines where various sized containers are filled and then labeled. Lacquer, varnish, enamel, shellac and paint removers and thinners vary in the ingredients used but the process is similar to that of paint manufacturing in that it is mainly a mixing operation. Varnishes involve a cooking process which is generally not used in the manufacture of the other products included in this classification.

This classification excludes the production of raw materials used in the manufacture of these products.

### **3701-23 Putty or synthetic resin: Manufacturing**

Applies to establishments engaged in the manufacture of putty or synthetic resin. Putty is a finely powdered chalk mixed with linseed oil. The main ingredients for both putty and synthetic resins are ground chalk, limestone and/or cal-

ite. The process for both products involves grinding and mixing operations.

This classification excludes the production of the raw materials used in the manufacture of these products.

**3701-25 Candle, crayon, and paste or glue: Manufacturing**

Applies to establishments engaged in the manufacture of candles, crayons, and synthetic adhesives such as paste or glue. Raw materials used for making candles include, but are not limited to, beeswax, paraffin, stearin, wicks and colors which are received from others. The wax is heated in kettles or similar devices into which the wicks are dipped either by hand or by dipping equipment which can be either manual or automated. A fragrance may be added to the melted wax for scented candles. When the wax has attained the desired shape and size it is hung on lines to dry. The wicks are then cut and the candles are placed in molds to shape the base of the candle. Color is then added by dipping either by hand for specialized designs or by machine for solid colors. The candles are then inspected, wrapped, packaged and labeled. Crayons use the same ingredients that are used in making candles with the exception of the wicks. The type of wax used in making crayons determines the hardness. The wax is melted in a kettle or similar device and poured into molds for shaping and cooling. The crayons are then inspected, packaged and labeled. Synthetic paste or glue is made from powder or granule arabic gum or modified starch which is received from others along with preservatives and the containers and caps. The process involves mixing and cooking the ingredients in steel tanks and pumping the product to a filling area where it is packaged, labeled and capped.

This classification excludes the manufacture of polish, dressing, or ink which is to be reported separately in classification 3701-13; the manufacture of glue from animal substances which is to be reported separately in classification 4301; and the production of raw materials used in the manufacture of these products.

**3701-27 Hazardous/toxic material: Repackaging for disposal**

Applies to establishments engaged in *identifying and repackaging* hazardous/toxic materials for disposal. This classification is distinguished from classification 4305-20, in that classification 3701-27 applies to the *identifying and repackaging for disposal* of such materials as drugs, pesticides, chemicals, and toners that contain toxic or hazardous materials, while classification 4305-20 includes the *processing or handling* of such materials as medical or septic tank waste, drug lab or hazardous spill *cleanup*, and *reprocessing or handling* of low-level radioactive materials. For handling hazardous or toxic materials, the workers are equipped with protective clothing such as long-sleeved shirts, depending on the material to which they will be exposed. They may also be equipped with steel-toed boots, protective gloves, safety glasses and various types of respirator equipment. On a typical project, the first step is to visually inspect the materials to see if they appear to be the materials described on a job order. If there is a question of identity, a sample of the material is sent to a lab for analysis. The establishment may have its own lab facilities or the sample may be sent to an outside lab, or

the customer may have it analyzed. Every component of the sample must be identified. Once the material has been identified, and all containers labeled, the containers are separated into appropriate groupings. Smaller containers of similar types of materials are packed into 55-gallon drums with plastic or other cushioning protective material to prevent breakage. All necessary paper work and forms required by various government agencies must be completed before the material can be transported to a disposal site.

This classification excludes hazardous/toxic material *processing or handling*, including processing of medical or septic tank waste, drug lab or hazardous spill cleanup; reprocessing or handling of low-level radioactive materials which is to be reported separately in classification 4305-20; and the replacement of nontoxic toner in cartridges used in business machines which is to be reported separately in classification 4107.)

**3701-06 Chemicals, N.O.C.: Manufacturing chemical mixing, blending, and repackaging nitrate recovery from X-ray and photo films**

**Applies to:**

Businesses engaged in manufacturing:

- Acetylene gas;
- Acid;
- Ammonia;
- Ammonia nitrate;
- Borax;
- Carbonic acid gas, also known as phenol;
- Chemicals using a nitration, alkylation or oxidation

process;

- Dry ice;
- Dyes, including dye and chemicals used for tinting candles;

and:

- Fireworks;
- Nitrogen;
- Oxygen and hydrogen;
- Potash;
- Salt.

Businesses engaged in:

- Recovering nitrate or silver from X-ray and photo

films.

• Mixing, blending or repackaging chemicals, but not manufacturing the ingredients.

**Products manufactured and processes used include, but are not limited to:**

• Acetylene gas - Highly flammable but nontoxic gas that is manufactured by reacting calcium carbide with water in a pressure generator, which combines carbon and lime to form the product.

• Ammonia - Colorless gas used as a component in fertilizer, medicines and cleaning compounds manufacturing. Involves combining hydrogen and nitrogen gases with a catalyst, which causes a reaction between the two gases when heated in a generator.

• Ammonia nitrate - Crystalline compound used mainly in fertilizers, explosives and propellants. Involves combining ammonia and nitric acid in a reactor.

• Borax - Used in manufacture of glass, glazes, soap, and boric acid. Produced by separating it from the potash by a

rapid cooling process. Evaporated by heating in a partial vacuum to produce crystals or granules which are dried.

- Carbonic acid gas, also known as phenol - Caustic poisonous gas used in manufacturing resins, plastics, and disinfectants. The manufacture of phenol involves a compression and refrigeration process.

- Chemicals using a nitration, alkylation or oxidation process:

- Alkylation - Involves combining alkyls with other substances to form products used in the production of paper pulp, hard soap and petroleum products.

- Nitration - Involves the combining of nitrate with an organic compound to produce nitrobenzene used in solvents, fertilizers and acids.

- Oxidation - Involves the combining of oxygen with other substances to produce products such as; but not limited to, hydrogen peroxide, protective metal coatings, and pharmaceutical preparations.

- Dry ice - Carbon dioxide in a solid form.

- Dyes, including dye and chemicals used for tinting candles - Made from organic and inorganic compounds. Manufacturing methods include weighing raw materials, pumping them into vats, heating, agitating, cooling, filtering through presses, and packaging. May also include drying and grinding into powder or may be left in liquid or paste forms.

- Fireworks.

- Mixing, blending or repackaging chemicals, but not manufacturing the ingredients - Mixed by hand or through a mechanical process.

- Nitrogen - Colorless gas that is obtained from the air and processed by compressing air in a pressurized tank, removing impurities, and separating nitrogen and oxygen through heating.

- Oxygen and hydrogen - Involves the recovery of these gaseous elements from the air by compression, expansion and cooling operations until it liquefies. Liquid air then goes to a fractionator where the oxygen is separated from the hydrogen along with other gases such as neon and helium.

- Potash - Used in fertilizer. Refined by adding an amine to the brine, which causes the salts to float to the surface where they are skimmed off. Evaporated by heating in a partial vacuum to produce crystals or granules, which are dried.

- Salt - Used in chemicals and food processing. Salt ores are dissolved in water to produce a brine of the desired concentration. Refined into common salt by adding caustic soda and soda ash. Evaporated by heating in a partial vacuum to produce crystals or granules, which are dried.

- Recovering nitrate or silver from X-ray and photo films - Placing films in developing solutions, ionizing the solution and separating the elements.

**Equipment includes, but is not limited to:**

- Pressurized tanks;
- Vats;
- Screens;
- Ovens;
- Grinding machines;
- Mixing and blending machinery;
- Filling and packaging machinery;
- Fork lifts;
- Trucks.

**Exclusions:**

- Technicians who set up and carry out fireworks displays are classified in 6207.

- The production of salt ores used in the manufacture of salt, borax, and potash.

**Note:**

For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3701-08 Cosmetic, pharmaceutical, serum: Manufacturing**

**Applies to:**

Businesses engaged in the manufacture of cosmetics, pharmaceuticals, serums, antitoxins or viruses.

**Products include, but are not limited to:**

- Soaps;
- Shampoo/conditioners;
- Creams, gels or lotions;
- Baby powder;
- Lipstick;
- Nail polish;
- Bath oils/salts;
- Tablets/pills;
- Ointments;
- Liquids/powders (pharmaceutical);
- Serums.

**Work activities include, but are not limited to:**

- Mixing of premanufactured ingredients.
- Mixing or blending of base medicinal ingredients and additives such as, but not limited to, sugars, starches, flavorings and waxes used for coatings.
- Bottling/packaging/labeling and laboratory equipment.
- Pulverizing, distilling, heating and drying product.
- Microscopic laboratory work.
- Working with animals, injecting with bacteria and viruses (eventually killing animal).

Killing of the animals is included in this classification as it is incidental and necessary to perform the operation to extract the serum from the glands and to separate the red blood cells from the blood.

**Equipment includes, but is not limited to:**

- Storage tanks;
- Mixers;
- Heating devices;
- Bottling/packaging/labeling equipment;
- Laboratory equipment.

**Exclusions:**

- Manufacture of ingredients used in the mixing of the cosmetics.

- Manufacture or harvest of ingredients used in the manufacture of the pharmaceuticals.

- Retail compounding pharmacy stores are classified in 6406-16.

**Note:**

For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3701-14 Extract, alcohol, perfume manufacturing; mint, including distillation of essential oils N.O.C.****Applies to:**

Businesses engaged in manufacturing or distilling:

- Alcohol - Not for ingestion.
- Extracts - Extracts are the concentrated forms of the essential components of a food or a plant.
- Mint.
- Perfumes.

**Processes used include, but are not limited to:**

• Alcohol - All use a distillation process, which involves the heating of liquids and resulting condensation of vapors to purify or create a substance contained in the original wood or grain product.

• Extracts - The process for obtaining extracts involves pressing, cooking, steaming, or distillation from plants, herbs, or fruit peelings. Extracts may be mixed or blended with other ingredients for greater strength, color, or consistency. Products are bottled or canned.

• Mint - Mint distillation may begin with the use of mint oil distilled by a supplier or with the distillation of the mint into mint oil. Mint leaves are chopped and blown into a steamer, which lifts the moisture and oils. Steam then passes through a series of condensation lines. Water is added to bring the oil to the top of the liquid. The mint oil is heated for purification and fragrance. Various mint oils may be blended together to produce distinctive products such as spearmint or peppermint.

• Perfumes - The process may involve distillation, cooking, grinding, compounding, drying, blending or liquidizing of ingredients. Ingredients may include extracts, oils, colors, and binders.

**Products include, but are not limited to:**

- Methanol (wood alcohol);
- Ethanol (grain alcohol);
- Denatured alcohol (combination of methanol and ethanol);
- Solvents;
- Germicides;
- Pesticides;
- Antiseptics;
- Materials intended for use in other products such as varnish or shellac;
- Flavorings, including mint, spearmint, and peppermint;
- Perfumes used to manufacture other products such as scented candles;
- Personal fragrances;
- Essential oils;
- Sachet powders;
- Ingredients for skin conditioners;
- Hop extracts used in the brewing of beer.

**Equipment includes, but is not limited to:**

- Distillation equipment;

- Steam cookers;
- Presses;
- Filters;
- Grinders;
- Vats;
- Vapor extraction equipment;
- Storage tanks;
- Mixers;
- Heating equipment;
- Forklifts;
- Laboratory equipment;
- Bottling, packaging, labeling equipment;
- Delivery trucks.

**Exclusions:**

- Manufacturing of spirituous liquor for ingestion is classified in 3702.
- Candle manufacturing is classified in 3701-22.
- Worker hours engaged in gasohol manufacturing or refining are reported separately in classification 3407.
- Worker hours engaged in hop pellet manufacturing are reported separately in classification 2101.
- Worker hours engaged in mint raising or harvesting are reported separately in classification 4811.

**Note:**

For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3701-22 Pigment solutions or emulsion: Manufacturing****Applies to:**

Businesses engaged in manufacturing a variety of chemical products including, but not limited to:

- Candles;
- Crayons;
- Dressings, see polish;
- Enamel, see paint;
- Glue;
- Ink, all types;
- Lacquer, see paint;
- Paint;
- Paint removers and thinners;
- Paste, see glue;
- Polish, also known as dressings include, but are not limited to:
  - Shoe polish;
  - Leather polish;
  - Furniture polish;
  - Automobile polish;
  - Metal polish.
- Putty;
- Shellac, see paint;
- Synthetic resin, see putty;
- Varnish.

**Processes used include, but are not limited to:**

• Candles - Wax is heated. Wicks are dipped in the wax either by hand or machine. Fragrances are added for scented candles. When the candles are dried, their wicks are cut and they are placed in molds to shape the base. Color may be

added by hand or by machine. The candles are inspected, wrapped, packaged, and labeled.

• Crayons - Similar to candles, but crayons are molded instead of dipped.

• Dressings or polish - Ingredients and processes vary dependent upon the product. Process may be simple and involve only mixing, or process may be detailed and involve heating or cooking and forming into a mold or stick form.

• Paint, enamel, lacquer, shellac - Involves a series of mixing and grinding operations. Solid pigments are blended with liquid resins. Paint extender may be added. Paint is pumped into filling stations. Containers of paint are packaged, labeled and shipped.

• Glue or paste - Involves mixing and cooking the ingredients in steel tanks and pumping the product to a filling area where it is packaged, labeled and capped.

• Ink - Involves cooking of oils and resin. Pigments and dryers are blended into the resin, which is then diluted to the proper consistency.

• Putty or synthetic resin - Putty is a finely powdered chalk mixed with linseed oil. Putty and synthetic resins have the same ingredients. Both are made by grinding and mixing.

• Varnish - Similar to paint manufacturing process. Manufacturing varnish also includes a cooking process.

**Ingredients used include, but are not limited to:**

- Beeswax;
- Paraffin;
- Stearin;
- Wicks;
- Powder or granule Arabic gum;
- Modified starch received from others;
- Pigments or coloring;
- Oils;
- Other waxes;
- Resins;
- Detergents;
- Methanol;
- Solvents;
- Water;
- Ground chalk;
- Limestone;
- Calcite;
- Preservatives.

**Equipment includes, but is not limited to:**

- Weighing and measuring scales;
- Mixers;
- Stoves;
- Molding apparatus;
- Automatic filing, labeling, and packaging machines;
- Forklifts;
- Delivery trucks.

**Exclusions:**

• The production of raw materials used to manufacture listed products.

• Worker hours engaged in glue manufacturing from animal substances are reported separately in classification 4301.

**Note:**

For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3701-27 Hazardous/toxic material: Repackaging for disposal**

**Applies to:**

Businesses engaged in identifying and repackaging hazardous/toxic materials for disposal.

**Note:**

This class is distinguished from classification 4305-20, in that classification 3701-21 applies to the identifying and repackaging for disposal of such materials as drugs, pesticides, chemicals, and toners that contain toxic or hazardous materials, while classification 4305-20 includes the processing or handling of such materials as medical or septic tank waste, drug lab or hazardous spill cleanup, and reprocessing or handling of low-level radioactive materials.

**Work activities include, but are not limited to:**

- Visual inspection of materials.
- Sending sample of materials to lab for analysis.
- Identifying components of material.
- Labeling of containers, by appropriate groupings.
- Materials are put into drums with protective material to prevent breakage.
- Complete paperwork required by various governmental agencies.
- Transport of material to disposal site.
- Lab analysis - Businesses may have their own lab facilities or may send to outside lab.

**Protective clothing and equipment includes:**

- Respirators;
- Steel toed boots;
- Protective gloves;
- Safety glasses;
- Protective clothing.

**Exclusions:**

• Worker hours engaged in hazardous/toxic materials processing or handling, including processing of medical or septic tank waste, drug lab or hazardous spill cleanup, reprocessing or handling of low-level radioactive materials must be reported separately in classification 4305-20.

• Worker hours engaged in the replacement of nontoxic toner in cartridges used in business machines are reported separately in classification 4107.

**Note:**

For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 10-05-109, filed 2/17/10, effective 4/1/10)

**WAC 296-17A-3902 Classification 3902.**

~~((3902-00 Fruit and vegetable: Cannery and freezer operations~~

~~Applies to establishments engaged in fruit and vegetable canning or freezing operations for wholesale customers.~~

Operations contemplated by this classification include the receipt of fruit and vegetables directly from growers or dealers, preparing produce for canning by removing foreign materials such as leaves or weeds, washing, sterilizing, grading, peeling, slicing, coring, blanching, sealding and pre-cooking, premeasuring, mixing them in a hopper with sugar or other ingredients, and further processing into canned or frozen products. Pea vining, when performed by employees of a cannery, is also included in this classification.

This classification excludes establishments engaged in evaporating, preserving or dehydrating fruits and vegetables which are to be reported separately in classification 3902-01; establishments engaged in manufacturing fruit juice, cider, jam or jelly which are to be reported separately in classification 3902-02; establishments engaged in packing *fresh* vegetables and fruits which are to be reported separately in classification 2104; and pea vining when done by employees of farm operations or farm labor contractors which is to be reported separately in the applicable farm classification.

**3902-01 Fruit and vegetable: Evaporating, preserving or dehydrating**

Applies to establishments engaged in evaporating, preserving, or dehydrating fruits and vegetables for wholesale customers. Operations contemplated by this classification include the receipt of fruit and vegetables directly from growers or dealers, washing, peeling, cooking, pressing fruits and vegetables by machine, adding preservatives and congealants, pasteurizing, then dehydrating, drying, or evaporating to remove the moisture which preserves the fruits and vegetables and leaves only the dry, solid portion. Finished products are packaged in cans, plastic bags, or boxes for shipping.

This classification excludes establishments engaged in canning or freezing of fruits and vegetables which are to be reported separately in classification 3902-00; establishments engaged in manufacturing fruit juice, cider, jam or jelly which are to be reported separately in classification 3902-02; establishments engaged in packing fresh vegetables and fruits which are to be reported separately in classification 2104; and farm operations which are to be reported separately in the applicable farm classification.

**3902-02 Fruit syrup or juice, cider, jam or jelly: Manufacturing**

Applies to establishments engaged in the manufacture of fruit syrup, juice, cider, jam, or jelly. Operations contemplated by this classification include the receipt of fruit directly from growers or dealers, washing, peeling, and cooking the fruit, extracting juice and separating seeds from pulp with fruit presses or separators, adding sugars, congealants and preservatives, pasteurizing, blending juices to produce a variety of flavors, and further processing to produce bottled, canned, or concentrate products.

This classification excludes establishments engaged in canning or freezing of fruits and vegetables which are to be reported separately in classification 3902-00; establishments engaged in evaporating, preserving or dehydrating fruits and vegetables which are to be reported separately in classification 3902-01; and farm operations which are to be reported separately in the applicable farm classification.

**3902-11 Chocolate, cocoa, corn products: Manufacturing**

Applies to establishments engaged in the manufacture of cocoa or chocolate such as Dutch or sweet chocolate or of corn products such as, but not limited to, tortillas. Operations contemplated by this classification include receipt of corn and cocoa beans from growers or dealers, processing operations, testing, packaging and shipping. Foreign matter is removed from the cocoa beans and they are sorted, divided, cleaned, and roasted in ovens. Shells are cracked, usually by machines, and the beans examined to ensure quality. Depending on the products being manufactured, beans may be pasteurized, ground, further dried, mixed with chocolate liquor, sugar, powdered milk, cocoa butter, or potassium solutions to make into finished products. Depending on the corn product being made, ingredients are pressed, kneaded, cut, shaped or flattened, and baked or cooked.

This classification excludes establishments engaged in the manufacture of crackers, potato chips, ravioli, tamale, and pasta, or chocolate candy and confections which are to be reported separately in classification 3906, and farm operations which are to be reported separately in the applicable farm classification.

**3902-12 Baking powder, dextrine, glucose and starch: Manufacturing**

Applies to establishments engaged in the manufacture of baking powder, dextrine, glucose and starch. Operations contemplated by this classification include the receipt of vegetables and grains, such as, but not limited to, potatoes, corn, and wheat from growers or dealers, processing operations, testing, storing finished products in storage tanks, packaging into drums or cans, and shipping. Vegetables or grains are cleaned, sorted, and foreign matter removed. They are dumped onto conveyors and transported to grinding machines where they are ground into a starch paste. Water may be added to make liquid starch or starch milk or dryers may remove excess moisture. Starch blends may be made from raw starch suspensions using chemical solutions. Shakers remove bran, gluten or other particles from the starch suspension. Dextrine is made by further mixing the starch with dextrine paste, adding chemicals, cooking and stirring until the starch is converted to dextrine. Baking powder is made by mixing baking soda, starch, and an acid compound such as cream of tartar.

This classification excludes establishments engaged in the manufacture of food sundries not covered by another classification which are to be reported separately in classification 3902-14 and farm operations which are to be reported separately in the applicable farm classification.

**3902-13 Nut shelling, egg breaking, coconut shredding and peanut handling**

Applies to establishments engaged in nut shelling, egg breaking, coconut shredding, and peanut handling. Nuts are received from suppliers in bulk and placed into machinery which cracks shells and separates broken shells from the nut meat. Another machine sorts whole nut meats from those that are chipped, broken, or contaminated. At each machine, nuts are examined for rejects, and foreign matter is removed with a vacuum hose or by hand. They may be chopped, sliced, or left whole, then poured from the machines into sacks or containers. The meats of certain nuts, such as almonds, may be

ground into meal, then canned for shipment. This classification also includes the grading and polishing of nuts, and shredding of coconuts. Egg-breaking machines break eggs and separate the yolk from the white. They are observed for color, quantity, and clarity; inferior yolks or whites are discarded prior to being automatically dropped onto separator trays with individual cups. Eggs may then be mixed with water, pasteurized or dried prior to packaging.

This classification excludes establishments engaged in the manufacture of oils which are to be reported separately in classification 3902-27 and establishments engaged in the manufacture of food sundries which are to be reported separately in classification 3902-14.

### **3902-14 Food sundries, N.O.C.: Manufacturing or processing**

Applies to establishments engaged in the manufacture of a variety of miscellaneous food products not covered by another classification (N.O.C.). Products include, but are not limited to, imitation crab, spices, peanut butter, condiments, salsa, salad dressings, mayonnaise, soups, tofu, instant potatoes, salads and certain ready-to-eat dishes that are usually sold to wholesale distributors. This classification also applies to the grinding and roasting of coffee beans. Operations contemplated by this classification include the receipt of raw ingredients from growers or dealers, processing operations, testing, quality control, laboratory operations, packaging and shipping. Individual processes, which vary depending on the product being manufactured, include, but are not limited to, cleaning, dividing, grinding, mixing, blending with other ingredients, cooking, cooling, dividing again into desired portions, and packaging. The products are packaged in plastic bags, bottles, or cans, usually by machine. Some products require vacuum sealing, pasteurizing, or freezing.

This classification excludes establishments engaged in the manufacture of crackers, potato chips, ravioli, tamale, pasta, cough drops, confectionery, and chewing gum which are to be reported separately in classification 3906 and farm operations which are to be reported separately in the applicable farm classification.

### **3902-15 Pickles and sauerkraut: Manufacturing**

Applies to establishments engaged in the manufacture of pickles and sauerkraut. Operations contemplated by this classification include the receipt of produce from growers or dealers, processing operations, testing, laboratory operations, packaging and shipping. Produce, such as cucumbers and cabbage, is cleaned, cut, chopped and placed in barrels, vats, or tanks of brine (a mixture of salt, sugar, spices, vinegar) until cured. At the end of curing period, product may be packed into glass jars, plastic bags, or cans. This classification also applies to the pickling of fruits or vegetables such as, but not limited to, tomatoes, peppers, and asparagus.

This classification excludes establishments engaged in canning or freezing of fruits and vegetables which are to be reported separately in classification 3902-00; establishments engaged in evaporating, preserving or dehydrating fruits and vegetables which are to be reported separately in classification 3902-01; establishments engaged in packing fresh vegetables and fruits which are to be reported separately in classification

2104; and farm operations which are to be reported separately in the applicable farm classification.

### **3902-17 Pet food: Manufacturing**

Applies to establishments engaged in the manufacture of frozen or canned pet foods. Operations contemplated by this classification include the receipt of raw ingredients, processing operations, packaging and shipping. After bones and foreign matter are removed, raw ingredients are cleaned and ground. Depending on the product, various ingredients such as, but not limited to, animal meat and fat, fish by products, cornmeal, soybean meal, ground wheat, rice, poultry, yeast, whey, salt, acids, chemicals, minerals, vitamins, water, or oil are mixed in large vats either by machine or by hand. Mixture is frozen or baked, dried, and packed into cans.

This classification excludes establishments engaged in the manufacture of dry pet food using a milling process which is to be reported separately in classification 2101 and farm operations which are to be reported separately in the applicable farm classification.

### **3902-24 Breakfast food: Manufacturing**

Applies to establishments engaged in the manufacture of breakfast foods such as cereals or breakfast bars. Operations contemplated by this classification include the receipt of ingredients, processing operations, quality control, laboratory operations, packaging, and shipping. Flour, meal, or milled grains such as, but not limited to, corn, oats, barley, wheat, and nuts are mixed with other ingredients, formed into a dough, rolled out and extruded into flakes or other shapes. Pressure cylinders may be used to expand or puff whole grains. Cereals may be sifted through screens to check for size, color, and uniformity or otherwise tested for quality, then baked or dried in bulk prior to packaging.

This classification excludes establishments engaged in the manufacture of wholesale bakery goods which are to be reported separately in classification 3906; establishments engaged in milling or grinding operations which are to be reported separately in classification 2101; and farm operations which are to be reported separately in the applicable farm classification.

### **3902-26 Poultry canning and canneries, N.O.C.**

Applies to establishments engaged in canning poultry or canning operations not covered by another classification (N.O.C.). Operations contemplated by this classification include the receipt of poultry or other products, processing operations, quality control, laboratory operations, packaging, and shipping. The process includes, but is not limited to, washing, cutting or chopping, and cooking poultry or other foods items. Preservatives or flavorings may be added before product is sealed in cans or jars.

This classification excludes establishments engaged in canning or freezing fruits or vegetables which are to be reported separately in classification 3902-00 and establishments engaged in canning or dehydrating meat products which are to be reported separately in classification 4301.

### **3902-27 Vegetable oil or butter substitutes: Manufacturing**

Applies to establishments engaged in the manufacture of salad or vegetable oils, shortening, margarine or other butter

substitutes. Operations contemplated by this classification include the receipt of seeds or beans from growers or through dealers, processing operations, quality control, laboratory operations, packaging and shipping. To make oils, soybeans, cottonseeds, safflower seeds, or shelled corn is cracked, ground, milled, steam cooked, and pressed to extract the oil. Depending on the product being made, other ingredients such as water, milk, powdered milk or salt may be blended with the oil, then heated, filtered, and filled into cans or bottles. To make shortening or butter substitutes, flavoring, catalytic agents, and chemicals are added to harden the oils; some products are kneaded to spread the coloring uniformly; then they are packaged in cans, plastic containers, or wrapped in plastic or foil. Machinery includes, but is not limited to, grinders, screens, presses, extractors, dryers, and conveyors.

This classification excludes establishments engaged in the manufacture of "real" butter which are to be reported separately in classification 3902-28 and farm operations which are to be reported separately in the applicable farm classification.

### **3902-28 Dairy products: Bottling or manufacturing**

Applies to establishments engaged in the bottling or manufacture of dairy products such as, but not limited to, bottled liquid or dried products derived from milk, butter, natural or processed cheeses, prepared products such as custard, dips or spread, whipped toppings, ice cream, ice cream mixes, and sherbet. Raw milk is received from suppliers and may go through heat treating, pasteurizing, cooling, and separators which adjust fat content by skimming the milk or adding cream, then pumping into vessels or vats. Additives, preservatives, flavorings, enzymes, or lactic acid may be added depending on the product being made. Further processing to manufacture cheese and other prepared dairy foods may include, but not be limited to, mixing, draining, pressing, spray drying, aging, cutting, and shredding. Product may be bottled or otherwise packaged for shipment.

This classification excludes establishments primarily engaged in the manufacture of dairy based salad dressings which are to be reported separately in classification 3902-14 and dairy cattle farming operations which are to be reported separately in classification 7301-))

This classification includes the receipt of raw materials from growers or dealers, processing operations, quality control, lab testing, warehousing, packaging, shipping, and pickup and delivery when performed by employees in connection with the business operations.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

### **3902-00 Fruit and vegetable: Cannery and freezer operations; fruit syrup or juice, cider, jam or jelly: Manufacturing**

#### **Applies to:**

Businesses engaged in fruit and vegetable canning or freezing operations for wholesale customers; and

Businesses engaged in the manufacture of fruit syrup, juice, cider, jam, or jelly.

#### **Ingredients used include, but are not limited to:**

- Various fruits and vegetables or juices;
- Sugars and sweeteners;
- Coagulants;
- Preservatives.

#### **Work activities include, but are not limited to:**

- Removing foreign materials such as leaves or weeds;
- Washing;
- Sterilizing;
- Grading;
- Peeling;
- Slicing;
- Coring;
- Blanching or scalding;
- Cooking;
- Measuring;
- Mixing;
- Extracting juice;
- Separating seeds from pulp with fruit presses or separators;
- Pasteurizing;
- Further processing to produce bottled, canned, frozen, or concentrate products; and
- Pea vining, when performed by employees of a cannery, is also included in this classification.

#### **Machinery and equipment include, but are not limited to:**

- Conveyors;
- Extractors;
- Mixers;
- Ovens;
- Pasteurizers;
- Pressers;
- Separators;
- Shakers;
- Shredders;
- Sorters;
- Storage tanks; and
- Vats.

#### **Exclusions:**

- Preserving or dehydrating fruits and vegetables are classified in 3902-01;
- Packing fresh vegetables and fruits is classified in 2104; and
- Pea vining when done by employees of farm operations or farm labor contractors is classified in the applicable farm classification.

### **3902-01 Fruit and vegetable: Evaporating, preserving or dehydrating**

#### **Applies to:**

Businesses engaged in evaporating, preserving, or dehydrating fruits and vegetables for wholesale customers.

#### **Ingredients include, but are not limited to:**

- Various fruits and vegetables;
- Sugars and sweeteners;
- Coagulants;
- Preservatives.



**Work activities include, but are not limited to:**

- Washing;
- Peeling;
- Cooking;
- Pressing fruits and vegetables by machine;
- Adding preservatives and congealants;
- Pasteurizing;
- Dehydrating;
- Drying;
- Evaporating; and
- Packaging in cans, plastic bags, or boxes.

**Machinery and equipment include, but are not limited to:**

- Conveyors;
- Extractors;
- Mixers;
- Ovens;
- Pasteurizers;
- Pressers;
- Separators;
- Shakers;
- Shredders;
- Sorters;
- Storage tanks;
- Vats; and
- Vacuum hoses.

**Exclusions:**

- Canning or freezing fruits and vegetables and manufacturing fruit juice, cider, jam or jelly are classified in 3902-00;
- Packing fresh vegetables and fruits is classified in 2104; and
- Farm operations are reported in the applicable farm classification.

**3902-11 Miscellaneous foods: Manufacturing****Applies to:**

Businesses engaged in the manufacture of a variety of products.

**Products manufactured include, but are not limited to:**

- Cocoa or chocolate;
- Corn products such as, but not limited to, tortillas;
- Baking powder, dextrine, glucose, and starch made from vegetables and grains;
- Shelled nuts;
- Egg products made by using egg cracking machines;
- Pickles, sauerkraut, pickled fruits and vegetables;
- Pet food (frozen or canned);
- Breakfast foods made from flour, meal, or milled grains; and
- Vegetable oil or butter substitutes made from seeds or beans.

**Processes used include, but are not limited to:**

• Cocoa or chocolate, such as Dutch or sweet chocolate, are made by removing foreign matter from cocoa beans, sorting, dividing, and roasting in ovens. Shells are usually cracked by machines, and beans examined to ensure quality. Depending on the products, beans may be pasteurized, ground, further dried, mixed with chocolate liquor, sugar,

powdered milk, cocoa butter, or potassium solutions to make into finished products;

• Corn products such as, but not limited to, tortillas. Depending on the corn products made by ingredients are pressed, kneaded, cut, shaped or flattened, and baked or cooked;

• Baking powder, dextrine, glucose, and starch are made from vegetables and grains, such as, but not limited to, potatoes, corn, and wheat are cleaned, sorted, and foreign matter removed; dumped onto conveyors and transported to grinding machines where they are ground into a starch paste. Water may be added to make liquid starch or starch milk or dryers may remove excess moisture.

- Starch blends may be made from raw starch suspensions using chemical solutions. Shakers remove bran, gluten, or other particles from the starch suspension;

- Dextrine is made by further mixing starch with dextrine paste, adding chemicals, cooking and stirring until the starch is converted to dextrine;

- Baking powder is made by mixing baking soda, starch, and an acid compound such as cream of tartar;

• Shelled nuts are placed into machinery which cracks shells and separates broken shells from the nut meat, then another machine sorts whole nut meats from those that are chipped, broken or contaminated. At each machine, nuts are examined for rejects, and foreign matter is removed with a vacuum hose or by hand. Nuts may be chopped, sliced, or left whole, then poured from the machines into sacks or containers. The meats of certain nuts, such as almonds, may be ground into meal, then canned for shipment. Also included is the grading and polishing of nuts, and coconut shredding;

• Egg products are made by using egg cracking machines that break eggs and separate the yolk from the white. Eggs are observed for color, quantity, and clarity; inferior yolks or whites are discarded before being automatically dropped onto separator trays with individual cups. Eggs may then be mixed with water, pasteurized or dried before packaging;

• Pickles, sauerkraut, pickled fruits and vegetables are made by cleaning, cutting, chopping and placing in barrels, vats, or tanks of brine (a mixture of salt, sugar, spices, vinegar) until cured. At the end of the curing period, product may be packed into glass jars, plastic bags, or cans;

• Pet food (frozen or canned) is made by removing bones then cleaning and grinding raw ingredients. Depending on the product, various ingredients include, but not limited to, animal meat and fat, fish by-products, cornmeal, soybean meal, ground wheat, rice, poultry, yeast, whey salt, acids, chemicals, minerals, vitamins, water, or oil and are mixed in large vats either by machine or by hand. The mixture is frozen or baked, dried, and packed into cans;

• Breakfast foods are made from flour, meal, or milled grains, such as, but not limited to, corn, oats, barley, wheat, and nuts mixed with other ingredients, formed into a dough, rolled out and extruded into flakes or other shapes. Pressure cylinders may be used to expand or puff whole grains. Cereals may be sifted through screens to check for size, color, and uniformity then baked or dried in bulk before packaging; and

• Vegetable oil or butter substitutes are made from seeds or beans, such as soybeans, cottonseeds, safflower seeds, or shelled corn which is cracked, ground, milled, steam cooked,

and pressed to extract the oil. Depending on the product being made, other ingredients such as water, milk, powdered milk or salt may be blended with the oil, then heated, filtered, and filled into cans or bottles. To make shortening or butter substitutes, flavoring, catalytic agents, and chemicals are added to harden the oils; some products are kneaded to spread the coloring uniformly, then packaged into cans, plastic containers, or wrapped in plastic or foil.

**Work activities include, but are not limited to:**

- Removing foreign matter from raw product;
- Sorting;
- Dividing;
- Cleaning;
- Cooking;
- Pasteurizing;
- Grinding;
- Mixing;
- Pressing;
- Kneading;
- Cutting;
- Shaping;
- Flattening;
- Baking;
- Cooking;
- Storing.

**Machinery and equipment include, but are not limited to:**

- Choppers;
- Conveyors;
- Dryers;
- Egg breakers;
- Extruders;
- Extractors;
- Grinders;
- Mixers;
- Nut crackers;
- Pasteurizers;
- Presses;
- Pressure cylinders;
- Sack makers;
- Screens;
- Separators;
- Shakers;
- Shredders;
- Sorters;
- Storage tanks;
- Vats; and
- Vacuum hoses.

**Exclusions:**

• Manufacturing crackers, potato chips, ravioli, tamale, and pasta, or chocolate candy and confections are classified in 3906;

• Farm operations are classified separately in the applicable farm classification;

• Manufacturing food sundries not covered by another classification are classified in 3902-14;

• Canning or freezing of fruits and vegetables are classified in 3902-00;

• Evaporating, preserving or dehydrating fruits and vegetables which are classified in 3902-01;

• Packing fresh vegetables and fruits are classified in 2104;

• Milling or grinding operations; and those that manufacture dry pet food using a milling process, are classified in 2101;

• Manufacturing wholesale bakery goods is classified in 3906; and

• Manufacturing "real" butter classified in 3902-28.

**3902-14 Food sundries, N.O.C.: Manufacturing or processing**

**Applies to:**

Businesses engaged in the manufacture of a variety of food products not covered by another classification (N.O.C.).

**Products manufactured include, but are not limited to:**

• Imitation crab;

• Spices;

• Peanut butter;

• Condiments;

• Salsa;

• Salad dressings;

• Mayonnaise;

• Soups;

• Tofu;

• Instant potatoes;

• Salads and certain ready-to-eat dishes that are usually sold to wholesale distributors; and

• Grinding and roasting of coffee beans.

**Work activities include, but are not limited to:**

• Cleaning;

• Dividing;

• Grinding;

• Roasting;

• Mixing;

• Blending with other ingredients;

• Cooking;

• Cooling;

• Dividing ingredients and product into desired portions;

• Packaging in plastic bags, bottles, or cans;

• Vacuum sealing;

• Pasteurizing; and

• Freezing.

**Machinery and equipment include, but are not limited to:**

• Conveyors;

• Extractors;

• Mixers;

• Ovens;

• Pasteurizers;

• Pressers;

• Separators;

• Shakers;

• Shredders;

• Sorters;

• Storage tanks; and

• Vats.

**Exclusions:**

- Manufacturing crackers, potato chips, ravioli, tamale, pasta, cough drops, confectionery, and chewing gum which are classified in 3906; and
- Farm operations are classified in the applicable farm classification.

**3902-28 Dairy products: Bottling or manufacturing****Applies to:**

Businesses engaged in the bottling or manufacture of dairy products.

**Products manufactured include, but are not limited to:**

- Bottled liquid or dried products derived from milk;
- Butter;
- Natural or processed cheeses; and
- Prepared products such as custard, dips or spread, whipped toppings, ice cream, ice cream mixes, and sherbet.

**Work activities include, but are not limited to:**

- Heat treating;
- Pasteurizing;
- Cooling;
- Separating;
- Pumping into vessels or vats;
- Adding preservatives, flavorings, enzymes, or lactic acid may be added depending on the product being made;
- Mixing;
- Draining;
- Pressing;
- Spray drying;
- Aging;
- Cutting;
- Shredding; and
- Bottling or other types of packaging.

**Machinery and equipment used include, but are not limited to:**

- Mixers;
- Coolers;
- Pasteurizers;
- Separators;
- Vats;
- Conveyors;
- Bottlers; and
- Packagers.

**Exclusions:**

- Manufacturing primarily dairy-based salad dressings is classified in 3902-14; and
- Dairy cattle farming operations are classified in 7301.

AMENDATORY SECTION (Amending WSR 15-02-060, filed 1/6/15, effective 7/1/15)

**WAC 296-17A-4802 Classification 4802.****4802-02 Farms: Berry****Applies to:**

((Establishments engaged in raising berries of all types.

**Work in this classification includes**, but is not limited to:

- Preparing soil for new plants;

- Planting;
- Fertilizing;
- Weeding;
- Pruning canes;
- Cutting runners;
- Installing posts and wire supports;
- Tying vines;
- Machine harvesting of berries;
- Maintaining or installing sprinkler or irrigation systems.

**Notes:**

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

**What activities are not included in this classification?**

- Fresh fruit packing operations (report in classification 2104);
- Canneries or freezer operations (report in classification 3902);
- Winery operations (report in classification 3702);
- Hand harvesting of berries (report in classification 4806); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

**What is a farm labor contractor?**

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors to report in?**

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4802-03 Farms: Bulb raising****Applies to:**

Establishments engaged in raising flowers and plants for bulbs.

**Work in this classification includes**, but is not limited to:

- Work done in an open field or a greenhouse;
- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Dead heading;
- Cutting flowers;

- Subsequent grading, sorting, packing, and shipping of bulbs;
- Maintaining or installing sprinkler or irrigation systems;
- Machine digging and harvesting bulbs.

**Notes:**

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

**What activities are not included in this classification?**

- Establishments engaged exclusively in the sale of fresh cut flowers and potted plants that are not involved in the cultivation of plants or flowers (report in classification 6404);
- Hand picking of bulbs (report in classification 4806); and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

**What is a farm labor contractor?**

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors to report in?**

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4802-06 Picking of forests products, N.O.C.**

**Applies to:**

Establishments engaged exclusively in picking forest products that are not covered by another classification (N.O.C.).

**Work in this classification is limited to:**

- Hand picking operations;
- Using hand held cutting devices such as pruning shears or saws.

**Typical crops:**

Cedar boughs	Moss	Wild flowers
Cones	Mushrooms	
Ferns	Tree bark	
Holly	Wild berries	

**Special note:**

• The farm labor contractor provision, as described in the general reporting rules, is not applicable to this classification

as such establishments are not engaged in a farming operation;

- Properties from which products are harvested from may be owned or leased; and
- Operations not described above are to be reported separately in the classification applicable to the work being performed.

**4802-11 Farms: Flower or vegetable seeds**

**Applies to:**

Establishments engaged in raising flowers, flowering plants or vegetable plants for seed.

**Work in this classification includes**, but is not limited to:

- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Machine harvesting seeds;
- Drying of seeds;
- Cutting fresh flowers;
- Harvesting incidental fresh vegetables;
- Maintaining or installing sprinkler or irrigation systems;
- Subsequent grading, sorting, packing and shipping of seed.

Work may take place in an open field or a greenhouse.

**Notes:**

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

**What activities are not included in this classification?**

- Fresh vegetable packing operations (report in classification 2104);
- Canneries or freezer operations (report in classification 3902);
- Establishments engaged exclusively in the sale of fresh cut flowers and potted plants but not involved in the cultivation of plants or flowers (report in classification 6404);
- Hand gathering of seeds where no hand held cutting device is used (report in classification 4806);
- Establishments engaged exclusively in the sale of fresh vegetables but not involved in the cultivation of plants (report in classification 6403); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

**What is a farm labor contractor?**

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors to report in?**

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4802-12 Farms: Field vegetable crops—Mechanically harvested**

**Fresh market**

**Applies to:**

Establishments engaged in raising field vegetable crops that are mechanically harvested.

**Work in this classification includes**, but is not limited to:

- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Pruning;
- Harvesting vegetables mechanically;
- Maintaining or installing sprinkler or irrigation systems.

**Typical crops:**

Carrots	Radishes	Table-beets
Cucumbers	Rhubarb	Tomatoes
Green beans	Rutabagas	Furnips
Parsnips	Squash	
Potatoes	Sweet corn	

**Notes:**

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.
- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

**How is 4802-12 different from 4808 "Diversified field crops"?**

- **Work in 4802** is generally associated with plantings in smaller quantities that result in continuous harvests throughout the season. For example, although corn is technically a grain crop, it is widely accepted as a vegetable crop when harvested for fresh market, cannery, or frozen food.

- **Work in 4808** is generally associated with vegetable crops that have a long growing season and are harvested when mature at the end of the season. These crops are left in the field to dry and are used as feed, flour, or cereal grain.

**What activities are not included in this classification?**

- Field vegetable crops harvested by hand (report in classification 4810);
- Fresh vegetable packing operations (report in classification 2104);
- Canneries or freezer operations (report in classification 3902); and

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

**What is a farm labor contractor?**

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

- Generally the work involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors to report in?**

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4802-13 Farms: Flowers—Field growing Farms: Florists—Cultivating or gardening**

**Applies to:**

Establishments engaged in raising flowers and flowering plants for sale.

**Work in this classification includes**, but is not limited to:

- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Cutting fresh flowers;
- Maintaining or installing sprinkler or irrigation systems;
- Subsequent grading, sorting, packing and shipping of flowers;
- Incidental collection of flower seeds for use in future crops.

Growing may take place in an open field or a greenhouse.

**Notes:**

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

**What activities are not included in this classification?**

- Establishments engaged exclusively in the sale of fresh cut flowers and potted plants but not involved in the cultivation of plants or flowers (report in classification 6404); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

**What is a farm labor contractor?**

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

~~• Generally the work involves manual labor tasks as opposed to machine operation.~~

**What risk classification are farm labor contractors to report in?**

~~• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and  
• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.))~~

Businesses engaged in raising berries of all types.

**Work activities include, but are not limited to:**

- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Pruning canes;
- Cutting runners;
- Installing posts and wire supports;
- Tying vines;
- Machine harvesting of berries;
- Maintaining or installing sprinkler or irrigation systems.

**Notes:**

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

• For rules on assigning in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**Typical crops:**

- All types of mechanically harvested berries.

**Exclusions:**

• Worker hours or businesses engaged in fresh fruit packing operations must be reported separately in classification 2104;

• Worker hours or businesses engaged in canneries or freezer operations must be reported separately in classification 3902;

• Winery operations are classified in classification 3702;

• Hand harvesting of berries are classified in classification 4806; and

• Contractors hired by a farm to install, repair or build any farm equipment or structures report in the classification applicable to the work performed.

**What is a farm labor contractor?**

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating or fertilizing; and

• Work usually involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors to report in?**

• Farm labor contractors are reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operator are reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4802-03 Farms: Bulb raising, flower or vegetable seeds, floral grow operations - Florists - Cultivating or gardening**

**Applies to:**

Businesses engaged in raising flowers, plants for bulbs, raising flowers or vegetable plants for seed, or in raising flowering plants for sale.

**Work activities include, but are not limited to:**

- Work done in an open field or a greenhouse;
- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Machine harvesting of seeds;
- Drying of seeds;
- Dead heading;
- Cutting fresh flowers;
- Cutting incidental fresh vegetables;
- Subsequent grading, sorting, packing, and shipping of bulbs;
- Maintaining or installing sprinkler or irrigation systems;
- Machine digging and harvesting bulbs;
- Subsequent grading, sorting, packing, and shipping of seed or fresh flowers or plants.

**Notes:**

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

**Typical crops:**

• Flowers, mechanically harvested;

• Flower bulbs or any type of bulb, mechanically harvested;

**Typical crops:**

• Flowers, mechanically harvested;

• Flower bulbs or any type of bulb, mechanically harvested;

• Flower seeds, mechanically harvested;

• Vegetable seeds, mechanically harvested.

**Exclusions:**

• Worker hours or businesses engaged in fresh vegetable packing operations must be reported separately in classification 2104.

• Worker hours or businesses engaged in canneries or freezer operations must be reported separately in classification 3902.

• Businesses engaged exclusively in the sale of fresh cut flowers and potted plants that are not involved in the cultivation of plants or flowers are classified in classification 6404.

• Hand picking of bulbs or hand harvesting of flowers are classified in classification 4806.

- Hand gathering of seeds where no handheld cutting device is used is classified in classification 4806.

- Contractors hired by a farm to install, repair or build any farm equipment or structures are not farm labor contractors and must be reported in the classification applicable to the work being performed.

**What is a farm labor contractor?**

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating or fertilizing; and

- Generally, the work involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors to report in?**

- Farm labor contractors report in the classification that applies to the farm they are contracting with; and

- Contractors who provide both equipment or machinery and the machine operators are reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4802-06 Picking of forest products, N.O.C.**

**Applies to:**

Businesses engaged exclusively in picking forest products that are not covered by another classification (N.O.C.).

**Work activities include, but are not limited to:**

- Hand picking operations;
- Using handheld pruning shears or saws;
- The farm labor contractor provision, as described in the general reporting rules, is not applicable to this classification as such establishments are not engaged in a farming operation;

- Properties from which products are harvested from are owned or leased; and

- Operations not described above report separately in the classification applicable to the work performed. (For example, if an employee harvests cedar boughs from the woods, the employee is reported in classification 4802-06.)

**Typical crops:**

- Cedar boughs;
- Cones;
- Ferns;
- Holly;
- Moss;
- Mushrooms;
- Tree bark;
- Wild berries;
- Wild flowers.

**4802-12 Farms: Field vegetable crops - Mechanically harvested for fresh market**

**Applies to:**

Businesses engaged in raising field vegetable crops that are mechanically harvested.

**Work activities include, but are not limited to:**

- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Pruning;

- Harvesting vegetables mechanically;

- Maintaining or installing sprinkler or irrigation systems.

**Notes:**

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

**Typical crops:**

- Carrots;
- Cucumbers;
- Green beans;
- Parsnips;
- Potatoes;
- Radishes;
- Rhubarb;
- Rutabagas;
- Squash;
- Sweet corn;
- Table beets;
- Tomatoes;
- Turnips.

**How is 4802-12 different from 4808 "Diversified field crops"?**

- Work in 4802 is generally associated with plantings in smaller quantities that result in continuous harvests throughout the season. For example, although corn is technically a grain crop, it is widely accepted as a vegetable crop when harvested for fresh market, cannery, or frozen food. Classification 4808 is generally associated with vegetable crops that have a long growing season and are harvested when mature at the end of the season. These crops are left in the field to dry and are used as feed, flour, or cereal grain.

**Exclusions:**

- Worker hours or businesses engaged in field vegetable crops harvested by hand must be reported separately in classification 4810.

- Worker hours or businesses engaged in fresh vegetable packing operations must be reported separately in classification 2104.

- Worker hours or businesses engaged in canneries or freezer operations must be reported separately in classification 3902.

- Contractors hired by farm to install, repair or build any farm equipment or structures are not farm labor contractors and must be reported in the classification applicable to the work performed.

**What is a farm labor contractor?**

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

- Generally, the work involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors to report in?**

• Farm labor contractors are reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**AMENDATORY SECTION** (Amending WSR 16-11-082, filed 5/17/16, effective 7/1/16)

**WAC 296-17A-4808 Classification 4808.**

**~~((4808-01 Farms: Diversified field crops—Not for fresh market~~**

**~~Applies to:~~**

~~Establishments engaged in growing a variety of grain, vegetable, or grass crops during a single season.~~

~~**Work in this classification includes,** but is not limited to:~~

- ~~• Preparing soil for new crops;~~
- ~~• Planting;~~
- ~~• Fertilizing;~~
- ~~• Weeding;~~
- ~~• Harvesting;~~
- ~~• Grading;~~
- ~~• Sorting;~~
- ~~• Packing;~~
- ~~• Shipping of farm products grown subject to this classification;~~
- ~~• Maintaining or installing sprinkler or irrigation systems.~~

**~~Typical crops:~~**

Alfalfa	Garlie	Rye
Barley	Grain	Sugar beets (for sugar)
Beans, dry	Grass seed	Timothy
Clover	Grass hay	Wheat
Corn (dry, silage)	Peas, dry	

**~~Notes:~~**

~~• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.~~

~~• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.~~

~~• This classification differs from classification 4802 "Vegetable farm operations" in that vegetable crops in classification 4808 generally have a long growing season and are harvested upon reaching maturity at the end of the season. Vegetable crops grown in classification 4802 are generally planted so that harvesting will occur continuously over the season and in smaller quantities. Crops grown in classification 4808 are generally used as feed, flour, or cereal grains, as opposed to crops grown in classification 4802, which are used for fresh market, cannery or frozen foods.~~

**~~What activities are not included in this classification?~~**

~~• Fresh vegetable packing (report in classification 2104);~~  
~~• Canneries or freezer operations (report in classification 3902);~~

~~• Employers growing only cereal grain crops, such as barley, corn, rye, or wheat (report in subclassification 4808-06);~~

~~• Establishments engaged exclusively in the sale of fresh vegetables but not involved in the cultivation of plants (report in classification 6403); and~~

~~• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).~~

**~~What is a farm labor contractor?~~**

~~• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and~~

~~• Generally the work involves manual labor tasks as opposed to machine operation.~~

**~~What risk classification are farm labor contractors to report in?~~**

~~• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and~~

~~• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.~~

**~~4808-02 Farms: Alfalfa, clover, and grass seed~~**

**~~Applies to:~~**

~~Establishments engaged exclusively in raising alfalfa, clover, and grass crops for seed.~~

~~**Work in this classification includes,** but is not limited to:~~

- ~~• Preparing soil for crops;~~
- ~~• Planting;~~
- ~~• Fertilizing;~~
- ~~• Machine harvesting;~~
- ~~• Drying of seeds;~~
- ~~• Grading;~~
- ~~• Sorting;~~
- ~~• Packing and shipping of seeds;~~
- ~~• Maintaining or installing sprinkler or irrigation systems.~~

**~~What activities are not included in this classification?~~**

~~• Grading, sorting, and packaging seeds; or selling baled alfalfa or clover by establishments not engaged in growing operations (report in classification 2101);~~

~~• Establishments engaged exclusively in grain or seed storage that are not engaged in growing operations (report in classification 2007); and~~

~~• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).~~

**~~What is a farm labor contractor?~~**

~~• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and~~

~~• Generally the work involves manual labor tasks as opposed to machine operation.~~



**What risk classification are farm labor contractors to report in?**

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4808-04 Farms: Hay**

**Applies to:**

Establishments engaged exclusively in raising hay, which includes, but is not limited to, grass hay, straw, clover, alfalfa, and timothy.

**Work in this classification includes**, but is not limited to:

- Raising of hay crops for seed;
- Preparing soil for crops;
- Planting;
- Fertilizing;
- Machine harvesting;
- Grading;
- Sorting;
- Drying of seeds;
- Packing and shipping of seeds;
- Maintaining or installing sprinkler or irrigation systems.

**Note:**

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

**What activities are not included in this classification?**

- Grading, sorting, and packaging seeds, or selling baled hay by establishments not engaged in growing operations (report in classification 2101); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

**What is a farm labor contractor?**

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors to report in?**

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4808-06 Farms: Cereal grains**

**Applies to:**

Establishments engaged in growing cereal grain crops.

**Work in this classification includes**, but is not limited to:

- Preparing soil for new crops;
- Planting;
- Fertilizing;
- Weeding;
- Harvesting;
- Grading;
- Sorting;
- Packaging and shipping of farm products grown subject to this classification;
- Maintaining or installing sprinkler or irrigation systems.

**Note:**

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

**Typical crops:**

Barley	Rye
Corn	Wheat

**What activities are not included in this classification?**

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

**What is a farm labor contractor?**

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors to report in?**

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4808-07 Potato sorting and storage**

**Applies to:**

Establishments engaged in storing potatoes in storage warehouses or cellars.

**Work in this classification includes**, but is not limited to:

- Sorting good potatoes from damaged ones, or from debris such as vines or rocks;
- Piling potatoes into storage area by size, and storing them until they are taken to processing or packaging plants;
- Sorting done in either the field or at a storage warehouse;
- Potato digging and piling when performed by employees of an employer who stores potatoes, but who is not engaged in growing potatoes.

**What activities are not included in this classification?**

- Fresh vegetable packing operations (report in classification 2104);

- ~~Canneries or freezer operations (report in classification 3902);~~
- ~~Potato chip manufacturing (report in classification 3906);~~
- ~~Establishments engaged exclusively in the sale of fresh vegetables but not involved in the cultivation of plants (report in classification 6403); and~~
- ~~Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed);~~

**Special note:** The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.

**4808-08 Custom hay baling**

**Applies:**

Exclusively to a specialist farm labor contractor engaged in mowing, turning, and baling hay owned by others.

**Work in this classification includes:**

- Incidental loading of hay onto trucks;
- Stacking of hay in barns or warehouses.

**Special note:** The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.

**4808-11 Custom farm services by contractor**

**Applies:**

Exclusively to contractors engaged in supplying and operating agriculture machinery and equipment at their customers' locations.

**Typical equipment used:**

Boom loaders	Pickers	Reapers
Combines	Plows	Tractors
Fertilizer spreaders	Potato diggers	

**Work in this classification includes,** but is not limited to:

- Preparing fields for crops;
- Planting;
- Cultivating crops;
- Fertilizing;
- Harvesting;
- This classification also includes seasonal agriculture produce hauling from the field to a processing or storage plant when performed by employees of an employer not engaged in the related farming operations associated with the crops being hauled.

**What activities are not included in this classification?**

• Contractors subject to this classification are generally not responsible for the overall care of the crops, but are merely hired to provide specified services, which involve the use of machinery and employee equipment operators;

• Hauling of agriculture produce from anywhere other than field to processing or storage plant is to be reported in classification 1102.) **4808-01 Farms: Field crops - Not for fresh market**

**Applies to:**

Businesses engaged in growing:

- Variety of grains, or vegetables (generally used as feed, flour, or cereal grains, as opposed to crops grown in classification 4802, which are used for fresh market, canning or frozen foods);
- Alfalfa, clover, timothy, straw, and other types of grass for hay or seed.

**Work activities include, but are not limited to:**

- Preparing soil for new crops;
- Planting;
- Fertilizing;
- Weeding;
- Machine harvesting;
- Drying of seeds;
- Grading;
- Sorting;
- Packing;
- Shipping of farm products grown subject to this classification;

- Maintaining or installing sprinkler or irrigation systems.

**Machinery and equipment used include, but are not limited to:**

- Balers;
- Combines;
- Fertilizer spreaders;
- Irrigation equipment;
- Seeding equipment;
- Tillers;
- Disk harrows;
- Tractors.

**Typical crops:**

- Alfalfa;
- Barley;
- Dry beans;
- Clover;
- Corn for silage;
- Garlic;
- Grass hay;
- Grass seed;
- Peas, dry;
- Rye;
- Straw;
- Sugar beets (for sugar);
- Timothy hay;
- Wheat.

**Notes:**

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

• This classification differs from classification 4802 "Vegetable farm operations" in that vegetable crops in classification 4808 generally have a long growing season and are harvested upon reaching maturity at the end of the season. Vegetable crops grown in classification 4802 are generally planted so that harvesting will occur continuously over the

season and in smaller quantities. Crops grown in classification 4808 are generally used as feed, flour, or cereal grains, as opposed to crops grown in classification 4802, which are used for fresh market, canning or frozen foods.

**Exclusions:**

• Worker hours or businesses engaged in fresh vegetable packing must be reported separately in classification 2104.

• Worker hours or businesses engaged in cannery or freezer operations must be reported separately in classification 3902.

• Businesses engaged exclusively in the sale of fresh vegetables, but not involved in the cultivation of plants, are classified in classification 6403.

• Contractors hired by the farm to install, repair or build any farm equipment or structures, must report in the classification applicable to the work being performed.

• Grading, sorting, and packaging seeds; or selling baled hay (alfalfa, timothy, clover, etc.) by businesses that are not engaged in growing operations is classified in classification 2101.

• Businesses engaged exclusively in grain or seed storage that are not engaged in growing operations, are classified in classification 2007.

**What is a farm labor contractor?**

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

• Generally, the work involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors reported in?**

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4808-07 Potato sorting and storage**

**Applies to:**

Businesses engaged in storing potatoes in storage warehouses or cellars.

**Work activities include, but are not limited to:**

• Sorting good potatoes from damaged ones, or from debris, such as vines or rocks, either in the field or at a storage warehouse.

• Piling potatoes into storage area by size, and storing them until they are taken to processing or packaging plants.

• Sorting done in either the field or at a storage warehouse.

• Potato digging and piling when performed by employees of an employer who stores potatoes, but who is not engaged in growing potatoes.

**Exclusions:**

• Worker hours or businesses engaged in fresh vegetable packing operations, must be reported separately in classification 2104.

• Worker hours or businesses engaged in cannery or freezer operations, must be reported separately in classification 3902.

• Worker hours or businesses engaged in potato chip manufacturing, must be reported separately in classification 3906.

• Businesses engaged exclusively in the sale of fresh vegetables, but not involved in the cultivation of plants, are classified in classification 6403.

• Contractors hired by a farm to install, repair, or build any farm equipment or structures, must report in the classification applicable to the work being performed.

**Special note:** The farm labor contractor provision is not applicable to this classification because these businesses are not engaged in farming operations.

**4808-11 Custom farm services (by contractor)**

**Applies to:**

Contractors supplying and operating agriculture machinery and equipment at their customers' locations.

**Work activities include, but are not limited to:**

• Preparing fields for crops;

• Planting;

• Cultivating crops;

• Fertilizing;

• Harvesting;

• Mowing, turning and baling hay;

• Incidental loading of hay onto trucks;

• Stacking of hay in barns or warehouses.

**Note:** This classification also includes seasonal agriculture produce hauling from the field to a processing or storage plant when performed by employees of an employer not engaged in the related farming operations associated with the crops being hauled.

**Machinery and equipment used include, but are not limited to:**

• Balers;

• Boom loaders;

• Combines;

• Fertilizer spreaders;

• Potato diggers;

• Seeding equipment;

• Spreaders;

• Tillers/disks;

• Tractors.

**Exclusions:**

• Contractors subject to this classification are generally not responsible for the overall care of the crops but are merely hired to provide specified services, which involve the use of machinery and employee equipment operators.

• Hauling of agriculture produce anywhere other than from the field to processing or storage plants is classified in classification 1102.

**Special note:** The farm labor contractor provision is not applicable to this classification because these businesses are not engaged in farming operations.

AMENDATORY SECTION (Amending WSR 17-03-109, filed 1/17/17, effective 4/1/17)

**WAC 296-17A-0301 Classification 0301.** Applies to:

Contractors engaged in the installation, service and repair of:

- Lawn type sprinkler systems;
- Agriculture sprinkler and irrigation systems, including above or below ground;
- New landscape construction or renovation projects;
- Invisible fence installation, which is used to confine animals within a given area;
- Paver stone installation projects such as, but not limited to: Driveways, walkways, patios and pool decks. Common types of pavers used include brick, concrete and stone.

Common methods of paver installation include:

- **Interlocking concrete pavers**, which are primarily sand set, but in some cases mortar set;
- **Permeable interlocking concrete pavers**, which are installed to help reduce stormwater runoff;
- **Pedestal set pavers**, when used for roof top decks and plaza areas to increase living space, or to meet certain environmental requirements (not acting as a roofing system).

Work contemplated by this classification includes, but is not limited to:

- Producing preliminary drawings of a landscape or renovation project;
  - Identifying area of land to be covered, to determine size and amount of pipe and sprinkler heads needed for irrigation/sprinkler system install;
  - Preparing the ground (may include tilling and spreading of top soils);
  - Trenching;
  - Burying wire in trench (invisible fencing);
  - Connecting low voltage transmitter box for invisible fencing;
  - Installing/repairing sprinkler systems;
  - Planting trees, plants or shrubs;
  - Planting or replacing grass from seed or sod;
  - Installing ground cover material or plastic to retard weeds;
  - Placing concrete borders;
  - Installing concrete, brick or stone pavers to create walkways, pathways, pool decks, or patios.
- Typical machinery includes, but is not limited to:
- Electric power tools;
  - Fertilizer spreaders;
  - Hand tools/rakes;
  - Mowers;
  - Small front end loaders;
  - Tractors with till attachments;
  - Trenchers;
  - Wheelbarrows;
  - Vibrating plow or pipe pulling machine.

**This classification includes:**

• Incidental construction of rockery, extruded concrete curbing, fences, ponds, walls, arbors, trellises and gazebos when performed by employee of a landscape contractor as part of a landscape contract.

- If these activities are conducted separately from a landscape contract and not part of a landscape project, they must

be reported separately in the classification applicable to the work being performed.

• Incidental construction of walls and rockery performed by employees of a paver stone installation contractor as part of a paver installation contract.

- If these activities are conducted separately from a paver stone installation contract and not part of a paver stone project, they must be reported separately in the classification applicable to the work being performed.

**Note:** Incidental work is a minor part of an overall project or contract.

**Example:** A ((paving)) paver installation company creates the driveway, walkways, and patio at a residential home. The company finds that the lawn will slide onto the driveway unless a three foot tall retaining wall the length of the driveway is created. The creation of the retaining wall to protect the driveway is *incidental* to the ((paving)) paver installation project and may be reported in **0301**.

**Excluded phases of work:**

- Worker hours engaged in open canal type irrigation systems, which are classified in **0108**.
- Worker hours engaged in maintenance and cleaning of lawn sprinkler system pipes and heads done in connection with a landscape maintenance contract which are classified in **0308**.
- Worker hours engaged in grading, clearing, or contouring of land which are classified in **0101**.
- Worker hours engaged in bulkheads not adjacent to water, or similar structures built of rock, which are classified in **0302**.
- Worker hours engaged in installation or on-site maintenance of roofing materials composed of impermeable barriers, sod, soil, and plants, sometimes termed landscape roofing, living roofing, or vegetative roofing, which are classified in **0507**.
- Worker hours engaged in paver installation on a roof by a roofing contractor, when acting as part of the roofing system, which are classified in **0507**.
- Worker hours engaged in installation or maintenance of a landscape roofing irrigation system, which are classified in **0507**.
- Worker hours engaged in lawn care maintenance or chemical spraying or fumigating which are classified in **0308**.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

For administrative purposes, classification 0301 is divided into the following subclassifications:

**0301-04 Lawn type sprinkler systems: Installation, service or repair**

**0301-06 Agricultural sprinkler/irrigation systems, N.O.C.: Installation, service or repair**

**0301-08 Landscape construction operations, N.O.C.**

AMENDATORY SECTION (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

**WAC 296-17A-1002 Classification 1002.**

**1002-00 Sawmills: Operation and maintenance**

Applies to establishments engaged in the operation and maintenance of a sawmill. Sawmills receive raw logs which

they usually store temporarily in their yard before cutting them into rough and finished lumber. This classification includes operations such as, but not limited to, loading raw logs onto the conveyor or log slip; sawing logs with a variety of head, cut-off, circular or band saws; grading and sorting lumber; drying green (wet) lumber; and the stacking and storing of lumber. The raw logs are cut into rough lumber, such as cants and blocks, or into finished lumber, such as posts, planks or boards.

This classification excludes all operations conducted in the woods, such as logging or use of a portable sawmill, which is to be reported separately in classification 5001, and establishments engaged *only* in the manufacturing of wood, veneer, veneer products, or lumber remanufacturing which is to be reported separately in the classification applicable to the manufacturing being performed.

**1002-08 Shake and shingle mills - Automated process  
(to be assigned by classifications underwriter)**

Applies to establishments operating an automated shake and shingle mill which manufacture shakes, shingles and/or ridge caps using automated processes. For purposes of this classification, automated processes refers to shake and shingle mills equipped with automatic feeders on all saws, adjustable packing and cutting stations, and fully automatic systems for conveying material to work stations. All equipment must be equipped with automatic shut off switches. Within a shingle mill the operation of a trim saw must be performed by an individual as a separate function from that of the shingle saw operator (shingle sawyer is not to perform both functions). Shake splitters must be equipped with a gauge control mechanism which permits the operator to automatically set the thickness of the cut. Conveyor systems must have dual controls to allow the deck man and sawyer the ability to control incoming material to the work station.

Block mills must be equipped with an automated pallet dump to eliminate the handling of material to the sawyer work station or an adjustable scissor lift adjacent to the shingle saw or shake splitter. Blocked wood purchased by mills must be contained in pallets prior to entering the mill yard or premises. Log mills must be equipped with a fully mechanized log slip (used to move logs into the deck area), log levelers, stabilizers, and lifters must be present in the deck area, automatic deck cut-off saw, live deck for moving material from the deck to the splitting area and overhead mounted splitters. Trim saws, also referred to as clipper saws, must be equipped with a laser guide or quartz light. This lighting reveals to the operator where its saw blade is in relationship to the material being processed.

For purposes of this classification, the following terms or words shall be given the meanings below:

*Automatic deck or cut-off saw:* A large saw, usually circular, used to trim logs to a specified length (rounds) before they enter a manufacturing plant.

*Clipper saw:* A machine used to make shingle edges parallel.

*Shingle:* Roofing or siding material having sawn faces and backs, are of a standard thickness at the butt end and tapered finish at the other end.

*Shake:* Roofing or siding material having at least one surface with a natural grain textured split surface.

*Live deck:* A chain driven platform located in the same proximity as the deck saw and is used to convey cut rounds from the cutting area to the splitting area.

*Log stabilizer:* A levered device adjacent to the deck saw used to hold the log steady while it is being cut.

*Log slip:* A chain driven conveyor used to move logs into the deck area.

*Laser or quartz guide light:* An overhead mounted light above a saw that illuminates that portion of a work surface where the saw blade will pass or make a cut.

*Log leveler:* A levered device adjacent to the deck saw used to level a log automatically.

*Overhead splitter:* A ceiling mounted hydraulic, air, or electrically operated apparatus with wedge shaped end that is used to split log rounds into block wood when activated by the splitterman.

*Shingle saw:* A machine used to make shingles.

*Shake splitter:* A machine used to split blocks into shake blanks.

*Shake saw:* A machine used to saw shake blanks into a finished wedged shaped product.

This classification excludes all operations conducted in the woods, such as logging or the cutting and splitting of shake or shingle bolts, which are to be reported separately in classification 5001.

**Special notes:** Shake and shingle mills not meeting all the conditions as set forth above shall be reported separately in classification 1005 "shake and/or shingle mills(~~N.O.C.~~)."

AMENDATORY SECTION (Amending WSR 15-02-060, filed 1/6/15, effective 7/1/15)

**WAC 296-17A-1007 Classification 1007.**

**1007-08 Geophysical exploration, N.O.C.**

Applies to contractors engaged in geophysical exploration, with no core drilling, and without ((~~seismatic~~)) seismic detection, who are not covered by another classification (N.O.C.). The more common methods of geophysical exploration are gravitational, electric and magnetic. In the gravitational method, delicate pendulums and torsion balances capable of detecting differences in the gravitational pull of the earth at various places enable the geologist to tell where oil is likely to be found. There are two electrical methods, resistivity and inductive. In the resistivity method, measurements are taken on an ohmmeter, which indicate the resistivity of the subsurface. The inductive method is somewhat comparable, but instead of determining the resistivity of the subsurface formations, the conductivity is measured enabling the geologist to determine the character of the subsurface being studied. The magnetic method is accomplished by means of a highly developed form of magnetic dipping needle with a telescope magnifier. The magnetic attraction exerted by magnetic rocks and formations causes the needle to deflect from its horizontal plane, thereby enabling a geologist to develop contour maps with lines of equal magnetic attraction. This classification includes prospectors who may specialize in particular instrumentation such as electrical, gravity, magnetic or seismic. The prospector studies structure of subsurface rock formations to locate petroleum deposits; conducts

research using geophysical instruments such as seismograph, gravimeter, torsion balance, and magnetometer, pendulum devices, and electrical resistivity apparatus to measure characteristics of the earth; computes variations in physical forces existing at different locations and interprets data to reveal subsurface structures likely to contain petroleum deposits; and determines desirable locations for drilling operations. This classification includes prospecting for mineral ores and the testing of soil for percolation when performed by employees of an employer subject to this classification.

This classification excludes core drilling and seismic geophysical exploration which are to be reported separately in classification 0103, and geophysical crews employed by oil companies who are to be reported in the classification applicable to the business.

**Special note:** When assigning classifications 1007-08, 4901-16 - Geologists, and 0103-10 - Seismic geophysical exploration, care must be taken to look beyond the word "geologist" to determine the actual nature of the activities being performed.

**1007-09 Testing and inspecting of pipelines or utility lines using radiographic, video, infrared thermography or X-ray analysis process by contractor at industrial plants or construction sites**

Applies to establishments engaged in the testing or inspecting of pipelines, utility lines or conduits for others, provided the testing or inspecting is not performed in conjunction with the construction of the pipeline. This classification includes testing or inspecting involving radiographic, video, infrared thermography or X-ray analysis processes such as the X-raying of containers, inspecting of utility lines, and the drawing of oil samples on-site when performed by employees of an employer subject to this classification. Classification 1007-09 is assigned primarily to field activities.

This classification excludes testing or inspecting done in conjunction with construction which is to be reported separately in the appropriate construction classification.

**1007-15 Inspection and grading bureaus, N.O.C.; log scaling and grading bureaus; lumber inspection services; weigh scale attendants, N.O.C.; weather stations; rainmaking - No aircraft; air flow/heat balancing and testing**

Applies to establishments operating as *inspection and grading bureaus*, not covered by another classification (N.O.C.), including, but not limited to, those involved in inspecting and grading commodities such as logs, lumber, shingles, shakes, poles, and railroad ties. The commodity is examined and stamped with a grademark which indicates the grade, species, producer's name or number and other pertinent data. A certificate of inspection may be issued in lieu of a grademark. The purpose of the inspection is to grade, tally, and stamp only those products which meet certain required specifications and to cull those products which do not meet the established standards. *Log scaling and grading bureaus* measure the logs, and by applying log rule formulas, determine the net yield, usually expressed in board feet. A scale ticket containing descriptive data is attached to the end of the log. This classification also applies to *weigh scale attendants* not covered by another classification (N.O.C.), when the service is available to the general public, otherwise the weigh

scale attendants are to be included in the basic classification of the business. This classification includes establishments engaged exclusively in such services as auto emission control testing, air flow balancing and testing, the balancing and testing of heating, ventilating and air conditioning systems, hydrostatic testing of such objects as boilers, tanks, pipes and fittings using compressed air or water pressure to detect leaks, the strength testing of building material such as, but not limited to, asphalt, concrete and steel; and the testing or inspecting of steel weldments. This classification also includes *weather stations* which observe and record weather conditions for use in forecasting, and which read weather instruments, including thermometers, barometers, and hygrometers to ascertain elements such as temperature, barometric pressure, humidity, wind velocity, and precipitation. Weather data is transmitted and received also from other stations. A fully automated (computerized) weather station can be reported under classification 4904. This classification also covers rainmaking without the use of aircraft.

**1007-16 Foresters (to be assigned only by reforestation underwriter)**

**Applies to:**

Foresters engaged in forest management.

**Work in this classification includes**, but is not limited to:

- Plan and direct forestation or reforestation projects;
- Map forest areas;
- Estimate standing timber, future growth, or manage timber sales;
- Plan cutting programs to assure continuous production of timber;
- Determine methods of cutting and removing timber with minimum of waste and environmental damage;
- Plan and design forest fire suppression and fire prevention programs;
- Plan and design construction of fire towers, trails, roads, and fire breaks;
- Design projects for control of floods, soil erosion, tree diseases, and insect pests;
- Perform tree auditing;
- Perform scientific, tree, forestry, and watershed studies for others; and
- Inspect precommercial thinning layouts or pruning operations.

**What activities are not included in this classification?**

- Tree auditing services while planting is in process (report in classification 5004); and
- Performing manual labor or direct supervision of manual laborers.

**1007-19 Timber cruisers (to be assigned only by reforestation underwriter)**

**Applies to:**

Timber cruisers engaged in cruising timber land to estimate the volume and quality of a timber stand through an on-site visual inspection.

**Work in this classification includes**, but is not limited to:

- Collecting data concerning forest conditions for appraisal, sales, administration, logging, land use, and forest management planning;
- Traversing forest area on foot in an established pattern and applying sampling technique;
- Recording in a test site the height and diameter of each tree and defects such as rot and bends, to estimate the useable wood in each tree;
- Preparing from data collected a summary report giving the timber types, sizes, condition and outstanding features of an area, such as existing roads, streams and communication facilities; and
- Marking trees with spray paint to denote trails and boundaries, or for cutting.

**What activities are not included in this classification?**

- Performing manual labor or direct supervision of manual laborers.

**1007-21 Environmental and ecological surveyor services, N.O.C.**

Applies to establishments engaged in providing environmental and ecological surveying services not covered by another classification (N.O.C.) for others. Environmental or ecological surveying firms typically serve as consultants to industrial or commercial enterprises, governmental agencies or private citizens. Environmental engineer is a term applied to engineering personnel who apply knowledge of chemical, civil, mechanical, or other engineering disciplines to preserve the quality of life by correcting and improving various areas of environmental concern, such as air, soil, or water pollution. Services include identifying and projecting potential environmental impact resulting from proposed projects, assessing the source, severity and extent of environmental damage resulting from human or natural causes, and recommending solutions to protect or regain the natural balance between organisms and their environment. Activities of environmental surveying/consulting establishments include, but are not limited to, locating archaeological sites for preservation, researching and collecting field data on birds and insects, preparing impact statement for landowners and developers, stream and fish monitoring, botanical surveys, wetland surveys, soil and groundwater testing for contamination, air monitoring including industrial hygiene services, monitoring and testing at hazardous waste sites, providing advice on pollution control at its source, and developing a plan for cleaning up already recognized problems such as waste disposal sites, radon or asbestos contamination. Other services provided may include helping clients develop a system for complying with various governmental regulations. This classification includes employees of the environmental surveying service who conduct field work as well as those who are assigned to act as project managers or project superintendents to oversee the work of remediation contractors.

This classification excludes all types of remediation work which is to be reported separately in the classification applicable to the type of remediation work being performed, and surveyors employed by construction companies or other types of businesses who are to be reported separately in the applicable classifications.

**Special note:** When assigning classifications 1007 or 4901, care must be taken to look beyond the words "consult-

ing" or "engineering" to determine the actual nature of the activities being performed.

AMENDATORY SECTION (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

**WAC 296-17A-1108 Classification 1108.**

**1108-02 Glass tempering**

Applies to establishments engaged in glass tempering services for others. Operations contemplated by this classification include glass cutting, bending, grinding, beveling, and silvering. Tools and equipment include metal and wood cutting tools and machinery, grinders, sanders, drills, saws, knives, suction cups, putty, caulking, cleaning solvents, forklifts, packing materials, delivery and service vehicles and tempering ovens. The process of glass tempering consists of taking auto or sheet glass which has been purchased from a glass manufacturer or distributor and placing it in a tempering oven. The oven heat realigns the molecular structure of the glass creating added strength, however, the appearance of the glass remains unchanged. This classification includes the sale of accessories for flat glass such as sealants, screening, aluminum frames for storm windows and doors, mirror backings, frames and glass cleaners.

This classification excludes establishments engaged in the installation of glass, mirrors, aluminum or wood window sashes or similar products away from the shop which are to be reported separately in classification 0511; establishments engaged in the manufacture of glass which is to be reported separately in classification 3503; merchants who specialize in selling or installing auto glass which is to be reported separately in classification 1108-04; glass merchants engaged exclusively in flat glass sales which are to be reported separately in classification 1108-03; and combined auto/flat glass merchants with no tempering which are to be reported separately in classification 1108-05.

**1108-03 Flat glass merchants - No tempering**

Applies to establishments engaged in receiving, storing and selling all types of fabricated glass and (~~plexiglas~~) plexiglass. Glass products include, but are not limited to, window glass, plate glass, safety glass for automobiles, and mirrors. Work contemplated by this classification includes cutting of glass to customers specified dimensions, beveling, buffing, grinding, polishing, silvering of plate glass, and the installation of glass into frames within the shop or adjacent yard. Some dealers may specialize in cutting, selling or installing fabricated flat glass or they may also sell and install plate, laminated, window, cathedral, stained, bullet proof, opalescent flat, picture, skylight and tempered glass. Most glass dealers will cut glass to order. Tools and equipment include metal and wood cutting tools and machinery, grinders, sanders, drills, saws, knives, suction cups, putty, caulking, cleaning solvents, forklifts, packing materials, delivery and service vehicles. This classification includes the sale of accessories for flat glass such as sealants, screening, aluminum frames for storm windows and doors, mirror backings, frames and glass cleaners.

This classification excludes establishments engaged in the installation of glass, mirrors, aluminum or wood window

sashes or similar products away from the shop which are to be reported separately in classification 0511; manufacturing of glass which is to be reported separately in classification 3503; glass merchants who perform glass tempering which are to be reported separately in classification 1108-02; and merchants who specialize in selling or installing auto glass which are to be reported separately in classification 1108-04.

#### **1108-04 Auto glass merchants**

Applies to establishments engaged in selling and installing automobile glass in vehicles. In addition to selling and installing new or replacement auto glass, merchants typically repair auto windshield cracks, scratches, bullseyes and breaks. Tools and equipment include metal and wood cutting tools, grinders, sanders, drills, saws, knives, windshield sticks, suction cups, putty, caulking, cleaning solvents, delivery and service vehicles. Solar tinting of auto glass with film to reduce heat and glare may also be performed, as well as selling and installing sun roofs. Auto glass merchants may offer 24-hour emergency service or pickup and delivery. Installation of auto glass, truck glass or boat tops performed in or away from the shop is included within the scope of this classification.

This classification excludes establishments engaged in the manufacturing of glass which are to be reported separately in classification 3503; tinting or the application of tinted plastic film to auto glass by an auto detailer which is to be reported separately in classification 3406; repairing auto windshield cracks, bullseyes and chips by an auto detailer which is to be reported in 3406; glass merchants who perform glass tempering which are to be reported separately in classification 1108-02; glass merchants exclusively dealing in flat glass which are to be reported in classification 1108-03; and combined auto/flat glass merchants with no tempering which are to be reported in classification 1108-05.

#### **1108-05 Combined auto and flat glass merchants - No tempering**

Applies to establishments engaged in receiving, storing and selling all types of fabricated glass and (~~plexiglas~~) plexiglass as window glass, plate glass, safety glass for automobiles, mirrors and other types of glass at a permanent shop location or adjacent yard. Work contemplated by this classification includes cutting of glass to customers' specified dimensions, beveling, buffing, grinding, polishing, silvering of plate glass and the installation of glass into frames. Tools and equipment include metal and wood cutting tools and machinery, grinders, sanders, drills, saws, knives, suction cups, windshield sticks, putty, caulking, cleaning solvents, forklifts, packing materials, and delivery and service vehicles. A glass merchant performing the installation of glass in automobiles is also included within the scope of this classification; as are related services such as, but not limited to, repair of auto windshield cracks, scratches, bullseyes and breaks; in vehicle tinting of auto glass to reduce heat and glare; and installing sun roofs. Other dealers may specialize in cutting, selling or installing fabricated flat glass or they may also sell and install plate, laminated, window, cathedral, stained, bullet proof, opalescent flat, picture, skylight and tempered glass. Included within the scope of this classification is the sale of accessories for flat glass such as sealants,

screening, aluminum frames for storm windows and doors, mirror backings, frames and glass cleaners.

This classification excludes establishments engaged in the installation of glass, aluminum or wood window sashes or similar products away from the shop which are to be reported separately in classification 0511; manufacturing of glass which is to be reported separately in classification 3503; tinting or the application of tinted plastic film to auto glass by an auto detailer which is to be reported separately in classification 3406; repairing auto windshield cracks, bullseyes and chips by an auto detailer which is to be reported in 3406; glass merchants who perform glass tempering which are to be reported separately in classification 1108-02; and flat glass merchants who do not sell or install auto glass which are to be reported separately in classification 1108-03.

#### **1108-06 Glass frosting, etching, beveling or grinding**

Applies to establishments engaged in shaping and finishing solid glass by cutting, frosting, etching, beveling, grinding, sandblasting, carving, glue chipping, decorating or grooving. Custom items manufactured in this classification include, but are not limited to, video game tops, glass signs, glass used in the assembly of electrical appliances such as microwave ovens, electronically controlled cabinets and display panels, and mirrors of all sizes. Machinery includes diamond or glass cutting saws, diamond or glass grinding wheels and discs, drills, polishing laps, etching tools and other hand tools. In the manufacture of mirrors, metallic solutions (usually silver), shellacs or varnishes, paints, and plate glass are received from outside sources. The glass is cut to size, ground, smoothed, and the edges may be beveled. Hole drilling, chemical etching, drying, buffing and polishing may be performed. Reflective surfaces are generally produced by pouring or spraying metallic solutions over prepared glass. Heavier coats are obtained by successive applications of the plating solution. After applying the plating solution, the mirrors are sprayed or hand brushed with shellac or varnish, then with paint. Frames, handles or similar finishings may be attached. Production manufacturing of insulated glass by sealing together two or more sheets of glass with an air space between them is also included when performed by employees of an employer subject to this classification.

This classification excludes the mining, digging or quarrying of raw materials which is to be reported separately in the applicable classification; glass merchants who do incidental grinding, beveling, silvering and cutting of glass who are to be reported separately in the classification applicable to the type of glass they specialize in; establishments manufacturing optical goods or telescopes, or perform precision grinding of blank or rough lenses which are to be reported separately in classification 6604; and establishments engaged in manufacturing stained or leaded glassware, or in melting or blowing glass which are to be reported separately in classification 3503.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

#### **WAC 296-17A-2008 Classification 2008.**

#### **2008-01 Warehouses - Field bonded**



Applies to establishments engaged in providing bonded warehouse services at the (~~customers~~) customer's location. Field bonding involves appropriating a warehouse (or portion of one), that is owned by the customer, for the purpose of segregating and securing a portion of that customer's merchandise to be used as collateral for a bank loan. The field bonding company will catalog the merchandise that is involved in the transaction, issue a receipt (the receipt is presented as collateral for the loan), and ensure its security and value for the length of the contract. The field bonding company is not responsible for the maintenance of the facility and doesn't become involved in handling, moving or shipping the goods. Work contemplated by this classification is limited to employees who catalog the goods being held, security guards, and clerical help employed at the secured location.

This classification excludes drivers who are to be reported separately in classification 1102.

**Special note:** Traditional warehousing establishments (such as those described in classification 2102) may be "bonded" in that they can assure their customers that goods regulated by the Bureau of Alcohol, Tobacco and Firearms, or goods awaiting inspection by U.S. Customs, will remain secured. This type of bonding is similar in that it is an assurance of value and safekeeping, but differs from classification 2008 in that the goods are delivered to, and held at, the warehouse company's own facility.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-3101 Classification 3101.**

**3101-05 Ready mix concrete dealers**

Applies to establishments engaged in the mixing and delivery of ready mix concrete for all types of residential and commercial projects such as, but not limited to, foundations, walls, slabs, roadways, driveways, walkways, dams, bridges and swimming pools. Usually, these establishments operate a plant location with a supply of sand, gravel, pebbles, broken stones or slag, and various ingredients to produce bonding adhesives such as cement. The concrete is premixed at the plant location and loaded into a delivery truck, or the raw unmixed ingredients such as cement, sand, gravel, pebbles, broken stones and water are loaded into a concrete truck and mixed in a revolving or rotating drum in transit to the project site. The concrete is discharged from the drum with use of a metal (~~shoot~~) chute or is transferred into the bed of a concrete pump truck for pumping. This classification includes ready mix dealers who operate concrete ready mix trucks and/or concrete pump trucks as part of the delivery service. This classification also includes the related sale of tools, equipment, and building materials such as bricks or concrete blocks(~~, and~~). This classification also includes pit and crusher operations provided all sand and gravel produced is used by the dealer to manufacture concrete mix.

This classification excludes establishments engaged in the commercial production and/or digging of sand, gravel or stone not in connection with a ready mix dealer which is to be reported separately in classification 0112, and concrete pump truck services not in connection with a ready mix dealer which is to be reported separately in classification 3506.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-3102 Classification 3102.**

**3102-04 (~~Rock~~) Stone wool insulation: Manufacturing**

Applies to establishments engaged in the manufacture of mineral wool insulation from siliceous materials such as, but not limited to, rock, slag, and glass, or combinations thereof. In a special furnace, hot air or steam is blown through molten rock or slag, shredding the material into a mass of fine intertwined fibers to form the wool. To produce fiberglass insulation material, molten glass is drawn at high speeds through orifices, then subjected to jets of high pressure steam which break the glass filaments into fine fibers. The final product, regardless of raw material, may be shipped in granules which are bagged, or formed into flat sheets, cut to size, enclosed in paper or foil, and packaged. Incidental rock, slag, and glass crushing operations are contemplated by this classification.

This classification excludes the digging or quarrying of raw materials which is to be reported separately in the classification appropriate to the work being performed, and the manufacture of asbestos products which is to be reported separately in classification 3104.

**AMENDATORY SECTION** (Amending WSR 19-17-069, filed 8/20/19, effective 10/1/19)

**WAC 296-17A-3402 Classification 3402.**

**(~~3402-00~~) 3402-02 Pump, safe, scale, auto jack, water meter, air compressor and elevator: Manufacturing or assembly**

**Applies to:**

Businesses that manufacture or assemble pumps, safes, scales, auto jacks, water meters, air compressors, and elevators and associated electronic components.

**Work activities include, but are not limited to:**

- Welding;
- Machining;
- General mechanical and electrical work;
- Assembly work.

**Machinery and equipment used include, but are not limited to:**

- Hand tools;
- Lathes;
- Mills;
- Drills;
- Grinders;
- Saws;
- Welders;
- Punches;
- Shears;
- Compression equipment;
- Pressure testers.

**Note:** Machinery/equipment could be manual or computer numeric controlled (CNC).

**Materials used include, but are not limited to:**

- Brass screws and rubber washers;

- Metals of all types, gauges, sizes, shapes and dimensions.

This classification includes the repair of items being manufactured or assembled when done by employees having operations subject to this classification. This is a shop or plant only classification and includes work performed in an adjacent yard when operated by an employer having operations subject to this classification.

**Exclusions:**

- Worker hours or businesses installing or repairing safes must be reported separately in classification 0607;
- Worker hours or businesses engaged in installing, servicing or repairing elevators must be reported separately in classification 0602;
- Worker hours or businesses installing pumps must be reported in the applicable classification;
- Activities away from the shop or plant must be reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3402-05 Machine shops, N.O.C., job shops, tool sharpening, mobile welding shops, storage battery manufacturing, assembly or repair, multimedia blasting, die casting, and heat treating metal**

**Applies to:**

Businesses with general machine shop operations not covered by another class. This classification also applies to the manufacture, assembly or repair of storage batteries, tool sharpening, multimedia blasting, die-casting and heat-treating.

**Work activities include, but are not limited to:**

- Tool sharpening;
- Welding;
- Mobile welding shops;
- Machining;
- Multimedia blasting:
  - *Multimedia (such as, but not limited to, glass, plastic and sand) blasting operations which strip paint or other coatings from metal or fiberglass. Most of the blasting operations in this classification are done on automobiles, but it also applies to establishments that perform blasting on items such as, but not limited to, barbecue grills, and cast iron pieces. Multimedia blasting processes in this classification are performed in a shop, use less air pressure and media with softer finishes than other blasting operations.*
- Die casting:
  - *Die-casting is a manufacturing process for producing accurately dimensioned, sharply defined metal products, which are referred to as "die castings." "Dies" are the steel molds used to mass-produce the product. The process begins when ingots of various metal alloys are melted in die casting machines. The machine forces the metal into the die under hydraulic or pneumatic pressure. The casting quickly solidifies in the die, and is automatically ejected by the machine, and the cycle starts again. The castings are cleaned by grinding or sanding, which also removes any excess metal "flash." Many die casting manufacturers maintain their own machine*

*shop for making the dies. Die making, when done as a part of die casting operations, is included within the scope of this classification.*

- Heat treating:

- *Process may use computer numeric controlled (CNC) ovens or furnaces. The oven may heat up to 1200 degrees Fahrenheit and a furnace may heat up to 2000 degrees Fahrenheit. The metal(s) is placed on a platform; the platform is hydraulically moved into the first chamber and the door is automatically closed. At this time, the oxygen is burned from the chamber. Then the second chamber door is opened and the metal enters the oven/furnace. Depending upon the specifications, the heat treating process usually takes six to sixteen hours. When the metal is finished in the heating chamber, it returns automatically to the first chamber. Then the platform lowers and the metals are dipped into a cooling agent. Once the metals are cooled to room temperature the platform rises, the door opens, and the materials are removed. The process is essentially the same without using computer numeric controlled (CNC) heat-treating equipment except that, rather than being hydraulically operated, the machine operators move the metals through the system. Many establishments do not produce a product, but heat-treat a variety of products to customer specifications.*

- Storage battery, manufacture, assembly or repair:

- *Lead ingots, weighing 20-25 pounds, are melted and poured into a mold or casting machine. After the grids are cooled lead oxide is then pumped onto each side of a grid and cured by baking in an oven of about 300-400 degrees F. The plates are then assembled by placing a negative separator (zinc) between a positive separator (copper), and so forth until there are enough of these cells to form the battery. Next, they are sent to a burning machine that cures the paste and plates. After the burning process, the plates are placed into a plastic or hard rubber box-like container and cured for two or three days. The plates are welded together and the top is attached to the body of the battery case with an epoxy glue. Diluted sulfuric acid is added to the battery and then it is put on a charger. The battery is then cleaned and packed for shipping.*

**Special note:** The term "job shop" is an industry term that means the shop will produce products to customer specifications.

**Machinery and equipment used include, but are not limited to:**

- Mills;
- Lathes;
- Grinders;
- Saws;
- Welding equipment;
- Inspection equipment;
- Material handling equipment;
- Casting machines;
- Burning machines;
- Ovens or furnaces;
- Steel molds;
- Hand tools;
- Air tools;
- Compressors;
- Portable welding equipment;

- Mobile welding equipment.

- Are used exclusively to repair machinery or equipment.

A "mobile shop" in this classification usually means a van or pickup pulling a utility trailer equipped with hand tools, specialty tools, air tools, a compressor, and a portable welding unit. The machinery or equipment is usually repaired at the customer's location; however, sometimes the broken part is removed and taken back to the shop for repair.

**Note:** Machinery/equipment could be manual or computer numeric controlled (CNC).

**Materials used include, but are not limited to:**

- Metals of all types, gauges, sizes, shapes and dimensions;
- Plastics.

This classification includes the repair of items being manufactured or assembled when done by employees having operations subject to this classification. This is a shop or plant only classification and includes work performed in an adjacent yard when operated by an employer having operations subject to this classification.

**Exclusions:**

- Worker hours or businesses sandblasting buildings or structures must be reported separately in classification 0504;
- Worker hours or businesses repairing buildings and structures must be reported separately in the appropriate construction classification;
- Worker hours or businesses doing mechanical repair (such as, on engines or electrical systems) must be reported separately in the classification applicable to the work being performed;
- Manufacturing dies for others, is classified in 3402-74;
- Manufacturing dry cell (flashlight type) batteries, is classified in 3602;
- Battery sales and installation, are classified in the applicable automotive services classification;
- Activities away from the shop or plant must be reported separately in the applicable classification, with the exception of mobile welding operations.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3402-06 Power saw, lawn and garden equipment, small motor, N.O.C: Repair**

**Applies to:**

Businesses that repair small power tools, small motors powered by gas or diesel, outboard marine engines, and lawn and garden equipment not covered by another classification (N.O.C.).

**Machinery and equipment used include, but are not limited to:**

- Hand and air tools.

Classification 3402-06 is assigned in conjunction with a store classification for establishments that have a store operation and repair the type of items they sell. Classification 3402-06 may also be assigned to a manufacturer representative who performs warranty repairs.

This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

**Exclusions:**

- Worker hours or businesses repairing electrical motors are classified in 5201;
- Activities away from the shop or plant which must be reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3402-14 Furnace, heater, radiator, wood, propane, or pellet stoves: Manufacturing**

**Applies to:**

Businesses that manufacture furnaces, radiators, wood, propane, or pellet burning stoves or similar heating fixtures.

**Machinery and equipment used include, but are not limited to:**

- Hand tools;
- Solder guns;
- Punches;
- Lathes;
- Saws.

**Note:** Machinery/equipment could be manual or computer numeric controlled (CNC).

**Materials used include, but are not limited to:**

- Sheet metal;
- Plate metal;
- Aluminum;
- Stainless steel.

**Note:** Establishments in this classification may have separate areas for electronic assembly and/or painting.

This classification includes the repair of items being manufactured or assembled when done by employees having operations subject to this classification. This is a shop or plant only classification and includes work performed in an adjacent yard when operated by an employer having operations subject to this classification.

**Exclusions:**

- Manufacturing radiators for automobiles or trucks, is classified in 3402-48;
- Manufacturing baseboard heaters, is classified in 3404;
- Activities away from the shop or plant must be reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3402-26 Saw blade and abrasive wheel: Manufacturing, assembly or sharpening**

**Applies to:**

Businesses that manufacture abrasive wheels, and businesses that manufacture, assemble, or sharpen saw blades such as, but not limited to, those used in circular saws, band saws, rip-saws, keyhole saws, and handsaws such as hacksaws or meat saws.

Abrasive wheel manufacturing operations often include a laboratory where carbon and other materials are mixed together to form the abrasive edges of the wheels.

**Note:** Businesses in this classification may also perform incidental sharpening services for items such as, but not limited to, tools, scissors, and knives.

**Machinery and equipment used include, but are not limited to:**

- Saws;
- Mills;
- Drills;
- Hand tools.

**Materials used include, but are not limited to:**

- High tensile steel;
- Carbide tipped blades.

This classification includes the repair of items being manufactured or assembled when done by employees having operations subject to this classification. This is a shop or plant only classification and includes work performed in an adjacent yard when operated by an employer having operations subject to this classification.

**Exclusions:**

- Repair or sharpening of chain saws, is classified in 3402-06;
- Manufacture or repair of electrical saws, is classified in 5201;
- Activities away from the shop or plant must be reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3402-29 Nut, bolt, screw, nail, tack, rivet, eyelet spike, needle, bedspring, wire mattress, N.O.C.: Manufacturing; sprinkler head, speedometer, carburetor: Manufacturing or assembly**

**Applies to:**

Businesses that manufacture nuts, bolts, screws, nails, tacks, rivets, eyelets, spikes, needles, bedspring, and wire mattresses not covered by another classification. N.O.C. This classification also applies to businesses that manufacture or assemble sprinkler heads, speedometers, or carburetors. Rebuilding carburetors is also included in this classification.

The carburetor rebuilding may be performed on vehicles that are driven or towed into the shop, or on carburetors that have been already removed from the vehicles.

Businesses in this classification may have separate areas for deburring, inspecting, packing and shipping.

**Machinery and equipment used include, but are not limited to:**

- Saws;
- Shears;
- Presses;
- Chuckers;
- Threading and tapping machines;
- Hand tools;
- Air tools;

- Diagnostic scopes;
- Drill press;
- Coiling machines;
- Ovens.

**Note:** Machinery/equipment could be manual or computer numeric controlled (CNC).

**Materials used include, but are not limited to:**

- Steel rods;
- Iron rods;
- Small component parts;
- Wire.

This classification includes the repair of items being manufactured or assembled when done by employees having operations subject to this classification. This is a shop or plant only classification and includes work performed in an adjacent yard when operated by an employer having operations subject to this classification.

**Exclusions:**

- Manufacturing stuffed mattresses, is classified in 3708;
- Manufacturing handles, latches, and hinges, is classified in 3404;
- Repair of speedometers or carburetors in a vehicle, is classified in the appropriate vehicle repair classification;
- Activities away from the shop or plant must be reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3402-40 Welding or cutting, N.O.C. (mobile operations limited to repair of equipment and machinery)**

**Applies to:**

Businesses doing welding or metal cutting not covered by another classification (N.O.C.) either in the shop or at the customer's site.

**Machinery and equipment used include, but are not limited to:**

- Welding equipment;
- Grinders;
- Saws;
- Drills;
- Material handling equipment.

**Materials used include, but are not limited to:**

- Steel;
- Aluminum alloys.

This classification also includes "mobile shops" which are used *exclusively* to repair machinery or equipment. A "mobile shop" in this classification usually means a van or pickup pulling a utility trailer equipped with hand tools, specialty tools, air tools, a compressor, and a portable welding unit. The machinery or equipment is usually repaired at the customer's location, sometimes with the use of the customer's equipment; however, broken parts may be removed and taken back to the shop for repair.

**Exclusions:**

- Worker hours or businesses doing welding construction or repairs to buildings or structures must be reported separately.

rately in the classification applicable to the work being performed;

- Worker hours or businesses doing mechanical repairs (such as, on engines and electrical systems) must be reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3402-48 Automobile or truck, radiator and heater core: Manufacturing and repair shops**

**Applies to:**

Businesses that manufacture and/or repair automobile or truck radiator and heater cores.

**Work activities in this classification include, but are not limited to:**

- Repair of radiators in the vehicle, or removed from vehicle;
- Radiators cleaned, air pressured, and dipped in water tank to check for leaks;
- Leaks repaired by welding the holes shut;
- Radiators dipped again to ensure the repair has been made properly;
- Cleaning radiator by sandblasting, ultra sound baths or "rodding" the radiator to remove corrosion.

**Note:** Manufacturer in this classification may have a die casting area and a separate electronic assembly area.

**Machinery and equipment used include, but are not limited to:**

- Hand tools and air tools;
- Solder guns;
- Punches;
- Welders;
- Dipping tanks;
- Hoists;
- Forklifts.

This classification includes the repair of items being manufactured or assembled when done by employees having operations subject to this classification. This is a shop or plant only classification and includes work performed in an adjacent yard when operated by an employer having operations subject to this classification.

**Exclusions:**

- Activities away from the shop or plant must be reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3402-74 Tool: Manufacturing, not hot forming or stamping; machine finishing tools, die: Manufacturing ferrous**

**Applies to:**

Businesses doing tool manufacturing or die manufacturing, for others, from ferrous materials.

**Products manufactured include, but are not limited to:**

- Jigs;
- Fixtures and dies for metal work;
- Wrenches;

- Screw drivers;
- Hammers;
- Torque wrenches;
- Pliers;
- Sockets;
- Cutting tools used in lathes, mills, rotors and saws.

**Machinery and equipment used include, but are not limited to:**

- Air and hand tools;
- Polishers;
- Sharpeners;
- Grinders;
- Inspection equipment;
- Mills;
- Lathes;
- Shapers;
- Sharpeners;
- Drill presses.

**Note:** Machinery/equipment could be manual or computer numeric controlled (CNC).

Businesses may have a galvanizing and/or electroplating area for the finish work, which is included when performed by employees of employers subject to this classification.

This classification includes the repair of items being manufactured or assembled when done by employees having operations subject to this classification. This is a shop or plant only classification and includes work performed in an adjacent yard when operated by an employer having operations subject to this classification.

**Exclusions:**

- Tool forging by hot forming or stamping is classified in 5106;
- Activities away from the shop or plant must be reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3402-77 Auto, truck, semi-trailer and bus body: Manufacturing; travel trailer body: Manufacturing or repair; automobile or motorcycle: Manufacturing or assembly**

**Applies to:**

Businesses that manufacture auto, truck, and bus bodies, or that manufacture or repair travel trailer bodies or cargo containers, or that manufacture or assemble automobiles or motorcycles.

**Work activities include, but are not limited to:**

- Welding operations;
- Using cutting torches;
- Operating milling, cutting and turning machines;
- Assembly operations performed with air and hand tools;
- Repair or replace hydraulic units;
- Shops may have a finish sanding area as well as a paint area where the vehicle bodies are sprayed with primer, a body bonding material, or a finish coat of paint.

**Machinery and equipment used include, but are not limited to:**

- Welders;
- Cutting torches;
- Air or hand tools;
- CNC machinery (computer numeric controlled);
- Saws;
- Grinders;
- Drill presses;
- Shears;
- Breaks;
- Hydraulic presses;
- Iron workers;
- Grinders;
- Hoists;
- Cranes and forklifts.

**Materials used include, but are not limited to:**

- Steel or aluminum, varying in thickness, 16 gauge to plate metal up to one inch thick;
- Shapes include sheet metal, tubes, solid rod or I-beams.

This classification includes the repair of items being manufactured or assembled when done by employees having operations subject to this classification. This is a shop or plant only classification and includes work performed in an adjacent yard when operated by an employer having operations subject to this classification.

**Exclusions:**

- Activities away from the shop or plant must be reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3402-85 Auto or truck parts; machining or rebuild not in vehicle****Applies to:**

Businesses that machine or rebuild auto or truck parts that are not in the vehicle.

**Products manufactured include, but are not limited to:**

- Water pumps;
- Fuel pumps;
- Transmissions;
- Heads;
- Brake drums;
- Ball joints;
- Rear ends;
- Sockets;
- Pulleys;
- Shafts;
- Fittings;
- Flywheels;
- Bearings.

**Machinery and equipment used include, but are not limited to:**

- Mills;
- Lathes;
- Grinders;
- Sanders;

- Presses;
- Welders;
- Balancing equipment.

**Note:** Machinery/equipment could be manual or computer numeric controlled (CNC).

This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

**Exclusions:**

- Manufacturing or rebuilding auto, truck, or aircraft engines are classified in 3402-86;
- Activities away from the shop or plant must be reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3402-86 Auto, truck, or aircraft engine, N.O.C.: Manufacturing or rebuilding****Applies to:**

Businesses that manufacture or rebuild auto, truck, or aircraft engines not covered by another classification (N.O.C.), including manufacturing the component parts.

**Note:** The basic difference between automobile, truck, and aircraft engines is the size and weight of the parts worked on.

**Work activities include, but are not limited to:**

- Use specialized machines and air tools to tear the core down to an engine block;
- Rebuild the engine;
- After engine is stripped down to the engine block, it is placed in a machine called a baker which heats to approximately 600 degrees and bakes away the grease;
- After baking, the engine block is placed in a sand blaster where the surface is cleaned with very fine steel shot;
- Engine block is then placed in a large pressure washer which removes the steel shot;
- Crank and shafts are ground and turned on machinery similar to lathes;
- Heads and valves are machined on valve grinders, valve facers, and head grinders. Shops that do not have equipment to grind the crank and camshafts will contract work out to other shops, or buy new crank and camshafts.

**Machinery and equipment used include, but are not limited to:**

- Baker machines;
- Sand blasters;
- Pressure washers;
- Lathes;
- Valve grinders;
- Valve facers;
- Head grinders;
- Boring bars;
- Hones;
- Solvent tanks;
- Hoists;
- Forklifts.

This classification includes the repair of items being manufactured or assembled when done by employees having operations subject to this classification. This is a shop or plant only classification and includes work performed in an adjacent yard when operated by an employer having operations subject to this classification.

**Exclusions:**

- Machining or rebuilding auto or truck parts is classified in 3402-85;
- Activities away from the shop or plant must be reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3402-94 Precision machined parts, N.O.C.: Manufacturing, gear: Manufacturing or grinding, small arms and ammunition: Manufacturing, assembly or rebuild, valve: Manufacturing**

**Applies to:**

Businesses that manufacture precision-machined parts not covered by another classification (N.O.C); that manufacture or grind gears, that manufacture, assemble or rebuild small arms (.50 caliber or less), that manufacture or reload ammunition, or that manufacture valves.

**Note:** Most precision machine establishments are "job shops." Job shops make component parts for other businesses according to customer specifications, rather than manufacturing a specific product.

**Work activities in this classification include, but are not limited to:**

- Machining;
- Grinding gears;
- Metal stamping of casings;
- Assembly;
- Inspecting;
- Cutting key slots and broaches.

**Products manufactured include, but are not limited to:**

- Precision parts for aerospace/medical industry;
- Gears;
- Pistols;
- Rifles;
- Shotguns;
- Light machine guns;
- Valves (regulate the flow of air, gas, liquids, or loose material through structures by opening, closing or obstructing passageways. They operate manually, electronically, with compressed air, or hydraulic pressure);
- Other types of precision parts.

**Machinery and equipment used include, but are not limited to:**

- Manual and CNC (computer numeric controlled) mills and lathes;
- Water jet machines;
- Saws;
- Drill press/drills;
- Grinding machines;
- Gear shapers;

- Hobbers;
- Other types of CNC machinery.

**Materials used include, but are not limited to:**

- Steel;
- Stainless steel;
- Aluminum;
- Titanium;
- Inconel;
- Plastics;
- Shapes include; solid blocks, flat bar, tube, angle stock.

This classification includes the repair of items being manufactured or assembled when done by employees having operations subject to this classification. This is a shop or plant only classification and includes work performed in an adjacent yard when operated by an employer having operations subject to this classification.

**Exclusions:**

- Manufacturing or repairing of heavy arms is classified in 5109;
- Gun stores are classified in 6309;
- Manufacturing valves made in a die mold is classified in 3402-74;
- Activities away from the shop or plant must be reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

**3402-98 Machinery, N.O.C.: Manufacturing or assembly**

**Applies to:**

Businesses that manufacture or assemble machinery not covered by another classification (N.O.C.).

Finished products vary widely and range from hand held machines to those weighing thousands of pounds. For the purpose of this classification, machinery means any combination of mechanical parts constructed primarily with metal and associated electronic components.

**Work activities in this classification include, but are not limited to:**

- Cutting;
- Welding;
- Forming;
- Drilling;
- Riveting;
- Clamping and bolting;
- Machining.

**Note:** Manufacturers in this classification may have a separate electronic assembly area.

**Machinery manufactured or assembled include, but are not limited to:**

- Grinding machines;
- Boring machines;
- Conveyor systems;
- Wood chippers;
- Printing or bookbinding machinery;
- Confectioners or food processing machinery;

- Photo processing machinery (photo processors or film enlargers);
- Shoe or textile machinery;
- Office machinery (copiers, collators, mail/postage machines, calculators and automated letter openers);
- Cash registers;
- Sewing machines.

**Machinery and equipment used include, but are not limited to:**

- Lathes;
- Mills;
- Breaks;
- Shears;
- Welders;
- Presses;
- Binding machinery;
- Drills;
- Saws;
- Water jets;
- Hand and air tools.

**Note:** Machinery/equipment could be manual or computer numeric controlled (CNC).

**Materials used include, but are not limited to:**

- Metal in varied sizes, shapes and dimensions;
- Plastic;
- Wood.

This classification includes the repair of items being manufactured or assembled when done by employees having operations subject to this classification. This is a shop or plant only classification and includes work performed in an adjacent yard when operated by an employer having operations subject to this classification.

**Exclusions:**

- Worker hours or businesses setting-up, installing or repairing printing, bookbinding, confectioners, or food processing machines must be reported separately in 0603;
- Worker hours or businesses installing or repairing shoe or textile machinery must be reported separately in 0603;
- Activities away from the shop or plant must be reported separately in the applicable classification.

**Note:** For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-3506 Classification 3506.**

**3506-02 Mobile crane and hoisting services; Rigging contractors, N.O.C.**

Applies to establishments engaged in mobile crane and hoisting services and rigging contractors not covered by another classification (N.O.C.). There are many types of cranes and derricks, both stationary and nonstationary. A mobile crane is a tire-mounted machine for hoisting and moving heavy objects by cables attached to a moveable boom. Rigging consists of a system of ropes, chains, cables, or tackle used for support. Generally, these types of establish-

ments respond to and service customer requests such as righting an overturned tractor trailer, hoisting a large bell, or placement of a satellite dish on top of a building. In addition, mobile crane businesses often maintain a variety of nonmobile cranes and derricks such as those used for construction of tall buildings or structures. This classification includes transporting of a nonmobile crane or derrick to and from a customer site, but excludes the set up or erection, operating, and disassembling of the unit.

This classification excludes the construction or erection of permanent nonmobile cranes (such as those permanently mounted at a manufacturing plant or seaport to load cargo) which are to be reported separately in classification 0508; and the set up, erection, operating, and disassembling of cranes, hoisting devices or rigging in connection with work covered under a construction classification which are to be reported separately in the construction classification applicable for the work being performed.

**Special note:** This classification includes mobile crane and hoisting businesses when providing a service at a construction site such as lifting an air conditioning unit to a building top, and provided the crane operator is an employee of the crane and hoisting business.

**3506-03 Concrete pump truck service**

Applies to establishments engaged in concrete pump truck services, including the pump truck control box operator. A concrete pump truck is a large vehicle equipped with an adjustable boom spanning approximately 65' in length equipped with a flexible 4" hose running alongside the boom. This type of vehicle is different from a concrete ready mix truck which mixes the concrete in a rotating or revolving drum prior to arriving at the project site and discharges the mix with use of a metal (~~shoot~~) chute. A concrete pump truck is designed to pump concrete into areas which are difficult for a concrete ready mix truck to reach such as a tall retaining wall, the foundation of a building or structure many feet below ground level, or into an area with limited access. Concrete is fed into the bed of the pump truck (usually by a ready mix concrete truck). The driver of the pump truck also operates the control box which adjusts the boom and amount of concrete mix to discharge. The control box operator receives instructions from a construction worker overseeing the concrete pour.

This classification excludes ready mix concrete dealers who deliver concrete who are to be reported separately in classification 3101 and all other concrete construction activities occurring at the project site which are to be reported separately in the classification applicable to the construction work being performed.

**Special note:** This classification is limited to the concrete pump truck driver and operation of the control box. Construction workers at the project site, such as workers who are positioning and repositioning the end of the boom which discharges concrete, or workers who provide instructions with use of a headset to the control box operator, or workers who are spreading the concrete as it is poured, are to be reported separately in the classification applicable to the construction work being performed.



AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

**WAC 296-17A-4910 Classification 4910.**

**4910-00 Property management services**

Applies to establishments engaged in managing their own property or properties owned by others. Properties include, but are not limited to, privately owned residential or commercial buildings, malls, apartment or condominium complexes, mobile home parks, halls, and conference rooms. Typical operations contemplated by this classification include, but are not limited to, management duties, advertising, showing vacant units to prospective tenants, collecting rent, providing security, and normal maintenance and repair when conducted by employees of employers subject to this classification. Normal maintenance and repair contemplated by this classification includes replacing parts on existing fixtures or equipment, repairing existing structures, normal cleaning or janitorial activities, maintaining existing landscaping, and shoveling snow from driveways or walkways. Construction, alteration, or improvements to the properties are *not* considered normal maintenance and are *not* contemplated by this classification. Major repair work is usually performed by contractors who are not employees of the property management business. *Apartment or condominium complexes and mobile home parks* may have common areas such as, but not limited to, laundry facilities, community rooms, tennis courts, exercise rooms, swimming pools, saunas or hot tubs, and playgrounds or small park areas. Common areas are maintained by employees of the complex or park owner or by the property management service. Residents of mobile home parks are usually responsible for maintaining their own mobile homes and their immediate space.

This classification includes homeowners' associations where residents in a housing development pay annual fees which cover the maintenance of lawns, paths, sprinkler systems, and common areas such as pools, activity centers, and tennis courts by employees of the homeowners' association.

This classification excludes employees engaged exclusively in clerical duties who are to be reported separately in classification 4904; employees engaged exclusively in sales duties such as collecting rents, showing and advertising the facility, conducting auctions, or in a combination of clerical and sales duties who are to be reported separately in classification 6303; establishments providing janitorial services exclusively which are to be reported separately in classification 6602; contractors engaged in mobile home set up or removal who are to be reported separately in classification 0517; any new construction or alteration work performed by employees of employers subject to this classification which is to be reported separately in the applicable construction classification; establishments that contract to perform maintenance or repair, but have no responsibilities in the management of the property, which are to be reported separately in the applicable classification; and lodging or food serving operations which are to be reported separately in the applicable classification.

**4910-01 Chimney cleaning - Residential and commercial buildings**

Applies to establishments engaged in providing chimney cleaning services to residential and commercial customers, such as restaurants and hotels. Workers who perform chimney cleaning services are commonly referred to as "chimney sweeps" and usually work alone or as a two-person team. When working as a team, one "sweep" works inside (~~the house~~) and the other works on the roof. The methods of cleaning vary. To protect the floors and furniture, drop cloths are placed in front of the fireplace and taped over the opening. The vertical drop cloth may have a "boot" or slit in it which allows rods to be pushed through. Various brushes, usually wire, are attached to extension rods and worked up and down the flue to dislodge the soot and creosote. Creosote deposits may be removed also with a chimney bar, which is a pipe-like instrument with a chisel end, or by using metal scrapers. Where the chimney top is protected from the rain by a hood or cap, it may not be possible to insert the brushes into the opening; a chain or weight may be lowered and swung back and forth inside the chimney. Some sweeps have custom-made vacuum trucks with large collection chambers to collect the soot. In addition to cleaning the chimney flue and fireplace, some sweeps clean oil, gas and coal burning furnaces, repair chimney and flue linings, remove animals from chimneys, and offer other related services. Repairs included in this classification are limited to such activities as caulking around the flashing and sealing brickwork.

This classification excludes establishments engaged in industrial (~~or commercial~~) chimney or smokestack cleaning services which are to be reported separately in classification 0508; contractors engaged in chimney reconstruction or new construction made of masonry or brick who are to be reported separately in classification 0302; contractors engaged in the installation of sheet metal stove pipe who are to be reported separately in classification 0307; and the installation of a new lining in the chimney which is to be reported separately in the applicable classification.

**4910-02 Mini-storage facilities**

Applies to establishments engaged in operating mini-storage facilities. Mini-storage facilities are usually fenced and entry is through a locking gate through which owners and renters of units are provided access. The units range from lockers to rooms of various sizes; once the unit is rented, the tenant or owner has sole access to it. Typical operations include, but are not limited to, management or clerical duties, renting or selling storage units to others, providing security, and normal maintenance and repair when performed by employees of employers subject to this classification. Normal maintenance and repair contemplated by this classification includes replacing parts on existing fixtures or equipment, repairing existing structures, normal cleaning of public areas, controlling rodents and other pests, maintaining existing landscaping, and shoveling snow from driveways or walkways. Construction, alteration, or improvements to the properties are *not* considered normal maintenance and are *not* contemplated by this classification. Major repair work is usually performed by contractors who are not employees of the storage facilities.

This classification excludes employees engaged exclusively in clerical duties who are to be reported separately in classification 4904; employees engaged exclusively in sales duties or in a combination of clerical and sales duties who are to be reported separately in classification 6303; and new construction or alteration work which is to be reported separately in the applicable construction classification.

#### **4910-03 Temporary signs - Placement or removal**

Applies to establishments engaged in placing or removing temporary yard signs such as, but not limited to, real estate signs for real estate offices or property management firms and campaign signs. The smaller signs are usually mounted on a metal rod which is pounded into the ground to a depth of about 18". A post hole digger may be used to dig holes for larger signs that require a more sturdy post.

This classification excludes all other types of sign installation, painting or repair which are to be reported separately in the applicable classification.

AMENDATORY SECTION (Amending WSR 09-16-109, filed 8/4/09, effective 10/1/09)

#### **WAC 296-17A-5307 Classification 5307.**

#### **5307-00 State government employees - N.O.C.**

Applies to state government employees not covered by another classification (N.O.C. - not otherwise classified). This is the basic state agency classification which covers employees who have duties that support the mission of the agency and have field or hazardous exposure. For purposes of this classification field or hazardous exposure is defined as any work which involves "hands on" work. Employees reported in this classification may have jobs that include, but are not limited to, performing manual labor or supervising a work crew performing manual labor, work in the trades, construction-type work or maintenance/repair work, operating machinery or equipment, stores/stock clerks, warehouse, supplies, deliveries, food services, facilities, recreational, or general security staff with no law enforcement duties. This classification also includes, but is not limited to, personnel such as engineers, inspectors, and biologists, who have field exposure. This classification includes supervisors who work at a field site and perform supervision duties in the field. This classification includes nonpatient care employees in state operated homes, schools, detention or correctional facilities not described in another classification.

This classification may be assigned to all departments, agencies, boards, commissions and committees of either the executive, legislative or judicial branches of state government.

This classification excludes:

- Employees who have law enforcement power in any capacity, who are to be reported separately in classification 7103;
- Juvenile rehabilitation custody staff at institutions or homes who are to be reported in 5307-01;
- Administrative employees with field duties who are to be reported separately in classification 5300;
- Clerical and administrative office personnel who are to be reported separately in classification 4902;

- Employees who work in state hospitals, homes, schools, detention or correctional facilities who are not otherwise classified and provide care and treatment for patients or residents who are to be reported separately in classification 7201;

- Employees who provide patient or health care at state-operated mental health or acute care hospitals with a fully implemented safe patient handling program who are to be reported in classification 7200;

- Employees who provide patient or health care at state-operated mental health or acute care hospitals that do not have a fully implemented safe patient handling program who are to be reported in classification 7400;

- Volunteers are to be reported in classification 6901; and

- Law enforcement volunteers in classification 6906.

#### **5307-01 State government employees - Juvenile rehabilitation custody**

Applies to employees of the (~~department of social and health services (DSHS))~~ department of children, youth, and families at juvenile institutions and juvenile residential community facilities. Employees in this risk classification may preserve order, provide security, and have the authority to detain, revoke privileges, or impose sanctions. Other work may include, but is not limited to, providing counseling, conducting assessments, rehabilitation, coordination of services, evaluations, and transporting detainees.

This classification excludes:

- Employees who do not have custody or security duties;
- Employees who perform parole duties such as those performed by a regional office, which are away from a juvenile institution or a juvenile residential community facility who are to be reported in 5300; and

- Employees who direct athletic and recreational activities who are to be reported in 5307-00.

See classifications 4902, 5300, 5307, 7200, 7201, and 7400 for all state government operations.

AMENDATORY SECTION (Amending WSR 19-11-109, filed 5/21/19, effective 7/1/19)

**WAC 296-17A-6411 Classification 6411.** Retail store operations limited to providing any combination of the following merchandise, supplies, or services:

- All types of phones;
- Beads;
- Books, newspapers, magazines, and comic books;
- Cameras;
- Cards (greeting, post, and sports);
- Cosmetics and fragrances;
- Laptops, electronic notebooks and pads, and other small electronic devices;
- Musical instruments (string, wood, brass, wind, and percussion);
- Photography and darkroom supplies;
- Records, music discs, tapes, videos, video games, and software disks;
- Small or portable entertainment players (or parts of player), radios, for homes, offices, or automobiles;

- Smoking accessories and tobacco products;
- Vaporizers and e-liquids;
- Other smaller items, such as playing cards, cups, calendars, puzzles, games, costume jewelry, cosmetics, pencils, pens, notebooks, etc.

**Note:** Stores in classification **6411** may also carry inventory listed in the scopes language of lower rated store risk classifications, along with the goods listed below, as long as the majority of the merchandise is described by the above list.

**Classification 6411 includes:**

- Cashiering;
- Cleaning and maintenance of store, storage areas, and associated business offices when performed by store employees;
- Inventory work by store employees;
- Sales of already-prepared snacks, and beverages (for off-site consumption), and/or promotional clothing;
- Parts and batteries for products included in classification **6411**;
- Receiving and returning merchandise at store's loading area;
- Renting items normally sold in classification **6411**;
- Sales work inside store;
- Store security and surveillance;
- Stocking.

**Classification 6411 excludes:**

- Stores selling merchandise described by a higher rated store classification;
- Delivery drivers who are reported separately in classification **1101**;
- Door to door sales, which are reported separately in subclassification **6309-22**;
- Stores using pallet jacks, fork lifts, conveyors, or other mechanized means of moving merchandise into and within store premises, which are classified in **6406** when merchandise is described by classification **6411** and/or classification **6406**;
- Stand-alone distribution centers or warehouses which are to be reported separately in classification **6407**;
- Repair or installation work, which must be reported separately;
- Sales of pets; see classifications **6406** and **7308**;
- Working at coffee stands, lunch counters, or any on-site food preparation or manufacturing of candy, where employees' hours are to be reported separately in classification **3905**;
- Employees doing custom framing; see classifications **6406** and **6309**;
- Product demonstration services which are to be reported in subclassification **6406-40**;
- Businesses providing inventory services which are to be reported in subclassification **6406-00**;
- Wholesales, reported in classification **6407**;
- High volume warehouse and distribution facilities which are reported separately in classification **6407**.

For administrative purposes, classification **6411** is divided into the following retail store subclassification(s):

**6411-00 Stores meeting the criteria for classification 6411, but not specifically described in any other subclassification. N.O.C.**

**6411-14 Wind, string, brass, and percussion musical instruments**

Includes hand held keyboards and music instruction.

Excludes:

- Stores selling pianos and organs, see classifications **6406**, **6309**, and **6306**;
- Repair of instruments, which is reported separately in classification **2906** or **3602**; (if more than one is applicable, assign only the highest rated classification for all repair).

**6411-19 Coins, stamps, rare metals, and collectible cards  
6411-20 Books, videos, electronic games, music, newspapers, magazines, and comic books**

Excludes establishments with coin or token arcades, to be reported in subclassification **6406-00**.

**6411-24 Tobacco ((and ~~marijuana products~~)), vaporizers and liquids, and smoking accessories**

Excludes:

- Retail stores primarily selling marijuana infused grocery items or marijuana, see classification **6403**;
- Retail bakeries selling a variety of baked goods infused with marijuana; see subclassification **3901-00**.

**6411-25 Phones, cameras, electronic tablets, laptops, and notebooks, GPS displays, small stereo components and other small portable electronic devices, N.O.C.**

Includes stores and kiosks selling and/or arranging DSL, cable, or dish services for phones, computers, televisions and other devices.

Excludes:

- Stores selling office or school supplies, reported in subclassification **6406-11**;
- Stores selling furniture or furniture kits; see classification **6406**, **6309**, or **6306**;
- Stores providing photo development and printing, see classification **6406** or **6506**;
- Workers performing repair work, which is to be reported separately in classification **3602**.

AMENDATORY SECTION (Amending WSR 15-02-060, filed 1/6/15, effective 7/1/15)

**WAC 296-17A-6501 Classification 6501.**

**Barbers, salons, tattoo shops**

Establishments in this classification offer personal grooming and beautification services for their customers. These businesses frequently advertise as a day spa but they do **not** operate baths, soaking pools, or steam rooms. Employers in this classification offer the following types of services:

- Barber;
- Beauty salon - Cosmetology;
  - Hair styling;
  - Hair removal, electrolysis, laser, threading, waxing;
  - Manicure, pedicure;
  - Esthetician services, facials, skin care, body scrubs;
  - Tanning.
- Tattoo shop;
  - Body art;
  - Body piercing;

- Permanent cosmetics;
- Tattooing.

When a business provides multiple services listed above and also offers services such as massage or body wraps, these services are included in classification 6501. Barber and beauty services may also be performed at a customer's home or in hospitals. This classification includes ((#)) clerical office and sales employees of the business.

Excluded from this classification are:

- Businesses providing baths, soaking pools, and hot tubs that also offer services listed in classification 6501 are assigned classification 6204.
- Massage therapy, foot massage, or reflexology businesses that are assigned classification 6109.

**Note:** Salons in this classification often operate by renting or leasing a booth or station to licensed individuals who are booth renters. Booth renters perform cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW. A booth renter pays a fee for the use of the shop's facility, receives no compensation from the owner, and performs services in the shop, but is not an employee of the shop owner and are exempt from coverage per RCW 51.12.020. These individuals may elect owner coverage.

For administrative purposes, classification 6501 is divided into the following subclassifications:

**6501-00 Barber shops**

**6501-01 Beauty, tanning, and nail salons**

**6501-02 Tattoo, piercing shops.**

AMENDATORY SECTION (Amending WSR 09-20-039, filed 9/30/09, effective 1/1/10)

**WAC 296-17A-6601 Classification 6601.**

**6601-00 Detective agencies**

Applies to establishments engaged in providing investigative and related services for others. Services include, but are not limited to, investigating corporate embezzlement and fraud, employee theft, insurance fraud, missing person cases, matrimonial or child custody disputes, conducting background checks, tracking and apprehending fugitives, monitoring burglar or fire alarm systems, or provide polygraph testing or fingerprinting services. Investigative methods include checking public records, conducting interviews, surveillance, and undercover operations. As a general rule, the detective agency provides clients with a final report, which includes documentation, photographs, or videotapes.

This classification excludes establishments engaged in providing customer shoplifting surveillance within retail stores which are to be reported separately in classification 6601-01 and surveillance employees hired as direct employees of a nondetective or security agency who are to be reported separately in the classification applicable to the establishment.

**6601-01 Merchant police or patrol**

Applies to establishments engaged in providing security services to shopping centers, malls, business parks, banks and other businesses. Services include, but are not limited to, monitoring parking lots and garages, maintaining public

security in malls, hospitals, and banks, providing surveillance for theft or shoplifting, and monitoring alarm systems.

This classification excludes detective agencies which are to be reported separately in classification 6601-00 and security guard services which are to be reported separately in classification 6601-02.

**6601-02 Security guard agencies**

Applies to establishments engaged in providing general security guard services for clients such as airports, commercial, industrial, residential and governmental facilities. Services include, but are not limited to, protecting persons or buildings, responding to fire or burglar alarms, protecting and/or transporting executives, providing security at strikes, and conducting electronic sweeps. The clients' security systems may be connected to a central security system of the security guard agency, where employees of the security guard agency monitor the client's systems and notify the appropriate authorities if necessary. As a general rule, security guards, do not have police powers.

This classification excludes security guards at logging sites who are to be reported separately in classification 6601-03 and security guards at construction sites who are to be reported separately in classification 6601-04 provided the conditions in the special exception section of the general rules have been met.

**6601-03 Security guards at logging sites**

Applies to employees of logging contractors or landowners who are employed as security guards to maintain security at logging sites by preventing, deterring and detecting crime and/or fires. Security guards subject to this classification are limited to employment at the site only during those hours that the employer is not conducting any other operations at the site and may have no other duties during their shift as security guard. This classification also applies to establishments that contract to provide security guards at logging sites.

**6601-04 Security guards at construction sites**

Applies to employees of construction contractors or landowners who are employed as security guards to maintain security at construction sites by preventing, deterring and detecting crime and/or fires. Security guards subject to this classification are limited to employment at the site only during those hours that the employer is not conducting any other operations at the site and may have no other duties during their shift as security guard. This classification also applies to establishments that contract to provide security guards at construction sites.

**6601-05 Armored car services**

Applies to establishments engaged in armored car services which transport cash or valuables for businesses such as, but not limited to, banks, supermarkets, and jewelry stores to other destinations. Also included are armored car services which collect or deposit money into or from automatic teller machines.

**6601-06 Crowd control services**

Applies to establishments engaged in providing crowd control services. Crowd control services is a growing field and may include, but not be limited to, crowd management at

sporting events, race tracks, live concerts, rallies, conventions, rodeos, and fairs. This classification includes parking lot staff, and rule enforcement employees such as uniformed or plain clothes security guards who maintain order as well as providing personal protection.

This classification excludes ~~((theatre))~~ theater ushers, inside ticket takers, set up crews and stagehands who are to be reported separately in classification 4504.

#### 6601-07 Process/legal messenger services

Applies to establishments engaged in providing process services and legal messenger services for others. Process servers deliver legal documents such as summonses, complaints, subpoenas and writs to individuals. A legal messenger delivers legal papers between legal representatives and the courts. Services may also include checking public records, surveillance work, and conducting interviews to locate recipients of legal documents. They will provide clients with a final report of service or nonservice on the recipient.

This classification excludes errand and parcel delivery services that are to be reported separately in classification 1101.

AMENDATORY SECTION (Amending WSR 12-24-067, filed 12/4/12, effective 1/4/13)

#### WAC 296-17A-6708 Classification 6708.

#### 6708-01 Jockeys

Applies to jockeys riding horses in a race, or working with the horses in any way, during the dates of a scheduled race meet. Coverage during a race meet is through election of optional coverage and is to be reported at ten hours per mount per race or ten hours per day if not riding in a race. Coverage outside the dates of a race meet is mandatory. Jockeys will be considered exercise riders when employed by a trainer and/or owner at a time other than during the dates of a scheduled race meet and are then reportable in the classification that is appropriate for their job duties.

#### 6708-02 Professional motor vehicle or watercraft race drivers

Applies to professional motor vehicle/water craft race drivers during a competition. Coverage during a competition is mandatory and is subject to a division of hours as provided in the general exclusion section of the general reporting rules.

When not driving during competition, hours worked are reportable as appropriate to the work being performed:

- Maintenance of a racing motor vehicle and/or pit crew operations which are to be reported separately in classification 3411;
- Assembly of a racing motor vehicle which is to be reported separately in classification 3402; maintenance of a racing water craft and/or pit crew operations which are to be reported separately in classification 3414; assembly of a racing water craft which is to be reported separately in classification 2903, 3402 or 3511 as appropriate; and any other work usually done for this employer which is to be reported separately as appropriate to the employees usual job duties.

This classification excludes piloting an aircraft in a race which is to be reported separately in classification 6803 for a plane or 6801 for a hot air balloon.

**Special note:** Race car drivers are reported at ~~((ten))~~ actual hours for each race/heat.

#### WSR 20-15-139

#### PROPOSED RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed July 21, 2020, 12:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-18-010.

Title of Rule and Other Identifying Information: Public records requests, adding WAC 192-02-010 Purpose, 192-02-020 Definitions, 192-02-030 Availability of public records, 192-02-040 Records index, 192-02-050 Purpose of requests, 192-02-060 Making a request for public records, 192-02-070 Records exempt from disclosure, 192-02-080 Closing withdrawn or abandoned request, 192-02-090 Later discovered documents, 192-02-100 No duty to create records, 192-02-110 Maintaining a log, 192-02-120 Providing records in installments, 192-02-130 Denials of requests, 192-02-140 Fee schedule, 192-02-150 Costs—General, 192-02-160 Costs—Customized services, 192-02-170 Costs—Inspection, 192-02-180 Costs—Mailing, 192-02-190 Payments, 192-02-200 Processing payments, and 192-02-210 Fee waivers.

Hearing Location(s): On August 27, 2020, at 10:00 a.m.

Telephone conference, call 360-407-3790. When prompted for the Conference ID number, press 51750 and then the # key. Hearing is being held remotely due to the COVID-19 pandemic.

Date of Intended Adoption: August 28, 2020.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by August 27, 2020.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teckstein@es.wa.gov [teckstein@esd.wa.gov], by August 20, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The employment security department (ESD) is seeking to adopt public disclosure and privacy rules. These rules will update the existing procedures governing public records requests made to the department and clarify the operation of the department's public records office under the Public Records Act.

Reasons Supporting Proposal: ESD seeks to provide clear and usable guidance for the public regarding the operations of its records office and the procedures governing public records requests made to the department.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to ESD. RCW 50.13.030 provides specific authority for rule making to implement chapter 50.13 RCW. RCW 42.56.100 provides rule-making authority to all agencies regarding public records.

Statute Being Implemented: RCW 50.13.030, 42.56.100.

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

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, Washington, 360-890-3448; Implementation: Robert Page, Olympia, Washington, 360-890-3504; and Enforcement: Rebekah O'Hara, Olympia, Washington, 360-890-3755.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, email Rules@esd.wa.gov, <https://esd.wa.gov/newsroom/ui-rule-making/>.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rule imposes no costs on employers. Instead, the rules provide clarity for requestors seeking public records from the department.

July 21, 2020  
Dan Zeitlin  
Policy Director

## Chapter 192-02 WAC

### PUBLIC RECORDS REQUESTS

#### NEW SECTION

**WAC 192-02-010 Purpose.** The purpose of this chapter is to:

(1) Ensure compliance by the employment security department with the provisions of chapter 42.56 RCW concerning disclosure of public records; and

(2) Inform the public of the procedures used by the department for requesting, producing, and disclosing public records.

#### NEW SECTION

**WAC 192-02-020 Definitions.** (1) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the department regardless of physical form or characteristics.

(2) "Public records officer" means the public records officer of the employment security department or the designee of the public records officer.

(3) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and

other documents including existing data compilations from which information may be obtained or translated.

#### NEW SECTION

**WAC 192-02-030 Availability of public records.** (1) Public records are available for inspection and copying during normal business hours of the department, as listed on the department's website.

(2) Records must be inspected at the offices of the department.

(3) Many public records are available for inspection and copying on the department's website at any time, at no cost.

#### NEW SECTION

**WAC 192-02-040 Records index.** (1) The department finds that maintaining an index is unduly burdensome and would interfere with agency operations.

(2) Maintaining an index unduly burdens and interferes with the department's operations since there is no single index of department records, which are stored in multiple locations, and are frequently modified.

#### NEW SECTION

**WAC 192-02-050 Purpose of requests.** (1) If a request is for a list of individuals, the department may:

(a) Ask the requestor if records are intended for a commercial purpose; and

(b) Require the requestor to provide information about the purpose of the use of the list.

(2) The department should specify on its request form that the department is not authorized to provide public records consisting of a list of individuals for a commercial use under RCW 42.56.070(8).

#### NEW SECTION

**WAC 192-02-060 Making a request for public records.** (1) To request access to public records of the department, or seek assistance in making such a request, contact the public records officer at:

Public Records Officer  
P.O. Box 9046  
Olympia, WA 98507-9046  
Phone: 1-844-766-8930  
Email: recordsdisclosure@esd.wa.gov

(2) Any person wishing to inspect or copy public records of the department shall make the request in writing to the public records officer through one of the following:

(a) On the department's request form;

(b) Through an online portal designated by the department for this purpose;

(c) By letter mailed to the address listed in subsection (1) of this section;

(d) By email sent to the address listed in subsection (1) of this section; or

(e) By submitting the request in person at the address provided on the department's website.

(3) Public records request should include:

- (a) The name of requestor;
  - (b) The address of requestor;
  - (c) Other contact information, including telephone number and any email address;
  - (d) Identification of the public records adequate for the public records officer to locate the records; and
  - (e) The date and time of day of the request.
- (4) If the requestor wishes to have copies of the records made instead of simply inspecting them, the requestor should so indicate and make arrangements to pay for copies of the records or a deposit.

(5) A records request form is available for use by requestors at the office of the public records officer and online at the department's website.

(6) If requestors refuse to identify themselves or provide sufficient contact information, the department will respond to the extent feasible and consistent with the law.

#### NEW SECTION

##### **WAC 192-02-070 Records exempt from disclosure.**

(1) Some records are exempt from disclosure, in whole or in part.

(2) If the department believes that a record is exempt from disclosure and should be withheld, the public records officer will provide:

- (a) The specific exemption; and
- (b) A written explanation of why the record or a portion of the record is being withheld.

(3) If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will:

- (a) Redact the exempt portions;
- (b) Provide the nonexempt portions; and
- (c) Indicate to the requestor in writing why portions of the record are being redacted.

#### NEW SECTION

**WAC 192-02-080 Closing withdrawn or abandoned request.** (1) The public records officer may close a request when the requestor:

- (a) Withdraws the request; or
- (b) Fails to:
  - (i) Clarify a request at the direction of the department;
  - (ii) Fulfill the requestor's obligations to inspect the records;
  - (iii) Pay the deposit;
  - (iv) Pay the required fees for an installment;
  - (v) Pay a customized service charge;
  - (vi) Make the final payment for the requested copies.

(2) The department will indicate to the requestor that the department has closed the request, unless the department has already indicated in previous correspondence that the request would be closed under the circumstances in subsection (1) of this section.

#### NEW SECTION

**WAC 192-02-090 Later discovered documents.** If, after the department has informed the requestor that it has provided all available records, the department becomes aware of additional responsive documents existing at the time of the request, the department will:

- (1) Promptly inform the requestor of the additional documents; and
- (2) Provide the discovered documents on an expedited basis.

#### NEW SECTION

**WAC 192-02-100 No duty to create records.** The department is not obligated to create a new record to satisfy a records request.

#### NEW SECTION

**WAC 192-02-110 Maintaining a log.** The department must maintain a log of public records requests to include:

- (1) The identity of the requestor if provided by the requestor;
- (2) The date the request was received;
- (3) The text of the original request;
- (4) A description of the records redacted or withheld and the reasons therefor; and
- (5) The date of the final disposition of the request.

#### NEW SECTION

##### **WAC 192-02-120 Providing records in installments.**

(1) If applicable, the department may provide:

- (a) Records on a partial or installment basis as records that are part of a larger set of requested records are assembled or made ready for inspection or disclosure;
- (b) Links to records on the agency's website as an installment;
- (c) Installments as the records are assembled; and
- (d) Records in logical batches.

(2) The department may choose to only assemble the first installment. If the requestor claims or reviews the first installment, the department will then assemble the next installments.

(3) The department may assess charges per installment for copies made for the requestor, unless the department is using the flat fee charge provided in RCW 42.56.120.

#### NEW SECTION

**WAC 192-02-130 Denials of requests.** (1) A denial of a request for records will be accompanied by a written statement of the specific reasons therefor.

(2) If the department denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter, pursuant to RCW 42.56.530. The attorney general has adopted rules on such requests in WAC 44-06-160.

(3) Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550.

NEW SECTION

**WAC 192-02-140 Fee schedule.** The fee schedule is available on the department's website.

NEW SECTION

**WAC 192-02-150 Costs—General.** (1) In order to timely implement a fee schedule consistent with the Public Records Act, it is more cost efficient, expeditious, and in the public interest for the department to adopt the state legislature's approved fees and costs for most of the department records, as authorized in RCW 42.56.120 and as published in the agency's fee schedule. Notwithstanding, for unemployment insurance records covered by chapter 192-15 WAC, the department may charge fees for records consistent with state or federal law.

(2) The department is not calculating actual costs for copying its records because to do so would be unduly burdensome for the following reasons:

(a) The department does not have the resources to conduct a study to determine actual copying costs for all its records.

(b) Conducting a study to determine actual copying costs would interfere with other essential department functions.

(c) Through the legislative process, the public and requestors have commented on and been informed of authorized fees and costs provided in the Public Records Act, including RCW 42.56.120 and other laws.

NEW SECTION

**WAC 192-02-160 Costs—Customized services.** (1) If the department estimates that a request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the department for other department purposes, the department may impose a customized service charge.

(2) The customized service charge is:

(a) Intended to reimburse the department up to the actual cost of providing the customized services; and

(b) In addition to the charge imposed for providing copies of public records.

(3) The department will:

(a) Notify the requestor of the customized service charge to be applied to the request;

(b) Include:

(i) An explanation of why the customized service charge applies;

(ii) A description of the specific expertise; and

(iii) A reasonable estimate cost of the charge.

(c) Provide the requestor the opportunity to amend the request in order to avoid or reduce the cost of a customized service charge.

NEW SECTION

**WAC 192-02-170 Costs—Inspection.** There is no fee for inspecting public records, including inspecting records on the department's website.

NEW SECTION

**WAC 192-02-180 Costs—Mailing.** The department may charge actual costs of mailing, including the cost of the shipping container.

NEW SECTION

**WAC 192-02-190 Payments.** Payment may be made to the department by:

(1) Check;

(2) Money order; or

(3) Other means as provided by the department.

NEW SECTION

**WAC 192-02-200 Processing payments.** (1) Before beginning to make copies or processing a customized service, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor.

(2) The public records officer may require:

(a) The payment of the remainder of the copying costs before providing all of the records;

(b) The payment of the costs of copying an installment before providing that installment; or

(c) The payment of a customized service charge.

(3) The department will not charge sales tax when it makes copies of public records.

NEW SECTION

**WAC 192-02-210 Fee waivers.** Requestors are required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the conditions set by the department and available on its website.

**WSR 20-15-144**

**PROPOSED RULES**

**WASHINGTON STATE PATROL**

[Filed July 21, 2020, 2:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-053.

Title of Rule and Other Identifying Information: Fire marshal standards.

Hearing Location(s): On September 24, 2020, at 9:00 a.m.

Call-in: 1-253-215-8782. Passcode: 877969.

Date of Intended Adoption: September 25, 2020.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA



98507, email [wsprules@wsp.wa.gov](mailto:wsprules@wsp.wa.gov), by September 22, 2020.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, agency rules coordinator, phone 360-596-4017, email [wsprules@wsp.wa.gov](mailto:wsprules@wsp.wa.gov), by September 22, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There is a need to update chapter 212-12 WAC, updates are to provide clarity and consistency in terms used throughout the chapter and clean up existing language.

Reasons Supporting Proposal: Updates are to provide clarity and consistency in terms used throughout the chapter and clean up existing language.

Statutory Authority for Adoption: RCW 18.20.130, 18.46.110, 18.51.140, 43.43.939, 43.44, 70.41.080, 70.97.-210, 71.12.485, 74.15.050.

Statute Being Implemented: RCW 18.20.130, 18.46.110, 18.51.140, 43.43.939, 43.44, 70.41.080, 70.97.210, 71.12.-485, 74.15.050.

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

Name of Proponent: Washington state patrol, state fire marshal, governmental.

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, Olympia, Washington, 360-596-4017; Implementation and Enforcement: State Fire Marshal, Olympia, Washington, 360-596-3906.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt pursuant to RCW 34.05.328 (5)(b)(v).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

July 21, 2020  
John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 08-06-050, filed 2/28/08, effective 3/30/08)

**WAC 212-12-001 Statement of authority.** The state director of fire protection is authorized to administer and enforce the provisions of this chapter and in accordance with RCW 43.44.010.

AMENDATORY SECTION (Amending WSR 13-18-066, filed 9/3/13, effective 10/4/13)

**WAC 212-12-005 Definitions.** Unless otherwise provided in this section, definitions in the Washington State Building Code, chapter 19.27 RCW, and 42 C.F.R. Ch. IV § 483.70, National Fire Protection Association, standard 101 "Life Safety Code" (~~((2000 edition, as))~~) current adopted edition by ~~((CMS-))~~ Centers for Medicare/Medicaid Services ~~((+))~~ (CMS) shall apply to this chapter. The following definitions will also apply to this chapter:

(1) "State director of fire protection" means the director of fire protection within the Washington state patrol, the state fire marshal, or authorized deputy or designee.

(2) "New facility" means any facility that is:

(a) Being occupied or licensed for the first time((?));

(b) Vacated for more than one ((hundred eighty days)) year and reoccupied((?));

(c) Closed for more than one ((hundred eighty days)) year and reopened((,-or));

(d) Changes occupancy classification; or

(e) For which the license has expired, will be considered as a new facility and must meet the current codes and standards as adopted. ((Except for boarding homes))

Exceptions:

• Existing assisted living facilities which may be vacated for more than one hundred eighty days if approved by the director of fire protection and the department of social and health services and/or department of health.

• Existing nursing homes that have been converted to an assisted living facility under provisions of chapter 388-78A WAC.

(3) "Before and after school program" means a program licensed by the department of ~~((early learning))~~ children, youth, and families that provides early learning experiences for children five years of age through twelve years of age who are attending kindergarten or elementary school.

(4) "Birthing center" or "childbirth center" are defined in chapter 18.46 RCW.

AMENDATORY SECTION (Amending WSR 08-06-050, filed 2/28/08, effective 3/30/08)

**WAC 212-12-010 Adoption of codes and standards.**

The following administrative codes and regulations are hereby adopted by reference as ~~((#))~~ set forth fully herein:

(1) Chapter 51-50 WAC, State Building Code adoption and amendment of the International Building Code.

(2) Chapter 51-51 WAC, State Building Code adoption and amendment of the International Residential Code.

(3) Chapter 51-52 WAC, State Building Code adoption and amendment of the International Mechanical Code.

(4) Chapter 51-54A WAC, State Building Code adoption and amendment of the International Fire Code.

(5) Chapter 51-56 WAC, State Building Code adoption and amendment of the Uniform Plumbing Code.

~~((Chapter 51-57 WAC, State Building Code adoption and amendment of Appendix A, B and Appendix I of the Uniform Plumbing Code.~~

~~((7)))~~ 42 C.F.R. Ch. IV § 483.70, National Fire Protection Association, standard 101, "Life Safety Code," ~~((2000 edition))~~ current adopted edition by ~~((CMS-))~~ Centers for Medicare/Medicaid Services ~~((+))~~ (CMS) for application in ambulatory surgical centers, hospice, nursing homes and hospitals.

AMENDATORY SECTION (Amending WSR 13-18-066, filed 9/3/13, effective 10/4/13)

**WAC 212-12-015 Applicability.** The provisions of this chapter apply to all facilities for which the director of fire protection is responsible for fire protection and enforcement including:

Adult rehabilitation center.  
 Alcoholism hospital.  
 Alcoholism intensive inpatient treatment services.  
 Alcoholism treatment facility.  
~~((Psychiatric hospital.))~~  
Assisted living facility.  
 Before and after school program((s)).  
~~((Boarding home.))~~  
 Birthing center.  
 Child care ~~((occupancies))~~ occupancy.  
Criminal prosecution.  
Enhanced services facility.  
Examination of premises.  
Examination of witnesses.  
 Group care facility.  
 Group care ~~((facilities))~~ facility for severely and ~~((multiply))~~ multiple handicapped children.  
Hazardous liquid and gas pipeline accidents—Preparedness of local first responders.  
Hospice.  
 Hospital.  
 Nursing home.  
~~((Transient accommodation.))~~  
Psychiatric hospital.  
Premises with guard animals—Registration, posting—Acts permitted firefighters—Liability for injury to firefighters.  
 Public buildings.  
~~((Enhanced services facilities. Examination of premises.))~~  
Record of fires.  
Removal of fire hazards—Appeal of order—Penalty.  
Reports and investigations of fire—Police powers.  
Residential treatment facility.  
 Standard of safety.  
 Schools—Standards for fire prevention and safety—Plan review and construction inspection.  
~~((Removal of fire hazards—Appeal of order—Penalty. Reports and investigations of fire—Police powers. Statistical information and reports. Examination of witnesses. Criminal prosecution. Record of fires. Premises with guard animals—Registration, posting—Acts permitted firefighters—Liability for injury to firefighters. Hazardous liquid and gas pipeline accidents—Preparedness of local first responders.))~~  
Statistical information and reports.  
Transient accommodation.

AMENDATORY SECTION (Amending WSR 08-06-050, filed 2/28/08, effective 3/30/08)

**WAC 212-12-020 Additional ~~((boarding home))~~ assisted living facility requirements.** This section shall be applicable to existing facilities that do not have fire sprinkler protection and smoke compartmentation on floors in which residents reside.

(1) ~~((Boarding home))~~ Resident evacuation capability levels.

(a) Evacuation capability is the ability of the resident of a ~~((boarding home))~~ facility licensed by the department of social and health services under chapter 18.20 RCW to respond to an emergency situation and either evacuate ~~((the boarding home))~~ or move to a point of safety.

(b) Residents shall be classified by the facility administration in one of the following evacuation ~~((levels))~~ capabilities:

(i) ~~((Level I))~~ Ambulatory - Persons physically and cognitively capable of walking or traversing a normal pathway to safety, including the ascent and descent of stairs, and capable of self-preservation, without the physical assistance of another person.

(ii) ~~((Level II))~~ Semiambulatory - Persons physically and cognitively capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another person.

(iii) ~~((Level III))~~ Nonambulatory - Persons physically or cognitively unable to walk or traverse a normal path to safety without the physical assistance of another person.

(2) Residents with evacuation capabilities of ~~((Level II or Level III))~~ semiambulatory or nonambulatory must reside on the grade level floor unless the ~~((boarding home))~~ facility receives written approval by the director of fire protection to house these residents on other floor levels.

(3) The ~~((boarding home))~~ facility must not admit or retain more than two residents with evacuation capabilities of ~~((Level II or Level III))~~ semiambulatory or nonambulatory unless:

(a) The ~~((boarding home))~~ facility receives written approval by the director of fire protection to care for more than two residents with evacuation capabilities of ~~((Level II or Level III))~~ semiambulatory or nonambulatory; and

(b) The ~~((boarding home))~~ facility is divided into at least two smoke barrier compartments on each floor; and

(c) The ~~((boarding home))~~ facility has an operational automatic sprinkler system throughout the facility, unless the ~~((boarding home))~~ facility was initially licensed prior to July 1, 2007, and is licensed for six or fewer residents.

AMENDATORY SECTION (Amending WSR 13-18-066, filed 9/3/13, effective 10/4/13)

**WAC 212-12-022 ~~((Additional))~~ Before and after school program requirements.** (1) ~~((Before and after school programs located in an existing, operational, public school or private school will be deemed as meeting code requirements at the time of their construction. Except that locations that are not equipped with an automatic fire sprinkler will be deemed as meeting code requirements only when the location of the program meets the following:~~

~~((a) Program must be located on the ground floor with direct exiting in the area the program is being provided;~~

~~((b) The building has an installed fire detection and alarm system; and~~

~~((c) The building has accessible fire extinguishers installed within the area the program is being provided.~~

(2)) Before and after school programs that are not located in an existing, operational, public or private school must be inspected as a new facility, as defined in WAC 212-12-005, and must be required to meet the code requirements outlined in chapter 19.27 RCW.

(2) Before and after school programs located in an existing, operational, public or private school wanting to change into a different license category as defined in chapter 43.216 RCW must meet the code requirements outlined in chapter 19.27 RCW.

AMENDATORY SECTION (Amending WSR 08-06-050, filed 2/28/08, effective 3/30/08)

**WAC 212-12-025 Fire reporting requirements.** Any facility licensed by the department of health or the department of social and health services, and inspected by the office of the state fire marshal, shall report within twenty-four hours to the office of the state fire marshal any accidental or unintentional fire, any deliberately set improper fire, any unusual incident that required implementation of the facility disaster plan, including any evacuation of all or part of the resident population to another area within the facility or to another address, and any circumstance which threatened or could have threatened the ability of the facility to ensure continuation of normal services to the residents.

AMENDATORY SECTION (Amending WSR 08-06-050, filed 2/28/08, effective 3/30/08)

**WAC 212-12-030 Right of appeal for state cited facilities.** The following procedure will apply to appeals of orders, decisions or citations made by the state fire marshal's office and it does not apply to CMS federal surveys:

(1) Administrative appeal (step 1) - A facility will have an opportunity to dispute cited deficiencies with a chief deputy state fire marshal. The purpose of this informal process is to give the facility an opportunity to refute cited deficiencies after an inspection. A written request with an explanation of the specific deficiencies that are being disputed ~~((shall))~~ must be submitted within ~~((ten))~~ fifteen days of receipt of the correction notice. All submittals ~~((shall))~~ must be sent to WSP-Fire Protection Bureau, P.O. Box ~~((42600))~~ 42642, Olympia, WA ~~((98504-2600))~~ 98504-2642 or via email at FIRE.MARSH@wsp.wa.gov. If a facility is successful in demonstrating that a deficiency should not have been cited, the chief deputy state fire marshal will remove or make the appropriate corrections to the citation. If a facility is unsuccessful in demonstrating that a deficiency should not have been cited, the facility will be notified in writing that the citation will remain unchanged. The facility will then have the option to proceed to step #2 in the administrative appeal process.

(2) Administrative appeal (step 2) - If a facility is not satisfied with the decision made during the administrative appeal (step 1), they may appeal the decision in writing within ~~((seven))~~ ten days of receipt of the written decision to the prevention division assistant state fire marshal. If a facility is successful in demonstrating that a deficiency should not have been cited, the assistant state fire marshal will remove or make the appropriate corrections to the citation. If a facility is unsuccessful in demonstrating that a deficiency should

not have been cited, the facility will be notified in writing that the citation will remain unchanged. The facility will then have the option to proceed to step #3 in the administrative appeal process.

(3) Administrative appeal (step 3) - If a facility is not satisfied with the decision made during the administrative appeal (step 2), they may appeal the decision in writing within ~~((seven))~~ ten days of receipt of the written decision to the director of fire protection. If a facility is successful in demonstrating that a deficiency should not have been cited, the director of fire protection will remove or make the appropriate corrections to the citation. If a facility is unsuccessful in demonstrating that a deficiency should not have been cited, the facility will be notified in writing that the citation will remain unchanged.

(4) This is a final agency action.

Note: This appeal process is not applicable to the Life Safety Code inspections.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-035 Special requirements.** In addition to the fire and life safety standards listed in WAC ~~((212-12-030))~~ 212-12-010, the following shall apply: ~~((+))~~ In nursing homes, fire alarm system annunciators shall be provided where the system serves more than one floor, one fire or smoke division, or one building. They shall be located at each main nurses' station on each floor, fire or smoke division, and/or building.

~~((2))~~ In all Group E-3, I, LC Occupancies, annual certification of fire alarm systems shall be performed by the holder of a current low voltage electrical contractors specialty license issued by the department of labor and industries.

~~((3))~~ Every story, and basements of Group LC Occupancies shall have not less than two exits.

Exception: Basements used exclusively for the service of the building may have one exit. For the purpose of this exception, storage rooms, laundry rooms, maintenance offices, and similar uses shall not be considered as providing service to the building.

~~((4))~~ In all ((Groups E-3, I, and LC)) occupancies inspected by the state fire marshal's office, emergency lighting for means of egress shall be provided. Emergency systems shall activate automatically in a power failure and be supplied from storage batteries or an on-site generator set. ((The system shall be installed in accordance with the requirements of the Electrical Code.))

AMENDATORY SECTION (Amending WSR 08-06-050, filed 2/28/08, effective 3/30/08)

**WAC 212-12-040 Fire ~~((emergency))~~ safety/evacuation/lockdown plan.** All ~~((Group I, Group E, and Group R2))~~ occupancies inspected by the state fire marshal's office shall develop and maintain a written ~~((fire emergency))~~ plan. In addition to the adopted code and standards in WAC 212-12-010, the plan shall include the following:

(1) Action to take by the person discovering a fire.

(2) Method of sounding an alarm on the premises.

~~((3) Actions to take for evacuation and assuring accountability of the occupants.~~

~~(4) An evacuation floor plan identifying exits.~~

~~(5) In Group R, Division 1 Occupancies and Group R, Division 3 Occupancies used as transient accommodations, a copy of the written evacuation plan shall be posted in each guest room.)~~

AMENDATORY SECTION (Amending WSR 08-06-050, filed 2/28/08, effective 3/30/08)

**WAC 212-12-044 Fire drills.** In all Group I, Group E, and Group R2 Occupancies licensed by the state and inspected by the state fire marshal's office, at least twelve planned and unannounced fire drills shall be held every year.

(1) Drills shall be conducted quarterly on each shift in Group I and Group R2, Occupancies and monthly in Group E Occupancies to familiarize personnel with signals and emergency action required under varied conditions.

(2) A detailed written record of all fire drills shall always be maintained and available for inspection ~~((at all times))~~.

(3) When drills are conducted between 9:00 p.m. and 6:00 a.m., a coded announcement may be used instead of audible alarms. ~~((Fire drills shall include the transmission of a fire alarm signal and simulation of emergency conditions. The fire alarm monitoring company shall be notified prior to the activation of the fire alarm system for drill purposes and again at the conclusion of the transmission and restoration of the fire alarm system to normal mode.))~~

**WSR 20-15-146**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

[Filed July 21, 2020, 3:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-03-078.

Title of Rule and Other Identifying Information: Chapter 182-51 WAC, Washington prescription drug pricing transparency program.

Hearing Location(s): On August 25, 2020, at 10:00 a.m.

As the Governor's Safe Start plan progresses, it is yet unknown whether by the date of this public hearing restrictions of meeting in public places will be eased. To continue to be safe, this hearing is being scheduled as a virtual only hearing. This will not be an in-person hearing and there is not a physical location available.

To attend the virtual public hearing, please register prior to the event at <https://attendee.gotowebinar.com/register/338877111368337931>. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than August 26, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by August 25, 2020.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay services 711, email [amber.loughheed@hca.wa.gov](mailto:amber.loughheed@hca.wa.gov), by August 7, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement the Washington prescription drug pricing transparency program as required under chapter 43.71C RCW.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 43.71C.110; and ESSHB [E2SHB] 1224, chapter 334, Laws of 2019.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 43.71C.110; and ESSHB [E2SHB] 1224, chapter 334, Laws of 2019.

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

Name of Proponent: Health care authority (HCA), governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Annette Schuffenhauer, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1254.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

July 21, 2020

Wendy Barcus

Rules Coordinator

**Chapter 182-51 WAC**

**PRESCRIPTION DRUG PRICING TRANSPARENCY PROGRAM**

NEW SECTION

**WAC 182-51-0050 Authority and purpose.** (1) Under the authority of chapter 43.71C RCW, this chapter implements the Washington prescription drug pricing transparency program.

(2) The purpose of the Washington prescription drug pricing transparency program is to provide notice and disclosure of information relating to the cost and pricing of prescription drugs in order to provide accountability to the state for prescription drug pricing.

(3) Reporting entities must comply with the authority's processes for submitting data as outlined in the authority's data submission guides as published on the authority's website.

NEW SECTION

**WAC 182-51-0100 Definitions.** For the purposes of this chapter:

- (1) "Authority" means the health care authority.
- (2) "Calendar days" means the same as in WAC 182-526-0010.
- (3) "Covered drug" means any prescription drug that:
  - (a) A covered manufacturer intends to introduce to the market at a wholesale acquisition cost of ten thousand dollars or more for a course of treatment lasting less than one month or a thirty-day supply, whichever period is longer; or
  - (b) Meets all of the following:
    - (i) Is currently on the market;
    - (ii) Is manufactured by a covered manufacturer; and
    - (iii) Has a wholesale acquisition cost of more than one hundred dollars for a course of treatment lasting less than one month or a thirty-day supply, and, taking into account only price increases that take effect after July 28, 2019, the manufacturer increases the wholesale acquisition cost at least:
      - (A) Twenty percent, including the proposed increase and the cumulative increase over one calendar year before the date of the proposed increase; or
      - (B) Fifty percent, including the proposed increase and the cumulative increase over three calendar years before the date of the proposed increase.
- (4) "Covered manufacturer" means a person, corporation or other entity engaged in the manufacture of prescription drugs sold in or into Washington state. "Covered manufacturer" does not include a private label distributor or retail pharmacy that sells a drug under the retail pharmacy's store label, or a prescription drug repackager.
- (5) "Data" means all data provided to the authority under RCW 43.71C.020 through 43.71C.080 and any analysis prepared by the authority.
- (6) "Data recipient" means an individual or entity authorized to receive data under RCW 43.71C.100.
- (7) "Data submission guide" means the document that contains the required data, required format, and instructions on submitting the data to be reported to the authority for each submitter type.
- (8) "Food and drug administration (FDA) approval date" means the deadline for the FDA to review applications for new drugs or new biologics after the new drug application or biologic application is accepted by the FDA as complete in accordance with the Prescription Drug User Fee Act of 1992 (106 Stat. 4491; P.L. 102-571).
- (9) "Health plan," "health carrier," and "carrier" mean the same as in RCW 48.43.005.
- (10) "Introduced to market" means made available for purchase in Washington state.
- (11) "New drug" means a drug for which a manufacturer is seeking initial approval under an original new drug application under 21 U.S.C. Sec. 355(b), under an abbreviated new drug application under 21 U.S.C. Sec. 355(j), or under a biologics license application under 42 U.S.C. Sec. 262. Each product listed on the application must be considered a new drug for purposes of reporting according to RCW 43.71C.-060.
- (12) "Pharmacy benefit manager" means the same as defined in RCW 19.340.010.

(13) "Pharmacy services administrative organization" means an entity that:

(a) Contracts with a pharmacy to act as the pharmacy's agent with respect to matters involving a pharmacy benefit manager, third-party payor, or other entities, including negotiating, executing, or administering contracts with the pharmacy benefit manager, third-party payor, or other entities; and

(b) Provides administrative services to pharmacies.

(14) "Prescription drug" means a drug regulated under chapter 69.41 or 69.50 RCW, including generic, brand name, specialty drugs, and biological products that are prescribed for outpatient use and distributed in a retail setting.

(15) "Private label distributor" means a firm that does not participate in the manufacture or processing of a drug but instead markets and distributes under its own trade name, and labels a drug product made by someone else.

(16) "Qualifying price increase" means a price increase described in subsection (3)(b) of this section.

(17) "Rebate" means negotiated price concessions, discounts, refunds or revenue, however characterized, that accrue directly or indirectly to a reporting entity in connection with utilization of prescription drugs by reporting entity members including, but not limited to, rebates, administrative fees, market share rebates, price protection rebates, performance-based price concessions, volume-related rebates or refunds, other credits, and any other negotiated price concessions or discounts that are reasonably anticipated to be passed through to a reporting entity during a coverage year, and any other form of price concession prearranged with a covered manufacturer, dispensing pharmacy, pharmacy benefit manager, rebate aggregator, group purchasing organization, or other party which are paid to a reporting entity and are directly attributable to the utilization of certain drugs by reporting entity members.

(18) "Reporting entity" means carriers, covered manufacturers, health carriers, health plans, pharmacy benefit managers, and pharmacy services administrative organizations, which are required to or voluntarily submit data according to chapter 43.71C RCW.

(19) "Wholesale acquisition cost" means, with respect to a prescription drug, the manufacturer's list price for the drug to wholesalers or direct purchasers in the United States, excluding any discounts, rebates, or reductions in price, for the most recent month for which the information is available, as reported in wholesale acquisition cost guides or other publications of prescription drug pricing.

#### **DATA REPORTING, NOTICES, AND CONFIDENTIALITY**

NEW SECTION

**WAC 182-51-0200 Reporting entity registration.** (1) No later than August 1st of each year, a reporting entity must register with the authority and provide the required contact information as defined in the applicable data submission guide. Reregistration is required only if there is a change in contact information previously provided.

(2) It is the responsibility of the reporting entity to maintain current and accurate contact information with the authority.

(3) Failure to register and provide or maintain accurate contact information with the authority may result in a reporting entity's inability to submit required data in compliance with this chapter and may result in fines as described in WAC 182-51-1100.

#### NEW SECTION

**WAC 182-51-0300 Health carriers—Cost utilization data reporting.** (1) No later than October 1st of each year, a health carrier must submit to the authority the prescription drug cost and utilization data for one or more previous calendar years for each health plan it offered in the state in the required format in accordance with the authority's applicable data submission guide.

(2) A carrier may voluntarily submit the data described in subsection (1) of this section for any employer-sponsored, self-funded health plan; Taft-Hartley trust health plan; worker's compensation plan; medicare Part D plan; or medicare advantage plan it administers.

(3) The authority may assess fines for not complying with the requirements in this section. See WAC 182-51-1000.

#### NEW SECTION

**WAC 182-51-0400 Pharmacy benefit managers—Data reporting.** (1) No later than March 1st of each year, a pharmacy benefit manager must submit to the authority all data specified in RCW 43.71C.030 in the required format in accordance with the authority's applicable data submission guide.

(2) The authority may examine or audit a pharmacy benefit manager's financial records to ensure the information submitted under this section is accurate. Information the authority acquires in an examination of financial records according to this subsection is treated as proprietary and confidential. The information collected according to this section is not subject to public disclosure under chapter 42.56 RCW.

(3) A pharmacy benefit manager may voluntarily submit the data described in subsection (1) of this section for any employer-sponsored, self-funded health plan; Taft-Hartley trust health plan; worker's compensation plan; medicare Part D plan; or medicare advantage plan it administers.

(4) The agency may assess fines for not complying with the requirements in this section. See WAC 182-51-1000.

#### NEW SECTION

**WAC 182-51-0500 Pharmacy benefit managers—Compliance.** (1) No later than March 1st of each year, each pharmacy benefit manager must file with the authority an attestation in the format required by the authority for the preceding calendar year, stating that the pharmacy benefit manager is in compliance with this chapter.

(2) A pharmacy benefit manager must not cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.

#### NEW SECTION

**WAC 182-51-0600 Manufacturers—Data and price reporting.** (1) On or before October 1, 2020, a covered manufacturer must submit to the authority all data specified in RCW 43.71C.050 and 43.71C.070 in accordance with the applicable data submission guide for each covered drug as the drug existed between July 28, 2019, and December 31, 2020.

(2) Beginning October 1, 2020, and monthly thereafter, a covered manufacturer must submit to the authority all data specified in RCW 43.71C.050 and 43.71C.070 in accordance with the applicable data submission guide, for each covered drug as follows:

(a) Each report related to a covered drug introduced to market or a qualifying price increase with an effective date between January 1st and January 31st, inclusive, is due by November 30th of the prior year;

(b) Each report related to a covered drug introduced to market or a qualifying price increase with an effective date between February 1st and February 28th, or in a leap year February 29th, inclusive, is due by December 31st of the prior year;

(c) Each report related to a covered drug introduced to market or a qualifying price increase with an effective date between March 1st and March 31st, inclusive, is due by January 31st of the same year;

(d) Each report related to a covered drug introduced to market or a qualifying price increase with an effective date between April 1st and April 30th, inclusive, is due by February 28th, or in a leap year February 29th, of the same year;

(e) Each report related to a covered drug introduced to market or a qualifying price increase with an effective date between May 1st and May 31st, inclusive, is due by March 31st of the same year;

(f) Each report related to a covered drug introduced to market or a qualifying price increase with an effective date between June 1st and June 30th, inclusive, is due by April 30th of the same year;

(g) Each report related to a covered drug introduced to market or a qualifying price increase with an effective date between July 1st and July 31st, inclusive, is due by May 31st of the same year;

(h) Each report related to a covered drug introduced to market or a qualifying price increase with an effective date between August 1st and August 31st, inclusive, is due by June 30th of the same year;

(i) Each report related to a covered drug introduced to market or a qualifying price increase with an effective date between September 1st and September 30th, inclusive, is due by July 31st of the same year;

(j) Each report related to a covered drug introduced to market or a qualifying price increase with an effective date between October 1st and October 31st, inclusive, is due by August 31st of the same year;

(k) Each report related to a covered drug introduced to market or a qualifying price increase with an effective date between November 1st and November 30th, inclusive, is due by September 30th of the same year; and

(l) Each report related to a covered drug introduced to market or a qualifying price increase with an effective date

between December 1st and December 31st, inclusive, is due by October 31st of the same year.

(3) The information submitted according to this section is not subject to public disclosure under chapter 42.56 RCW.

(4) The authority may assess fines for not complying with the requirements in this section. See WAC 182-51-1000.

#### NEW SECTION

**WAC 182-51-0700 Manufacturers—Notice of new drug applications.** (1) On or before October 1, 2020, a manufacturer must submit to the authority all data specified in RCW 43.71C.060(1) in accordance with the applicable data submission guide for all new drug applications or biologic license applications submitted on or after October 1, 2019, through September 30, 2020, for which the manufacturer has received an FDA approval date.

(2) Beginning October 1, 2020, a manufacturer must submit to the authority all data specified in RCW 43.71C.060(1) in accordance with the applicable data submission guide for all new drug applications or biologic license applications submitted on or after October 1, 2020, within sixty calendar days of the manufacturer receiving the FDA approval date as follows:

(a) All new drug applications or biologic license applications for which the manufacturer has received an FDA approval date between January 1st and January 31st, inclusive, is due by November 30th of the prior year;

(b) All new drug applications or biologic license applications for which the manufacturer has received an FDA approval date between February 1st and February 28th, or in a leap year February 29th, inclusive, is due by December 31st of the prior year;

(c) All new drug applications or biologic license applications for which the manufacturer has received an FDA approval date between March 1st and March 31st, inclusive, is due by January 31st of the same year;

(d) All new drug applications or biologic license applications for which the manufacturer has received an FDA approval date between April 1st and April 30th, inclusive, is due by February 28th, or in a leap year February 29th, of the same year;

(e) All new drug applications or biologic license applications for which the manufacturer has received an FDA approval date between May 1st and May 31st, inclusive, is due by March 31st of the same year;

(f) All new drug applications or biologic license applications for which the manufacturer has received an FDA approval date between June 1st and June 30th, inclusive, is due by April 30th of the same year;

(g) All new drug applications or biologic license applications for which the manufacturer has received an FDA approval date between July 1st and July 31st, inclusive, is due by May 31st of the same year;

(h) All new drug applications or biologic license applications for which the manufacturer has received an FDA approval date between August 1st and August 31st, inclusive, is due by June 30th of the same year;

(i) All new drug applications or biologic license applications for which the manufacturer has received an FDA

approval date between September 1st and September 30th, inclusive, is due by July 31st of the same year;

(j) All new drug applications or biologic license applications for which the manufacturer has received an FDA approval date between October 1st and October 31st, inclusive, is due by August 31st of the same year;

(k) All new drug applications or biologic license applications for which the manufacturer has received an FDA approval date between November 1st and November 30th, inclusive, is due by September 30th of the same year; and

(l) All new drug applications or biologic license applications for which the manufacturer has received an FDA approval date between December 1st and December 31st, inclusive, is due by October 31st of the same year.

(3) A manufacturer may limit the information reported according to this section to information that is in the public domain or publicly reported.

(4) The agency may assess fines for not complying with the requirements in this section. See WAC 182-51-1000.

#### NEW SECTION

**WAC 182-51-0800 Pharmacy services administrative organizations—Data reporting.** (1) No later than October 1st of each year, a pharmacy services administrative organization representing a pharmacy or pharmacy chain in the state must submit to the authority the data specified in RCW 43.71C.080 following the guidelines set in the authority's applicable data submission guide.

(2) Any pharmacy services administrative organization whose revenue is generated from flat service fees not connected to drug prices or volume, and paid by the pharmacy, is exempt from reporting, subject to audit by the authority. These organizations must petition the authority for exemption from the reporting requirements according to the frequency listed and the format required in the authority's applicable data submission guide.

(3) The authority may assess fines for not complying with the requirements in this section. See WAC 182-51-1000.

#### NEW SECTION

**WAC 182-51-0900 Data confidentiality.** The authority provides data only after the data recipient, as defined by this chapter, has signed a nondisclosure agreement. The authority may prohibit access to or use of the data by a data recipient who violates the nondisclosure agreement.

#### NEW SECTION

**WAC 182-51-1000 Data submission guides.** (1) All data and data files must be submitted to the authority in accordance with the requirements in this chapter and the respective data submission guide for the respective reporting period. Data submission guides are located on the authority's website.

(2) The authority develops data submission guides and has final approval authority over them.

(3) At its discretion, the authority may grant reporting entities an extension to comply with any changes the authority makes to the data submission guides. Reporting entities

must request extensions in accordance with WAC 182-51-1200.

## ENFORCEMENT

### NEW SECTION

**WAC 182-51-1100 Authority to assess fines.** (1) RCW 43.71C.090 allows the authority to assess a fine of up to one thousand dollars per day for failure to comply with the requirements of RCW 43.71C.020 through 43.71C.080 and the requirements of this chapter.

(2) The authority may, at its sole discretion, grant an extension of time to a reporting requirement deadline under WAC 182-51-1200.

### NEW SECTION

**WAC 182-51-1200 Extension of deadlines.** (1) The authority may, at its sole discretion, grant:

(a) An extension of time to a reporting requirement deadline; or

(b) Permission to correct previously submitted data.

(2) Extensions.

(a) A reporting entity may request an extension of time for submitting a report or the resubmission of a report due to extenuating circumstances affecting the reporting entity's ability to submit the data by the deadline.

(b) The request for an extension must be for no more than one reporting period and must contain a detailed explanation as to the reason the reporting entity is unable to meet the reporting requirements for that period.

(c) A reporting entity must submit a request for an extension to the authority at least thirty calendar days before the applicable reporting deadline unless the requestor is unable to meet this deadline due to circumstances beyond the reporting entity's control. If unable to meet this deadline, the reporting entity must notify the authority in writing as soon as the reporting entity determines that an extension is necessary.

(d) The authority may approve a request for extenuating circumstances. The authority provides written notification of the approval or denial to the requestor within fifteen calendar days from when the authority receives the request from the reporting entity. If the authority does not approve a request for an extension, the written notification includes the reason for the denial.

(e) A reporting entity may not appeal the authority's decision to deny an extension.

### NEW SECTION

**WAC 182-51-1300 Fines for failure to comply with reporting requirements.** (1) The authority may assess fines for failure to comply with the general reporting requirements of this chapter including, but not limited to, failing to report data or reporting erroneous or inaccurate data.

(2) Unless the authority has approved an extension, the authority may assess a fine for failure to comply with general reporting requirements contained in chapter 43.71C RCW and this chapter including, but not limited to, the following:

(a) Failure to timely submit required data files; or

(b) Failure to accurately submit all data elements.

(3) Unless the authority has approved an extension, the authority may assess fines for failure to comply with data file requirements outlined in the applicable data submission guide in effect for the required reporting period including, but not limited to, the following:

(a) Submitting a data file in an unapproved layout;

(b) Submitting a data element in an unapproved format;

(c) Submitting a data element with unapproved coding;

(d) Failing to submit a required data element;

(e) Failing to comply with the approved data submission schedule; or

(f) Transmitting data files using an unapproved process.

(4) Upon failing to comply with a reporting requirement in this chapter, the authority first issues a warning notice to a reporting entity. The authority sends the warning notice to the reporting entity's last known email or physical address. The warning notice describes the failure to comply with the requirements of this chapter and gives the reporting entity ten days to become compliant or request an extension of time to report the required data according to WAC 182-51-1200(2).

(5) A reporting entity that fails to comply with the same reporting requirement in this chapter for which it previously received a warning notice may be assessed a fine of up to one thousand dollars per day. Failure to comply with each reporting requirement for the reporting period is a different occurrence with a separate fine.

(6) Fines begin to accrue on the first day after the reporting deadline. For those reporting entities granted an extension by the authority, fines begin to accrue on the first day after the extended due date.

### NEW SECTION

**WAC 182-51-1400 Amount of fines based on culpability.** (1) In determining the amount of any fine, the authority considers the level of culpability associated with the violation. The levels of culpability, in the order of least severe to most severe, are as follows:

(a) **Did not know.** The reporting entity did not know and by exercising reasonable diligence, could not have known the violation had occurred.

(b) **Reasonable cause.** The reporting entity knew, or by exercising diligence should have known, that the violation had taken place, but the reporting entity did not act with willful neglect.

(c) **Willful neglect - Corrected.** The violation was due to the reporting entity's intentional failure or reckless indifference, and the violation was corrected within thirty calendar days from the date the reporting entity knew or with reasonable diligence should have known of the violation.

(d) **Willful neglect - Uncorrected.** The violation was due to the reporting entity's intentional failure or reckless indifference, and the violation was not corrected within thirty calendar days from the date the reporting entity knew or with reasonable diligence should have known of the violation.

(2) The fine ranges for each level of culpability and the daily cap for violations of a similar nature are as follows:



Culpability category	Fines per violation, per day
Did not know	\$250
Reasonable cause	\$500
Willful neglect - Corrected	\$750
Willful neglect - Not corrected	\$1,000

NEW SECTION

**WAC 182-51-1500 Notice of violation and fine.** (1) When a reporting entity fails to comply with reporting requirement(s) after receiving a warning notice, the authority may assess a fine and notifies the reporting entity. The authority mails the notice of violation to the reporting entity's last known address by certified mail, return receipt requested.

(2) The notice of violation includes the following information:

- (a) The specific reasons and criteria that support the imposition of the assessed fine(s);
- (b) The legal authority that supports the imposition of a fine or fines;
- (c) The amount of the fine(s);
- (d) The date when the fine(s) and other actions imposed will take effect, if not appealed; and
- (e) An explanation of the reporting entity's appeal rights.

NEW SECTION

**WAC 182-51-1600 Process to appeal determination of a violation and assessed fines.** (1) Each reporting entity to whom the authority issues a notice of a violation and fine may request a hearing to be conducted in accordance with this chapter and chapter 182-526 WAC.

(2) A reporting entity must submit a request for a hearing to the authority in writing, in a manner that provides proof of receipt, within twenty-eight calendar days after receipt of written notice provided under WAC 182-51-1500.

(3) The request for hearing must specify:

- (a) The name of the reporting entity requesting the hearing and the reporting entity's, or representative's, mailing address, telephone number, and email address (if available);
- (b) The items, facts, or conclusions in the notice of violation being contested; and
- (c) The basis for contesting the authority's action, including any mitigating factors upon which the reporting entity relies and the outcome the reporting entity is seeking.

NEW SECTION

**WAC 182-51-1700 Informal dispute resolution prior to a hearing.** (1) A reporting entity may informally dispute the authority's determination of a violation under this chapter. Reporting entities must submit the request for dispute resolution in writing, and it must include the following:

- (a) The supporting evidence for each assessed violation; and
  - (b) The relief sought for each disputed violation.
- (2) The dispute may include a request for a dispute resolution conference.

(a) If the agency grants the reporting entity's request for a dispute resolution conference, the conference occurs within sixty calendar days of the date the reporting entity received the authority's written acceptance of the request for a dispute resolution conference.

(b) The reporting entity must notify the authority of who will attend the dispute resolution conference on the reporting entity's behalf at least five business days before the conference.

(3) The authority may terminate the dispute resolution process at any time.

(4) Nothing in this chapter prevents settlement discussions between the parties. All settlement discussions are informal and without prejudice to the rights of the participants in the discussions.

NEW SECTION

**WAC 182-51-1800 Administrative hearing (formal appeal) right.** (1) A reporting entity has a right to an administrative hearing (formal appeal), and any resulting appeals process available under chapters 34.05 RCW and 182-526 WAC, if the authority assesses a fine against the reporting entity under any section of chapter 43.71C RCW and this chapter. To the extent that there may be a conflict between the general provisions contained in chapter 182-526 WAC and this chapter, the more specific provisions in this chapter apply.

(2) A reporting entity may appeal both the assessed violation(s) and the amount of the fine(s) assessed in the notice of violation and fine.

(3) At the administrative hearing and on appeal, the reporting entity bears the burden of proving by a preponderance of the evidence that it has complied with applicable laws, rules, regulations, and agreements.

(4) The administrative hearing process is governed by chapters 34.05 RCW and 182-526 WAC.

(5) The authority does not begin the collection process until a decision in the administrative hearing is issued and all levels of appeal have been exhausted.

(6) Interest on owed and outstanding fines continues to accrue at the rate of one percent per month or portion of a month, but it is not collected until a decision in the administrative hearing is issued and all levels of appeal have been exhausted.

**WSR 20-15-147****PROPOSED RULES****HEALTH CARE AUTHORITY**

[Filed July 21, 2020, 3:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-21-063.

Title of Rule and Other Identifying Information: WAC 182-300-0100 Single bed certification.

Hearing Location(s): On August 25, 2020, at 10:00 a.m.

As the Governor's Safe Start plan progresses, it is yet unknown whether by the date of this public hearing restric-

tions of meeting in public places will be eased. To continue to be safe, this hearing is being scheduled as a virtual only hearing. This will not be an in-person hearing and there is not a physical location available.

To attend the virtual public hearing, please register prior to the event at <https://attendee.gotowebinar.com/register/338877111368337931>. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than August 26, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by August 25, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay services 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by August 7, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is required to comply with the requirements in 2ESHB 1388 which changed the designation of the state behavioral health services, effective July 1, 2018. The single bed certification rules were previously filed under Preproposal statement of inquiry WSR-18-14-080 and Emergency rule-making order WSR 19-13-057, as WAC 182-538D-0526.

The rule making under WSR 18-14-080 was finalized under WSR 19-24-063. Rule making for single bed certification was continued through a separate rule-making process, and this is the outcome of that effort. Single bed certification has also been renumbered from WAC 182-538D-0526 to WAC 182-300-0100 to reflect that it is not solely a service under medicaid.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; and 2ESBH [2ESHB] 1388 (chapter 201, Laws of 2018).

Statute Being Implemented: RCW 41.05.021, 41.05.160; and 2ESBH [2ESHB] 1388 (chapter 201, Laws of 2018).

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

Name of Proponent: Health care authority (HCA), governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Annette Schuffenhauer, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1254.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not impose a disproportionate cost impact on small businesses or nonprofits.

July 21, 2020

Wendy Barcus  
Rules Coordinator

## Chapter 182-300 WAC

### SINGLE BED CERTIFICATION

#### NEW SECTION

**WAC 182-300-0100 Single bed certification.** At the discretion of the health care authority (HCA) or HCA's designee, an exception may be granted to a facility that is not certified under chapter 246-341 WAC, for a person on a seventy-two-hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment in order to allow timely and appropriate treatment. An exception may also be granted for a maximum of thirty days to allow a community facility to provide treatment to a person on a ninety- or one hundred eighty-day inpatient involuntary commitment order or to a person who has been revoked from a less restrictive alternative order or conditional release. For involuntarily detained or committed children, an exception may be granted to allow timely and appropriate treatment in a facility not certified under chapter 246-341 WAC, until the child's discharge from that setting to the community, or until they transfer to a bed in a children's long-term inpatient program (CLIP).

(1) In the case of an adult, the behavioral health administrative services organization (BH-ASO) or a designee must submit a written request for a single bed certification to HCA or HCA's designee. In the case of a child, the facility must submit the written request to HCA or HCA's designee and provide a copy to the BH-ASO. HCA or HCA's designee must receive and approve the request in order for a facility to accept a person for timely and appropriate treatment under this section. If HCA or HCA's designee has assumed the duties assigned to a nonparticipating BH-ASO, HCA or HCA's designee may designate an entity to request a single bed certification as described in this section.

(2) HCA or HCA's designee may issue a single bed certification to the facility for timely and appropriate mental health treatment when the following requirements are met in each instance where such certification is sought for a person:

(a) The facility that is the site of the proposed single bed certification confirms that it is willing and able to provide directly, or by direct arrangement with other public or private agencies, timely and appropriate mental health treatment to the person for whom the single bed certification is sought; and

(b) The request for single bed certification describes why the person meets at least one of the following criteria:

(i) The person is expected to be ready for discharge from inpatient services within the next thirty days and being at a community facility would facilitate continuity of care, consistent with the person's individual treatment needs;

(ii) The person can receive appropriate mental health treatment in a residential treatment facility, as defined in WAC 246-337-005, and the single bed certification will be only to that facility; or

(iii) The person can receive appropriate mental health treatment in a hospital with a psychiatric unit, a psychiatric

hospital, or a hospital that is willing and able to provide timely and appropriate mental health treatment, including a temporary health care facility that has a behavioral health component credentialed or approved by the department of health, and the single bed certification will apply only to that facility.

(3) In order to provide timely and appropriate mental health treatment, the facility receiving the single bed certification, or the public or private agency the facility has a direct arrangement with to provide mental health treatment, must:

(a) Implement standards for administration that include written procedures to assure that a mental health professional, as defined in RCW 71.05.020, and licensed physicians are available for consultation and communication with both the person and the direct patient care staff;

(b) Use a plan of care/treatment. The medical or clinical record must contain documentation that:

(i) An individualized mental health treatment plan was developed, when possible, collaboratively with the person. If the person is unwilling or unable to participate in development of the plan, documentation must be made in the record. Development of this plan may include participation of a multidisciplinary team, a mental health professional as defined in RCW 71.05.020, or collaboration with members of the person's support system as identified by the person; and

(ii) A mental health professional, as defined in RCW 71.05.020, has had contact with each involuntarily detained person at least daily for the purposes of:

(A) Observation and evaluation; and

(B) Assessing whether the person is appropriate for release from involuntary commitment to accept treatment on a voluntary basis; and

(c) Have standards for administration and monitoring of medication, including psychiatric medications. A person has a right to make an informed decision regarding the use of antipsychotic medication consistent with RCW 71.05.215.

(4) If a person requires medical services that are not generally available at a facility certified under this chapter, or at a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section, HCA or HCA's designee may issue a single bed certification to that facility for the person as follows:

(a) The single bed certification request must adequately describe why the person requires medical services that are not available at a facility certified under this chapter, a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section;

(b) The facility that is the site of the requested single bed certification must confirm that it is willing and able to provide the medical services; and

(c) The facility has documented that one of the following has been met:

(i) With the authorization of the hospital, and consistent with any applicable hospital policies and procedures, the BH-ASO assigns a mental health professional to provide the person appropriate mental health treatment at the facility, including observation and evaluation, during the period of time the person is provided medical services; or

(ii) The hospital provides medical services and a plan that addresses the person's mental health treatment needs

until the person is medically stable and the BH-ASO or a designee identifies an appropriate facility for the person that is one of the following:

(A) The hospital providing services;

(B) A facility that is certified as an evaluation and treatment (E&T) facility; or

(C) A facility that can meet the person's needs under the single bed certification criteria in this section.

(d) If a qualified medical professional determines that mental health treatment for the person is not clinically indicated, the requirements in (c) of this subsection do not apply. When the person is determined to be medically stable, the facility must ensure the requirements in (c) of this subsection are met.

(5) HCA or HCA's designee makes the decision and gives written notification to the requesting entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal or state law.

(6) A person who receives services under a single bed certification under this section must be transferred:

(a) To an evaluation and treatment facility if on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment; or

(b) To a state hospital if on a ninety- or one hundred eighty-day inpatient commitment, or if the person's less restrictive alternative order or conditional release was revoked, as soon as the attending physician considers the person medically stable and a bed becomes available, unless the treating facility consents to continue treatment and continued treatment in the current setting is consistent with the best clinical interests of the person.

(7) HCA or HCA's designee may make site visits at any time to verify that the terms of the single bed certification are being met. Failure to comply with any term of this exception may result in corrective action. If HCA or HCA's designee determines that the violation places people in imminent jeopardy, immediate revocation of this exception can occur.

(8) The BH-ASO retains the responsibility for ensuring due process required by RCW 71.24.300 (6)(b).

(9) Neither a person nor a facility has fair hearing rights as defined under chapter 182-526 WAC regarding single bed certification decisions made by HCA or HCA's designee staff.

## WSR 20-15-151

### PROPOSED RULES

### STATE BOARD OF EDUCATION

[Filed July 22, 2020, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-12-020.

Title of Rule and Other Identifying Information: The state board of education (SBOE) has proposed rule changes to chapters 180-51, 180-90, and 180-111 WAC.

Hearing Location(s): On August 27, 2020, at 2:00 p.m. Online using Zoom at <https://zoom.us/j/97149829541>. This will be the primary site for the public to attend the hearing. Members of the public are encouraged to participate online

due to COVID-19 health risks and necessary precautions by connecting to Zoom at <https://zoom.us/j/97149829541>; and on August 27, 2020, at 2:00 p.m., at Brouillet Room, Fourth Floor, Old Capitol, 600 Washington Street S.E., Olympia, WA 98504. This will be the site for the in-person hearing. The presiding officer of the hearing will follow applicable state and health requirements regarding COVID-19 at the time of the hearing. Members of the public are encouraged to participate online due to COVID-19 health risks and necessary precautions by connecting to Zoom at <https://zoom.us/j/97149829541>.

Date of Intended Adoption: September 17, 2020.

Submit Written Comments to: Parker Teed, 600 Washington Street S.E., Olympia, WA 98504, email [rulescoordinatorSBE@k12.wa.us](mailto:rulescoordinatorSBE@k12.wa.us), fax 360-586-2357, by August 27, 2020.

Assistance for Persons with Disabilities: Contact Parker Teed, phone 360-725-6047, fax 360-586-2357, TTY 360-664-3631, email [rulescoordinatorSBE@k12.wa.us](mailto:rulescoordinatorSBE@k12.wa.us), by August 27, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SBOE has proposed amendments to chapters 180-51, 180-90, and 180-111 WAC to make changes as necessary to align rule to current policy or practice, correct references to law, implement recently passed legislation, improve readability of the rule, and make other changes identified during the review of the WAC chapter. SBOE is responding to emergent COVID-19 issues in the education system with clarifications on flexibility in chapter 180-51 WAC and with turning emergency rule making into permanent rule making on chapter 180-90 and 180-111 WAC. These rules clarify existing flexibilities and make emergency rule into permanent rule as necessary.

The changes to chapter 180-90 WAC allow private schools to use online-only education if state or local health requirements prevent in-person education or if the school deems it unsafe to open.

The changes to chapter 180-111 WAC put the emergency waiver program for graduation requirements and private school time requirements into permanent rule. The emergency waiver program was administered using emergency rule.

SBOE is also proposing clarifications to chapter 180-51 WAC to allow for flexibility in meeting graduation requirements so that local education agencies may use these flexibilities to respond to the emergency situation. The changes to chapter 180-51 WAC address the following:

- Clarification on meeting subject area graduation requirements.
- Flexibility for the Washington state history (WSH) non-credit requirement.
- Clarification on districts' authority to provide mastery-based crediting opportunities.

Reasons Supporting Proposal: Sections 10 through 12, chapter 7, Laws of 2020 (EHB 2965) authorizes SBOE to engage in rule making to provide flexibility in response to the novel coronavirus (COVID-19) emergency. Clarification of existing policy on graduation requirements in chapter 180-51 WAC and allowance of online-only education for the 2020-

2021 school year for private schools are responsive to the COVID-19 emergency.

Statutory Authority for Adoption: Sections 10 through 12, chapter 7, Laws of 2020 (EHB 2965); RCW 28A.195.010, 28A.230.090, 28A.150.220(7).

Statute Being Implemented: Sections 10 through 12, chapter 7, Laws of 2020 (EHB 2965); RCW 28A.195.010, 28A.230.090, 28A.150.220(7).

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

Name of Proponent: SBOE, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6024.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: Private schools are affected by the proposed rules. However, the portion of the rule that is not dictated by statute adds flexibility to allow for private schools to offer online-only education during state or local health measures in response to COVID-19 or until the private school deems the situation safe to reopen in-person. The rest of the rule-making changes qualify for the exemptions checked above of internal government operations, correction or clarification of language, or are dictated by statute. These rules are responsive to an emergency situation. Changes to graduation requirements clarify policy so that districts make use of available flexibilities in response to challenges meeting graduation requirements due to COVID-19 and these rules will not impose added costs on private schools.

A copy of the detailed cost calculations may be obtained by contacting Parker Teed, 600 Washington Street S.E., Olympia, WA 98504, phone 360-725-6047, fax 360-586-2357, TTY 360-664-3631, email [rulescoordinatorSBE@k12.wa.us](mailto:rulescoordinatorSBE@k12.wa.us).

July 21, 2020  
Randy Spaulding  
Executive Director

AMENDATORY SECTION (Amending WSR 84-11-049, filed 5/17/84)

**WAC 180-51-015 Application of chapter to charter and tribal compact schools, approved private schools, and community colleges.** High school diplomas granted by a charter school established under chapter 28A.710 RCW, tribal compact school operated according to the terms of

state-tribal education compacts authorized under chapter 28A.715 RCW, approved private schools under chapter 28A.195 RCW and by community colleges under RCW 28B.50.535 shall meet the requirements of this chapter. References in this chapter to the board of directors of a school district shall apply to the governing board of the charter school, tribal compact school, approved private school or the community college district affected. References within this chapter to school district shall refer to the charter school, tribal compact school, approved private school or community college district. References within this chapter to high school shall refer to each charter school, tribal compact school, approved private school or ~~((each))~~ community college.

**AMENDATORY SECTION** (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-025 Local school district application of state requirements.** The content of courses and the determination of which courses satisfy particular subject area requirements and whether a particular course may satisfy more than one subject area requirement shall be determined locally in accordance with written policies adopted by boards of directors of districts provided that: ((Provided, that))

(1) If a world language graduation requirement is established, credits earned in American sign language shall count toward the completion of the requirement.

(2) Districts must recognize career and technical high school course equivalencies in accordance with RCW 28A.230.097.

(3) District may recognize single courses that meet more than one core subject area graduation requirement, allowing students to meet more than one graduation requirement while earning one credit. If the course is unusually accelerated and addresses learning standards deeply in more than one subject area, the district may award more than one credit.

**AMENDATORY SECTION** (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-050 High school credit—Definition.** As used in this chapter the term "high school credit" shall mean:

(1) Grades nine through twelve or the equivalent of a four-year high school program, or as otherwise provided in RCW 28A.230.090(4):

(a) Successful completion, as defined by written district policy, of courses taught to the state's learning standards. In accordance with WAC 180-51-025, local school boards may recognize courses that address the learning standards of more than one subject area as meeting more than one subject area graduation requirement. The determination of credits should be based on the subject areas, the range, and the depth to which the learning standards are addressed in the course. If there are no state-adopted learning standards for a subject, the local governing board, or its designee, shall determine learning standards for the successful completion of that subject; or

(b) Satisfactory demonstration by a student of proficiency ~~((competency))~~ or mastery, as defined by written district policy, of the state's learning standards.

(2) College and university course work. At the college or university level, five quarter or three semester hours shall

equal one high school credit: Provided, that for the purpose of this subsection, "college and university course work" means course work that generally is designated 100 level or above by the college or university.

(3) Community/technical college high school completion program - Diploma awarded by community/technical colleges. Five quarter or three semester hours of community/technical college high school completion course work shall equal one high school credit: Provided, that for purposes of awarding equivalency credit under this subsection, college and university high school completion course work includes course work that is designated below the 100 level by the college and the course work is developmental education at grade levels nine through twelve or the equivalent of a four-year high school program. (See also WAC 180-51-053)

(4) Community/technical college high school completion program - Diploma awarded by school district. A minimum of one-half and a maximum of one high school credit may be awarded for every five quarter or three semester hours of community/technical college high school completion course work: Provided, that for purposes of awarding equivalency credit under this subsection, college and university high school completion course work includes course work that is designated below the 100 level by the college and the course work is developmental education at grade levels nine through twelve or the equivalent of a four-year high school program. (See also WAC 180-51-053)

(5) Each high school district board of directors shall adopt a written policy for determining the awarding of equivalency credit authorized under subsection (4) of this section. The policy shall apply uniformly to all high schools in the district.

(6) Each high school district board of directors shall adopt a written policy regarding the recognition and acceptance of earned credits. The policy shall apply to all high schools in the district. The policy may include reliance on the professional judgment of the building principal or designee in determining whether or not a credit meets the district's standards for recognition and acceptance of a credit. The policy shall include an appeal procedure to the district if it includes reliance on the professional judgment of the building principal or designee.

(7) A student must first obtain a written release from their school district to enroll in a high school completion program under subsection (3) of this section if the student has not reached age eighteen or whose class has not graduated.

#### **NEW SECTION**

**WAC 180-51-051 Procedure for granting students mastery-based credit.** (1) Definitions. The definitions in this section apply throughout this chapter.

(a) Per WAC 180-51-015, references to "district" within this section means a school district, a charter school established under chapter 28A.710 RCW, a tribal compact school operated according to the terms of state-tribal education compacts authorized under chapter 28A.715 RCW, and community and technical colleges per WAC 180-51-015.

(b) Per E2SHB 1599 (section 301, chapter 252, Laws of 2019), "mastery-based learning" means:

(i) Students advance upon demonstrated mastery of content;

(ii) Competencies include explicit, measurable, transferable learning objectives that empower students;

(iii) Assessments are meaningful and a positive learning experience for students;

(iv) Students receive rapid, differentiated support based on their individual learning needs; and

(v) Learning outcomes emphasize competencies that include application and creation of knowledge along with the development of important skills and dispositions.

(2) Per WAC 180-51-050, a district may award credit to a student who demonstrates mastery on the state learning standards. If no state standard is available for a subject the district may award credit based on mastery of locally adopted standards.

(3) A district's written policy for awarding mastery-based credit must include:

(a) A provision that details how the district will ensure cultural responsiveness and equity in awarding of mastery-based credit. Each district shall maintain disaggregated student data and periodically review which subgroups of students are receiving mastery-based credit. If the district finds disproportionality among student groups receiving mastery-based credit, the district should be prepared to take appropriate actions to ensure equitable access to mastery-based credit opportunities.

(b) Which subjects or courses are eligible for mastery-based credit.

(c) Other methods allowable for a student to demonstrate proficiency and qualify for mastery credit, beyond what is established in subsection (4)(b) of this section for locally developed assessment options.

(4) Student demonstration of mastery: Student demonstration of mastery of the state's learning standards is not limited to standardized assessment results. Nothing in this section prohibits LEAs from developing additional methods to allow students to show proficiency and earn mastery-based credit, beyond what is included in this section. Districts who adopt a written policy for awarding mastery-based credit may make the following methods of earning mastery-based credit available to their students:

(a) State assessments in English language arts, math, and science, in accordance with RCW 28A.655.070;

(b) Local assessment options: Districts are encouraged to allow students to choose their assessment method from a variety of district-approved options. Additionally, districts may consider using standards-based grading for any local assessment approach to awarding credit. Local assessment options may include:

(i) Locally created written or oral test;

(ii) Written report by the student;

(iii) Student-designed portfolio of work;

(iv) Student presentation or oral defense of their learning in the course;

(v) Hands-on demonstration of knowledge and skills; or

(vi) A combination of assessment approaches, as defined by the district.

(c) Equivalency course of study: Students may receive credit for learning experiences outside of school that align to

state learning standards, in accordance with WAC 392-410-300.

(d) Successful completion of next higher-level course: Districts may award credit for a course when the student successfully completes the next higher-level course in a sequence that includes a natural progression of the state learning standards from the previous course. Districts shall use the state or locally determined learning standards as their guide when making decisions regarding what courses should qualify.

(5) High school and beyond plan (HSBP): In accordance with WAC 180-51-220, a student's high school and beyond plan should reflect subject area requirements intended to be met, or that have been met, through mastery-based credit per WAC 180-51-220.

AMENDATORY SECTION (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-056 Previous requirements for high school graduation.** This section describes the statewide minimum credit and subject areas requirements for high school graduation for students who entered the ninth grade or began the equivalent of a four-year high school program prior to July 1, 2012 (the class of 2015 and previous classes). This section applies to students of the applicable graduation cohorts in high school completion programs at community and technical colleges. Such programs may recognize courses that meet more than one subject area graduation requirement, in accordance with WAC 180-51-025 and 180-51-050.

(1) The minimum credit and subject area requirements, except as noted in subsections (2) and (3) of this section, are as follows:

(a) Three **English** credits (reading, writing, and communications) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district.

(b) Two **science** credits (physical, life, and earth) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district. At least one credit in laboratory science is required which shall be defined locally.

(c) Two and one-half **social studies** credits that at minimum align with the state's learning standards in civics, economics, geography, history, and social studies skills at grade ten and/or above plus content that is determined by the district. The social studies requirement shall consist of the following mandatory courses or equivalencies:

(i) One credit shall be required in United States history and government which shall include study of the Constitution of the United States.

(ii) Under the provisions of RCW 28A.230.170 and 28A.230.090, one-half credit shall be required in Washington state history and government which shall include study of the Constitution of the state of Washington and shall include information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state. If taken in seventh or eighth grade, this course may meet the state history and government graduation require-

ment. However, the course may only count as a high school credit if the academic level of the course exceeds the requirements for seventh and eighth grade classes or is equivalent to a course offered at a high school in the district as determined by the school district board of directors (RCW 28A.230.090). The study of the United States and Washington state Constitutions shall not be waived but may be fulfilled through an alternative learning experience approved locally under written district policy. Secondary school students who have completed and passed a state history and government course of study in another state, and students who transferred from another state as eleventh or twelfth grade students who have or will have earned two credits in social studies at graduation, may have the Washington state history and government requirement waived.

(iii) One credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on current problems may be accepted as equivalencies.

(d) One-half credit of **health**.

(e) One and one-half credits of **physical education**. Students may be excused from the physical education requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate proficiency/~~(competency)~~  mastery in the knowledge portion of the physical education requirement, in accordance with written district policy. Such policies that should be based upon meeting both health and physical education curricula concepts as well as alternative means of engaging in physical activities, as directed in RCW 28A.210.365.

(f) One **arts** credit that at minimum is aligned to learning standards.

(g) One credit in **career and technical education** or occupational education. Courses that meet this requirement include courses that are part of career and technical education programs, as defined in chapter 28A.700 RCW, or occupational education courses as identified by the district. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate (~~competency~~)  mastery of skills under student learning goal four (RCW 28A.150.210) and are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the career and technical education program standards of the office of the superintendent of public instruction. Districts are encouraged to offer career and technical education programs, as defined in RCW 28A.700.010.

(i) An exception of the career and technical education requirement may be made for private schools as provided in WAC 180-90-160.

(ii) A student who earns credit through a career and technical education course determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education course per RCW 28A.700.070, will not be required to pass a course in the noncareer and technical education subject to earn a credit in the noncareer and technical education subject. The single career and technical education course equivalency meets two gradu-

ation requirements, the career and technical education subject area graduation requirement and the noncareer and technical education subject area graduation requirement. The student therefore has an additional elective credit.

(h) Five and one-half credits of **electives**. Districts may replace these credits with local district requirements through written district policy.

(i) Each student shall have a **high school and beyond plan** for their high school experience, that informs course-taking and that is aligned with the student's postsecondary goals.

(2) For students who entered ninth grade prior to July 1, 2009 (graduating classes preceding the class of 2013), additional graduation requirements are as follows:

(a) The total minimum number of credits required for high school graduation is nineteen.

(b) Two mathematics credits that at minimum align with mathematics grade level expectations for ninth and tenth grade, plus content that is determined by the district.

(3) For students who entered ninth grade as of July 1, 2009, through June 30, 2012 (the class of 2013 through the class of 2015), additional graduation requirements are as follows:

(a) The total minimum number of credits required for high school graduation is twenty.

(b) Three mathematics credits that align with the high school mathematics standards as developed and revised by the office of the superintendent of public instruction and satisfy the requirements set forth below:

(i) Unless otherwise provided for in (b)(ii) of this subsection, the three mathematics credits required under this section must include:

(A) Algebra 1 or integrated mathematics I;

(B) Geometry or integrated mathematics II; and

(C) Algebra 2 or integrated mathematics III.

(ii) A student may elect to pursue a third credit of high school-level mathematics, other than algebra 2 or integrated mathematics III, based on a career-oriented program of study identified in the student's high school and beyond plan that is currently being pursued by the student.

AMENDATORY SECTION (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-067 State subject and credit requirements for high school graduation—Students entering the ninth grade on or after July 1, 2012, through June 30, 2015.** The statewide subject areas and credits required for high school graduation, beginning July 1, 2012, for students who enter the ninth grade or begin the equivalent of a four-year high school program, as of July 1, 2012, through June 30, 2015, except as provided in WAC 180-51-068(11), shall total twenty as provided below. The credit and subject area requirements in this section apply to districts with a waiver to delay implementing WAC 180-51-068. For such districts, this section will apply to students who entered ninth grade between July 1, 2012, and June 30, 2016. All credits are to be aligned with the state's learning standards for the subject. The content of any course shall be determined by the local school district. Districts may recognize courses that meet more than

one subject area graduation requirement, per WAC 180-51-025 and 180-51-050.

(1) Four **English** credits.

(2) Three **mathematics** credits that satisfy the requirements set forth below:

(a) Unless otherwise provided for in (d) through (g) of this subsection, the three mathematics credits required under this section must include:

- (i) Algebra 1 or integrated mathematics I;
- (ii) Geometry or integrated mathematics II; and
- (iii) Algebra 2 or integrated mathematics III.

(b) A student may elect to pursue a third credit of high school-level mathematics, other than algebra 2 or integrated mathematics III, if all of the following requirements are met:

(i) The student's elective choice is based on a career-oriented program of study identified in the student's high school and beyond plan that is currently being pursued by the student;

(ii) The student's parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection than algebra 2 or integrated mathematics III because it will better serve the student's education and career goals;

(iii) A meeting is held with the student, the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable), and a high school representative for the purpose of discussing the student's high school and beyond plan and advising the student of the requirements for credit bearing two- and four-year college level mathematics courses; and

(iv) The school has the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) sign a form acknowledging that the meeting with a high school representative has occurred, the information as required was discussed, and the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection given the student's education and career goals.

(c) Equivalent career and technical education mathematics courses meeting the requirements set forth in RCW 28A.230.097 can be taken for credit instead of any of the mathematics courses set forth in (a) of this subsection if the career and technical education mathematics courses are recorded on the student's transcript using the equivalent academic high school department designation and course title.

(d) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade that is automatically transcribed on the student's high school transcript in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrates mastery(~~(competency)~~) in high school math subjects and has received credit for them, may use these credits to meet their math graduation requirements. Upon completion of algebra 1 or integrated math I, geometry or integrated math II, and a third credit of high school level math that aligns with the student's high school and beyond plan, the student should be encouraged to consider additional math

courses, which align with the student's education and career goals in their high school and beyond plan.

(e) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade and opts to receive no high school credit for such course(s) in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrated mastery(~~(competency)~~) in these subjects but did not receive high school credits, may either:

(i) Repeat the course(s) for credit in high school; or

(ii) Earn three credits of high school mathematics in different math subjects than those completed before high school. The student must take algebra 1 or integrated mathematics I and geometry or integrated math II in high school if the student did not complete these courses at a high school level prior to high school, but the student does not need to repeat courses if the student already took the courses at a high school level.

(3) Two **science** credits, at least one of the two credits must be in laboratory science.

(4) Three **social studies** credits (two credits prescribed courses, plus one credit social studies elective) and a non-credit requirement. The social studies requirement shall consist of the following mandatory courses or equivalencies:

(a) One credit shall be required in United States history.

(b) Successful completion of Washington state history and government shall be required, subject to the provisions of RCW 28A.230.170(~~(RCW)~~), 28A.230.090, 28A.320.170 and WAC 392-410-120, and shall include information on the cultures, histories, and governments of the American Indian peoples who are the first inhabitants of the state. Successful completion of Washington state history must be noted on each student's transcript. The Washington state history and government requirement may be waived by the principal for individual students who:

(i) Have successfully completed a state history and government course of study in another state; or

(ii) Are in eleventh or twelfth grade and who have not completed a course of study in Washington's history and state government because of previous residence outside the state or because emergency school closure, or other circumstance due to an emergency, prevented the student from having the opportunity to fulfill this requirement.

(c) One-half credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on contemporary world problems may be accepted as equivalencies.

(d) One-half credit shall be required in civics and include at a minimum the content listed in RCW 28A.230.093.

(5) One-half credits of **health**.

(6) One and one-half credits of physical education. Students may be excused from the physical education requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate (~~(competency)~~)mastery of the knowledge portion of the physical education requirement, in accordance with written district policy. Such policies should be based upon addressing health and physical education learning standards as well as alternative means of engaging in physical activities, as directed in RCW 28A.210.365.



(7) One **arts** credit. The essential content in this subject area may be satisfied in the visual or performing arts.

(8) One credit in **career and technical education** or **occupational education**.

(a) "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate (~~competency~~) mastery of skills under student learning goal four and which skills are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the career and technical education program standards of the office of the superintendent of public instruction.

(b) Students who earn a graduation requirement credit through a career and technical education course determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education course will not be required to earn a second credit in the noncareer and technical education course subject. The student earns one credit while meeting two graduation requirements, a career and technical education requirement and the noncareer and technical education subject requirement. The total number of credits required for graduation remains unchanged, and the student will need to earn an additional elective credit.

(9) Four credits of **electives**.

(10) Each student shall have a **high school and beyond plan** for their high school experience, as described in WAC 180-51-220.

(11) Students who complete and pass all required International Baccalaureate Diploma Programme courses are considered to have satisfied state subject and credit requirements for graduation from a public high school, subject to the provisions of RCW 28A.230.090, 28A.230.170, and chapter 28A.230 RCW.

(12) A student with an individualized education program (IEP) must be provided the opportunity to meet graduation requirements that align with the student's high school and beyond plan pursuant to WAC 180-51-115.

AMENDATORY SECTION (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-068 State subject and credit requirements for high school graduation—Students entering the ninth grade on or after July 1, 2015, through June 30, 2017.** The statewide subject areas and credits required for high school graduation, beginning July 1, 2015, for students who enter the ninth grade or begin the equivalent of a four-year high school program (the class of 2019), shall total twenty-four as required in this section, except as otherwise provided in subsections (12) and (13) of this section. All credits are to be aligned with the state's learning standards developed under RCW 28A.655.070 for the subject. The content of any course shall be determined by the local school district. Districts may recognize courses that meet more than one subject area graduation requirement, in accordance with WAC 180-51-025 and 180-51-050.

(1) Four **English** credits.

(2) Three **mathematics** credits that satisfy the requirements set forth in (a) through (e) of this subsection:

(a) Unless otherwise provided for in (b) of this subsection, the three mathematics credits required under this section must include:

(i) Algebra 1 or integrated mathematics I;

(ii) Geometry or integrated mathematics II; and

(iii) A third credit of high school mathematics, aligning with the student's interests and high school and beyond plan, with agreement of the student's parent or guardian. The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, the school counselor or principal may provide agreement with the plan.

(b) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade that is automatically transcribed on the student's high school transcript in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrates mastery(~~competency~~) in high school math subjects and has received credit for them, may use these credits to meet their math graduation requirements. Refer to WAC 180-51-030 for information about opting out of credits and numerical grades. Upon completion of algebra 1 or integrated math I, geometry or integrated math II, and a third credit of high school level math that aligns with the student's high school and beyond plan, the student should be encouraged to consider additional math courses, which align with the student's education and career goals in their high school and beyond plan.

(c) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade and opts to receive no high school credit for such course(s) in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrated mastery(~~competency~~) in these subjects but did not receive high school credits, may either:

(i) Repeat the course(s) for credit in high school; or

(ii) Earn three credits of high school mathematics in different math subjects than those completed before high school. The student must take algebra 1 or integrated mathematics I and geometry or integrated math II in high school if the student did not complete these courses at a high school level prior to high school, but the student does not need to repeat courses if the student already took the courses at a high school level.

(3) Three **science** credits, at least two of which must be in laboratory science as provided in subsection (17)(a) of this section. A student may choose the content of the third credit of science, based on the student's interests and high school and beyond plan, with agreement of the student's parent or guardian. The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.-

090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, agreement may be provided by the school counselor or principal.

(4) Three **social studies** credits (two credits prescribed courses, plus a one credit social studies elective) and a non-credit requirement. The social studies requirement shall consist of the following mandatory courses or equivalencies:

(a) One credit shall be required in United States history.

(b) Successful completion of Washington state history and government shall be required, subject to the provisions of RCW 28A.230.170, 28A.230.090, 28A.320.170 and WAC 392-410-120, and shall include information on the cultures, histories, and governments of the American Indian peoples who are the first inhabitants of the state. Successful completion of Washington state history must be noted on each student's transcript. The Washington state history and government requirement may be waived by the principal for individual students who:

(i) Have successfully completed a state history and government course of study in another state; or

(ii) Are in eleventh or twelfth grade and who have not completed a course of study in Washington's history and state government because of previous residence outside the state or because emergency school closure, or other circumstance due to an emergency, prevented the student from having the opportunity to fulfill this requirement.

(c) One-half credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on contemporary world problems may be accepted as equivalencies.

(d) One-half credit shall be required in civics and include at a minimum the content listed in RCW 28A.230.093.

(5) One-half credit in **health**.

(6) One and one-half in **physical education**. Students may be excused from the physical education requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate (~~(competency)~~) mastery of the knowledge portion of the fitness requirement, in accordance with written district policy. Such policies should be based upon addressing health and physical education learning standards as well as alternative means of engaging in physical activities, as directed in RCW 28A.210.365.

(7) Two **arts** credits. The essential content in this subject area may be satisfied in the visual or performing arts. One of the two arts credits may be replaced with a personalized pathway requirement as provided in subsection (17)(c) of this section.

(8) One credit in **career and technical education**.

(a) A career and technical education credit means a credit resulting from a course in a career and technical education program or occupational education credit as contained in the career and technical education program standards of the office of the superintendent of public instruction. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate (~~(competency)~~) mastery of skills under student learning goal four and which skills are required for suc-

cess in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the career and technical education program standards of the office of the superintendent of public instruction. Districts are encouraged to offer career and technical education programs, as defined in RCW 28A.700.010.

(b) An exception may be made for private schools as provided in WAC 180-90-160.

(c) A student who earns credit through a career and technical education course determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education core course (RCW 28A.700.070 and subsection (14) of this section), will not be required to pass a course in the noncareer and technical education subject to earn a credit in that subject. The student earns one credit while meeting two graduation requirements, a career and technical education requirement and the noncareer and technical education subject requirement. The total number of credits required for graduation remain unchanged, and the student will need to earn an additional elective credit.

(9) Two credits in **world languages or personalized pathway requirements**. If the student has chosen a four-year degree pathway under subsection (11) of this section, the student shall be advised to earn two credits in world languages.

(10) Four credits of **electives**.

(11) Each student shall have a **high school and beyond plan** to guide his or her high school experience, as described in WAC 180-51-220.

(12) A school district wishing to implement the requirements for high school graduation for students who enter the ninth grade or begin the equivalent of a four-year high school program on July 1, 2016, or July 1, 2017, rather than July 1, 2015, may apply to the state board of education for a temporary waiver of the requirements of this section. The state board of education shall post an application form on its website for use by districts seeking this waiver.

(a) An application for a waiver must:

(i) Meet the requirements of chapter 217, Laws of 2014 (E2SSB 6552), which include describing why the waiver is being requested, the specific impediments preventing timely implementation of the high school graduation requirements established in subsections (1) through (10) of this section, and the efforts that will be taken to achieve implementation with the graduating class proposed under the waiver.

(ii) Be accompanied by a resolution adopted by the district board of directors requesting the waiver. The resolution must state the entering freshman class or classes for whom the waiver is requested, and be signed by the board chair or president and the district superintendent.

(b) A district implementing a waiver shall continue to be subject to the requirements of WAC 180-51-067 during the school year or years for which the waiver has been granted.

(c) Nothing shall prevent a district granted a waiver from electing to implement subsections (1) through (11) of this section during the term for which the waiver is granted. A district granted a waiver that elects to implement subsections (1) through (11) of this section shall provide notification of such decision to the state board of education.

(d) The state board of education shall post the application for each waiver on its public website.

(13) A school district that grants high school diplomas may waive up to two of the credits required for graduation under this section for individual students for reason of a student's circumstances, as defined by the district. Unless otherwise provided in law, students granted a waiver under this subsection must earn the seventeen required subject credits in subsections (1) through (7) of this section, which may be by satisfactory demonstration of competence under WAC 180-51-050. The waiving of credits for individual students for reason of a student's circumstances must be in accordance with written policies adopted by resolution of each board of directors of a district that grants diplomas.

(14) Career and technical education courses determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education course in accordance with RCW 28A.700.070 can be taken for credit in place of that course. Equivalencies may be determined for any of the core credit graduation requirements of subsections (1) through (7) of this section.

(15) Students who complete and pass all required International Baccalaureate Diploma Programme courses are considered to have satisfied state subject and credit requirements for graduation from a public high school, subject to the provisions of RCW 28A.230.090, 28A.230.170, and chapter 28A.230 RCW.

(16) A student with an individualized education program must be provided the opportunity to meet graduation requirements that align with the student's high school and beyond plan pursuant to WAC 180-51-115.

(17) Definitions:

(a) "Laboratory science" means any instruction that provides opportunities for students to interact directly with the material world, or with data drawn from the material world, using the tools, data collection techniques, models and theories of science. A laboratory science course meeting the requirement of subsection (3) of this section may include courses conducted in classroom facilities specially designed for laboratory science, or coursework in traditional classrooms, outdoor spaces, or other settings which accommodate elements of laboratory science as identified in this subsection;

(b) "Personalized pathway" means a locally determined body of coursework identified in a student's high school and beyond plan that is deemed necessary to attain the post-secondary career or educational goals chosen by the student;

(c) "Personalized pathway requirements" means up to three course credits chosen by a student under subsections (7) and (9) of this section that are included in a student's personalized pathway and prepare the student to meet specific post-secondary career or educational goals.

**AMENDATORY SECTION** (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-095 Temporary exemption from course and credit requirements.** Annual exemptions to the definition of an annualized high school credit may be granted upon the request of an approved private school which offers evi-

dence that delineates content, time, or (~~competency~~) mastery assessments which are substantially equivalent to the definition stated in WAC 180-51-050. The waiver process shall be administered by the state board of education.

**AMENDATORY SECTION** (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

**WAC 180-51-210 State subject and credit requirements for high school graduation.** (1) Definitions. The definitions in this section apply throughout this chapter.

(a) "Laboratory science" means any instruction that provides opportunities for students to interact directly with the material world, or with data drawn from the material world, using the tools, data collection techniques, models and theories of science. A laboratory science course meeting the requirement of subsection (4) of this section may include courses conducted in classroom facilities specially designed for laboratory science, or course work in traditional classrooms, outdoor spaces, or other settings which accommodate elements of laboratory science as identified in this subsection;

(b) "Personalized pathway" means a locally determined body of course work identified in a student's high school and beyond plan that is deemed necessary to attain the postsecondary career or educational goals chosen by the student;

(c) "Personalized pathway requirements" means up to three course credits chosen by a student that are included in a student's personalized pathway, that prepare the student to meet specific postsecondary career or educational goals, and that align with the student's high school and beyond plan. A student's personalized pathway requirements are included in the student's flexible credits, as defined in this subsection.

(d) "Core credit" is a credit earned through course work or through (~~mastery or competency-based~~) mastery-based credit in the subject areas listed in subsection (4) of this section. Students subject to the graduation requirements in this section must earn seventeen core credits in high school. Core credits do not include electives or personalized pathway requirements and may not be waived under RCW 28A.230.090 (1)(e) or subsection (2) of this section.

(e) "Flexible credit" is a credit that is either an elective credit or a personalized pathway requirement. Flexible credits may be waived under RCW 28A.230.090 and subsection (2) of this section, and are listed in subsection (5) of this section.

(2) A school district that grants high school diplomas may waive up to two of the flexible credits required for graduation under subsection (4) of this section for an individual student, based on the student's circumstances. Districts will grant any such waiver in accordance with written district policy. A student granted a waiver under this subsection must earn the core credits in subsection (4) of this section, but may graduate with as few as twenty-two credits, rather than twenty-four credits.

(3) The statewide subject areas and credits required for high school graduation, for students who enter the ninth grade or begin the equivalent of a four-year high school program on or after July 1, 2017, (the class of 2021 and beyond) shall total twenty-four, except as otherwise provided in this

section. The twenty-four subject area credits for graduation include core credits and flexible credits listed in subsections (4) and (5) of this section. All credits are to be aligned with the state's learning standards developed under RCW 28A.655.070 for the subject and may be earned through (~~mastery- or competency-based~~) mastery-based credit. The contents of any course shall be determined by the local school district. Districts may recognize courses that meet more than one subject area graduation requirement, per WAC 180-51-025 and 180-51-050. Districts are encouraged to adopt culturally-responsive curricula that is relevant to the district's students, including the incorporation of curricula about the history, culture, and government of the nearest federally recognized Indian tribe or tribes as required by RCW 28A.320.170.

(4) Core credits are credits and subject areas that may not be waived under RCW 28A.230.090 (1)(e) and subsection (2) of this section. The core credits include:

(a) Four **English** credits.

(b) Three **mathematics** credits.

(i) Unless otherwise provided for in (b)(ii) of this subsection, the three mathematics credits required under this section must include:

(A) Algebra 1 or integrated mathematics I;

(B) Geometry or integrated mathematics II; and

(C) A third credit of high school mathematics, aligning with the student's interests and high school and beyond plan, with agreement of the student's parent or guardian. The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, agreement may be provided by the school counselor or principal.

(ii) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade that is automatically transcribed on the student's high school transcript in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrates mastery(~~competency~~) in high school math subjects and has received credit for them, may use these credits to meet their math graduation requirements. Refer to WAC 180-51-030 for information about opting out of credits and numerical grades. Upon completion of algebra 1 or integrated math I, geometry or integrated math II, and a third credit of high school level math that aligns with the student's high school and beyond plan, schools are urged to encourage the student to consider additional math courses, which align with the student's education and career goals in their high school and beyond plan.

(iii) A student who prior to ninth grade successfully completes one or more high school level math courses with a passing grade and opts to receive no high school credit for such course(s) in accordance with RCW 28A.230.090 and WAC 180-51-030, or a student who demonstrated mastery(~~competency~~) in these subjects but did not receive high school credits, may either:

(A) Repeat the course(s) for credit in high school; or

(B) Earn three credits of high school mathematics in different math subjects than those completed before high school. The student must take algebra 1 or integrated mathematics I and geometry or integrated math II in high school if the student did not complete these courses at a high school level prior to high school, but the student does not need to repeat courses if the student already passed the courses at a high school level.

(c) Three **science** credits, at least two of which must be in laboratory science. A student may choose the content of the third credit of science based on the student's interests and high school and beyond plan, with agreement of the student's parent or guardian. The high school and beyond plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district (RCW 28A.230.090). Districts are encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible. If the parent or guardian is unavailable or does not indicate a preference for a specific course, the school counselor or principal may provide agreement with the plan.

(d) Three **social studies** credits (two credits prescribed courses, plus one credit social studies elective) and Washington state history and government, a noncredit requirement typically met in middle school. In accordance with RCW 28A.320.170, when a school district board of directors reviews or adopts its social studies curriculum, it shall incorporate curricula about the history, culture, and government of the nearest federally recognized Indian tribe or tribes, so that students learn about the unique heritage and experience of those tribe or tribes. The social studies requirement shall consist of the following mandatory courses:

(i) One credit shall be required in United States history or its equivalent.

(ii) One-half credit shall be required in contemporary world history, geography, and problems, or its equivalent. Courses in economics, sociology, civics (through the class of 2023), political science, international relations, or related courses with emphasis on contemporary world problems may be accepted as equivalencies.

(iii) One-half credit shall be required in civics, including at a minimum the content listed in RCW 28A.230.094. Starting with the class of 2024, districts must offer this graduation requirement as a stand-alone course, subject to the provisions of RCW 28A.230.094.

(iv) Successful completion of Washington state history and government shall be required, subject to the provisions of RCW 28A.230.170, 28A.230.090, ~~28A.320.170~~ and WAC 392-410-120, and shall include information on the cultures, histories, and governments of the American Indian peoples who are the first inhabitants of the state. Successful completion of Washington state history must be noted on each student's transcript. The Washington state history requirement may be waived by the principal for individual students who:

(A) Have successfully completed a state history course of study in another state; or

(B) Are in eleventh or twelfth grade and who have not completed a course of study in Washington's history because of previous residence outside the state or because emergency

school closure, or other circumstance due to an emergency, prevented the student from having the opportunity to fulfill this requirement.

(e) One-half credit of **health**.

(f) One and one-half credit of **physical education**. Students may be excused from the physical education requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate (~~(competency)~~) mastery in the knowledge portion of the physical education requirement, in accordance with written district policy. Such policies should be based upon addressing health and physical education learning standards as well as alternative means of engaging in physical activities, as directed in RCW 28A.210.365.

(g) One credit in **career and technical education**.

(i) Courses that meet this requirement include courses that are part of career and technical education programs, as defined in chapter 28A.700 RCW, or occupational education courses as identified by the district. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate (~~(competency)~~) mastery of skills under student learning goal four and are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the career and technical program standards of the office of the superintendent of public instruction. Districts are encouraged to offer career and technical education programs, as defined in RCW 28A.700.010.

(ii) An exception of the career and technical education requirement may be made for private schools as provided in WAC 180-90-160.

(iii) A student who earns credit through a career and technical education course determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education core course (RCW 28A.700.070 and subsection (7) of this section), will not be required to pass a course in the noncareer and technical education subject to earn a credit in that subject. The student earns one credit while meeting two graduation requirements, a career and technical education requirement and the noncareer and technical education subject requirement. The total number of credits required for graduation remain unchanged, and the student will need to earn an additional elective credit.

(h) One **arts** credit. The essential content in this subject area may be satisfied in dance, media arts, music, theater, and visual arts.

(5) Flexible credits are credits that may be waived under RCW 28A.230.090 and subsection (2) of this section. Districts may replace these credits with local district requirements through written district policy. Flexible credits include:

(a) One **arts** credit. The essential content in this subject area may be satisfied in dance, media arts, music, theater and visual arts. This credit may be replaced with a personalized pathway requirement as provided in subsection (1)(c) of this section.

(b) Two credits in **world languages**. These credits may be replaced with personalized pathway requirements as provided in subsection (1)(c) of this section. If the student has an educational goal of attaining a baccalaureate degree, the stu-

dent shall be advised to earn at least two credits in the same world language. Students who earn a Seal of Biliteracy (RCW 28A.300.575) are considered to have met this requirement.

(c) Four credits of **electives**.

(6) Each student shall have a **high school and beyond plan** to guide his or her high school experience and prepare the student for postsecondary education, training, and career, as described in WAC 180-51-220.

(7) Career and technical education courses determined by the district or by the office of the superintendent of public instruction to be equivalent to a noncareer and technical education course in accordance with RCW 28A.700.070 can be taken for credit in place of that course. Equivalencies may be determined for any of the core credit graduation requirements of subsection (4) of this section.

(8) Students who complete and pass all required International Baccalaureate Diploma Programme courses are considered to have satisfied state subject and credit requirements for graduation from a public high school, subject to the provisions of RCW 28A.230.090, 28A.230.170, and chapter 28A.230 RCW.

(9) A student with an individualized education program (IEP) must be provided the opportunity to meet graduation requirements that align with the student's high school and beyond plan, pursuant to WAC 180-51-115.

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

**WAC 180-90-141 Loss of private school approval.**

The state board of education may rescind approval of a private school for one or more of the following reasons:

(1) Failure to have students enrolled for any six consecutive calendar months in the school's physical facilities or failure to provide evidence of student enrollment upon request of the state board of education for the said period of time.

(a) For the 2020-21 school year, schools that implement an online education program consistent with the provisions of RCW 28A.195.090 will not be subject to rescission based on a failure to have students enrolled in the school's physical facilities; and

(b) The school maintains a physical address in Washington and plans to resume classroom instruction when the governing body of the school determines it is safe to do so and resumption is allowable under state and local emergency status.

(2) Failure to provide verification that the approved private school teaching staff have a valid Washington state teaching certificate or meet the provisions of WAC 180-90-112(5).

(3) Failure to provide verification that the physical facilities of the school meet the health and fire safety standards.

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

**WAC 180-90-160 Minimum standards and certificate form.** (1) The annual certificate required by WAC 180-

90-130 shall be in substantial compliance with the form and substance of the following:

CERTIFICATE OF COMPLIANCE WITH STATE STANDARDS

ESD/County/Public School District Private School/ District Address

I, . . . . ., do hereby certify that I am the principal or chief administrator of the above named school; that said school is located at the address listed above, and conducts grades . . . . . through . . . . . with a projected enrollment of . . . . .; and that said school is scheduled to meet throughout the . . . . . school year, the following standards with the exception only of such deviations, if any, as are set forth in an attachment to this certificate of compliance

or

I, . . . . ., do hereby certify that I am the superintendent of the above named private school district; and that the private schools under my jurisdiction are scheduled to meet throughout the school year, the following standards with the exception only of such deviations as are set forth in an attachment to this certificate of compliance; and that a list of such schools, including the grades conducted and the projected enrollment for each school, accompanies this certificate:

(a) Except as provided in chapter 180-111 WAC for the 2019-20 school year, the minimum school year for instructional purposes consists of no less than one hundred eighty school days or the equivalent in annual minimum instructional hour offerings as prescribed in RCW 28A.195.010.

(b) On each school day, pupils enrolled and in attendance at the school are engaged in educational activity planned by and under the direction of the school; and that pupils are provided an annual total instructional hour offering, as prescribed in RCW 28A.195.010, of at least:

- (i) 450 Hours for students in kindergarten.
(ii) 1000 Hours for students in grades one through twelve.

(c) All classroom teachers hold appropriate Washington State certification except for:

(i) Teachers for religious courses or courses for which no counterpart exists in the public schools: Provided, That a religious course is a course of study separate from the courses of study defined in RCW 28A.195.010 including occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of the appreciation of art and music all in sufficient units for meeting state board of education graduation requirements, except as provided in chapter 180-111 WAC; and/or

(ii) A person of unusual competence who is not certified but who will teach students in an exceptional case under the general supervision of a Washington state certificated teacher, administrator, or superintendent pursuant to WAC 180-90-112. The non-Washington state certificated teacher, the Washington state certificated person who will supervise,

and the exceptional circumstances are listed on the addendum to this certificate.

(d) If the school operates an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody, the extension program meets the following requirements:

(i) The parent, guardian, or custodian is supervised by a person certified under chapter 28A.410 RCW and who is employed by the school;

(ii) The planning by the certified person and the parent, guardian, or person having legal custody includes objectives consistent with (a), (b), (e) through (g) of this subsection;

(iii) The certified person spends a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the extension program;

(iv) Each student's progress is evaluated by the certified person; and

(v) The certified person does not supervise more than thirty students enrolled in the approved private school's extension program.

(e) Measures have been taken to safeguard all permanent records against loss or damage through either the storage of such records in fire-resistant containers or facilities, or the retention of duplicates in a separate and distinct area;

(f) The physical facilities of the school are adequate to meet the program offered, and all school facilities and practices are in substantial compliance with reasonable health and fire safety standards, as substantiated by current inspection reports of appropriate health and fire safety officials which are on file in the chief administrator's office;

(g) The school's curriculum includes instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music in sufficient units for meeting state board of education graduation requirements, as set forth in chapter 180-51 WAC. A school may substitute courses specific to the mission or focus of the school to satisfy the career and technical education requirement of chapter 180-51 WAC and may waive requirements as provided in chapter 180-111 WAC;

(h) The school or its organized district maintains up-to-date policy statements related to the administration and operation of the school or district;

(i) The school does not engage in a policy of racial segregation or discrimination;

(j) The governing authority of this private school or private school district has been apprised of the requirements of chapter 180-90 WAC relating to the minimum requirements for approval of private schools and such governing authority has further been apprised of all deviations from the rules and regulations of the state board of education and the standards contained in chapter 180-90 WAC. I have reported all such deviations herewith.

Dated this . . . . day of . . . . ., 20 . . . .
(signed)

(title)

.....

(phone number)

(2) Approval by the state board of education is contingent upon on-going compliance with the standards certified herein. The school shall notify the state board of education of any deviation from these standards which occurs after the action taken by the state board of education. Such notification shall be filed within thirty days of occurrence of the deviation.

(3) Failure to comply with the requirements of this chapter may result in the revocation of the approval of the private school and shall be considered in subsequent application for approval as a private school.

(4) Following initial approval as a private school by the state board of education, evidence of current accreditation by a state board of education approved accrediting body may be submitted annually in lieu of approval documents described in subsection (1)(a) through (j) of this section.

**Chapter 180-111 WAC**

**EMERGENCY WAIVER OF CERTAIN REQUIREMENTS IN RESPONSE TO NOVEL CORONAVIRUS**

NEW SECTION

**WAC 180-111-010 Authority and purpose.** (1) The authority for this chapter is sections 10 through 12, chapter 7, Laws of 2020 (EHB 2965) which authorizes the state board of education to administer an emergency waiver program.

(2) The purpose of this chapter is:

(a) To establish an emergency waiver program to grant local education agencies and private schools flexibility so that students in the graduating class of 2020 or earlier who were on track to graduate before the gubernatorial declaration of emergency of February 29, 2020, the proclamation of statewide school closures on March 13, 2020, and any subsequent amendments to these proclamations, are not negatively impacted by measures taken by the local education agency or private school in response to the novel coronavirus (COVID-19); and

(b) To allow flexibility from instructional hour or school day requirements for the 2019-20 school year for private schools that close due to the novel coronavirus.

(3) This chapter expires July 31, 2020.

NEW SECTION

**WAC 180-111-020 Definitions.** The definitions in this section apply throughout this chapter.

(1) "Good faith effort" means the local education agency or private school considered and implemented options, determined appropriate by the local education agency or private school, to support individual students in meeting credit requirements. Options for helping students meet credit requirements or waive credit requirements include, but are not limited to:

(a) Recommendations provided by the office of the superintendent of public instruction in its published guidance on supporting seniors during long-term school closures, as outlined in Bulletin Number 022-20 issued on March 20, 2020, and Bulletin Number 024-20 issued on March 23, 2020, and any related subsequent bulletins.

(b) Awarding or waiving of credits through existing authority of local education agencies and private schools:

(i) Local graduation requirements under WAC 180-51-020 may be waived at local discretion without approval of the state board of education.

(ii) Local education agencies and private schools that have implemented state credit requirements under WAC 180-51-068 (the twenty-four-credit graduation requirement framework) have the authority to award a two-credit waiver of flexible credits for individual student circumstances.

(iii) Students may be excused from physical education, provided they demonstrate competency/mastery in the knowledge portion of the required one and one-half credits, as articulated in WAC 180-51-056 (1)(e), 180-51-067(6), and 180-51-068(6).

(iv) Per WAC 180-51-056 (1)(c)(ii), 180-51-067 (4)(b), and 180-51-068 (4)(b)(i) and (ii), the noncredit requirement of Washington state history can be waived for students who either have completed a state history course in another state, or for eleventh or twelfth grade students who have not completed the course because of previous residence in another state.

(v) Credits may be awarded based on the student's demonstrated proficiency/competency of the state's learning standards under WAC 180-51-050.

(2) "Local education agency" means a school district, charter school established under chapter 28A.710 RCW, or tribal compact school operated according to the terms of state-tribal education compacts authorized under chapter 28A.715 RCW. References within this chapter to local education agency shall also apply to community and technical college colleges per WAC 180-51-015.

(3) "On track to graduate" means the individual student's earned credits and current or planned enrollment as of the gubernatorial declaration of emergency of February 29, 2020, would have been sufficient, as determined by the student's local education agency or private school, for the student to meet the applicable state minimum graduation requirements (as defined in WAC 180-51-056, 180-51-067, and 180-51-068) by the end of the 2019-20 school year as defined by RCW 28A.150.203.

NEW SECTION

**WAC 180-111-030 Application and approval process.** (1) Beginning no later than April 15, 2020, the state board of education shall make an application available to local education agencies seeking this waiver. A local education agency may apply to the state board of education for the authority to waive credit-based graduation requirements for individual students. The state board of education will accept applications through a deadline to be determined by the state board of education.

(2) In order to be granted the waiver authority, the local education agency must certify the following:

(a) The local education agency has considered equity in applying for the waiver and will consider equity in administering the waiver. This may include, but is not limited to, an equity analysis, community outreach, or other means to assess and mitigate potential disparate impacts of this waiver.

(b) The local education agency will grant waivers on an individual student basis to eligible students in accordance with WAC 180-111-040.

(c) Prior to granting a waiver, the local education agency will make a good faith effort, as defined in WAC 180-111-020, to help individual students address credit deficiencies and meet core course requirements.

(d) The local education agency will administer the waiver in accordance with program rules as outlined in this chapter.

(3) The application must be certified by the district superintendent or equivalent personnel with authority to sign on behalf of the local education agency.

(4) The state board of education may approve applications that meet the criteria outlined in subsections (2) and (3) of this section. The board may delegate this authority to its executive director for efficiency per RCW 28A.305.130(7).

(5) The state board of education shall promptly post on its public website the information collected on the application, a list of all applications received, and the decision to approve or deny each application.

#### NEW SECTION

**WAC 180-111-040 Emergency waiver of credit-based graduation requirements.** (1) Beginning from the date of approval of its waiver, in accordance with WAC 180-111-030, through July 31, 2020, in accordance with the establishing legislation, a local education agency may waive subject area credit graduation requirements outlined in subsection (2) of this section for individual students after completing all of the following requirements:

(a) The local education agency shall review the individual student's completed and planned coursework and determine that the student was on track to graduate, as defined in WAC 180-111-020.

(b) The local education agency shall demonstrate a good faith effort, as defined in WAC 180-111-020, to help the individual student meet credit-based graduation requirements through other options.

(c) The local education agency shall consult with the individual student, and make a reasonable effort to consult with a parent or guardian of the student, and shall make a reasonable effort to provide information about this waiver in the preferred languages of the student, and of the parent or guardian of the student if applicable. The information shall include, but is not limited to:

(i) What is being waived for the individual student;

(ii) Potential benefits and limitations that could result from receiving the waiver including impacts on high school graduation and postsecondary plans;

(iii) The option for the individual student to decline the waiver and for the student to be provided with the opportunity

to earn the credits needed to complete graduation requirements through continued enrollment beyond the planned graduation date.

(2) Waived credit graduation requirements:

(a) Waived credit graduation requirements are limited to credits a student would have had the opportunity to earn by the end of the 2019-20 school year including:

(i) Courses and other credit-earning opportunities the student was enrolled in as of February 29, 2020; and

(ii) Credits that the student planned to complete by the end of the 2019-20 school year as defined in RCW 28A.150.-203 for terms not yet started as of February 29, 2020, that were scheduled to occur during the period of school closure due to the novel coronavirus. These planned credits must be indicated on the student's high school and beyond plan, in course registration records, or in the student's credit attainment or recovery plan.

(b) Waived graduation requirement credits may include both core credit graduation requirements and flexible credit graduation requirements, as defined in WAC 180-51-210.

(3) This waiver may apply to individual students participating in the international baccalaureate diploma programme as defined in RCW 28A.230.122 to enable these students to earn a Washington high school diploma.

(4) Schools operating under the waiver defined in WAC 180-18-055 may waive graduation requirements in a manner consistent with this section.

(5) Each local education agency shall maintain a record of courses and requirements waived as part of the individual student record and shall report to the state board of education in a manner determined by the state board of education.

(6) The local education agency shall consider equity in administering the emergency waiver under this section. This consideration should be designed to identify and mitigate potential disparate impacts of the emergency waiver and to determine if any changes to the local education agency's approach in administering the emergency waiver are needed before the conclusion of the 2019-20 school year.

#### NEW SECTION

**WAC 180-111-050 Emergency waiver for private schools.** (1) This section applies to private schools approved to operate in Washington for the 2019-20 school year under chapter 180-90 WAC.

(2) Private schools may waive credit-based graduation requirements for individual students who were on track to graduate, as defined in WAC 180-111-020, in a manner consistent with the provisions of WAC 180-111-040.

(3) Private schools that have implemented an online education program consistent with the provisions of RCW 28A.195.090 that provide the remaining curriculum will be considered to have the instructional hour requirements met. Private schools have discretion to determine whether the curriculum has been adequately satisfied.

(4) The state board of education waives the instructional hours and days requirement under RCW 28A.195.010 for the 2019-20 school year. The number of hours or days offered after February 29, 2020, will not be considered for continued approval of private schools.



(5) Each private school shall notify the state board of education in a format provided by the board whether the private school is waiving requirements under this section.

**WSR 20-15-157**  
**PROPOSED RULES**  
**STATE BOARD OF HEALTH**

[Filed July 22, 2020, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-14-085.

Title of Rule and Other Identifying Information: Chapter 246-215 WAC, Food service, the state board of health (board) is proposing to incorporate with Washington state modification provisions from the 2017 United States Food and Drug Administration (FDA) Food Code (FDA Food Code) and recently passed legislation. The purpose of the revision is to adopt national standards from the FDA Food Code to improve food safety and reduce the burden from foodborne disease in Washington state. The proposal incorporates several recent statutory amendments made by the state legislature. The proposal also makes technical and editorial changes where appropriate.

Hearing Location(s): On October 13, 2020, at 1:30 p.m.

In response to the coronavirus disease 2019 (COVID-19) public health emergency, the state board of health will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the GoTo Webinar application. The public may submit verbal comments during the specified public comment and rules hearing segments.

1. To access the meeting online and register <https://attendee.gotowebinar.com/register/4735583794817723406>.

2. You can also dial-in and listen/observe only using your phone: Call in: +1 (562) 247-8422. Access Code: 521-354-641.

Date of Intended Adoption: October 13, 2020.

Submit Written Comments to: Peter Beaton, Department of Health, P.O. Box 47820, Olympia, WA 98504-7822, email <https://fortress.wa.gov/doh/policyreview>, by September 29, 2020.

Assistance for Persons with Disabilities: Contact Melanie Hisaw, phone 360-236-3301, TTY 711, email [Melanie.Hisaw@doh.wa.gov](mailto:Melanie.Hisaw@doh.wa.gov), by September 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal revises chapter 246-215 WAC to incorporate, with Washington state modifications, the FDA Food Code. The purpose of the revision is to adopt national standards (also known as national consensus codes) from the FDA Food Code for food safety to reduce the burden from foodborne disease in Washington state. From 2014 to 2018, Washington has averaged fifty-four foodborne disease outbreaks with six hundred two reported cases annually.

Major provisions updated in the 2017 FDA Food Code include: (1) Employee health, illness and hygiene; (2) clean-up of vomiting and diarrheal events; (3) restricting bare hand contact with ready-to-eat food; (4) date marking for seven day shelf life of opened refrigerated foods; (5) cooking and storage temperatures; (6) naming convention changes; and (7) approved sources of food.

In addition to the provisions of the FDA Food Code, the rule revisions also include provisions unique to Washington state or modifications of the FDA Food Code as follows: (1) Active managerial control and the duties of the person in charge; (2) certified food protection manager requirement; (3) donated food operating requirements, facility clarifications, and modifications to food source; (4) refilling reusable consumer-owned containers; (5) modification of consumer advisory and requirements for parasite reduction in fresh fish; and (6) dogs in select outdoor areas of food establishments.

In addition, the proposal incorporates several recent statutory amendments made by the state legislature. These include: (1) SB 6398 (chapter 20, Laws of 2016 1st sp. sess.), cultural foods - time-temperature safety standards (Asian rice noodles); (2) SHB 2639 (chapter 167, Laws of 2018), mobile food units - commissary or servicing area requirements; (3) SHB 2822 (chapter 176, Laws of 2018), service animals - misrepresentation; (4) SSB 5218 (chapter 185, Laws of 2019), concerning mobile food units - regulatory approval; and (5) HB 2412 (chapter 230, Laws of 2020), concerning domestic brewery and microbrewery retail licenses - various provisions (dogs in microbreweries).

Reasons Supporting Proposal: RCW 43.20.145 requires the board to consider the latest version of the FDA Food Code in adopting the state food service rules. The FDA Food Code is a model used by forty-nine states and other regulatory partners when drafting regulations. Washington's current retail food service rules are based on the 2009 FDA Food Code. Since then, the 2013 and 2017 FDA Food Code versions have been published. The state rules need to be revised to reflect these new standards.

Statutory Authority for Adoption: RCW 43.20.050 and 43.20.145.

Statute Being Implemented: RCW 43.20.050 and 43.20.145.

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

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Shelton, 243 Israel Road S.E., Tumwater, WA 98501, 509-212-1206; Implementation and Enforcement: Joe Graham, 243 Israel Road S.E., Tumwater, WA 98501, 360-236-3305.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Peter Beaton, Department of Health, P.O. Box 47820, Olympia, WA 98504-7822, phone 360-236-4031, TTY 711, email [Peter.Beaton@doh.wa.gov](mailto:Peter.Beaton@doh.wa.gov).

The proposed rule does impose more-than-minor costs on businesses.

## Small Business Economic Impact Statement

**The following North American Industry Classification System (NAICS) codes identify the types of businesses that are required to comply with the proposed rule along with the calculated minor cost thresholds.**

NAICS Code 455110, Description "Supermarkets and other grocery (except convenience) stores," # of businesses in Washington (WA) "1,565," Minor Cost Threshold (MCT) (1% average annual payroll) "\$9,550," MCT (0.03% annual receipts) "\$26,818."

NAICS Code 455120, Description "Convenience stores," # of businesses in WA "564," (1% average annual payroll) "\$979," MCT (0.03% annual receipts) "\$2,552."

NAICS Code 4552, Description "Specialty stores," # of businesses in WA "608," MCT (1% average annual payroll) "\$1,900," MCT (0.03% annual receipts) "\$2,199."

NAICS Code 447110, Description "Gasoline station with convenience store," # of businesses in WA "1,706," MCT (1% average annual payroll) "\$1,592," MCT (0.03% annual receipts) "\$11,416."

NAICS Code 624210, Description "Community food services," # of businesses in WA "144," MCT (1% average annual payroll) "\$2,247," MCT (0.03% annual receipts) "\$5,661."

NAICS Code 722110, Description "Full service restaurants," # of businesses in WA "5,612," MCT (1% average annual payroll) "\$4,222," MCT (0.03% annual receipts) "\$2,605."

NAICS Code 722211, Description "Limited service restaurants," # of businesses in WA "4,826," MCT (1% average annual payroll) "\$2,658," MCT (0.03% annual receipts) "\$2,166."

NAICS Code 722310, Description "Food service contractors," # of businesses in WA "453," MCT (1% average annual payroll) "\$5,876," MCT (0.03% annual receipts) "\$4,497."

NAICS Code 722330, Description "Mobile food services," # of businesses in WA "130," MCT (1% average annual payroll) "\$626," MCT (0.03% annual receipts) "\$453."

**Source:**(1) United States Census Bureau, 2016 Economic Census, Geographic Area Series County Business Patterns, (2) United States Census Bureau, Economy-Wide Key Statistics, 2012.

**Probable cost of compliance. The following is a description of the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

To determine the probable costs of the proposed rules, staff conducted a survey of FSAC representatives and stakeholders that included representatives from local health jurisdiction food staff, food service associations, and professional service providers. The department sent surveys to a department email food safety contact list of approximately six hundred stakeholders. In addition, the department requested FSAC members, local health jurisdiction partners, mobile food and restaurant associations to survey their stakeholders. The department received forty-four responses that are refer-

enced in the analysis below. Many of the responses were incomplete largely because the requirements do not impact food establishments universally. For example, some establishments already have staff with certified food protection manager certifications. Other establishments indicated they are not planning on implementing voluntary programs that would have a cost (e.g., allowing dogs in establishments, completing a written contamination-free process for refilling consumer owned containers). In some cases, respondents provided time estimates with no dollar amounts and in some cases indicated minimal or nominal costs. For the purpose of this analysis, the department's assumption is that labor costs are approximately \$20 per hour, which was a representative value in cost per hour responses (i.e., they [there] were several responses around this value but some were lower, some were higher). This value can be used to convert time-only responses to quantitative costs.

**WAC 246-215-02107 Certified Food Protection Manager (FDA Food Code 2-102.12):**

**Description:** The proposed amendments add a requirement for food establishments, deemed to pose a risk of causing or contributing to foodborne illness based on the nature of the operation, to have at least one employee obtain certification from a nationally accredited program as a certified food protection manager (CFPM).

**Cost:** The department researched costs associated with the CFPM certification. Many respondents indicated they will have to obtain the certification. The certification must be renewed every five years at or before expiration to be considered valid. Based on survey and research, the department estimates it will cost approximately \$511.50 for food establishments to have an employee obtain a CFPM. This includes cost of training, test preparation, travel to test site and time to take test. This equates to approximately \$102 annual cost (\$511.50/five year time period for CFPM approval). This cost may increase with high employee turnover.

**WAC 246-215-02245 Employee health—Removal of exclusion or restriction based on diagnosis:**

**Description:** This section specifies the person in charge of a food establishment must obtain approval from a local health officer before reinstating a food employee that was excluded from the workplace due to symptoms of jaundice or a diagnosis of infection with hepatitis A, norovirus, *Salmonella*, *Shigella*, or Shiga toxin-producing *E. coli*. By including norovirus and all species of Salmonella, Washington's rule will align with the Food Code. The department's assumption is that these will be infrequent events based on department staff experience in the food industry. In addition to controlling for two additional pathogens, the amendment deletes reference to a manual on communicable diseases when considering employee reinstatement and retains use of professional judgement, current standards of practice and the best available medical and scientific information.

**Cost:** There is no significant compliance cost associated with the proposed changes. There will be the nominal infrequent cost for food establishments to spend a few minutes to contact the local health officer via phone or email to get approval for reinstatement.

**WAC 246-215-03290 Original containers and records—Shellstock maintaining identification (FDA Food Code 3-203.12):**

**Description:** This section requires food establishments to leave tags and labels attached to shellstock (such as mussels, oysters, and clams) containers to remain attached until the container is empty unless an alternate record keeping system is approved. The proposed change requires food establishments put the first date of sale on the shellstock tag or label in addition to the existing requirement to record the date the last shellstock is sold or served. The proposed rule also clarifies that establishments may not commingle shellstock with shellstock with different tag information into shared containers before being ordered by the consumer to ensure tracking information is accurately maintained.

**Cost:** Thirty-eight out of forty-four responders did not answer or provided an incomplete answer to this question. Two responders indicated they already use this date mark system and four responders indicated that this requirement will only take a few minutes to complete this task. Operators are already required to record the final date of sale on the tag and some routinely add both dates as standard practice. One responder questioned the benefit of marking the tags, which indicated a need for education. Based on the survey responses, the department's assumption is that there is a nominal compliance cost of writing the first date of sale on containers labels and tags (minutes to complete).

**WAC 246-215-03300 Preventing contamination by employees—Preventing contamination from hands (FDA Food Code 3-301.11):**

**Description:** This section addresses preventing potential food contamination from food worker hands and provides allowances for bare hand contact with ready-to-eat food in certain circumstances. The proposed change clarifies an additional option that allows bare hand contact of ready-to-eat food when the food is an ingredient, such as chopping carrots that will be added to a stew, which will be cooked in the establishment to a minimum temperature of one hundred forty-five degrees Fahrenheit (°F) (63° Celsius (C)).

Another proposed change requires the food establishment to document they informed food employees that they must report to the person in charge when they have gastrointestinal symptoms and diseases that are transmissible through food. Food establishments that have approval to have bare hand contact with ready-to-eat food must record food employee illness information in a log and retain for ninety days and also obtain written approval from the regulatory authority to reinstate bare hand contact if they voluntarily or involuntarily discontinued an approved allowance for bare hand contact.

**Cost:** Sixteen responders indicated they were not interested in allowing bare hand contact of foods of ready-to-eat food that will not be cooked. Twenty-three responders did not provide an answer to these questions. Two responders indicated they were interested and one indicated they were interested in this practice for bartenders only. Six responders indicated that there will be minimal or no cost to track food employee illness information in a log and retain for ninety days if they were going to implement a bare hand food contact practice. The sole respondent that provided a cost esti-

mate indicated it would take \$50 in administrative costs to comply.

**WAC 246-215-03348 Preventing contamination from equipment, utensils, and linens—Refilling returnables (FDA Food Code 3-304.17):**

**Description:** This rule allows, but does not require, food service establishments to permit customers to use returnable food and beverage containers, utensils, and linens. For those food establishments allowing use of returnable containers, this section establishes requirements to prevent contamination, including specifying container cleanliness and who must refill the containers. The proposed change allows establishments to create and submit a written plan for approval from the regulatory authority for consumers to refill their own containers with non-time/temperature control for safety food and for employees to refill a consumer-owned container with any type of food.

**Cost:** Food establishments may, but are not required, to adopt practices for refilling containers. Food establishments offering refilling must comply with the rules to prevent contamination. Most of the resulting required actions in this section are taken directly from the Food Code and are exempt from analysis because they adopt federal regulations without material change. The section adds a unique provision for consumers to supply their own containers for refilling that is not in the Food Code.

Ten out of forty-four responders indicated they were interested in exploring the practice of filling consumer-owned containers. Nineteen indicated they would not pursue this practice and fifteen did not provide a response. Responders indicated a broad range of time estimates to complete the written contamination-free process or policy (from hours, to weeks, to months). Based on these results, the department assumes most food establishments that elect to offer this service could develop processes in one to two days (\$160-\$320). After implementation, the department intends to develop templates that food establishments could use to develop their plans.

Local health departments reported a range of time and fees to review the written processes. Some indicated that they would review plans for no fee and others estimated a review time from fifteen minutes to one hour with hourly fee ranging from (\$60-\$229.80 per hour). Responders also indicated they were unsure of the equipment needed for a contamination free process. Based on searches of the internet, food grade gravity bins cost approximately \$172 for one unit.<sup>1</sup> It is unknown how many units a food establishment will elect to put into service but these costs would be scalable. The department assumes food establishments will factor the anticipated cost when considering to offer this service. Ultimately, food establishments will incur cost from this section based on the cost of developing and obtaining approval of policies from the regulatory authority and location specific costs for making modifications to the equipment where food is stored or displayed to ensure the process used to refill the containers prevents contamination.

<sup>1</sup> Amazon Trade Fixtures Gravity Bin 6" X 18" Tritan by Freeman. Model # 06108TR-MBS.

**WAC 246-215-03400 Cooking—Raw animal foods (FDA Food Code 3-401.11):**

**Description:** This section establishes minimum requirements for the safe cooking of raw animal foods, such as meat, fish and poultry. The Food Code recognizes two methods to cook foods safely—cook and hold, or instantaneous kill.

The current Food Code increases the cook and hold time for comminuted (ground or tenderized) meat cooked to 155°F (68°C) from fifteen to seventeen seconds. The Food Code also includes an instantaneous cooking temperature for comminuted meat of 158°F (70°C) with no hold time. The FSAC considered these two methods and recommended that food establishments use the instantaneous method for cooking ground meat to the instantaneous kill temperature of 158°F (70°C) due to reduced need to monitor the increased holding time. The proposed change allows use of the instantaneous kill method without the need for regulatory authority approval. A food establishment may also use an alternative approach that consists of cooking to a lower temperature with a corresponding holding period option if approved by the regulatory authority. There are three options when using the cook and hold method (i.e., different minimum temperatures with corresponding hold times).

In addition to switching preferred cooking temperature methods, the proposed amendment changes the holding time for chicken cooked to 165°F (74°C) from a minimum time of fifteen seconds to an instantaneous standard consistent with the FDA Food Code.

**Cost:** If a food establishment offers comminuted meat, the department assumes food establishments will need to adjust equipment operations, write procedures and train staff on how to accommodate the cooking temperature and time. Survey responders indicated that it will typically be between one to two hours (\$20-\$40) to complete these tasks. Food establishments continuing to cook with combined temperature and hold time will incur administrative costs to obtain approval from the regulatory authority. Local health jurisdiction representatives on the FSAC indicated that such approval could consist of a discussion with an inspector, written correspondence, or amendment to standard operating procedures clearly identifying the food establishment's plans. Based on the survey input, a food establishment could take approximately one hour to develop a document describing the cooking temperature and holding time it intends to adopt, at an estimated cost of \$20 per hour.

**WAC 246-215-03620 Consumer advisory—Consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens (FDA Food Code 3-603.11):**

**Description:** This section requires food establishments to provide consumers with written notification of the potential risk for eating undercooked animal products. The current consumer advisory in the Food Code notifies the consumer of increased bacterial infection risk from eating undercooked animal products but is not designed for potential parasites in undercooked fish. The amendment to this section adds partially-cooked fresh fish to the list of dishes allowed to be served undercooked with a proper written advisory.

**Cost:** Three out of forty-four respondents indicated they would like the option to serve fresh partially cooked fish. Fifteen indicated they would not be interested and twenty-six did not respond to the question. One respondent indicated

that they regularly update menus and including this information would not be a cost burden but were concerned with the requirement to include the word "parasite" as it would be a distraction. Based on stakeholder input inclusion of "parasite" on the menu was not recommended by the FSAC; the department will provide a supplementary handout in a print ready format that explains the risks associated with parasites. Food establishments must provide the handout, if requested by the customer, which will be a nominal cost.

**WAC 246-215-06570 Methods—Prohibiting animals (FDA Food Code 6-501.115):**

**Description:** This section establishes the general restriction of animals in food establishments and lists exceptions when animals are allowed. The first modification restructures the sentence syntax without changing intent and clarifies that service animals, as defined in RCW 49.60.040, are allowed in areas that are not used for food preparation and in areas that are open for customers such as dining and sales areas. The proposed rule also expands the Food Code provision and allows a food establishment to create a plan to permit dogs in the outdoor and indoor portions of the establishment with regulatory authority approval.

**Cost:** Nine out of forty-four respondents indicated they are interested in adopting this practice and provided varying time estimates to complete the plans and train staff. Food establishments would be required to create a plan to allow animals and to submit the plan to the local health department or regulatory authority for approval. FSAC local health department members indicated it would take approximately one to two hours (\$60-\$229.80 per hour) for the review and approval of the plan.

There are also minor costs if an establishment elects to provide single use disposable containers<sup>2</sup> (\$18.99 for one hundred dishes) to provide water to visiting dogs. The department will provide a print ready sign to notify other customers that dogs are allowed in the outdoor areas. The food establishment will have the nominal cost of printing the sign.

2 Internet research- Amazon- Disco pets vet-grade biodegradable pet bowls 8 oz./1 cup.

**WAC 246-215-09160 Required postings—Business name and operating locations:**

**Description:** This section establishes requirements for mobile food units to post their business name and operating locations. The proposed amendments add a requirement for mobile food units to permanently post the business name on the exterior of the mobile food unit using a minimum 4" size letters. The requirement is designed to notify consumers of the business name should a descriptor be needed for a complaint or illness investigation and to assist with cross-county plan review reciprocity.

The amendment moves the requirement to notify the regulatory authority of the days, hours, and locations of operation from the date of submission of the initial application, WAC 246-215-09115(5), to the date when the food unit is operational. The amendment also clarifies the options for notification such as by telephone, electronic mail, written correspondence, social media, or other mutually-acceptable system.

**Cost:** There are nominal costs associated with the proposed amendments. All survey respondents indicated they

have signage that meets minimum standards that commonly consists of a "wrap" that is designed, manufactured, and installed. Mobile food unit wraps can cost thousands of dollars (\$1,000-10,000). Those that do not currently have their business name posted will not need to install a new wrap but could display the required information using other approaches (paint, tape, board, sign, etc.) that generally would not be a significant cost (e.g., \$10 for package of 4" letters).

Survey respondents indicated it would take a few minutes on a daily, weekly or monthly basis to comply with keeping regulatory authorities informed about their days and hours of operation and locations when they are planning a change, which would be a nominal cost.

#### **WAC 246-215-09400 Requirements and exemptions:**

**Description:** This section establishes exemptions for some sections of chapter 246-215 WAC for donated food distributing organizations (DFDOs). The proposed amendment adds a requirement for DFDOs to provide the current 501(c) Internal Revenue Service (IRS) status or a letter of sponsorship from a valid non-profit organization to the regulatory authority upon initial application. Additionally, the DFDO must update the regulatory authority annually regarding the nature of food service activities or when food service changes or if the IRS determination letter is revoked.

**Cost:** Nonprofit organizations should already have a valid 501(c) determination from the IRS to operate in this tax status and meet the federal definition of a distributing organization under chapter 69.80 RCW. Providing a copy of the most current letter to the regulatory authority will be a nominal cost.

#### **WAC 246-215-09430 Food labels—Alternative labeling:**

**Description:** This section requires DFDOs that repack food to add a label on each package with the name and place of business of the manufacturer, packer, or distributor. The department's assumption is that in most cases, this information is included in the label from the original container.

**Cost:** Survey respondents indicated that they would incur additional costs in creating labels but did not provide specific cost estimates. One respondent indicated that they repackage a lot of food and will have to arrange for another volunteer worker to complete this work. Label makers cost \$165 and labels cost \$12 for 500 3/4" by 2" labels<sup>3</sup>. The actual cost of this section will be determined by the type of products DFDOs receive as donations from food establishments and others and whether the food will need to be labeled.

<sup>3</sup> Internet research- Dymo Label Printer Model #1752266.

#### **WAC 246-215-09435 Record keeping—Receiving record:**

**Description:** This section establishes record keeping requirements for DFDOs. The proposed amendments increase the duration a DFDO must retain records from thirty days to ninety days.

**Cost:** Survey respondents indicated that they already have to retain records for their own operations and that the cost of retaining these records for additional time will not be significant. If a DFDO maintains hard copies of records ver-

sus electronic, they could have to obtain additional storage space, which again would be nominal.

#### **Summary of Compliance Costs:**

As identified above, there are sections that impose costs on food establishments. Many of these are voluntary (if the food establishment elects to do something, they will incur costs (e.g., offering customers the option to use consumer owned containers)). In almost all of these sections with mandatory compliance costs, only a percentage of food establishments will incur compliance costs (i.e., the requirements in the sections and their resulting costs will not impact all food establishments). When food establishments incur costs, these costs are often offset by the assumed reduction in foodborne illness from the proposed rule changes and other cost saving measures such as reducing the use of disposables.

**Loss of Sales/Revenue:** The department assumes that the proposed rule will not result in a loss of sales or revenue.

**Analysis of whether the proposed rule may impose more than minor costs on businesses in the industry:** The minor cost thresholds for the businesses identified above range from a high of \$26,818 (.003 of annual receipts of supermarkets) to a low of \$453 (.003 of annual receipts of mobile food units). Based on this analysis, the rule will impose more than minor costs on businesses in the mobile food services business classification.

**Determination of whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule:** Many of the costs outlined in this analysis generally apply to all sized businesses, from the smallest to the largest food establishments (e.g., cost of CFPM). Because of this, it is assumed that the proposed rules will have a disproportionate impact on small businesses.

**The steps taken to reduce the costs of the rule on small businesses:** As required in the Regulatory Fairness Act, the agency considered each of the following methods of reducing the impact of the proposed rule on small businesses: (a) Reducing, modifying, or eliminating substantive regulatory requirements; (b) simplifying, reducing, or eliminating recordkeeping and reporting requirements; (c) reducing the frequency of inspections; (d) delaying compliance timetables; (e) reducing or modifying fine schedules for noncompliance; or (f) any other mitigation techniques including those suggested by small businesses or small business advocates.

**Summary of methods to reduce impact of the proposed rule on small businesses:** The FSAC consists of representatives from all types of food establishments and regulatory roles. Over its many months of discussions on the draft rules, the FSAC was aware of the potential impact of the proposed rules and had the mindset "can we get the same food safety outcome with a more practical approach for our stakeholders." The FSAC generally considered and discussed the merits of the methods listed above on all applicable topics. The FSAC introduced, discussed all FDA Food Code amendments and debated if there was an opportunity to reduce, modify or eliminate substantive regulatory requirements. For example regarding the CFPM requirement, the FSAC recognized that requiring a CFPM per shift would have a large impact on food establishments and instead recommended one

CFPM per establishment. The implementation of this requirement will be delayed one year from the chapter effective date to help mitigate its impact. This is an example of how the FSAC did consider some alternatives that would be more impactful and elected to propose a less burdensome regulation.

For all FDA food code provisions that had a record keeping component, the FSAC carefully considered whether these requirements could be reduced or scaled back. The FSAC considered and ultimately recommended the minimum time period that still protected public health.

Collectively, the FSAC recommended the proposed rules have the lowest impact but still achieve the main objectives of the authorizing statutes.

**Description of how small businesses were involved in the development of the proposed rule:** The department established the FSAC in 2017 in order to receive input from large and small businesses in the food service industry. Several FSAC voting members represented small businesses including the Washington State Hospitality Association representative that represents over six thousand businesses, many of which are food establishments that meet the definition of a small business.

In addition, a representative from the mobile food unit association participated and represented over one hundred mobile food unit owners. There was also a representative of the association of farmer's markets (farmer's market association), which represent the markets and the farmers who sell their goods at the market. Generally, these are small businesses.

These FSAC voting members contributed to the development of the proposed rules through participation in subcommittee meetings and in the full workgroup meetings.

**The estimated number of jobs that will be created or lost as the result of compliance with the proposed rule:** There are two sections of the proposed rule where the department anticipates that businesses will need to create (hire) jobs to comply with the proposed rule. WAC 246-215-02110 Duties—Certified food protection manager (CFPM) establishes a requirement for each food establishment to have one employee with a CFPM certification. Many food establishments have employees that already have or will be able to obtain the CFPM. There may be some food establishments, however, which elect to hire a contractor to satisfy the requirement. The number of establishments that will hire a new employee is unknown.

WAC 246-215-09430 Food labels, alternative labeling requires donated food distributing organizations (DFDOs) to provide information about a product if they create smaller packages from a larger package. The information includes name and place of business of the manufacturer, packer, or distributor on each individual label. One respondent indicated they repackage a lot of food and they may need to arrange for another volunteer per shift to complete this labeling when they repackage items.

A copy of the statement may be obtained by contacting Peter Beaton, Department of Health, P.O. Box 47820, Olympia, WA 98504, phone 360-236-4031, TTY 711, email Peter.Beaton@doh.wa.gov.

July 21, 2020  
Michelle A. Davis  
Executive Director

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-01100 Intent—Food safety, illness prevention, and honest presentation (((2009)) FDA Food Code 1-102.10).** The purpose of this chapter is to safeguard public health and provide to CONSUMERS FOOD that is safe, unADULTERATED, and honestly presented.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-01105 Scope—Statement (((2009)) FDA Food Code 1-103.10).** This chapter establishes definitions; sets standards for management and personnel, FOOD operations, and EQUIPMENT and facilities; and provides for FOOD ESTABLISHMENT plan review, PERMIT issuance, inspection, EMPLOYEE RESTRICTION, and PERMIT suspension. This chapter adopts, with modification, the 2017 Food Code published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-01110 Applicability.** (1) The requirements of this chapter apply to an operation that meets the definition of a FOOD ESTABLISHMENT as defined in WAC 246-215-01115(((48))) (50).

(2) When a LOCAL BOARD OF HEALTH adopts rules with more stringent provisions than those contained in this chapter, the more stringent rules apply.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-01115 Definitions, abbreviations, and acronyms (((2009)) FDA Food Code 1-201.10(B)).** The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "~~(Accredited program)~~ ACCREDITED PROGRAM."

(a) ACCREDITED PROGRAM means a FOOD protection manager certification program that has been evaluated and listed by an accrediting agency as conforming to national standards for organizations that certify individuals.

(b) ACCREDITED PROGRAM refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, recertification, discipline, and grievance procedures; and test development and administration.

(c) ~~((Accredited program))~~ ACCREDITED PROGRAM does not refer to training functions or educational programs.

(2) "ACTIVE MANAGERIAL CONTROL" means the purposeful use of specific policies and procedures in the FOOD

ESTABLISHMENT to control foodborne illness risk factors. It embodies a preventive rather than reactive approach to food safety through a continuous system of training, monitoring, and verification.

~~((3))~~ (3) "ADDITIVE."

(a) "FOOD ADDITIVE" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(s) and 21 C.F.R. 170.3(e)(1).

(b) "COLOR ADDITIVE" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 201(t) and 21 C.F.R. 70.3(f).

~~((3))~~ (4) "ADULTERATED" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, Section 402.

~~((4))~~ (5) "APPROVED" means acceptable to the REGULATORY AUTHORITY based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

~~((5))~~ (6) "ASIAN RICE-BASED NOODLES" means a rice-based pasta that contains rice powder, water, wheat starch, vegetable cooking oil, and optional ingredients to modify the pH or water activity, or to provide a preservative effect. The ingredients do not include products derived from animals. The rice-based pasta is prepared by using a traditional method that includes cooking by steaming at not less than one hundred thirty degrees Fahrenheit, for not less than four minutes.

~~(7)~~ (7) "ASYMPTOMATIC."

(a) ASYMPTOMATIC means without obvious symptoms; not showing or producing indications of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice.

(b) ASYMPTOMATIC includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

~~((6))~~ (8) " $A_w$ " means water activity which is a measure of the free moisture in a FOOD, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol  $A_w$ .

~~((7))~~ (9) "BALUT" means an embryo inside a fertile EGG that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

~~((8))~~ (10) "BED AND BREAKFAST OPERATION" means a private home or inn offering one or more lodging units on a temporary basis to travelers.

~~((9))~~ (11) "BEVERAGE" means a liquid for drinking, including water.

~~((10))~~ (12) "BOTTLED DRINKING WATER" means water that is SEALED in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

~~((11))~~ (13) "CATERING OPERATION."

(a) CATERING OPERATION means a PERSON who contracts with a client to prepare a specific menu and amount of FOOD in an APPROVED FOOD ESTABLISHMENT for service to the client's guests or customers at a different location.

(b) Consistent with its application under WAC 246-215-08325, a CATERING OPERATION APPROVED for a PERMIT may

cook or perform final preparation on certain FOOD at the service location.

~~((12))~~ (14) "CERTIFICATION NUMBER" means a unique combination of letters and numbers assigned by a SHELLFISH CONTROL AUTHORITY to a MOLLUSCAN SHELLFISH DEALER according to the provisions of the National Shellfish Sanitation Program.

~~((13))~~ (15) "CERTIFIED FOOD PROTECTION MANAGER" means an EMPLOYEE with the authority to implement food protection measures and who meets the certification requirements listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs.

(16) "C.F.R." means Code of Federal Regulations. Citations in this chapter to the C.F.R. refer sequentially to the Title, Part, and Section numbers, such as 40 C.F.R. 180.194 refers to Title 40, Part 180, Section 194.

~~((14))~~ (17) "CIP."

(a) CIP means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and SANITIZING solution onto or over EQUIPMENT surfaces that require cleaning, such as the method used, in part, to clean and SANITIZE a frozen dessert machine.

(b) CIP does not include the cleaning of EQUIPMENT such as band saws, slicers, or mixers that are subject to in-place manual cleaning without the use of a CIP system.

~~((15))~~ (18) "COMMINGLE" means:

(a) To combine SHELLSTOCK harvested on different days or from different growing areas as identified on the tag or label~~((:))~~, or

(b) To combine SHUCKED SHELLFISH from containers with different container codes or different shucking dates.

~~((16))~~ (19) "COMMINUTED."

(a) COMMINUTED means reduced in size by methods ~~((that include))~~ including chopping, flaking, grinding, or mincing.

(b) COMMINUTED includes FISH or MEAT products that are reduced in size and restructured or reformulated such as gefilte FISH, gyros, ground beef, and sausage; and a mixture of two or more types of MEAT that have been reduced in size and combined, such as sausages made from two or more MEATS.

~~((17))~~ (20) "COMMISSARY" means an APPROVED FOOD ESTABLISHMENT where FOOD is stored, prepared, portioned, or PACKAGED for service elsewhere.

~~((18))~~ (21) "CONDITIONAL EMPLOYEE" means a potential FOOD EMPLOYEE to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential FOOD EMPLOYEES who ~~((might))~~ may be suffering from a disease that can be transmitted through FOOD and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

~~((19))~~ (22) "CONFIRMED DISEASE OUTBREAK" means a FOODBORNE DISEASE OUTBREAK in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the FOOD as the source of the illness.

~~((20))~~ (23) "CONSUMER" means a PERSON who is a member of the public, takes possession of FOOD, is not functioning in the capacity of an operator of a FOOD ESTABLISHMENT or FOOD PROCESSING PLANT, and does not offer the FOOD for resale.

~~((21))~~ (24) "CORROSION-RESISTANT" means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the FOOD to be contacted, the normal use of cleaning compounds and SANITIZING solutions, and other conditions of the use environment.

~~((22))~~ (25) "COUNTER-MOUNTED EQUIPMENT" means EQUIPMENT that is not portable and is designed to be mounted off the floor on a table, counter, or shelf ~~((previously table-mounted EQUIPMENT))~~.

~~((23))~~ (26) "CRITICAL CONTROL POINT" means a point or procedure in a specific FOOD system where loss of control might result in an unacceptable health RISK.

~~((24))~~ (27) "CRITICAL LIMIT" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a CRITICAL CONTROL POINT to minimize the RISK that the identified FOOD safety HAZARD might occur.

~~((25))~~ (28) "CUT LEAFY GREENS" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula, and chard. The term "leafy greens" does not include herbs such as cilantro or parsley. The term "cut" does not include removing and discarding the exterior leaves.

~~((26))~~ (29) "DEALER" means a PERSON who is authorized by a SHELLFISH CONTROL AUTHORITY for the activities of SHELLSTOCK shipper, shucker-packer, repacker, reshipper, or depuration processor of MOLLUSCAN SHELLFISH according to the provisions of the National Shellfish Sanitation Program.

~~((27))~~ (30) "DISCLOSURE" means a written statement that clearly identifies the animal-derived FOODS which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

~~((28))~~ (31) "DONATED FOOD DISTRIBUTING ORGANIZATION" means a FOOD ESTABLISHMENT that is a charitable non-profit organization under Section 501(c) of the federal Internal Revenue Code that distributes FOOD free of charge to the needy.

~~((29))~~ (32) "DONOR" means a person, corporation, association, or other organization that donates FOOD to a DONATED FOOD DISTRIBUTING ORGANIZATION under the provisions of chapter 69.80 RCW, known as the Good Samaritan Food Donation Act.

~~((30))~~ (33) "DONOR KITCHEN" means a kitchen that is used by a DONOR to handle, store, or prepare FOOD for donation to needy persons through a DONATED FOOD DISTRIBUTING ORGANIZATION and which is not a residential kitchen in a private home.

~~((31))~~ (34) "DRINKING WATER."

(a) DRINKING WATER means water that meets 40 C.F.R. 141, National Primary Drinking Water Regulations.

(b) DRINKING WATER is traditionally known as "potable water."

(c) DRINKING WATER includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.

(d) DRINKING WATER means potable water that is supplied in compliance with chapters 246-290 and 246-291 WAC.

~~((32))~~ (35) "DRY STORAGE" means a room or area designated for the storage of PACKAGED or containerized bulk ~~((nonPOTENTIALLY HAZARDOUS))~~ FOOD that is not TIME/TEMPERATURE CONTROL FOR SAFETY FOOD and dry goods such as SINGLE-SERVICE ARTICLES.

~~((33))~~ (36) "EASILY CLEANABLE."

(a) EASILY CLEANABLE means a characteristic of a surface that:

(i) Allows effective removal of soil by normal cleaning methods;

(ii) Is dependent on the material, design, construction, and installation of the surface; and

(iii) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into FOOD based on the surface's APPROVED placement, purpose and use.

(b) EASILY CLEANABLE includes a tiered application of the requirements that qualify the surface as EASILY CLEANABLE as specified in (a) of this subsection to different situations in which varying degrees of cleanability are required such as:

(i) The appropriateness of stainless steel for a FOOD preparation surface as opposed to the lack of need for stainless steel to be used for floors or for tables used for CONSUMER dining; or

(ii) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the CONSUMER dining area.

~~((34))~~ (37) "EASILY MOVABLE" means:

(a) Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of EQUIPMENT for cleaning; and

(b) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the EQUIPMENT to be moved for cleaning of the EQUIPMENT and adjacent area.

~~((35))~~ (38) "EGG."

(a) EGG means the shell EGG of avian species such as chicken, duck, goose, guinea, quail, RATITES, turkey, or any other species of fowl.

(b) EGG does not include:

(i) A BALUT;

(ii) The EGG of a reptile species such as alligator; or

(iii) An EGG PRODUCT.

~~((36))~~ (39) "EGG PRODUCT."

(a) EGG PRODUCT means all, or a portion of, the contents found inside EGGS separated from the shell and pasteurized in a FOOD PROCESSING PLANT, with or without added ingredi-



ents, intended for human consumption such as dried, frozen, or liquid EGGS.

(b) EGG PRODUCT does not include FOOD which contains EGGS only in a relatively small (~~(portion)~~) proportion such as cake mixes.

~~((37))~~ (40) "EMPLOYEE" means the PERMIT HOLDER, PERSON IN CHARGE, FOOD EMPLOYEE, PERSON having supervisory or management duties, PERSON on the payroll, family member, volunteer, PERSON performing work under contractual agreement, or other PERSON working in a FOOD ESTABLISHMENT.

~~((38))~~ "ENTEROHEMORRHAGIC ~~ESCHERICHIA COLI~~ (EHEC)" means *E. coli* which cause hemorrhagic colitis, meaning bleeding enterically or bleeding from the intestine. The term is typically used in association with *E. coli* that have the capacity to produce Shiga toxins and to cause attaching and effacing lesions in the intestines. EHEC is a subset of STEC, whose members produce additional virulence factors. Infections with EHEC might be ASYMPTOMATIC but are classically associated with bloody diarrhea (hemorrhagic colitis) and hemolytic uremic syndrome (HUS) or thrombotic thrombocytopenic purpura (TTP). Examples of serotypes of EHEC include: *E. coli* O157:H7; *E. coli* O157:NM; *E. coli* O26:H11; *E. coli* O145:NM; *E. coli* O103:H2; or *E. coli* O111:NM. Also see Shiga Toxin-producing *E. coli*.

~~((39))~~ (41) "EPA" means the United States Environmental Protection Agency.

~~((40))~~ (42) "EQUIPMENT."

(a) EQUIPMENT means an article that is used in the operation of a FOOD ESTABLISHMENT such as a freezer, grinder, hood, ice maker, MEAT block, mixer, oven, reach-in refrigerator, scale, sink slicer, stove, table, TEMPERATURE MEASURING DEVICE for ambient air, VENDING MACHINE, or WARE-WASHING machine.

(b) EQUIPMENT does not include items used for handling or storing large quantities of PACKAGED FOODS that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.

~~((41))~~ (43) "EXCLUDE" means to prevent a PERSON from working as an EMPLOYEE in a FOOD ESTABLISHMENT or entering a FOOD ESTABLISHMENT as an EMPLOYEE.

~~((42))~~ (44) "FDA" means the United States Food and Drug Administration.

~~((43))~~ (45) "FISH."

(a) FISH means fresh or saltwater finfish, crustaceans, mollusks, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals(~~;~~ and all mollusks), if such animal life is intended for human consumption.

(b) FISH includes an edible human FOOD product derived in whole or in part from FISH, including FISH that have been processed in any manner.

~~((44))~~ (46) "FOOD" means a raw, cooked, or processed edible substance, ice, BEVERAGE, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

~~((45))~~ (47) "FOODBORNE DISEASE OUTBREAK" means the occurrence of two or more cases of a similar illness resulting from the ingestion of a common FOOD.

~~((46))~~ (48) "FOOD-CONTACT SURFACE" means:

(a) A surface of EQUIPMENT or a UTENSIL with which FOOD normally comes into contact; or

(b) A surface of EQUIPMENT or a UTENSIL from which FOOD might drain, drip or splash:

(i) Into a FOOD; or

(ii) Onto a surface normally in contact with FOOD.

~~((47))~~ (49) "FOOD EMPLOYEE" means an individual working with unPACKAGED FOOD, FOOD EQUIPMENT or UTENSILS, or FOOD-CONTACT SURFACES.

~~((48))~~ (50) "FOOD ESTABLISHMENT."

(a) FOOD ESTABLISHMENT means an operation that:

(i) Stores, prepares, PACKAGES, serves, and vends FOOD directly to the CONSUMER, or otherwise provides FOOD for human consumption such as a restaurant; satellite or catered feeding location; CATERING OPERATION if the operation provides FOOD directly to a CONSUMER(~~(s)~~) or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or FOOD bank; and

(ii) Relinquishes possession of FOOD to a CONSUMER directly, or indirectly through a delivery service such as home delivery or grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(b) FOOD ESTABLISHMENT includes:

(i) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is PERMITTED by the REGULATORY AUTHORITY; and

(ii) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the PREMISES; and regardless of whether there is a charge for the FOOD.

(c) FOOD ESTABLISHMENT does not include:

(i) An establishment that offers only (~~(nonPOTENTIALLY HAZARDOUS FOODS))~~ nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD prePACKAGED in a licensed FOOD ESTABLISHMENT or FOOD PROCESSING PLANT;

(ii) An establishment that offers only (~~(nonPOTENTIALLY HAZARDOUS))~~ nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, nonREADY-TO-EAT, minimally cut, unprocessed fruits, vegetables, and fresh herbs;

(iii) A FOOD PROCESSING PLANT, cottage FOOD operation, or other establishment for activities regulated by the Washington state department of agriculture or the United States Department of Agriculture;

(iv) An establishment that offers only (~~(nonPOTENTIALLY HAZARDOUS))~~ nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, READY-TO-EAT FOOD(~~(s)~~) produced in a licensed FOOD ESTABLISHMENT or FOOD PROCESSING PLANT (such as premixed soda pop, powdered creamer, pretzels, cookies, doughnuts, cake, or MEAT jerky) that are served from the original package without direct hand contact, with limited portioning, directly onto or into sanitary SINGLE-USE ARTICLES or SINGLE-SERVICE ARTICLES (~~(from the original package)~~);

(v) An establishment that offers only (~~(nonPOTENTIALLY HAZARDOUS))~~ nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, hot BEVERAGES (such as coffee, (~~(hot)~~) tea, or (~~(hot)~~)

pasteurized apple cider) served directly into sanitary SINGLE-SERVICE ARTICLES;

(vi) An establishment that offers only dry ~~((nonPOTENTIALLY HAZARDOUS))~~ nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, nonREADY-TO-EAT FOODS with no additional processing (such as dry beans, dry grains, in-shell nuts, coffee beans, tea leaves, or herbs for tea);

(vii) An establishment that offers only prePACKAGED frozen confections produced in a licensed FOOD ESTABLISHMENT or FOOD PROCESSING PLANT;

(viii) A residential kitchen in a private home or other location, if only FOODS that are ~~((nonPOTENTIALLY HAZARDOUS))~~ nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD baked goods are prepared and wrapped in a sanitary manner for sale or service by a nonprofit organization operating for religious, charitable, or educational purposes and if the CONSUMER is informed by a clearly visible placard at the sales or service location that the FOODS are prepared in a kitchen that is not inspected by a REGULATORY AUTHORITY;

(ix) A location where FOODS that are prepared as specified in ~~((b))~~ (c)(viii) of this subsection are sold or offered for human consumption;

(x) A ~~((hotel/motel))~~ hotel, motel, or other similar business that maintains an ice dispensing machine for self-service use by guests and the ice is not used by a FOOD ESTABLISHMENT;

(xi) A kitchen in a private home operated as a family day care provider as defined in RCW 43.215.010 (1)(c) or an adult family home as defined in RCW 70.128.010, used only to prepare FOOD for residents and other people for whom the operation is licensed to provide care;

(xii) A private home that receives catered or home-delivered FOOD;

(xiii) A private home or other location used for a PRIVATE EVENT;

(xiv) A DONOR KITCHEN; ~~((and))~~

(xv) A location used for a POTLUCK;

(xvi) A location, not including special events as defined in RCW 82.32.033, operating thirty or fewer days per calendar year, used by a PERSON under the age of eighteen for the sale of nonalcoholic beverages, such as lemonade, using non-TIME/TEMPERATURE CONTROL FOR SAFETY FOOD with no direct hand contact and served directly into SINGLE-SERVICE ARTICLES; and

(xvii) A BED AND BREAKFAST OPERATION that prepares and offers FOOD to guests if the home is owner occupied, the number of available guest bedrooms does not exceed two, breakfast is the only meal offered, and the CONSUMER is informed in published advertisements, mailed brochures, and placards posted at the registration area that the FOOD is prepared in a kitchen that is not regulated or inspected by the REGULATORY AUTHORITY.

~~((49))~~ (51) "FOOD PROCESSING PLANT."

(a) FOOD PROCESSING PLANT means a commercial operation that manufactures, packages, labels, or stores FOOD for human consumption, and provides FOOD for sale or distribution to other business entities such as FOOD PROCESSING PLANTS or FOOD ESTABLISHMENTS.

(b) FOOD PROCESSING PLANT does not include a FOOD ESTABLISHMENT.

~~((50))~~ (52) "FOOD WORKER CARD" means a FOOD and BEVERAGE service worker's ~~((PERMIT))~~ permit as required under chapter 69.06 RCW.

~~((51))~~ (53) "GAME ANIMAL."

(a) GAME ANIMAL means an animal, the products of which are FOOD that is not classified as livestock, sheep, swine, goat, horse, mule, or other equine in 9 C.F.R. 301.2 Definitions, or as POULTRY, or FISH.

(b) GAME ANIMAL includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.

(c) GAME ANIMAL does not include RATITES.

~~((52))~~ (54) "GRADE A STANDARDS" means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" with which certain fluid and dry milk and milk products comply.

~~((53))~~ "GRILL MARKED" means ~~FOOD that has been seared using a NONCONTINUOUS COOKING process in which the FOOD is placed on a heated cooking surface for no more than one minute on each side.~~

~~((54))~~ (55) "HACCP PLAN" means a written document that delineates the formal procedures for following the Hazard Analysis and Critical Control Point principles developed by The National Advisory Committee on Microbiological Criteria for Foods.

~~((55))~~ (56) "HANDWASHING SINK."

(a) HANDWASHING SINK means a lavatory, a basin or vessel for washing, a wash basin, or a PLUMBING FIXTURE especially placed for use in personal hygiene and designed for the washing of the hands.

(b) HANDWASHING SINK includes an automatic handwashing facility.

~~((56))~~ (57) "HAZARD" means a biological, chemical, or physical property that might cause an unacceptable CONSUMER health RISK.

~~((57))~~ (58) "HEALTH PRACTITIONER" means a physician licensed to practice medicine, or if allowed by LAW, a nurse practitioner, physician assistant or similar medical professional.

~~((58))~~ (59) "HERMETICALLY SEALED CONTAINER" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned FOODS, to maintain the commercial sterility of its contents after processing.

~~((59))~~ (60) "HIGHLY SUSCEPTIBLE POPULATION" means ~~((persons))~~ people who are more likely than others ~~((people))~~ in the general population to experience foodborne disease because they are:

(a) Immunocompromised, PRESCHOOL age children, or older adults; and

(b) Obtaining FOOD at a facility that provides services in a custodial care, health care, or assisted living~~((nutritional services, or socialization services))~~ setting including, but not limited to, child or adult day care center, kidney dialysis center, hospital~~((s))~~ or nursing home, or nutritional or socialization services such as a senior center.

~~((60))~~ (61) "IMMEDIATE SERVICE" means service to the public within thirty minutes of preparation.

~~((61))~~ (62) "IMMINENT HEALTH HAZARD" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on a fire, flood, extended interruption of electrical or water service, SEWAGE backup, misuse of POISONOUS OR TOXIC MATERIALS, onset of an apparent FOOD-BORNE DISEASE OUTBREAK, gross insanitary occurrence or condition, or other circumstance that might endanger public health.

~~((62))~~ (63) "INJECTED" means manipulating ~~((a))~~ MEAT to which a solution has been introduced into its interior by processes that are referred to as "injecting," "pump marinating," or "stitch pumping."

~~((63))~~ (64) "INTACT MEAT" means a cut of whole muscle(s) MEAT that has not undergone COMMINUTION, INJECTION, MECHANICAL TENDERIZATION, or RECONSTRUCTION.

~~(65)~~ "JUICE."

(a) JUICE means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purees of the edible portions of one or more fruits or vegetables, or any concentrates of such liquid or puree.

(b) JUICE does not include, for purposes of HACCP, liquids, purees, or concentrates that are not used as BEVERAGES or ingredients of BEVERAGES.

~~((64))~~ (66) "KITCHENWARE" means FOOD preparation and storage UTENSILS.

~~((65))~~ (67) "LAW" means applicable local, state, and federal statutes, regulations, and ordinances.

~~((66))~~ (68) "LINENS" means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

~~((67))~~ (69) "LOCAL BOARD OF HEALTH" means the county or district board of health.

~~((68))~~ (70) "LOCAL HEALTH OFFICER" means the legally qualified physician who has been appointed as the health officer for the county or district public health department.

~~((69))~~ (71) "MAJOR FOOD ALLERGEN."

(a) MAJOR FOOD ALLERGEN means:

(i) Milk, EGG, FISH (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A FOOD ingredient that contains protein derived from a FOOD as specified in (a)(i) of this subsection.

(b) MAJOR FOOD ALLERGEN does not include:

(i) Any highly refined oil derived from a FOOD specified in (a)(i) of this subsection and any ingredient derived from such highly refined oil; or

(ii) An ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004. (Public Law 108-282.)

~~((70))~~ (72) "MEAT" means the flesh of animals used as FOOD including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except FISH and POULTRY.

~~((71))~~ (73) "MECHANICALLY TENDERIZED."

(a) MECHANICALLY TENDERIZED means manipulating MEAT with deep penetration by processes which ~~((might))~~

may be referred to as "blade tenderizing," "jaccarding," "pinning," "needling," or using blades, pins, needles, or any mechanical device.

(b) MECHANICALLY TENDERIZED does not include processes by which solutions are INJECTED into MEAT.

~~((72))~~ (74) "MG/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

~~((73))~~ (75) "MOBILE FOOD UNIT" means a readily movable FOOD ESTABLISHMENT.

~~((74))~~ (76) "MOBILE PRIMARY PERMIT" means a PERMIT issued by a REGULATORY AUTHORITY to operate a MOBILE FOOD UNIT within the jurisdiction of the REGULATORY AUTHORITY where the business is primarily located.

~~(77)~~ "MOBILE SECONDARY PERMIT" means a PERMIT issued by a REGULATORY AUTHORITY to an applicant holding a valid MOBILE PRIMARY PERMIT as detailed in RCW 43.20.149.

(78) "MOLLUSCAN SHELLFISH" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

~~((75))~~ (79) "NONCONTINUOUS COOKING."

(a) NONCONTINUOUS COOKING means the cooking of FOOD in a FOOD ESTABLISHMENT using a process in which the initial heating of the FOOD is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service.

(b) NONCONTINUOUS COOKING does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

~~((76))~~ (80) "PACKAGED."

(a) PACKAGED means bottled, canned, cartoned, securely bagged, or securely wrapped, whether PACKAGED in a FOOD ESTABLISHMENT or a FOOD PROCESSING PLANT.

(b) PACKAGED does not include a wrapper, carry-out box, or other nondurable container used ~~((to containerize FOOD with the purpose of facilitating FOOD protection))~~ by a FOOD EMPLOYEE to protect the FOOD during service or delivery to the CONSUMER:

(i) ~~((During service and receipt of the FOOD by the))~~ Upon CONSUMER request; or

(ii) During ~~((the))~~ display at a staffed, self-service buffet line, or VENDING MACHINE on the PREMISES serving food prepared by the FOOD ESTABLISHMENT, such as at a school.

~~((77))~~ (81) "PERMIT" means the document issued by the REGULATORY AUTHORITY that authorizes a PERSON to operate a FOOD ESTABLISHMENT.

~~((78))~~ (82) "PERMIT HOLDER" means the entity that:

(a) Is legally responsible for the operation of the FOOD ESTABLISHMENT such as the owner, the owner's agent, or other ~~((person))~~ PERSON; and

(b) When required, possesses a valid PERMIT to operate a FOOD ESTABLISHMENT.

~~((79))~~ (83) "PERSON" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

~~((80))~~ (84) "PERSON IN CHARGE" means the individual present at a FOOD ESTABLISHMENT who is responsible for the operation at the time.

~~((81))~~ (85) "PERSONAL CARE ITEMS."

(a) PERSONAL CARE ITEMS means items or substances that might be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.

(b) PERSONAL CARE ITEMS include items such as medicines; first-aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

~~((82))~~ (86) "pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between zero and seven indicate acidity and values between seven and fourteen indicate alkalinity. The value for pure distilled water is seven, which is considered neutral.

~~((83))~~ (87) "PHYSICAL FACILITIES" means the structure and interior surfaces of a FOOD ESTABLISHMENT including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

~~((84))~~ (88) "PLUMBING FIXTURE" means a receptacle or device that:

(a) Is permanently or temporarily connected to the water distribution system of the PREMISES and demands a supply of water from the system; or

(b) Discharges used water, waste materials, or SEWAGE directly or indirectly to the drainage system of the PREMISES.

~~((85))~~ (89) "PLUMBING SYSTEM" means the water supply and distribution pipes; PLUMBING FIXTURES and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the PREMISES; and water treating EQUIPMENT.

~~((86))~~ (90) "POISONOUS OR TOXIC MATERIALS" means substances that are not intended for ingestion and are included in four categories:

(a) Cleaners and SANITIZERS, which include cleaning and SANITIZING agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(b) Pesticides, except SANITIZERS, which include substances such as insecticides and rodenticides;

(c) Substances necessary for the operation and maintenance of the establishment such as nonFOOD grade lubricants and PERSONAL CARE ITEMS that might be deleterious to health; and

(d) Substances that are not necessary for the operation and maintenance of the establishment and are on the PREMISES for retail sale, such as petroleum products and paints.

~~((87))~~ "POOLED" is the combination of four or more raw EGGS, EGG yolks, or EGG whites.

(88) "POTENTIALLY HAZARDOUS FOOD (PHF)."

(a) POTENTIALLY HAZARDOUS FOOD means a FOOD that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

(b) POTENTIALLY HAZARDOUS FOOD includes:

(i) An animal FOOD that is raw or heat treated, a plant FOOD that is heat treated or consists of raw seed sprouts, cut melons, CUT LEAFY GREENS, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, fresh herb in oil mixtures, or garlic in oil mix-

tures unless modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and

(ii) Except as specified in (c)(iv) of this subsection, a FOOD that because of the interaction of its  $A_w$  and pH values is designated as product assessment required (PA) in Table A or B of this subsection;

**Table A. Interaction of pH and  $A_w$  for Control of Spores in Food Heat treated to Destroy Vegetative Cells and Subsequently Packaged**

$A_w$ values	pH values		
	4.6 or less	>4.6 - 5.6	>5.6
≤0.92	Non-PHF	Non-PHF	Non-PHF
>0.92 - .95	Non-PHF	Non-PHF	PA**
>0.95	Non-PHF	PA	PA

\*\* PA means product assessment required.

**Table B\*. Interaction of pH and  $A_w$  for Control of Vegetative Cells and Spores in Food Not Heat treated or Heat treated but not PACKAGED.**

$A_w$ values	pH values			
	<4.2	4.2 - 4.6	>4.6 - 5.0	>5.0
<0.88	Non-PHF	Non-PHF	Non-PHF	Non-PHF
0.88 - 0.90	Non-PHF	Non-PHF	Non-PHF	PA**
>0.90 - 0.92	Non-PHF	Non-PHF	PA	PA
>0.92	Non-PHF	PA	PA	PA

\*\* PA means product assessment required.

(c) POTENTIALLY HAZARDOUS FOOD does not include:

(i) An air cooled hard boiled EGG with shell intact, or an EGG with the shell intact that is not hard-boiled, but has been pasteurized to destroy all viable salmonellae;

(ii) A FOOD in an unopened HERMETICALLY SEALED CONTAINER that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;

(iii) A FOOD that because of its pH or  $A_w$  value, or interaction of  $A_w$  and pH values, is designated as a non-PHF FOOD in Table A or B of this subsection;

(iv) A FOOD that is designated as product assessment required (PA) in Table A or B of this subsection and has undergone a product assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that FOOD is precluded due to:

(A) Intrinsic factors including added or natural characteristics of the FOOD such as preservatives, antimicrobials, humectants, acidulants or nutrients;

(B) Extrinsic factors including environmental or operational factors that affect the FOOD such as packaging, modified atmosphere such as REDUCED OXYGEN PACKAGING, shelf life and use, or temperature range of storage and use; or

(C) A combination of intrinsic and extrinsic factors; or

(v) A FOOD that does not support the growth or toxic formation of pathogenic microorganisms in accordance with (c)(i) or (iv) of this subsection even though the FOOD might

contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

~~((89))~~ (91) "POTLUCK" means an event where:

- (a) People are gathered to share FOOD;
- (b) People attending the event are expected to bring FOOD to share;
- (c) There is no compensation provided for people bringing FOOD to the event;
- (d) There is no charge for any FOOD or BEVERAGE provided at the event; and
- (e) The event is not conducted for commercial purposes.

~~((90))~~ (92) "POULTRY" means:

- (a) Any domesticated bird (chickens, turkeys, ducks, geese, guineas, RATITES, or squabs), whether live or dead, as defined in 9 C.F.R. 381.1 Poultry Products Inspection Regulations Definitions, Poultry; and
- (b) Any migratory waterfowl or game bird, pheasant, partridge, quail, grouse, or pigeon, whether live or dead, as defined in 9 C.F.R. 362.1 Voluntary Poultry Inspection Regulations, Definitions.

~~((91))~~ (93) "PREMISES" means:

- (a) The ~~((physical facility))~~ PHYSICAL FACILITY, its contents, and the contiguous land or property under the control of the PERMIT HOLDER; or
- (b) The ~~((physical facility))~~ PHYSICAL FACILITY, its contents, and the land or property not described under (a) of this subsection if its facilities and contents are under control of the PERMIT HOLDER and might impact FOOD ESTABLISHMENT personnel, facilities, or operations, and a FOOD ESTABLISHMENT is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

~~((92))~~ (94) "PRESCHOOL."

(a) PRESCHOOL means a program that provides organized care and education for children below the age required for kindergarten entry. A PRESCHOOL operates for two or more days per week with no child enrolled on a regular basis for more than four hours per day.

(b) ~~((A))~~ PRESCHOOL does not include:

- (i) Programs where the parent or guardian is present at each session;
- (ii) Parent-child classes where the focus is on parent education;
- (iii) Short-term parks and recreation programs;
- (iv) Informal parent and child groups;
- (v) Irregular babysitting;
- (vi) Licensed child care; or
- (vii) FOOD preparation and service operations otherwise under PERMIT or license by the REGULATORY AUTHORITY.

~~((93))~~ (95) "PRIMAL CUT" means a basic major cut into which carcasses and sides of MEAT are separated, such as beef round, pork loin, lamb flank, or veal breast.

~~((94))~~ (96) "PRIVATE EVENT" means a private gathering limited to members and guests of members of a family, organization, or club, where the event is not open or advertised to the general public, and where FOOD is provided without compensation.

~~((95))~~ (97) "PUBLIC WATER SYSTEM" means a DRINKING WATER system that is operated in compliance with chapters 246-290 and 246-291 WAC.

~~((96))~~ (98) "RATITE" means a flightless bird such as an emu, ostrich, or rhea.

~~((97))~~ (99) "READY-TO-EAT FOOD."

(a) READY-TO-EAT FOOD means FOOD that:

(i) Is in a form that is edible without additional preparation to achieve FOOD safety, as specified under WAC 246-215-03400 (1) through (3) or WAC 246-215-03405 or 246-215-03425; or

(ii) Is a raw or partially cooked animal FOOD and the CONSUMER is advised as specified under WAC 246-215-03400 (4)(a) and (c); or

(iii) Is prepared in accordance with a VARIANCE that is granted as specified under WAC 246-215-03400 (4)(d); and

(iv) ~~((Might))~~ May receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

(b) READY-TO-EAT FOOD includes:

(i) Raw animal FOOD that is cooked as specified under WAC 246-215-03400 or 246-215-03405, or frozen as specified under WAC 246-215-03425;

(ii) Raw fruits and vegetables that are washed as specified under WAC 246-215-03318;

(iii) Fruits and vegetables that are cooked for hot holding, as specified under WAC 246-215-03410;

(iv) All ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is cooked to the temperature and time required for the specific FOOD under WAC 246-215-03400 through 246-215-03445 and cooled as specified under WAC 246-215-03515;

(v) Plant FOOD for which further washing, cooking, or other processing is not required for FOOD safety, and from which rinds, peels, husks, or shells, if naturally present, are removed;

(vi) Substances derived from plants such as spices, seasonings, and sugar;

(vii) A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for FOOD safety;

(viii) The following products that are produced in accordance with ~~((USDA))~~ USDA guidelines and that have received a lethality treatment for pathogens: Dry, fermented sausages, such as dry salami or pepperoni; salt cured MEAT and POULTRY products, such as ~~((prosciutto))~~ prosciutto ham, country cured ham, and Parma ham; and dried MEAT and POULTRY products, such as jerky or beef sticks; and

(ix) FOODS manufactured according to 21 C.F.R. Part 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

~~((98))~~ (100) "RED HIGH RISK FACTORS" are improper practices or procedures identified as the most prevalent contributing factors to foodborne illness or injury, as listed on the food Establishment Inspection Report form.

~~((99))~~ (101) "REDUCED OXYGEN PACKAGING."

(a) REDUCED OXYGEN PACKAGING means:

(i) The reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the ~~((surrounding))~~ atmosphere (approximately twenty-one percent at sea level); and

(ii) A process as specified in (a)(i) of this subsection that involves a FOOD for which the hazards *Clostridium botulinum* or *Listeria monocytogenes* require control in the final PACKAGED form.

(b) REDUCED OXYGEN PACKAGING includes:

(i) Vacuum packaging, in which air is removed from a package of FOOD and the package is ~~((hermetically))~~ HERMETICALLY SEALED so that a vacuum remains inside the package;

(ii) Modified atmosphere packaging, in which the atmosphere of a package of FOOD is modified so that its composition is different from air but the atmosphere might change over time due to the permeability of the packaging material or the respiration of the FOOD. Modified atmosphere packaging includes reduction of the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;

(iii) Controlled atmosphere packaging, in which the atmosphere of a package of FOOD is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring FOOD, and impermeable packaging material;

(iv) Cook chill packaging, in which cooked FOOD is hot filled into impermeable bags which have the air expelled and are then SEALED or crimped closed. The bagged FOOD is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or

(v) Sous vide packaging, in which raw or partially cooked FOOD is ~~((placed in hermetically SEALED;))~~ vacuum packaged in an impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens.

~~((100))~~ (102) "REFUSE" means solid waste not carried by water through a SEWAGE system.

~~((101))~~ (103) "REGULATORY AUTHORITY" means the local, state, or federal enforcement body or authorized representative having jurisdiction over the FOOD ESTABLISHMENT. The LOCAL BOARD OF HEALTH, acting through the LOCAL HEALTH OFFICER, is the REGULATORY AUTHORITY for the activity of a FOOD ESTABLISHMENT, except as otherwise provided by LAW.

~~((102))~~ (104) "REMINDER" means a written statement concerning the health RISK of consuming animal FOODS raw, undercooked, or without otherwise being processed to eliminate pathogens.

~~((103))~~ (105) "RESERVICE" means the transfer of FOOD that is unused and returned by a CONSUMER after being served or sold and in the possession of the CONSUMER, to another person. RESERVICE does not include FOOD displayed on a self-service operation as described in WAC 246-215-03369.

~~((104))~~ (106) "RESTRICT" means to limit the activities of a FOOD EMPLOYEE so that there is no RISK of transmitting a disease that is transmissible through FOOD and the FOOD EMPLOYEE does not work with exposed FOOD, clean EQUIPMENT, UTENSILS, LINENS~~((; and))~~, unwrapped SINGLE-SERVICE ARTICLES, or unwrapped SINGLE-USE ARTICLES.

~~((105))~~ (107) "RESTRICTED EGG" means any check, dirty EGG, incubator reject, inedible, leaker, or loss as defined in 9 C.F.R. 590.

~~((106))~~ (108) "RESTRICTED USE PESTICIDE" means a pesticide product that contains the active ingredients specified in 40 C.F.R. 152.175 Pesticides Classified for Restricted Use, and that is limited to use by or under the direct supervision of a certified ~~((operator))~~ applicator.

~~((107))~~ (109) "RISK" means the likelihood that an adverse health effect will occur within a population as a result of a HAZARD in a FOOD.

~~((108))~~ (110) "SAFE MATERIAL" means:

(a) An article manufactured from or composed of materials that might not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any FOOD;

(b) An ADDITIVE that is used as specified in Section 409 of the Federal Food, Drug, and Cosmetic Act; or

(c) Other materials that are not ADDITIVES and that are used in conformity with applicable regulations of the FDA.

~~((109))~~ (111) "SANITIZATION" means the application of cumulative heat or chemicals on cleaned FOOD-CONTACT SURFACES that, when evaluated for efficacy, is sufficient to yield a reduction of five logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

~~((110))~~ (112) "SEALED" means free of cracks or other openings that allow the entry or passage of moisture.

~~((111))~~ (113) "SERVICE ANIMAL" means any dog or miniature horse, meeting the requirements in RCW 49.60.040 that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability~~((; as specified in RCW 49.60.218.~~

~~((112))~~. The work or tasks performed by the service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing nonviolent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors.

The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks.

(114) "SERVICING AREA" means an operating base location to which a MOBILE FOOD UNIT or transportation vehicle returns regularly for such things as vehicle and EQUIPMENT cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding FOOD.

~~((113))~~ (115) "SEWAGE" means liquid waste containing animal or vegetable matter in suspension or solution and ~~((might))~~ may include liquids containing chemicals in solution.

~~((114))~~ (116) "SHELLFISH CONTROL AUTHORITY" means a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of MOLLUSCAN SHELLFISH harvesters and DEALERS for interstate commerce.

~~((115))~~ (117) "SHELLSTOCK" means raw, in-shell MOLLUSCAN SHELLFISH.

~~((116))~~ (118) "SHIGA TOXIN-PRODUCING *ESCHERICHIA COLI* (STEC)" means any *E. coli* capable of producing Shiga toxins (also called verocytotoxins) ~~((or "Shiga-like" toxins)). Examples of serotypes of STEC include both O157 and non-O157 *E. coli*. Also see ENTEROHEMORRHAGIC *ESCHERICHIA COLI*.~~

~~((117))~~. STEC infections can be asymptomatic or may result in a spectrum of illness ranging from mild nonbloody diarrhea, to hemorrhagic colitis (i.e., bloody diarrhea), to hemolytic uremic syndrome (HUS-a type of kidney failure). Examples include *E. coli* O157, *E. coli* O26, and *E. coli* O145.

(119) "SHUCKED SHELLFISH" means MOLLUSCAN SHELLFISH that have one or both shells removed.

~~((118))~~ (120) "SINGLE-SERVICE ARTICLES" means TABLEWARE, carry-out UTENSILS, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one-time, one-PERSON use after which they are intended for discard.

~~((119))~~ (121) "SINGLE-USE ARTICLES."

(a) SINGLE-USE ARTICLES means ~~((utensils))~~ UTENSILS and bulk FOOD containers designed and constructed to be used once and discarded.

(b) SINGLE-USE ARTICLES includes items such as wax paper, butcher paper, plastic wrap, formed aluminum FOOD containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under WAC 246-215-04100, 246-215-04200, and 246-215-04204 for multiuse UTENSILS.

~~((120))~~ (122) "SLACKING" means the process of moderating the temperature of a FOOD such as allowing a ~~((food))~~ FOOD to gradually increase from a temperature of -10°F (-23°C) to 25°F (-4°C) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen FOOD such as shrimp.

~~((121))~~ (123) "SMOOTH" means:

(a) A FOOD-CONTACT SURFACE having a surface free of pits and inclusions with a cleanability equal to or exceeding that of (100 grit) number three stainless steel;

(b) A nonFOOD-CONTACT SURFACE of EQUIPMENT having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and

(c) A floor, wall, or ceiling having an even or level surface with no roughness or projections that render it difficult to clean.

~~((122))~~ (124) "TABLEWARE" means eating, drinking, and serving UTENSILS for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.

~~((123))~~ (125) "TEMPERATURE MEASURING DEVICE" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of FOOD, air, or water.

~~((124))~~ (126) "TEMPORARY FOOD ESTABLISHMENT" means a FOOD ESTABLISHMENT:

(a) Operating at a fixed location, with a fixed menu, for not more than twenty-one consecutive days in conjunction with a single event or celebration, such as a fair or festival; or

(b) Operating not more than three days a week at a fixed location, with a fixed menu, in conjunction with an APPROVED, recurring, organized event, such as a farmers market.

~~((125))~~ (127) "TIME/TEMPERATURE CONTROL FOR SAFETY FOOD" (TCS)(formerly "potentially hazardous food" (PHF)).

(a) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD means a FOOD that requires time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

(b) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD includes:

(i) An animal FOOD that is raw or heat-treated; a plant FOOD that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, fresh herb-in-oil mixtures, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and

(ii) Except as specified in subsection (3)(d) of this definition, a FOOD that because of the interaction of its  $A_w$  and pH values is designated as product assessment required (PA) in Table A or B of this definition;

**Table A. Interaction of pH and  $A_w$  for control of spores in FOOD heat-treated to destroy vegetative cells and subsequently**

**PACKAGED**

<u><math>A_w</math> values</u>	<u>pH: 4.6 or less</u>	<u>pH: &gt;4.6 - 5.6</u>	<u>pH: &gt;5.6</u>
<u>&lt;0.92</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>
<u>≥0.92 - 0.95</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>PA</u>
<u>≥0.95</u>	<u>non-TCS FOOD</u>	<u>PA</u>	<u>PA</u>

**Table B. Interaction of pH and  $A_w$  for control of vegetative cells and spores in FOOD not heat-treated or heat-treated but not PACKAGED**

<u><math>A_w</math> values</u>	<u>pH: &lt;4.2</u>	<u>pH: 4.2 - 4.6</u>	<u>pH: &gt;4.6 - 5.0</u>	<u>pH: &gt;5.0</u>
<u>&lt;0.88</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>
<u>0.88 - 0.90</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>PA</u>
<u>&gt;0.90 - 0.92</u>	<u>non-TCS FOOD</u>	<u>non-TCS FOOD</u>	<u>PA</u>	<u>PA</u>
<u>&gt;0.92</u>	<u>non-TCS FOOD</u>	<u>PA</u>	<u>PA</u>	<u>PA</u>

(c) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD does not include:

(i) An air-cooled hard-boiled EGG with shell intact, or an EGG with shell intact that is not hard boiled, but has been pasteurized to destroy all viable Salmonellae;

(ii) A FOOD in an unopened HERMETICALLY SEALED CONTAINER that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution;

(iii) A FOOD that because of its pH or  $A_w$  value, or interaction of  $A_w$  and pH values, is designated as a non-TCS FOOD in Table A or B of this subsection;

(iv) A FOOD that is designated as product assessment required (PA) in Table A or B of this subsection and has undergone a product assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that FOOD is precluded due to:

(A) Intrinsic factors including added or natural characteristics of the FOOD such as preservatives, antimicrobials, humectants, acidulants or nutrients;

(B) Extrinsic factors including environmental or operational factors that affect the FOOD such as packaging, modified atmosphere such as REDUCED OXYGEN PACKAGING, shelf life and use, or temperature range of storage and use; or

(C) A combination of intrinsic and extrinsic factors; or

(v) A FOOD that does not support the growth or toxic formation of pathogenic microorganisms in accordance with (c)(i) through (iv) of this subsection even though the FOOD might contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

(128) "USDA" means the United States Department of Agriculture.

((+26)) (129) "UTENSIL" means a FOOD-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of FOOD, such as KITCHENWARE or TABLEWARE that is multiuse, SINGLE-SERVICE, or SINGLE-USE; gloves used in contact with FOOD; temperature sensing probes of FOOD TEMPERATURE MEASURING DEVICES; and probe-type price or identification tags used in contact with FOOD.

((+27)) (130) "VARIANCE" means a written document issued by the REGULATORY AUTHORITY that authorizes a modification or waiver of one or more requirements of this chapter if, in the opinion of the REGULATORY AUTHORITY, a health HAZARD or nuisance will not result from the modification or waiver.

((+28)) (131) "VENDING MACHINE" means a self-service device that, upon insertion of a coin, paper currency,

token, card, or key, or by electronic transaction or ((by)) optional manual operation, dispenses unit servings of FOOD in bulk or in ((packages)) PACKAGES without the necessity of replenishing the device between each vending operation.

((+29)) (132) "VENDING MACHINE LOCATION" means the room, enclosure, space, or area where one or more VENDING MACHINES are installed and operated and includes the storage areas and areas on the PREMISES that are used to service and maintain the VENDING MACHINES.

((+30)) (133) "WAREWASHING" means the cleaning and SANITIZING of UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT.

((+31)) (134) "WHOLE-MUSCLE, INTACT BEEF" means whole muscle beef that is not INJECTED, MECHANICALLY TENDERIZED, reconstructed, or scored and marinated, from which beef steaks may be cut.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02100 Responsibility—Assignment** ((2009)) FDA Food Code 2-101.11). (1) Except as specified in subsection (2) of this section, the PERMIT HOLDER shall be the PERSON IN CHARGE or shall designate a PERSON IN CHARGE and shall ensure that a PERSON IN CHARGE is present at the FOOD ESTABLISHMENT during all hours of operation.

(2) In a FOOD ESTABLISHMENT with two or more separately PERMITTED departments that are the legal responsibility of the same PERMIT HOLDER and that are located on the same PREMISES, the PERMIT HOLDER may, during specific time periods when FOOD is not being prepared, PACKAGED, or served, designate a single PERSON IN CHARGE who is present on the PREMISES during all hours of operation, and who is responsible for each separately PERMITTED FOOD ESTABLISHMENT on the PREMISES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02105 Demonstration of knowledge** ((2009)) FDA Food Code 2-102.11). Based on the RISKS of foodborne illness inherent to the FOOD operation, during inspections and upon request, the PERSON IN CHARGE shall demonstrate to the REGULATORY AUTHORITY knowledge of foodborne disease prevention, application of the HAZARD analysis and CRITICAL CONTROL POINT principles, and the requirements of this chapter. The PERSON IN CHARGE shall demonstrate this knowledge by:

(1) Complying with this chapter by having no violations of RED HIGH RISK FACTORS during the current inspection;



(2) Being a ~~((certified food protection manager))~~ CERTIFIED FOOD PROTECTION MANAGER who has shown proficiency of required information through passing a test that is part of an ~~((accredited program))~~ ACCREDITED PROGRAM; or

(3) Responding correctly to the inspector's questions as they relate to the specific FOOD operation. The areas of knowledge include:

(a) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a FOOD EMPLOYEE;

(b) Explaining the responsibility of the PERSON IN CHARGE for preventing the transmission of foodborne disease by a FOOD EMPLOYEE who has a disease or medical condition that might cause foodborne disease;

(c) Describing the symptoms associated with the diseases that are transmissible through FOOD;

(d) Explaining the significance of the relationship between maintaining the time and temperature of ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD and the prevention of foodborne illness;

(e) Explaining the ~~((hazards))~~ HAZARDS involved in the consumption of raw or undercooked MEAT, POULTRY, EGGS, and FISH;

(f) Stating the required FOOD temperatures and times for safe cooking of ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD including MEAT, POULTRY, EGGS, and FISH;

(g) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;

(h) Describing the relationship between the prevention of foodborne illness and the management and control of the following:

(i) Cross contamination;

(ii) Hand contact with READY-TO-EAT FOODS;

(iii) Handwashing; and

(iv) Maintaining the FOOD ESTABLISHMENT in a clean condition and in good repair;

(i) Describing FOODS identified as MAJOR FOOD ALLERGENS and the symptoms that a MAJOR FOOD ALLERGEN could cause in a sensitive individual who has an allergic reaction;

(j) Explaining the relationship between FOOD safety and providing EQUIPMENT that is:

(i) Sufficient in number and capacity; and

(ii) Properly designed, constructed, located, installed, operated, maintained, and cleaned;

(k) Explaining correct procedures for cleaning and SANITIZING UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT;

(l) Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;

(m) Identifying POISONOUS OR TOXIC MATERIALS in the FOOD ESTABLISHMENT and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to LAW;

(n) Identifying CRITICAL CONTROL POINTS in the operation from purchasing through sale or service that when not

controlled can contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this chapter;

(o) Explaining the details of how the PERSON IN CHARGE and FOOD EMPLOYEES comply with the HACCP PLAN if a plan is required by the LAW, this chapter, or an agreement between the REGULATORY AUTHORITY and the FOOD ESTABLISHMENT;

(p) Explaining the responsibilities, rights, and authorities assigned by this chapter to the:

(i) FOOD EMPLOYEE;

(ii) CONDITIONAL EMPLOYEE;

(iii) PERSON IN CHARGE; ~~((and))~~

(iv) REGULATORY AUTHORITY; and

(q) Explaining how the PERSON IN CHARGE, FOOD EMPLOYEES and CONDITIONAL EMPLOYEES comply with reporting responsibilities and EXCLUSION or RESTRICTION of FOOD EMPLOYEES.

#### NEW SECTION

**WAC 246-215-02107 Certified food protection manager (FDA Food Code 2-102.12).** (1) By July 1, 2022, FOOD ESTABLISHMENTS must have at least one CERTIFIED FOOD PROTECTION MANAGER as evidenced by a valid certificate available from an ACCREDITED PROGRAM. The certificate must be available upon request. If the CERTIFIED FOOD PROTECTION MANAGER leaves employment for any reason, the FOOD ESTABLISHMENT must have another CERTIFIED FOOD PROTECTION MANAGER on staff within sixty days.

(2) This section does not apply to certain types of FOOD ESTABLISHMENTS deemed by the REGULATORY AUTHORITY to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of FOOD preparation.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02110 Duties—Food protection manager certification ~~((2009))~~ FDA Food Code 2-102.20.** ~~((A PERSON IN CHARGE who is certified by a food protection manager certification program is deemed to comply with WAC 246-215-02105(2). The certification program must be evaluated and listed by a Conference for Food Protection recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs.))~~ CERTIFIED FOOD PROTECTION MANAGER responsibilities include training and implementing a program of food protection and education for each PERSON IN CHARGE, so each PERSON IN CHARGE is able to successfully demonstrate knowledge described in WAC 246-215-02105, and fulfill the duties as described in WAC 246-215-02115 to maintain ACTIVE MANAGERIAL CONTROL.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02115 Duties—Person in charge ~~((2009))~~ FDA Food Code 2-103.11.** The PERSON IN CHARGE shall ensure that:

(1) FOOD ESTABLISHMENT operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under WAC 246-215-06290;

(2) Persons unnecessary to the FOOD ESTABLISHMENT operation are not allowed in the FOOD preparation, FOOD storage, or WAREWASHING areas, except that brief visits and tours may be authorized by the PERSON IN CHARGE if steps are taken to ensure that exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES are protected from contamination;

(3) EMPLOYEES and other persons such as delivery and maintenance persons and pesticide applicators entering the FOOD preparation, FOOD storage, and WAREWASHING areas comply with this chapter;

(4) EMPLOYEES are effectively cleaning their hands by routinely monitoring the EMPLOYEES' handwashing;

(5) EMPLOYEES are visibly observing FOODS as they are received to determine that they are from APPROVED sources, delivered at the required temperatures, protected from contamination, unADULTERATED, and accurately presented, by routinely monitoring the EMPLOYEES' observations and periodically evaluating FOODS upon their receipt;

(6) EMPLOYEES are verifying that FOODS delivered to the FOOD ESTABLISHMENT during nonoperating hours are from APPROVED sources and are placed into appropriate storage locations such that they are maintained at the required temperatures, protected from contamination, unADULTERATED and accurately presented;

(7) EMPLOYEES are properly cooking (~~POTENTIALLY HAZARDOUS~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD, being particularly careful in cooking those FOODS known to cause severe foodborne illness and death, such as EGGS and COMMINUTED MEATS, through daily oversight of the EMPLOYEES' routine monitoring of the cooking temperatures using appropriate TEMPERATURE MEASURING DEVICES properly scaled and calibrated as specified under WAC 246-215-04220 and 246-215-04580(2);

(~~7~~) (8) EMPLOYEES are using proper methods to rapidly cool (~~POTENTIALLY HAZARDOUS~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOODS that are not held hot or are not for consumption within four hours, through daily oversight of the EMPLOYEES' routine monitoring of FOOD temperatures during cooling;

(~~8~~) (9) EMPLOYEES are properly maintaining the temperatures of the TIME/TEMPERATURE CONTROL FOR SAFETY FOOD during hot and cold holding through daily oversight of the EMPLOYEES' routine monitoring of FOOD temperatures;

(10) CONSUMERS who order raw or partially cooked READY-TO-EAT FOODS of animal origin are informed as specified under WAC 246-215-03620 that the FOOD is not cooked sufficiently to ensure its safety;

(~~9~~) (11) EMPLOYEES are properly SANITIZING cleaned multiuse EQUIPMENT and UTENSILS before they are reused, through routine monitoring of solution temperature and exposure time for hot water SANITIZING, and chemical concentration, pH, temperature, and exposure time for chemical SANITIZING;

(~~10~~) (12) CONSUMERS are notified that clean TABLEWARE is to be used when they return to self-service areas such

as salad bars and buffets as specified under WAC 246-215-03345;

(~~11~~) (13) Except when approval is obtained from the REGULATORY AUTHORITY as specified under WAC 246-215-03300(~~4~~) (5), EMPLOYEES are preventing cross-contamination of READY-TO-EAT FOOD with bare hands by properly using suitable UTENSILS such as deli tissue, spatulas, tongs, SINGLE-USE gloves, or dispensing EQUIPMENT;

(~~12~~) (14) EMPLOYEES are properly trained in FOOD safety, including FOOD allergy awareness, as it relates to their assigned duties; (~~and~~

(~~13~~) (15) FOOD EMPLOYEES and CONDITIONAL EMPLOYEES are informed in a verifiable manner of their responsibility to report in accordance with LAW, to the PERSON IN CHARGE, information about their health and activities as they relate to diseases that are transmissible through FOOD, as specified under WAC 246-215-02205; and

(16) Written procedures and plans, such as a clean-up plan for vomit and diarrhea, where specified by this chapter and as developed by the FOOD ESTABLISHMENT to ensure ACTIVE MANAGERIAL CONTROL, are maintained and implemented as required.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02200 Employee health—Reporting policy.** The PERMIT HOLDER shall require FOOD EMPLOYEES and CONDITIONAL EMPLOYEES to report to the PERSON IN CHARGE information about their health and activities as they relate to diseases that are transmissible through FOOD. A FOOD EMPLOYEE or CONDITIONAL EMPLOYEE shall report the information in a manner that allows the PERSON IN CHARGE to reduce the RISK of foodborne disease transmission, including providing necessary additional information, such as the date of onset of illness symptoms, diagnosis, or exposure to illness.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02205 Employee health—Reportable history of illness.** (1) FOOD EMPLOYEES and CONDITIONAL EMPLOYEES shall report to the PERSON IN CHARGE if they:

(a) Have diarrhea, vomiting, sore throat with fever, or jaundice (yellow skin or eyes), except as specified under WAC 246-215-02235;

(b) Have a lesion containing pus such as a boil or infected wound that is open or draining and is:

(i) On the hands or wrist;

(ii) On exposed portions of the arms; or

(iii) On other parts of the body, unless the lesion is covered by a dry, durable, tight-fitting bandage; or

(c) Have an illness diagnosed by a HEALTH PRACTITIONER as due to an infection with:

(i) Norovirus;

(ii) Hepatitis A virus;

(~~(ii) Salmonella Typhi (Typhoid Fever);~~

(~~iii) Shigella; or~~

(~~iv) Enterohemorrhagic or~~) (iii) Shigella spp.;

(~~iv) SHIGA TOXIN-PRODUCING ESCHERICHIA COLI;~~

(v) *Salmonella* Typhi (Typhoid fever); or

(vi) *Salmonella* (nontyphoidal).

(2) In addition to the reporting in subsection (1) of this section, FOOD EMPLOYEES and CONDITIONAL EMPLOYEES in a FOOD ESTABLISHMENT serving a HIGHLY SUSCEPTIBLE POPULATION shall report to the PERSON IN CHARGE if they:

(a) ~~((Have an illness diagnosed by a HEALTH PRACTITIONER as due to an infection with Norovirus or *Salmonella* other than *Salmonella* Typhi;~~

~~(b))~~ Have consumed or prepared FOOD implicated in a CONFIRMED DISEASE OUTBREAK;

~~((c))~~ (b) Have attended or worked in a setting where there is a CONFIRMED DISEASE OUTBREAK;

~~((d))~~ (c) Live in the same household as someone who works at or attended a setting where there is a CONFIRMED DISEASE OUTBREAK; or

~~((e))~~ (d) Live in the same household as or have consumed FOOD prepared by a PERSON who is infected or ill with:

(i) ~~((Enterohemorrhagic or))~~ SHIGA TOXIN-PRODUCING *ESCHERICHIA COLI*;

(ii) *Shigella* spp.;

(iii) *Salmonella* Typhi; ~~((or))~~

(iv) Hepatitis A virus or jaundice; or

(v) *Norovirus*.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02210 Employee health—Prohibit a conditional employee from becoming a food employee.** The PERSON IN CHARGE shall ensure that a CONDITIONAL EMPLOYEE who exhibits or reports symptoms or a diagnosed disease as described in WAC 246-215-02205(1) ~~((or (2)(a)))~~ does not become a FOOD EMPLOYEE until they meet the requirements for the removal of RESTRICTION or EXCLUSION in WAC 246-215-02245 and 246-215-02250. A CONDITIONAL EMPLOYEE that reports a history of exposure to disease in WAC 246-215-02205 (2) ~~((b))~~ (a) through ~~((c))~~ (d) may not become a FOOD EMPLOYEE in a FOOD ESTABLISHMENT serving a HIGHLY SUSCEPTIBLE POPULATION until the requirements in WAC 246-215-02250 are met.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02220 Employee health—Conditions of exclusion.** Except as provided in WAC 246-215-02235, the PERSON IN CHARGE of a FOOD ESTABLISHMENT shall EXCLUDE any FOOD EMPLOYEE who is known to have:

(1) Diarrhea or vomiting;

(2) Jaundice;

(3) A diagnosed infection (symptomatic or ASYMPTOMATIC) with *Salmonella* Typhi, *Shigella*, ~~((Enterohemorrhagic or))~~ SHIGA TOXIN-PRODUCING *ESCHERICHIA COLI*, *Norovirus*, or hepatitis A virus;

(4) A sore throat with fever ~~((or a diagnosed infection with *Norovirus* or *Salmonella* other than *Salmonella* Typhi,))~~ and works in a FOOD ESTABLISHMENT serving a HIGHLY SUSCEPTIBLE POPULATION; or

(5) A previous infection with *Salmonella* Typhi within the past three months without having antibiotic therapy.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02225 Employee health—Conditions of restriction.** The PERSON IN CHARGE of a FOOD ESTABLISHMENT shall RESTRICT any FOOD EMPLOYEE who is known to have:

(1) A lesion that appears inflamed or contains pus and that is not covered;

(2) Exposure to foodborne pathogens as described in WAC 246-215-02205 (2) ~~((b))~~ (a) through ~~((c))~~ (d) and works in a FOOD ESTABLISHMENT serving a HIGHLY SUSCEPTIBLE POPULATION; or

(3) A sore throat with fever.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02235 Employee health—Other conditions.** A FOOD EMPLOYEE with a symptom of gastrointestinal illness, such as vomiting, diarrhea, or jaundice, may work in a FOOD ESTABLISHMENT without special RESTRICTION, provided that the FOOD EMPLOYEE furnishes written medical documentation from a HEALTH PRACTITIONER to the REGULATORY AUTHORITY ~~((from a HEALTH PRACTITIONER))~~ or PERSON-IN-CHARGE that the symptom is due to a medical condition not transmissible through FOOD, such as Crohn's disease, irritable bowel syndrome, ulcerative colitis, ~~((or))~~ hepatitis C, cancer or pregnancy.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02240 Employee health—Complying with ~~((LOCAL HEALTH OFFICER))~~ local health officer.** The PERSON IN CHARGE of a FOOD ESTABLISHMENT and FOOD EMPLOYEES shall comply with orders issued by the LOCAL HEALTH OFFICER for EXCLUDING EMPLOYEES from a FOOD ESTABLISHMENT or RESTRICTING EMPLOYEE activities due to a diagnosed or suspected infection by a disease agent that can be transmitted from a FOOD EMPLOYEE through FOOD until the LOCAL HEALTH OFFICER rescinds the order.

AMENDATORY SECTION (Amending WSR 15-05-014, filed 2/6/15, effective 3/9/15)

**WAC 246-215-02245 Employee health—Removal of exclusion or restriction based on diagnosis.** Except as specified under WAC 246-215-02250, the PERSON IN CHARGE shall obtain approval from the LOCAL HEALTH OFFICER before reinstating a FOOD EMPLOYEE who was RESTRICTED or EXCLUDED based on ~~((~~

~~((1) *The Control of Communicable Diseases Manual*, 20th edition, published by the American Public Health Association; or~~

~~((2) Other))~~ measures the LOCAL HEALTH OFFICER deems necessary ~~((based on his or her))~~ using professional judgment, current standards of practice, and the best available medical and scientific information.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02250 Employee health—Removal of exclusion or restriction based on symptoms.** The PERSON IN CHARGE shall adhere to the following conditions when reinstating a FOOD EMPLOYEE who was RESTRICTED or EXCLUDED due to:

- (1) Diarrhea or vomiting: Remove EXCLUSION when ASYMPTOMATIC for more than twenty-four hours;
- (2) Jaundice: Remove EXCLUSION with approval of the LOCAL HEALTH OFFICER and REGULATORY AUTHORITY if not the same agency;
- (3) Sore throat with fever: Remove EXCLUSION or RESTRICTION when ASYMPTOMATIC; or
- (4) Uncovered infected wound or ~~((pustular))~~ pus-filled boil: Remove RESTRICTION when skin, wound, or ~~((pustular))~~ pus-filled boil is properly protected by an impermeable cover and, if on the hand or wrist, with a SINGLE-USE glove.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02255 Employee health—Removal of exclusion or restriction based on exposure.** The PERSON IN CHARGE of a facility that serves a HIGHLY SUSCEPTIBLE POPULATION shall ~~((adhere to the following conditions when))~~ get approval from the LOCAL HEALTH OFFICER and the REGULATORY AUTHORITY before reinstating a FOOD EMPLOYEE who was RESTRICTED due ((to:

- ~~(1) Exposure to Norovirus, Shigella spp., or Enterohemorrhagic or SHIGA TOXIN PRODUCING ESCHERICHIA COLI: Remove RESTRICTION when more than three days since potential exposure or more than three days since household contact became ASYMPTOMATIC;~~
- ~~(2) Exposure to Salmonella Typhi: Remove RESTRICTION when more than fourteen days since the last potential exposure or more than fourteen days since household contact became ASYMPTOMATIC;~~
- ~~(3) Exposure to hepatitis A: Remove RESTRICTION when:~~
  - ~~(a) The FOOD EMPLOYEE is immune to hepatitis A virus infection because of prior illness from hepatitis A, vaccination, or IgG administration; or~~
  - ~~(b) More than thirty days have passed since the last day the FOOD EMPLOYEE was potentially exposed or since the FOOD EMPLOYEE'S household contact became jaundiced)) to any condition under WAC 246-215-02205(2).~~

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02300 Hands and arms—Clean condition ~~((2009))~~ FDA Food Code 2-301.11.** FOOD EMPLOYEES shall keep their hands and exposed portions of their arms clean.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02305 Hands and arms—Cleaning procedure ~~((2009))~~ FDA Food Code 2-301.12.** (1) Except

as specified in subsection (4) of this section, FOOD EMPLOYEES shall clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands or arms for at least 20 seconds, using a cleaning compound in a HANDWASHING SINK that is equipped as specified under WAC 246-215-05210 and Part 6, Subpart C of this chapter.

(2) FOOD EMPLOYEES shall use the following cleaning procedure in the order stated to clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands and arms:

- (a) Rinse under clean, running warm water;
- (b) Apply an amount of cleaning compound recommended by the cleaning compound manufacturer;
- (c) Rub together vigorously for at least ten to fifteen seconds while:
  - (i) Paying particular attention to removing soil from underneath the fingernails during the cleaning procedure; and
  - (ii) Creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, finger tips, and areas between the fingers;
- (d) Thoroughly rinse under clean, running warm water; and
- (e) Immediately follow the cleaning procedure with thorough drying using a method as specified under WAC 246-215-06310.

(3) To avoid recontaminating their hands or surrogate prosthetic devices, FOOD EMPLOYEES may use disposable paper towels or similar clean barriers when touching surfaces such as manually operated faucet handles on a HANDWASHING SINK or the handle of a restroom door.

(4) If APPROVED and capable of removing the types of soils encountered in the FOOD operations involved, an automatic handwashing facility may be used by FOOD EMPLOYEES to clean their hands or surrogate prosthetic devices.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02310 Hands and arms—When to wash ~~((2009))~~ FDA Food Code 2-301.14.** FOOD EMPLOYEES shall clean their hands and exposed portions of their arms as specified under WAC 246-215-02305 immediately before engaging in FOOD preparation including working with exposed FOOD, clean EQUIPMENT and UTENSILS, and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES and:

- (1) After touching bare human body parts other than clean hands and clean, exposed portions of arms;
- (2) After using the toilet room;
- (3) After caring for or handling SERVICE ANIMALS or aquatic animals as specified under WAC 246-215-02415(2);
- (4) Except as specified under WAC 246-215-02400(2), after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
- (5) After handling soiled EQUIPMENT or UTENSILS;
- (6) During FOOD preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;
- (7) When switching between working with raw FOOD and working with READY-TO-EAT FOOD;

(8) Before donning gloves for working with READY-TO-EAT FOOD unless a glove change is not the result of contamination; and

(9) After engaging in other activities that contaminate the hands or gloves.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02315 Hands and arms—Where to wash ~~((2009))~~ FDA Food Code 2-301.15.** FOOD EMPLOYEES shall clean their hands in a HANDWASHING SINK or APPROVED automatic handwashing facility and may not clean their hands in a sink used for FOOD preparation or WAREWASHING, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02320 Hands and arms—Hand antiseptics ~~((2009))~~ FDA Food Code 2-301.16.** (1) A hand antiseptic used as a topical application, hand antiseptic solution used as a hand dip, or a hand antiseptic soap must:

(a) Comply with one of the following:

(i) Be an APPROVED drug that is listed in the FDA publication *Approved Drug Products with Therapeutic Equivalence Evaluations* as an APPROVED drug based on safety and effectiveness; or

(ii) Have active antimicrobial ingredients that are listed in the FDA monograph ~~((or))~~ for OTC Health-Care Antiseptic Drug Products as an antiseptic handwash; and

(b) ~~((Comply))~~ Consist only of components which the intended use of each complies with one of the following:

(i) ~~((Have components that are exempted from the requirement of being listed in federal FOOD ADDITIVE regulations as specified in))~~ A threshold of regulation exemption under 21 C.F.R. 170.39 - Threshold of Regulation for Substances Used in ~~((FOOD))~~ Food Contact Articles; or

(ii) ~~((Comply with and be listed in:~~

~~((A))~~ 21 C.F.R. 178 - Indirect ~~((FOOD ADDITIVES))~~ Food Additives: Adjuvants, Production Aids, and ~~((SANITIZERS))~~ Sanitizers as regulated for use as a FOOD ADDITIVE with conditions of safe use; or

~~((B))~~ (iii) A determination of generally recognized as safe (GRAS). Partial listings of substances with FOOD uses that are GRAS may be found in 21 C.F.R. 182 - Substances Generally Recognized as Safe, 21 C.F.R. 184 - Direct Food Substances Affirmed as Generally Recognized as Safe, or 21 C.F.R. 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe for use in contact with FOOD, and in FDA's Inventory of GRAS Notices; or

(iv) A prior sanction listed under 21 C.F.R. 181 - Prior Sanctioned Food ingredients; or

(v) A FOOD Contact Notification that is effective; and

(c) Be applied only to hands that are cleaned as specified under WAC 246-215-02305.

(2) If a hand antiseptic or a hand antiseptic solution used as a hand dip does not meet the requirements specified under subsection (1)(b) of this section, use must be:

(a) Followed by thorough hand rinsing in clean water before hand contact with FOOD or by the use of gloves; or

(b) Limited to situations that involve no direct contact with FOOD by the bare hands.

(3) A hand antiseptic solution used as a hand dip must be maintained clean and at a strength equivalent to at least 100 MG/L chlorine.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02325 Fingernails—Maintenance ~~((2009))~~ FDA Food Code 2-302.11.** (1) FOOD EMPLOYEES shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(2) Unless wearing intact gloves in good repair, a FOOD EMPLOYEE may not wear fingernail polish or artificial fingernails while preparing FOOD.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02330 Jewelry—Prohibition ~~((2009))~~ FDA Food Code 2-303.11.** Except for a single ring or wedding ring set covered by a glove in good repair, FOOD EMPLOYEES may not wear jewelry including medical information jewelry on their arms or hands while preparing FOOD.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02335 Outer clothing—Clean condition ~~((2009))~~ 17 FDA Food Code 2-304.11.** FOOD EMPLOYEES shall wear clean outer clothing to prevent contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02400 Food contamination prevention—Eating, drinking, or using tobacco ~~((2009))~~ FDA Food Code 2-401.11.** (1) Except as specified in subsection (2) of this section, an EMPLOYEE may only eat, drink, or use any form of tobacco only in designated areas where ~~((the contamination of))~~ exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES; or other items needing protection cannot ~~((result))~~ be contaminated.

(2) A FOOD EMPLOYEE may drink from a closed BEVERAGE container if the container is handled to prevent contamination of:

(a) The EMPLOYEE's hands;

(b) The container; and

(c) Exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02405 Food contamination prevention—Discharges from the eyes, nose, and mouth ((2009) FDA Food Code 2-401.12).** FOOD EMPLOYEES experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; or unwrapped SINGLE-SERVICE or SINGLE-USE ARTICLES.

NEW SECTION

**WAC 246-215-02406 Food contamination prevention—Use of bandages, finger cots, or finger stalls (FDA Food Code 2-401.13).** If a FOOD EMPLOYEE working with exposed FOOD uses an impermeable cover such as a bandage, finger cot or finger stall located on the wrist, hand or finger, the FOOD EMPLOYEE shall cover the area with a single-use glove.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02410 Hair restraints—Effectiveness ((2009) FDA Food Code 2-402.11).** (1) Except as provided in subsection (2) of this section, FOOD EMPLOYEES shall wear short hair or use hair restraints such as hats, hair coverings or nets, rubber bands, or hair clips to keep their hair off the face and behind their shoulders, and clothing that covers body hair to protect exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

(2) This section does not apply to FOOD EMPLOYEES such as counter staff who only serve BEVERAGES and wrapped or PACKAGED FOODS, hostesses, and wait staff if they present a minimal RISK of contaminating exposed FOOD, clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-02415 Animals—Handling prohibition ((2009) FDA Food Code 2-403.11).** (1) Except as specified in subsection (2) of this section, FOOD EMPLOYEES may not care for or handle animals that may be present such as patrol dogs, SERVICE ANIMALS, or pets that are allowed as specified under WAC 246-215-06570 (2)(b) through (e).

(2) FOOD EMPLOYEES with SERVICE ANIMALS may handle or care for their SERVICE ANIMALS and FOOD EMPLOYEES may handle or care for FISH in aquariums or MOLLUSCAN SHELLFISH or crustacean in display tanks if they wash their hands as specified under WAC 246-215-02305 and ((246-215-02315)) 246-215-02310(3).

NEW SECTION

**WAC 246-215-02500 Responding to contamination events—Clean-up of vomiting and diarrheal events (FDA**

**Food Code 2-501.11).** (1) A FOOD ESTABLISHMENT shall have written procedures for EMPLOYEES to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the FOOD ESTABLISHMENT.

(2) The procedures shall address the specific actions EMPLOYEES must take to minimize the spread of contamination and the exposure of EMPLOYEES, consumers, FOOD, and surfaces to vomitus or fecal matter.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03100 Condition—Safe, unadulterated, and honestly presented ((2009) FDA Food Code 3-101.11).** FOOD must be safe, UNADULTERATED, and, as specified under WAC 246-215-03605, honestly presented.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03200 Sources—Compliance with food law ((2009) FDA Food Code 3-201.11).** (1) FOOD must be obtained from sources that comply with LAW.

(2) FOOD prepared in a private home may not be used or offered for human consumption in a FOOD ESTABLISHMENT except as otherwise provided in this chapter.

(3) PACKAGED FOOD must be labeled as specified under LAW, including chapter 69.04 RCW; 21 C.F.R. 101 Food Labeling; 9 C.F.R. 317 Labeling, Marking Devices, and Containers; 9 C.F.R. 381 Subpart N Labeling and Containers; and as specified under WAC 246-215-03265 and 246-215-03270.

(4) FISH, other than those specified under WAC 246-215-03425 (2)(a) through (f), that are intended for consumption in raw or undercooked form and allowed as specified under WAC 246-215-03400(4) may be offered for sale or service if they are obtained from a supplier that freezes the FISH as specified under WAC 246-215-03425; or if they are frozen on the PREMISES as specified under WAC 246-215-03425 and records are retained as specified under WAC 246-215-03430.

(5) WHOLE-MUSCLE, INTACT BEEF steaks that are intended for consumption in an undercooked form without a CONSUMER advisory as specified under WAC 246-215-03400 (3) must be:

(a) Obtained from a FOOD PROCESSING PLANT that, upon request by the purchaser, PACKAGES the steaks and labels them((;)) to indicate that the steaks meet the definition of WHOLE-MUSCLE, INTACT BEEF; or

(b) Deemed acceptable by the REGULATORY AUTHORITY based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of WHOLE-MUSCLE, INTACT BEEF; and

(c) If individually cut in a FOOD ESTABLISHMENT:

(i) Cut from WHOLE-MUSCLE, INTACT BEEF that is labeled by a FOOD PROCESSING PLANT as specified in (a) of this subsection or identified as specified in (b) of this subsection;

(ii) Prepared so they remain intact; and

(iii) If PACKAGED for undercooking in a FOOD ESTABLISHMENT, labeled as specified in (a) of this subsection or identified as specified in (b) of this subsection.

(6) MEAT and POULTRY that is not a READY-TO-EAT FOOD and is in a PACKAGED form when it is offered for sale or otherwise offered for consumption, must be labeled to include safe handling instructions as specified in LAW, including 9 C.F.R. 317.2(I) and 9 C.F.R. 381.125(b).

(7) EGGS that have not been specifically treated to destroy all viable *Salmonellae* must be labeled to include safe handling instructions as specified in LAW, including 21 C.F.R. 101.17(h).

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03205 Sources—Food in a hermetically sealed container ((2009) FDA Food Code 3-201.12).** FOOD in a HERMETICALLY SEALED CONTAINER must be obtained from a FOOD PROCESSING PLANT that is regulated by the FOOD regulatory agency that has jurisdiction over the plant.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03210 Sources—Fluid milk and milk products ((2009) FDA Food Code 3-201.13).** Fluid milk and milk products must be obtained from sources that comply with GRADE A STANDARDS as specified in LAW.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03215 Sources—Fish ((2009) FDA Food Code 3-201.14).** (1) FISH that are received for sale or service must be:

- (a) Commercially and legally caught or harvested; or
- (b) APPROVED for sale or service.

(2) MOLLUSCAN SHELLFISH that are recreationally caught may not be received for sale or service.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03220 Sources—Molluscan shellfish ((2009) FDA Food Code 3-201.15).** (1) MOLLUSCAN SHELLFISH must be obtained from sources according to LAW and the requirements specified in the United States Department of Health and Human Services, Public Health Service, FDA, National Shellfish Sanitation Program Guide for the Control of ((MOLLUSCAN SHELLFISH)) Molluscan Shellfish.

(2) MOLLUSCAN SHELLFISH received in interstate commerce must be from sources that are listed in the Interstate Certified Shellfish Shippers List.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03225 Sources—Wild mushrooms.** (1) The PERMIT HOLDER shall obtain wild harvested mushrooms only from sources in Washington, Oregon, Idaho, California, Montana, and British Columbia where each mushroom is individually identified in the fresh state.

(2) Only the following wild harvested mushroom species may be offered for sale or service in a FOOD ESTABLISHMENT:

- (a) Hedgehog (*Hydnum repandum*, *H. umbilicatum*);
- (b) Porcini/King Bolete (*Boletus edulis*);
- (c) Lobster (*Hypomyces lactifluorum* growing on *Russula brevipes*);
- (d) Pacific Golden Chanterelle (*Cantharellus formosus*, *C. cascadenis*, *C. cibarius* var *roseocanus*);
- (e) White Chanterelle (*Cantharellus subalbidus*);
- (f) Yellow Foot/Winter Chanterelle (*Craterellus tubaeformis*);
- (g) Black Trumpet (*Craterellus cornucopioides*);
- (h) Saffron milk cap (*Lactarius deliciosus*);
- (i) Coral Hydnum/Bears Tooth (*Hericium coralloides*, *H. abietis*, *H. americanum*);
- (j) Oyster (*Pleurotus populinus*, *P. pulmonarius*, *P. ostreus*);
- (k) Cauliflower mushroom (*Sparassiss crispis*);
- (l) Oregon Black Truffle (*Leucangium carthusianum*);
- (m) Oregon White Truffle (*Tuber gibbosum*, *T. oregonense*);

(n) Blue Chanterelle (*Polyozellus multiplex*);

(o) *Morchella* species including, but not limited to, Black Morels (*Morchella elata*) and Blonde Morels (*Morchella esculenta*);

(p) Matsutake/Japanese Pine Mushroom (*Tricholoma magnivelare*).

(3) Wild harvested mushrooms prepared for IMMEDIATE SERVICE by a FOOD ESTABLISHMENT must be cooked to 135°F except for those sold for home use from grocery or farmer's markets.

(4) The PERMIT HOLDER shall keep written documentation supplied by the mushroom identifier for any wild harvested mushrooms offered for sale or service on file for ninety days after receipt. The documentation must include:

- (a) The common name and Latin binomial name of the mushroom;
- (b) The name, original signature, business name, mailing address, email and telephone number of the mushroom identifier;
- (c) The province, state, and county or counties where harvested;
- (d) The date or dates of harvest;
- (e) The date of sale to the FOOD ESTABLISHMENT; and
- (f) The amount of product by weight.

(5) This section does not apply to dried or fresh mushrooms that are grown, processed or PACKAGED in a FOOD PROCESSING PLANT regulated by a state or federal FOOD REGULATORY AUTHORITY.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03230 Sources—Game animals ((2009) FDA Food Code 3-201.17).** (1) If GAME ANIMALS are received for sale or service they must be:

- (a) Commercially raised for FOOD and:
  - (i) Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction; or

(ii) Under a routine inspection program conducted by a regulatory agency other than the agency that has animal health jurisdiction; and

(iii) Raised, slaughtered, and processed according to:

(A) LAWS governing MEAT and POULTRY as determined by the agency that has animal health jurisdiction and the agency that conducts the inspection program; and

(B) Requirements which are developed by the agency that has animal health jurisdiction and the agency that conducts the inspection program with consideration of factors such as the need for antemortem and postmortem examination by an APPROVED veterinarian or veterinarian's designee; or

(b) Under a voluntary inspection program administered by the ~~((USDA))~~ USDA for GAME ANIMALS such as exotic animals (reindeer, elk, deer, antelope, water buffalo, or bison) that are "inspected and APPROVED" in accordance with 9 C.F.R. 352 Exotic Animals and Horses; Voluntary Inspection ~~((of))~~ or rabbits that are "inspected and certified" in accordance with 9 C.F.R. 354 Voluntary Inspection of Rabbits and Edible Products Thereof.

(2) A GAME ANIMAL may not be received for sale or service if it is a species of wildlife that is listed in 50 C.F.R. 17 Endangered and Threatened Wildlife and Plants.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03235 Specifications for receiving—Temperature ~~((2009))~~ FDA Food Code 3-202.11.** (1) Except as specified in subsections (2) through (4) of this section, refrigerated, ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD must be at a temperature of 41°F (5°C) or below when received.

(2) If a temperature other than 41°F (5°C) for a ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD is specified in LAW governing its distribution, such as LAWS governing milk and MOLLUSCAN SHELLFISH, the FOOD may be received at the specified temperature.

(3) Raw EGGS must be received in refrigerated EQUIPMENT that maintains an ambient air temperature of 45°F (7°C) or less.

(4) ~~((POTENTIALLY HAZARDOUS FOOD))~~ Freshly made ASIAN RICE-BASED NOODLES received at ambient temperatures directly from a noodle processing facility licensed by Washington state department of agriculture must be immediately reheated in accordance with WAC 246-215-03440(3) or immediately cooled in accordance with WAC 246-215-03515(3).

(5) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is cooked to a temperature and for a time specified under WAC 246-215-03400 through 246-215-03410 and received hot must be at a temperature of 135°F (57°C) or above.

~~((5))~~ (6) A FOOD that is labeled frozen and shipped frozen by a FOOD PROCESSING PLANT must be received frozen.

~~((6))~~ (7) Upon receipt, ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD must be free of evidence of previous temperature abuse.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03240 Specifications for receiving—Additives ~~((2009))~~ FDA Food Code 3-202.12.** FOOD may not contain unAPPROVED ADDITIVES or ADDITIVES that exceed the amounts specified in 21 C.F.R. 170-180 relating to FOOD ADDITIVES, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 C.F.R. 181-186, substances that exceed amounts specified in 9 C.F.R., Subpart C, Section 424.21(b) Food Ingredients and Sources of Radiation, or pesticide residues that exceed provisions specified in 40 C.F.R. 180 Tolerances for Pesticides Chemicals in Food, and exceptions.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03245 Specifications for receiving—Eggs ~~((2009))~~ FDA Food Code 3-202.13.** EGGS must be received clean and sound and may not exceed the RESTRICTED EGG tolerances for United States Consumer Grade B as specified in United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.200 et seq., administered by the Agricultural Marketing Service of USDA.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03250 Specifications for receiving—Eggs and milk products, pasteurized ~~((2009))~~ FDA Food Code 3-202.14.** (1) EGG PRODUCTS must be obtained pasteurized.

(2) Fluid milk, fluid milk products, dry milk, and dry milk products must meet "Grade A pasteurized" milk standards of chapter 15.36 RCW, except "Grade A raw milk" products meeting standards of chapter 15.36 RCW may be sold in retail stores in the original intact container ~~((for off-PREMISES consumption))~~ and not used as an ingredient.

(3) Frozen milk products, such as ice cream, must be obtained pasteurized as specified in 21 C.F.R. 135 - Frozen Desserts.

(4) Cheese must be obtained pasteurized unless alternative procedures to pasteurization are specified in the C.F.R., such as 21 C.F.R. 133 - Cheeses and Related Cheese Products, for curing certain cheese varieties.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03255 Specifications for receiving—Package integrity ~~((2009))~~ FDA Food Code 3-202.15.** FOOD packages must be in good condition and protect the integrity of the contents so that the FOOD is not exposed to adulteration or potential contaminants.



AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03260 Specifications for receiving—~~Ice~~ ((2009)) FDA Food Code 3-202.16.** Ice used as a FOOD or a cooling medium must be made from DRINKING WATER.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03265 Specifications for receiving—Shucked shellfish, packaging and identification** ((2009)) **FDA Food Code 3-202.17.** (1) Raw SHUCKED SHELLFISH must be obtained in nonreturnable packages which bear a legible label that identifies the:

(a) Name, address, and CERTIFICATION NUMBER of the shucker, packer, or repacker of the MOLLUSCAN SHELLFISH; and

(b) The "sell by" or "best if used by" date for packages with a capacity of less than 1.89 L (one-half gallon) or the date shucked for packages with a capacity of 1.89 L (one-half gallon) or more.

(2) A package of raw SHUCKED SHELLFISH that does not bear a label or which bears a label which does not contain all of the information as specified under subsection (1) of this section is subject to a hold order, as allowed by LAW, or seizure and destruction in accordance with 21 C.F.R. Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d) Molluscan Shellfish.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03270 Specifications for receiving—Shellstock identification** ((2009)) **FDA Food Code 3-202.18.** (1) SHELLSTOCK must be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester or DEALER that depurates, ships, or reships the SHELLSTOCK, as specified in the *National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish*, and that list:

(a) Except as specified under subsection (3) of this section, on the harvester's tag or label, the following information in the following order:

(i) The harvester's identification number that is assigned by the SHELLFISH CONTROL AUTHORITY;

(ii) The date of harvest;

(iii) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the SHELLFISH CONTROL AUTHORITY and including the abbreviation of the name of the state or country in which the shellfish are harvested;

(iv) The type and quantity of shellfish; and

(v) The following statement in bold, capitalized type: "~~((This tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days))~~ **THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS.**"; and

(b) Except as specified in subsection (4) of this section, on each DEALER'S tag or label, the following information in the following order:

(i) The DEALER'S name and address, and the CERTIFICATION NUMBER assigned by the SHELLFISH CONTROL AUTHORITY;

(ii) The original shipper's CERTIFICATION NUMBER including the abbreviation of the name of the state or country in which the shellfish are harvested;

(iii) The same information as specified for a harvester's tag under (a)(ii) through (iv) of this subsection; and

(iv) The following statement in bold, capitalized type: "~~((This tag is required to be attached until container is empty and thereafter kept on file for 90 days))~~ **THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS.**"

(2) A container of SHELLSTOCK that does not bear a tag or label or that bears a tag or label that does not contain all of the information as specified under subsection (1)(a) of this section is subject to a hold order, as allowed by LAW, or seizure and destruction in accordance with 21 C.F.R. Subpart D - Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d).

(3) If a place is provided on the harvester's tag or label for a DEALER'S name, address and CERTIFICATION NUMBER, the DEALER'S information must be listed first.

(4) If the harvester's tag or label is designed to accommodate each DEALER'S identification as specified under subsection (1)(a)(i) and (ii) of this section, individual DEALER tags or labels need not be provided.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03275 Specifications for receiving—Shellstock, condition** ((2009)) **FDA Food Code 3-202.19.** When received by a FOOD ESTABLISHMENT, SHELLSTOCK must be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or SHELLSTOCK with badly broken shells must be discarded.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03280 Specifications for receiving—~~(Juice treated)~~ Commercially processed treated juice** ((2009)) **FDA Food Code 3-202.110.** PrePACKAGED JUICE must:

(1) Be obtained from a processor with a HACCP system as specified in 21 C.F.R. Part 120 Hazard Analysis and Critical Control (HACCP) Systems; and

(2) Be obtained pasteurized or otherwise treated to attain a 5-log reduction of the most resistant microorganism of public health significance as specified in 21 C.F.R. Part 120.24 Process Controls.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03285 Original containers and records—Molluscan shellfish, original container ((2009)) FDA Food Code 3-203.11).** (1) Except as specified in subsections (2)((-3), and (4)) through (5) of this section, MOLLUSCAN SHELLFISH may not be removed from the container in which they are received other than immediately before sale or preparation for service.

(2) For display purposes, SHELLSTOCK may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a CONSUMER may be removed from the display or display container and provided to the CONSUMER if:

(a) The source of the SHELLSTOCK on display is identified as specified under WAC 246-215-03270 and recorded as specified under WAC 246-215-03290; and

(b) The SHELLSTOCK are protected from contamination.

(3) SHUCKED SHELLFISH may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a CONSUMER'S request if:

(a) The labeling information for the shellfish on display as specified under WAC 246-215-03265 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

(b) The shellfish are protected from contamination.

(4) SHUCKED SHELLFISH may be removed from the container in which they were received and ((rePACKAGED)) repacked in CONSUMER self-service containers where allowed by LAW if:

(a) The labeling information for the shellfish is on each CONSUMER self-service container as specified under WAC 246-215-03265 and 246-215-03610 (1) and (2)(a) through (e);

(b) The labeling information as specified under WAC 246-215-03265 is retained and correlated with the date when, or dates during which, the shellfish is sold or served;

(c) The labeling information and dates specified under (b) of this subsection are maintained for ninety days; and

(d) The shellfish are protected from contamination.

(5) SHELLSTOCK may be removed from the container in which they are received and repacked in CONSUMER self-service containers if:

(a) Each self-service container of SHELLSTOCK is plainly marked with the harvest area name, harvest area date, and original shellfish DEALER'S CERTIFICATION NUMBER, including the abbreviation of the name of the state or country in which the shellfish are harvested, or otherwise marked with a code that can be used to link the product with tag or label information as specified under WAC 246-215-03270;

(b) The tag or label information as specified under WAC 246-215-03270 for SHELLSTOCK is retained in a written or electronic log for ninety days that correlates the date when, or dates during which, the SHELLSTOCK sold;

(c) The SHELLSTOCK are protected from contamination; and

(d) The packaging material allows air to get to the shellfish.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03290 Original containers and records—Shellstock, maintaining identification ((2009)) FDA Food Code 3-203.12).** (1) Except as specified under subsection (3)(b) of this section, SHELLSTOCK tags or labels must remain attached to the container in which the SHELLSTOCK are received until the container is empty.

(2) The date range when the first and last SHELLSTOCK from the container is sold or served must be recorded on the tag or label.

(3) The identity of the source of SHELLSTOCK that are sold or served must be maintained by retaining SHELLSTOCK tags or labels for ninety calendar days from the last date that is recorded on the tag or label, as specified under subsection (2) of this section by:

(a) Using an APPROVED record keeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified under subsection (2) of this section; and

(b) If SHELLSTOCK are removed from its tagged or labeled container:

(i) Preserving source identification by using a record-keeping system as specified under (a) of this subsection; and

(ii) Ensuring that SHELLSTOCK from one tagged or labeled container are not COMMINGLED with SHELLSTOCK from another container with different CERTIFICATION NUMBERS; different harvest dates; or different growing areas as identified on the tag or label before being ordered by the CONSUMER.

**((Subsection)) Subpart C - Preventing Contamination After Receiving**

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03300 Preventing contamination by employees—Preventing contamination from hands ((2009)) FDA Food Code 3-301.11).** (1) FOOD EMPLOYEES shall wash their hands as specified under WAC 246-215-02305.

(2) Except when washing fruits and vegetables as specified under WAC 246-215-03318 or as specified in subsection (4) of this section, FOOD EMPLOYEES may not contact exposed, READY-TO-EAT FOOD with their bare hands and shall use suitable UTENSILS such as deli tissue, spatulas, tongs, SINGLE-USE gloves, or dispensing EQUIPMENT.

(3) FOOD EMPLOYEES shall minimize bare hand and arm contact with exposed FOOD that is not in a READY-TO-EAT form.

(4) Subsection (2) of this section does not apply to a FOOD EMPLOYEE that contacts exposed, READY-TO-EAT FOOD with bare hands when the READY-TO-EAT FOOD is to be cooked in the FOOD ESTABLISHMENT to heat all parts of the FOOD to a temperature of at least 145°F (63°C) prior to service.

(5) FOOD EMPLOYEES not serving a HIGHLY SUSCEPTIBLE POPULATION may contact exposed, READY-TO-EAT FOOD with their bare hands if:

(a) The PERMIT HOLDER obtains prior approval from the REGULATORY AUTHORITY;

(b) Written procedures are maintained in the FOOD ESTABLISHMENT and made available to the REGULATORY AUTHORITY upon request that include: ~~((i) For each bare hand contact procedure, a listing of the specific READY-TO-EAT FOODS that are touched by the hands;~~

~~((ii))~~ Diagrams and other information showing that handwashing facilities, installed, located, equipped, and maintained as specified under WAC 246-215-05230, 246-215-05255, 246-215-05265, 246-215-05270, 246-215-06305, 246-215-06310, and 246-215-06320, are in an easily accessible location and in close proximity to the work station where bare hand contact procedure is conducted.

(c) A written EMPLOYEE health policy that details how the FOOD ESTABLISHMENT complies with Part 2, Subpart B of this chapter including:

(i) Documentation that FOOD EMPLOYEES and CONDITIONAL EMPLOYEES acknowledge that they are informed to report information about their health and activities as they relate to gastrointestinal symptoms and diseases that are transmittable through FOOD as specified in WAC 246-215-02200, including a written log of reportable EMPLOYEE illnesses maintained for ninety days;

(ii) Documentation that FOOD EMPLOYEES and CONDITIONAL EMPLOYEES acknowledge their responsibilities as specified in WAC 246-215-02205 and 246-215-02240; and

(iii) Documentation that the PERSON IN CHARGE acknowledges the responsibilities as specified in WAC 246-215-02215, 246-215-02220, 246-215-02255, and 246-215-08520.

(d) Documentation that FOOD EMPLOYEES acknowledge they have received training at least annually in:

(i) The RISKS of contacting ~~((the specific))~~ READY-TO-EAT FOODS with bare hands;

(ii) Proper handwashing as specified under WAC 246-215-02305;

(iii) When to wash their hands as specified under WAC 246-215-02310;

(iv) Where to wash their hands as specified under WAC 246-215-02315;

(v) Proper fingernail maintenance as specified under WAC 246-215-02325;

(vi) Prohibition of jewelry as specified under WAC 246-215-02330; and

(vii) Good hygienic practices as specified under WAC 246-215-02400 and 246-215-02405.

(e) Documentation that hands are washed before FOOD preparation and as necessary to prevent cross contamination by FOOD EMPLOYEES as specified under WAC 246-215-02300, 246-215-02305, 246-215-02310, and 246-215-02315 during all hours of operation when ~~((the specific))~~ READY-TO-EAT FOODS are prepared;

(f) Documentation that FOOD EMPLOYEES contacting READY-TO-EAT FOOD with bare hands use two or more of the following control measures to provide additional safeguards to hazards associated with bare hand contact:

(i) Double handwashing;

(ii) Nail brushes;

(iii) A hand antiseptic after handwashing as specified under WAC 246-215-02320;

(iv) Incentive programs ~~((such as paid sick leave))~~ provided by the FOOD ESTABLISHMENT that assist or encourage FOOD EMPLOYEES not to work when they are ill; or

(v) Other APPROVED control measures; and

(g) Documentation that corrective action is taken when (a) through (f) of this subsection are not followed;

(h) If the allowance for a FOOD ESTABLISHMENT to contact READY-TO-EAT FOOD with bare hands is voluntarily or involuntarily discontinued, suspended or revoked, a FOOD ESTABLISHMENT may not reinstate bare hand contact with READY-TO-EAT FOOD without written approval from the REGULATORY AUTHORITY.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03303 Preventing contamination by employees—Preventing contamination when tasting ~~((2009))~~ FDA Food Code 3-301.12.** A FOOD EMPLOYEE may not use a UTENSIL more than once to taste FOOD that is to be sold or served.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03306 Preventing food and ingredient contamination—Packaged and unpackaged food—Separation, packaging, and segregation ~~((2009))~~ FDA Food Code 3-302.11.** (1) A FOOD must be protected from cross contamination by:

(a) Except as specified in (a)~~((iii))~~ (iv) of this subsection, separating raw animal FOODS during storage, preparation, holding, and display from:

(i) Raw READY-TO-EAT FOOD including other raw animal FOOD such as FISH for sushi or MOLLUSCAN SHELLFISH, or other raw READY-TO-EAT FOOD such as fruits and vegetables; ~~((and))~~

(ii) Cooked READY-TO-EAT FOOD;

(iii) Fruits and vegetables before they are washed; and

(iv) Frozen, commercially processed and PACKAGED raw animal FOOD may be stored and displayed with or above frozen, commercially processed and PACKAGED, READY-TO-EAT FOOD.

(b) Except when combined as ingredients, separating types of raw animal FOODS from each other such as beef, FISH, lamb, pork, and POULTRY during storage, preparation, holding and display by:

(i) Using separate EQUIPMENT for each type; or

(ii) Arranging each type of FOOD in EQUIPMENT so that cross contamination of one type with another is prevented; and

(iii) Preparing each type of FOOD at different times or in separate areas.

(c) Cleaning EQUIPMENT and UTENSILS as specified under WAC 246-215-04605(1) and SANITIZING as specified under WAC 246-215-04710;

(d) Except as specified under WAC 246-215-03520 ~~((2))~~ ~~((b))~~ and subsection (2) of this section, storing the FOOD in packages, covered containers, or wrappings;

(e) Cleaning ~~((HERMETICALLY SEALED CONTAINERS))~~ hermetically sealed containers of FOOD of visible soil before opening;

(f) Protecting FOOD containers that are received PACKAGED together in a case or overwrap from cuts when the case or overwrap is opened;

(g) Storing damaged, spoiled, or recalled FOOD being held in the FOOD ESTABLISHMENT as specified under WAC 246-215-06415; and

(h) Separating fruits and vegetables, before they are washed as specified under WAC 246-215-03318 from READY-TO-EAT FOOD.

(2) Subsection (1)(d) of this section does not apply to:

(a) Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;

(b) PRIMAL CUTS, quarters, or sides of raw MEAT or slab bacon that are hung on clean, SANITIZED hooks or placed on clean, SANITIZED racks;

(c) Whole, uncut, processed MEATS such as country hams, and smoked or cured sausages that are placed on clean, SANITIZED racks;

(d) FOOD being cooled as specified under WAC 246-215-03520; or

(e) SHELLSTOCK.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03309 Preventing food and ingredient contamination—Food storage containers, identified with common name of food ~~((2009))~~ FDA Food Code 3-302.12).** Except for containers holding FOOD that can be readily and unmistakably recognized such as dry pasta, working containers holding FOOD or FOOD ingredients that are removed from their original packages for use in the FOOD ESTABLISHMENT, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar must be identified with the common name of the FOOD.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03312 Preventing food and ingredient contamination—Pasteurized eggs, substitute for raw eggs for certain recipes ~~((2009))~~ FDA Food Code 3-302.13).** Pasteurized EGGS or EGG PRODUCTS must be substituted for raw EGGS in the preparation of FOODS such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, meringue, egg-nog, ice cream, and EGG-fortified BEVERAGES that are not:

(1) Cooked as specified under WAC 246-215-03400 (1)(a) or (b); or

(2) Included in WAC 246-215-03400(4).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03315 Preventing food and ingredient contamination—Protection from unapproved additives ~~((2009))~~ FDA Food Code 3-302.14).** (1) FOOD must be protected from contamination that might result from the addition of, as specified under WAC 246-215-03240:

(a) Unsafe or unAPPROVED FOOD ADDITIVES or COLOR ADDITIVES; and

(b) Unsafe or unAPPROVED levels of APPROVED FOOD ADDITIVES and COLOR ADDITIVES.

(2) A FOOD EMPLOYEE may not:

(a) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a FOOD considered to be a good source of vitamin B<sub>1</sub>; or

(b) Except for grapes, serve or sell FOOD specified under (a) of this subsection that is treated with sulfiting agents before receipt by the FOOD ESTABLISHMENT.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03318 Preventing food and ingredient contamination—Washing fruits and vegetables ~~((2009))~~ FDA Food Code 3-302.15).** (1) Except as specified in subsection (2) of this section, and except for whole, raw fruits and vegetables that are intended for washing by the CONSUMER before consumption, raw fruits and vegetables not in a READY-TO-EAT form must be thoroughly rinsed under running water to remove soil and other contaminants after any soaking and before being cut, combined with other ingredients, cooked, served, or offered for human consumption in READY-TO-EAT form.

(2) ~~((Raw))~~ Fruits and vegetables may be washed by using chemicals as specified under WAC 246-215-07225.

(3) Devices used for on-site generation of chemicals meeting the requirements specified in 21 C.F.R. 173.315, Chemicals Used in the Washing or to Assist in the Peeling of Fruits and Vegetables, for the washing of raw, whole fruits and vegetables must be used in accordance with the manufacturer's instructions.

(4) For the purposes of this section, raw vegetables include fresh herbs and sprouts.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03321 Preventing food and ingredient contamination—~~((Pooling))~~ Combining of raw eggs in advance prohibited.** Except EGGS that are used in batters or ~~((POOLED))~~ mixed immediately before cooking, mixing four or more raw EGGS ~~((may not be POOLED))~~, EGG whites, or EGG yokes is prohibited.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03324 Preventing contamination from ice used as a coolant—Ice used as exterior coolant, prohibited as ingredient ~~((2009))~~ FDA Food Code 3-303.11).** After use~~((s))~~ as a medium for cooling the exterior surfaces of FOOD such as melons or FISH, PACKAGED FOOD such as canned BEVERAGES, or cooling coils and tubes of EQUIPMENT, ice may not be used as a FOOD.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03327 Preventing contamination from ice used as a coolant—Storage or display of food in contact with water or ice ~~((2009))~~ FDA Food Code 3-303.12.** (1) PACKAGED FOOD may not be stored in direct contact with ice or water if the FOOD is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(2) Except as specified in subsections (3) and (4) of this section, unPACKAGED FOOD may not be stored in direct contact with undrained ice.

(3) Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.

(4) Raw POULTRY and raw FISH that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03330 Preventing contamination from equipment, utensils, and linens—Food contact with equipment and utensils ~~((2009))~~ FDA Food Code 3-304.11.** FOOD must only contact surfaces of:

(1) EQUIPMENT and UTENSILS that are cleaned as specified under WAC 246-215-04600 through 246-215-04650 and SANITIZED as specified under WAC 246-215-04700 through 246-215-04710; ~~((or))~~

(2) SINGLE-SERVICE ARTICLES and SINGLE-USE ARTICLES; or

(3) LINENS, such as cloth napkins, as specified under WAC 246-215-03336 that are laundered as specified under Part 4, Subpart B of this chapter.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03333 Preventing contamination from equipment, utensils, and linens—In-use utensils, between-use storage ~~((2009))~~ FDA Food Code 3-304.12.** During pauses in FOOD preparation or dispensing, FOOD preparation and dispensing UTENSILS must be stored:

(1) Except as specified under subsection (2) of this section, in the FOOD with their handles above the top of FOOD and the container;

(2) In FOOD that is not ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD with their handles above the top of the FOOD within containers or EQUIPMENT that can be closed, such as bins of sugar, flour, or cinnamon;

(3) On a clean portion of the FOOD preparation table or cooking EQUIPMENT only if the in-use UTENSIL and the FOOD-CONTACT SURFACE of the FOOD preparation table or cooking EQUIPMENT are cleaned and SANITIZED at a frequency specified under WAC 246-215-04605 and 246-215-04705;

(4) In running water of sufficient velocity to flush particulates to the drain, if used with moist FOOD such as ice cream or mashed potatoes;

(5) In a clean, protected location if the ~~((utensils))~~ UTENSILS, such as ice scoops, are used only with a FOOD that is not ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD; or

(6) In a container of water maintained at a temperature of 135°F (57°C) or greater or 41°F (5°C) or less and the container is cleaned at a frequency specified under WAC 246-215-04605 (4)(g).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03336 Preventing contamination from equipment, utensils, and linens—Linens and napkins, use limitation ~~((2009))~~ FDA Food Code 3-304.13.** LINENS ~~((and)), such as cloth~~ napkins, may not be used in contact with FOOD unless they are used to line a container for the service of FOODS and the LINENS and napkins are replaced each time the container is refilled for a new CONSUMER.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03339 Preventing contamination from equipment, utensils, and linens—Wiping cloths, use limitation ~~((2009))~~ FDA Food Code 3-304.14.** (1) Cloths that are in use for wiping FOOD spills from TABLEWARE and carry out containers that occur as FOOD is being served must be:

(a) Maintained dry; and

(b) Used for no other purpose.

(2) Cloths in-use for wiping counters and other EQUIPMENT surfaces must be:

(a) Held between uses in a chemical SANITIZER solution at a concentration specified under WAC 246-215-04565; and

(b) Laundered daily as specified under WAC 246-215-04805(4) ~~((or~~

~~((c) Dry disposable towels used in conjunction with a spray bottle of chemical SANITIZER solution at a concentration specified under WAC 246-215-04565 are not required to be held in a chemical SANITIZER solution as long as the towels are disposed of after each use)).~~

(3) Cloths in-use for wiping surfaces in contact with raw animal FOODS must be kept separate from cloths used for other purposes.

(4) Dry wiping cloths and the chemical SANITIZING solutions specified in subsection (2)(a) of this section in which wet wiping cloths are held between uses must be free of FOOD debris and visible soil.

(5) Containers of chemical SANITIZING solutions specified in subsection (2)(a) of this section in which wet wiping cloths are held between uses must be stored and used in a manner that prevents contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, SINGLE-SERVICE or SINGLE-USE ARTICLES.

(6) SINGLE-USE disposable SANITIZER wipes must be used in accordance with EPA-APPROVED manufacturer's label use instructions.

(7) Dry disposable towels used in conjunction with a spray bottle of chemical SANITIZER solution at a concentration specified under WAC 246-215-04565 must be discarded after each use.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03342 Preventing contamination from equipment, utensils, and linens—Gloves, use limitation ((2009) FDA Food Code 3-304.15).** (1) If used, SINGLE-USE gloves must be used for only one task such as working with READY-TO-EAT FOOD or with raw animal FOOD, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation.

(2) Except as specified in subsection (3) of this section, slash-resistant gloves that are used to protect the hands during operations requiring cutting must be used in direct contact only with FOOD that is subsequently cooked as specified under Part 3, Subpart D of this chapter such as frozen FOOD or a PRIMAL CUT OF MEAT.

(3) Slash-resistant gloves may be used with READY-TO-EAT FOOD that will not be subsequently cooked if the slash-resistant gloves have a SMOOTH, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a SMOOTH, durable, nonabsorbent glove, or a SINGLE-USE glove.

(4) Cloth gloves may not be used in direct contact with FOOD unless the FOOD is subsequently cooked as required under Part 3, Subpart D such as frozen FOOD or a PRIMAL CUT OF MEAT.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03345 Preventing contamination from equipment, utensils, and linens—Using clean tableware for second portions and refills ((2009) FDA Food Code 3-304.16).** (1) Except for refilling a CONSUMER'S drinking cup or container without contact between the pouring UTENSIL and the lip-contact area of the drinking cup or container, FOOD EMPLOYEES may not use TABLEWARE, including SINGLE-SERVICE ARTICLES, soiled by the CONSUMER, to provide second portions or refills.

(2) Except as specified in subsection (3) of this section, self-service CONSUMERS may not be allowed to use soiled TABLEWARE, including SINGLE-SERVICE ARTICLES, to obtain additional FOOD from the display and serving EQUIPMENT.

(3) Drinking cups and containers may be reused by self-service CONSUMERS if refilling is a contamination-free process as specified under WAC 246-215-04230 (1), (2), and ((3)) (4).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03348 Preventing contamination from equipment, utensils, and linens—Refilling returnables ((2009) FDA Food Code 3-304.17).** (1) ((A take-home FOOD container returned to a FOOD ESTABLISHMENT

may not be refilled at a FOOD ESTABLISHMENT with a POTENTIALLY HAZARDOUS FOOD:

(2) Except as specified in subsection (3) of this section, a take-home FOOD container refilled with FOOD that is not POTENTIALLY HAZARDOUS FOOD must be cleaned as specified under WAC 246-215-04650(2).

(3) Single service cups and personal take-out BEVERAGE containers, such as thermally insulated bottles, nonspill coffee cups, and promotional BEVERAGE glasses, may be refilled by EMPLOYEES or the CONSUMER if refilling is a contamination-free process as specified under WAC 246-215-04230 (1), (2), and (4).) Except as specified in subsections (2) through (6) of this section, empty containers returned to a FOOD ESTABLISHMENT for cleaning and refilling with FOOD shall be cleaned and refilled in a regulated FOOD PROCESSING PLANT.

(2) A take-home FOOD container returned to a FOOD ESTABLISHMENT may be refilled at a FOOD ESTABLISHMENT with FOOD if the FOOD container is:

(a) Designed and constructed for reuse and in accordance with the requirements specified in Part 4, Subparts A and B of this chapter;

(b) One that was initially provided by the FOOD ESTABLISHMENT to the CONSUMER, either empty or filled with FOOD by the FOOD ESTABLISHMENT, for the purpose of being returned for reuse;

(c) Returned to the FOOD ESTABLISHMENT by the CONSUMER after use;

(d) Subject to the following steps before being refilled with FOOD:

(i) Cleaned as specified under Part 4, Subpart F of this chapter;

(ii) Sanitized as specified under Part 4, Subpart G of this chapter; and

(iii) Visually inspected by a FOOD EMPLOYEE to verify that the container, as returned, meets the requirements specified under Part 4, Subparts A and B of this chapter.

(3) A take-home FOOD container returned to a FOOD ESTABLISHMENT may be refilled at a FOOD ESTABLISHMENT with a BEVERAGE if:

(a) The BEVERAGE is not a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;

(b) The design of the container and of the rinsing EQUIPMENT and the nature of the BEVERAGE, when considered together, allow effective cleaning at home or in the FOOD ESTABLISHMENT;

(c) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;

(d) The CONSUMER-owned container returned to the FOOD ESTABLISHMENT for refilling is refilled for sale or service only to the same CONSUMER; and

(e) The container is refilled by:

(i) An EMPLOYEE of the FOOD ESTABLISHMENT; or

(ii) The owner of the container if the BEVERAGE system includes a contamination-free transfer process as specified under WAC 246-215-04230 (1), (2), and (4) that cannot be bypassed by the container owner.

(4) Consumer-owned multiuse BEVERAGE containers may be refilled, including TIME/TEMPERATURE CONTROL FOR

SAFETY FOOD and nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD beverages, by EMPLOYEES or the CONSUMER if refilling is a contamination-free process as specified in WAC 246-215-04230 (1), (2), and (4).

(5) CONSUMER-owned containers that are not FOOD-specific may be filled at a water VENDING MACHINE or system.

(6) A FOOD ESTABLISHMENT under an APPROVED plan may allow CONSUMERS to:

(a) Refill a visibly clean CONSUMER-owned container with nonREADY-TO-EAT FOOD, bulk FOOD, and PACKAGED FOOD;

(b) Refill a visibly clean CONSUMER-owned container with READY-TO-EAT FOOD when dispensed from equipment, such as a gravity-flow unit, meeting standards for liquid FOOD and ice in WAC 246-215-04230; and

(c) Request a FOOD EMPLOYEE of the FOOD ESTABLISHMENT to refill a visually clean CONSUMER-owned container with FOOD using a contamination-free process.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03351 Preventing contamination from the premises—Food storage (((2009)) FDA Food Code 3-305.11).** (1) Except as specified in subsections (2) and (3) of this section, FOOD must be protected from contamination by storing the FOOD:

(a) In a clean, dry location;

(b) Where it is not exposed to splash, dust, or other contamination; and

(c) At least six inches (15 cm) above the floor.

(2) FOOD in packages and working containers may be stored less than six inches (15 cm) above the floor on case lot handling EQUIPMENT as specified under WAC 246-215-04268.

(3) Pressurized BEVERAGE containers, cased FOOD in waterproof containers such as bottles or cans, and milk containers in plastic crates may be stored on a floor that is clean and not exposed to floor moisture.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03354 Preventing contamination from the premises—Food storage, prohibited areas (((2009)) FDA Food Code 3-305.12).** FOOD may not be stored:

(1) In locker rooms;

(2) In toilet rooms;

(3) In dressing rooms;

(4) In garbage rooms;

(5) In mechanical rooms;

(6) Under sewer lines that are not shielded to intercept potential drips;

(7) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;

(8) Under open stairwells; or

(9) Under other sources of contamination.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03357 Preventing contamination from the premises—Vended (~~(potentially hazardous)~~) time/temperature control for safety food, original container (((2009)) FDA Food Code 3-305.13).** (~~(POTENTIALLY HAZARDOUS)~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD dispensed through a VENDING MACHINE must be in the package in which it was placed at the FOOD ESTABLISHMENT or FOOD PROCESSING PLANT at which it was prepared.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03360 Preventing contamination from the premises—Food preparation (((2009)) FDA Food Code 3-305.14).** During preparation, unPACKAGED FOOD must be protected from environmental sources of contamination.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03363 Preventing contamination by consumers—Food display (((2009)) FDA Food Code 3-306.11).** (1) Except for nuts in the shell and whole raw fruits and vegetables that are intended for hulling, peeling, or washing by the CONSUMER before consumption, FOOD on display must be protected from contamination by the use of packaging; counter, service line, or salad bar FOOD guards; display cases; or other effective means;

(2) If PACKAGED for CONSUMER self-service, hard crusted breads such as baguettes must be completely covered and may be open at one end.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03366 Preventing contamination by consumers—Condiments, protection (((2009)) FDA Food Code 3-306.12).** (1) Condiments must be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays with the proper UTENSILS, original containers designed for dispensing, or individual packages or portions.

(2) Condiments at a VENDING MACHINE LOCATION must be in individual packages or provided in dispensers that are filled at an APPROVED location, such as the FOOD ESTABLISHMENT that provides FOOD to the VENDING MACHINE LOCATION, a FOOD PROCESSING PLANT that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the VENDING MACHINE LOCATION.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03369 Preventing contamination by consumers—Consumer self-service operations (((2009)) FDA Food Code 3-306.13).** (1) Raw unPACKAGED animal

FOOD such as beef, lamb, pork, POULTRY, and FISH may not be offered for CONSUMER self-service. This subsection does not apply to:

(a) CONSUMER self-service of READY-TO-EAT FOODS at buffets or salad bars that serve FOODS such as sushi or raw shellfish;

(b) Ready-to-cook individual portions for cooking and immediate consumption on the PREMISES such as CONSUMER-cooked MEATS or CONSUMER-selected ingredients for Mongolian barbecue; or

(c) Raw, frozen shrimp, lobster, finfish, calamari, or adductor muscle of scallop; or frozen, breaded seafood.

(2) CONSUMER self-service operations for READY-TO-EAT FOODS must be provided with suitable utensils or effective dispensing methods that protect the FOOD from contamination.

(3) CONSUMER self-service operations such as buffets and salad bars must be monitored by FOOD EMPLOYEES trained in safe operating procedures.

(4) Containers for display and service of READY-TO-EAT, UNPACKAGED, bulk FOODS for CONSUMER self-service must have a CONSUMER access point (~~(no less than)~~) at least 30 inches above floor level, except for APPROVED containers of liquids.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03372 Preventing contamination by consumers—Returned food and reservice of food** ~~((2009))~~ **FDA Food Code 3-306.14**. (1) Except as specified in subsections (2) and (3) of this section, after being served or sold and in the possession of a CONSUMER, FOOD that is unused or returned by the CONSUMER may not be offered as FOOD for human consumption.

(2) Except as specified under WAC 246-215-03800(7), a container of FOOD that is not (~~POTENTIALLY HAZARDOUS~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD may be re-served from one CONSUMER to another if:

(a) The FOOD is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or

(b) The FOOD, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.

(3) Surplus previously served FOOD, such as whole uncut produce that complies with WAC 246-215-03318, unopened bags of sliced fruit, unopened containers of TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that are immediately placed in a temperature-controlled environment, and other APPROVED FOODS may be re-served to a PERSON or DONATED FOOD DISTRIBUTING ORGANIZATION under an APPROVED plan.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03375 Preventing contamination by consumers—Miscellaneous sources of contamination** ~~((2009))~~ **FDA Food Code 3-307.11**. FOOD must be pro-

ected from contamination that might result from a factor or source not specified under Part 3, Subparts A through F in this chapter.

**Subpart D - Destruction of Organisms of Public Health Concern**

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03400 Cooking—Raw animal foods** ~~((2009))~~ **FDA Food Code 3-401.11**. (1) Except as specified under subsections (2), (3), and (4) of this section, raw animal FOODS such as EGGS, FISH, MEAT, POULTRY, and FOODS containing these raw animal FOODS, must be cooked to heat all parts of the FOOD to a temperature and for a time that complies with one of the following methods based on the FOOD that is being cooked:

(a) 145°F (63°C) or above for fifteen seconds for:

(i) Raw EGGS that are broken and prepared in response to a CONSUMER'S order and for IMMEDIATE SERVICE; and

(ii) Except as specified under (b) and (c) of this subsection and subsections (2) and (3) of this section, FISH and INTACT MEAT, including GAME ANIMALS commercially raised for FOOD as specified under WAC 246-215-03230 (1)(a) and GAME ANIMALS under a voluntary inspection program as specified under WAC 246-215-03230 (1)(b);

(b) ~~((155°F (68°C) for fifteen seconds))~~ 158°F (70°C) or above for <1 second (instantaneous) or a temperature and time combination specified in ((the following chart)) Table 3-1, provided that FOOD EMPLOYEES monitor both temperature and time under an APPROVED plan, for RATITES; MECHANICALLY TENDERIZED and INJECTED MEATS; and COMMINUTED FISH, MEAT, GAME ANIMALS commercially raised for FOOD as specified under WAC 246-215-03230 (1)(a), GAME ANIMALS under a voluntary inspection program as specified under WAC 246-215-03230 (1)(a); and raw EGGS that are not prepared as specified under (a)(i) of this subsection; or

**Table 3-1: Minimum Temperatures**

Temperature °F (°C)	Time
145 (63)	3 minutes
150 (66)	1 minute
<del>((158 (70)))</del> 155 (68)	<del>((&lt;1 second (instantaneous)))</del> 17 seconds

(c) 165°F (74°C) or above for ~~((15 seconds))~~ <1 second (instantaneous) for POULTRY; BALUTS; wild GAME ANIMALS; stuffed FISH; stuffed MEAT; stuffed pasta; stuffed POULTRY; stuffed RATITES; or stuffing containing FISH, MEAT, POULTRY, or RATITES.

(2) Whole MEAT roasts, including beef, corned beef, lamb, pork, and cured pork roasts such as ham, must be cooked:

(a) ~~((In an oven that is preheated to the temperature specified for the roast's weight in Table 3-2 and that is held at that temperature; and~~



**Table 3-2: Oven Temperature Based on Weight**

Oven Type	Less Than 10 lbs. (4.5 kg)	10 lbs. (4.5 kg) or More
Still Dry	350°F (177°C) or more	250°F (121°C) or more
Convection	325°F (163°C) or more	250°F (121°C) or more
High Humidity <sup>†</sup>	250°F (121°C) or less	250°F (121°C) or less

<sup>†</sup> Relative humidity greater than 90% for at least one hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100% humidity.

(b)) As specified in the following ((chart)) Table 3-2, to heat all parts of the FOOD to a temperature and for the holding time that corresponds to that temperature:

**Table 3-(3) 2: Temperature and Holding Time**

Temperature °F (°C)	Time in Minutes <sup>1</sup>	Temperature °F (°C)	Time in Seconds <sup>1</sup>
130 (54.4)	112	147 (63.9)	134
131 (55.0)	89	149 (65.0)	85
133 (56.1)	56	151 (66.1)	54
135 (57.2)	36	153 (67.2)	34
136 (57.8)	28	155 (68.3)	22
138 (58.9)	18	157 (69.4)	14
140 (60.0)	12	158 (70.0)	0
142 (61.1)	8		
144 (62.2)	5		
145 (62.8)	4		

<sup>1</sup> Holding time may include postoven heat rise.

(b) In an oven that is preheated to the temperature specified for the roast's weight in Table 3-3 and that is held at that temperature; and

**Table 3-3: Oven Temperature Based on Weight**

Oven Type	Less Than 10 lbs. (4.5 kg)	10 lbs. (4.5 kg) or More
Still Dry	350°F (177°C) or more	250°F (121°C) or more
Convection	325°F (163°C) or more	250°F (121°C) or more
High Humidity <sup>1</sup>	250°F (121°C) or less	250°F (121°C) or less

<sup>1</sup> Relative humidity greater than 90 percent for at least one hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides 100 percent humidity.

(3) A raw or undercooked WHOLE-MUSCLE, INTACT BEEF steak may be served or offered for sale in a READY-TO-EAT form if:

(a) The FOOD ESTABLISHMENT serves a population that is not a HIGHLY SUSCEPTIBLE POPULATION;

(b) The steak is labeled to indicate that it meets the definition of WHOLE-MUSCLE, INTACT BEEF as specified under WAC 246-215-03200(5); and

(c) The steak is cooked on both the top and the bottom to a surface temperature of 145°F (63°C) or above and a cooked color change is achieved on all external surfaces.

(4) A raw animal FOOD such as raw EGG, raw FISH, raw-marinated FISH, raw MOLLUSCAN SHELLFISH, or steak tartare; or a partially cooked FOOD such as lightly cooked FISH, soft cooked EGGS, or rare MEAT other than WHOLE-MUSCLE, INTACT BEEF steaks as specified in subsection (3) of this section, may be served or offered for sale in a READY-TO-EAT form if:

(a) As specified under WAC 246-215-03800 (3)(a) and (b), the FOOD ESTABLISHMENT serves a population that is not a HIGHLY SUSCEPTIBLE POPULATION;

(b) The FOOD is not offered from a children's menu or children's section of any menu; and

(c) The CONSUMER is informed as specified under WAC 246-215-03620 that to ensure its safety, the FOOD should be cooked as specified under subsection (1) or (2) of this section; or

(d) The REGULATORY AUTHORITY grants a VARIANCE from subsection (1) or (2) of this section as specified under WAC 246-215-08110 based on a HACCP PLAN that:

(i) Is submitted by the PERMIT HOLDER and APPROVED as specified under WAC 246-215-08115;

(ii) Documents scientific data or other information showing that a lesser time and temperature regimen results in safe FOOD; and

(iii) Verifies that EQUIPMENT and procedures for FOOD preparation and training of FOOD EMPLOYEES at the FOOD ESTABLISHMENT meet the conditions of the VARIANCE.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03405 Cooking—Microwave cooking** ((2009)) **FDA Food Code 3-401.12**. Raw animal FOODS cooked in a microwave oven must be:

(1) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;

(2) Covered to retain surface moisture;

(3) Heated to a temperature of at least 165°F (74°C) in all parts of the FOOD; and

(4) Allowed to stand covered for two minutes after cooking to obtain temperature equilibrium.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03410 Cooking—Plant food cooking for hot holding** ((2009)) **FDA Food Code 3-401.13**. ((Fruits and vegetables)) **Plant FOODS** that are cooked for hot holding must be cooked to a temperature of at least 135°F (57°C).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03415 Cooking—Noncontinuous cooking of raw animal foods** ~~(((2009)) FDA Food Code 3-401.14).~~ ~~((Except as specified in subsection (7) of this section,))~~ Raw animal FOODS that are cooked using a NONCONTINUOUS cooking process must be:

(1) Subject to an initial heating process that is no longer than sixty minutes in duration;

(2) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked, ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD under WAC 246-215-03515(1);

(3) After cooling, held frozen or cold, as specified for ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD under WAC 246-215-03525 (1)(b);

(4) Prior to sale or service, cooked using a process that heats all parts of the FOOD to a temperature ~~((of at least 165°F (74°C) for fifteen seconds))~~ and time specified under WAC 246-215-03400 (1) through (3);

(5) Cooled according to the time and temperature parameters specified for cooked ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD under WAC 246-215-03515(1) if not either hot held as specified under WAC 246-215-03525(1), served immediately, or held using time as a public health control as specified under WAC 246-215-03530 after complete cooking;

(6) Prepared and stored according to written procedures that:

(a) Have obtained prior approval from the REGULATORY AUTHORITY;

(b) Are maintained in the FOOD ESTABLISHMENT and are available to the REGULATORY AUTHORITY upon request;

(c) Describe how the requirements specified under subsections (1) through (5) of this section are to be monitored ~~((and))~~ documented ~~((by the PERMIT HOLDER))~~ and the corrective actions to be taken if the requirements are not met;

(d) Describe how the FOODS, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as FOODS that must be cooked as specified under subsection (4) of this section prior to being offered for sale or service; and

(e) Describe how the FOODS, after initial heating but prior to cooking as specified under subsection (4) of this section, are to be separated from READY-TO-EAT FOODS as specified under WAC 246-215-03306(1) ~~((and~~

~~(7) Raw animal FOODS that are GRILL MARKED must be:~~

~~(a) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked POTENTIALLY HAZARDOUS FOOD under WAC 246-215-03515(1);~~

~~(b) Marked or otherwise identified as FOODS that must be cooked;~~

~~(c) Separated from READY-TO-EAT FOODS as specified under WAC 246-215-03306(1);~~

~~(d) Prior to sale or service, cooked to the temperatures specified under WAC 246-215-03400;~~

~~(e) Hot held as specified under WAC 246-215-03525(1), served immediately, or held using time as a public health~~

~~control as specified under WAC 246-215-03530 after complete cooking; and~~

~~(f) Disposed if left over after cooking and hot holding)).~~

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03425 Freezing—Parasite destruction** ~~(((2009)) FDA Food Code 3-402.11).~~ (1) Except as specified in subsection (2) of this section, before service or sale in READY-TO-EAT form, raw, raw marinated, partially cooked, or marinated partially cooked FISH must be:

(a) Frozen and stored at a temperature of -4°F (-20°C) or below for a minimum of one hundred sixty-eight hours (seven days) in a freezer; or

(b) Frozen at -31°F (-35°C) or below until solid and stored at -31°F (-35°C) or below for a minimum of fifteen hours; or

(c) Frozen at -31°F (-35°C) or below until solid and stored at -4°F (-20°C) or below for a minimum of twenty-four hours.

(2) Subsection (1) of this section does not apply to:

(a) MOLLUSCAN SHELLFISH;

(b) A scallop product consisting only of the shucked adductor muscle;

(c) Tuna of the species *Thunnus alalunga*, *Thunnus albacores* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin tuna, Northern); or

~~(((e)))~~ (d) Aquacultured FISH, such as salmon, that:

(i) If raised in open water, are raised in net pens; or

(ii) Are raised in land-based operations such as ponds or tanks; and

(iii) Are fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured FISH.

~~(((e)))~~ (e) FISH EGGS that have been removed from the skein and rinsed.

(f) Fresh unfrozen finfish, such as halibut or salmon, which are partially cooked only upon consumer request and served in accordance with WAC 246-215-03620 (2) and (3)(d).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03430 Freezing—Records, creation and retention** ~~(((2009)) FDA Food Code 3-402.12).~~ (1) Except as specified under WAC 246-215-03425(2) and subsection (2) of this section, if raw, raw marinated, partially cooked, or marinated partially cooked FISH are served or sold in READY-TO-EAT form, the PERSON IN CHARGE shall record the freezing temperature and time to which the FISH are subjected and shall retain the records of the FOOD ESTABLISHMENT for ninety calendar days beyond the time of service or sale of the FISH.

(2) If the FISH are frozen by a supplier, a written agreement or statement from the supplier stipulating that the FISH supplied are frozen to a temperature and for a time specified under ~~((Section 3-402.11))~~ WAC 246-215-03425 may substitute for the records specified under subsection (1) of this section.

(3) If raw, raw marinated, partially cooked, or marinated partially cooked FISH are served or sold in READY-TO-EAT form, and the FISH are raised and fed as specified under WAC 246-215-03425 (2)(c), a written agreement or statement from the supplier or aquaculturist stipulating that the FISH were raised and fed as specified under WAC 246-215-03425 (2)(c), must be obtained by the PERSON IN CHARGE and retained in the records of the FOOD ESTABLISHMENT for ninety calendar days beyond the time of service or sale of the FISH.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03435 Reheating—Preparation for immediate service ((2009) FDA Food Code 3-403.10).** Cooked and refrigerated FOOD that is prepared for IMMEDIATE SERVICE in response to an individual CONSUMER order, such as a roast beef sandwich au jus, may be served at any temperature.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03440 Reheating—Reheating for hot holding ((2009) FDA Food Code 3-403.11).** (1) Except as specified under subsections (2), (3), and (5) of this section, ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is cooked, cooled, and reheated for hot holding must be reheated so that all parts of the FOOD reach a temperature of at least 165°F (74°C) for fifteen seconds.

(2) Except as specified under subsection (3) of this section, ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD reheated in a microwave oven for hot holding must be reheated so that all parts of the FOOD reach a temperature of at least 165°F (74°C) and the FOOD is rotated or stirred, covered, and allowed to stand covered for two minutes after reheating.

(3) READY-TO-EAT TIME/TEMPERATURE CONTROL FOR SAFETY FOOD ((taken from a) that has been commercially processed((, HERMETICALLY SEALED CONTAINER, or from an intact package from)) and PACKAGED in a FOOD PROCESSING PLANT that is inspected by the FOOD REGULATORY AUTHORITY that has jurisdiction over the plant, must be heated to a temperature of at least 135°F (57°C) for hot holding.

(4) Reheating for hot holding as specified under subsections (1) through (3) of this section must be done rapidly and the time the FOOD is between 41°F (5°C) and the temperature specified under subsections (1) through (3) of this section may not exceed two hours.

(5) Remaining unsliced portions of MEAT roasts that are cooked as specified under WAC 246-215-03400(2) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under WAC 246-215-03400(2).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03445 Other methods—Treating juice ((2009) FDA Food Code 3-404.11).** JUICE PACKAGED in a FOOD ESTABLISHMENT must be:

(1) Treated under a HACCP PLAN as specified under WAC 246-215-08215 ((2) through (5)) to attain a 5-log reduction, which is equal to a 99.999% reduction, of the most resistant microorganism of public health significance; or

(2) Labeled, if not treated to yield a 5-log reduction of the most resistant microorganism of public health significance:

(a) As specified under WAC 246-215-03610; and

(b) As specified in 21 C.F.R. 101.17(g) Food Labeling, Warning, Notice, and Safe Handling Statements, JUICES that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens with the following, "*Warning: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems.*"

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03500 Temperature and time control—Frozen food ((2009) FDA Food Code 3-501.11).** Stored frozen FOODS must be maintained frozen.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03505 Temperature and time control—((Potentially hazardous)) Time/temperature control for safety food, slacking ((2009) FDA Food Code 3-501.12).** Frozen ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is slacked to moderate the temperature must be held:

(1) Under refrigeration that maintains the FOOD temperature at 41°F (5°C) for less; or

(2) At any temperature if the FOOD remains frozen.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03510 Temperature and time control—Thawing ((2009) FDA Food Code 3-501.13).** Except as specified in subsection (4) of this section, ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD must be thawed:

(1) Under refrigeration that maintains the FOOD temperature at 41°F (5°C) or less; or

(2) Completely submerged under running water:

(a) At a water temperature of 70°F (21°C) or below;

(b) With sufficient water velocity to agitate and float off loose particles in an overflow; and

(c) For a period of time that does not allow thawed portions of READY-TO-EAT FOOD to rise above 41°F (5°C); or

(d) For a period of time that does not allow thawed portions of raw animal FOOD requiring cooking as specified under WAC 246-215-03400 (1) or (2) to be above 41°F (5°C) for more than four hours including:

(i) The time the FOOD is exposed to the running water and the time needed for preparation for cooking; or

(ii) The time it takes under refrigeration to lower the FOOD temperature to 41°F (5°C);

(3) As part of a cooking process if the FOOD that is frozen is:

(a) Cooked as specified under WAC 246-215-03400 (1) or (2) or 246-215-03405; or

(b) Thawed in a microwave oven and immediately transferred to conventional cooking EQUIPMENT, with no interruption in the process; or

(4) Using any procedure if a portion of frozen, READY-TO-EAT FOOD is thawed and prepared for IMMEDIATE SERVICE in response to an individual customer's order; or

(5) REDUCED OXYGEN PACKAGED FISH that bears a label indicating that it is to be kept frozen until time of use must be removed from the reduced oxygen environment:

(a) Prior to thawing under refrigeration as specified in subsection (1) of this section; or

(b) Prior to, or immediately upon completion of, thawing using procedures specified in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03515 Temperature and time control—Cooling (~~((2009))~~ FDA Food Code 3-501.14).** (1) Cooked (~~((POTENTIALLY HAZARDOUS FOOD must be cooled))~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD must be cooled, uncovered, protected from contamination, in EQUIPMENT that maintains an ambient air temperature of 41°F (5°C) or less and:

(a) In a shallow, uncovered, layer of two inches or less; or

(b) Up to four inches thick in one dimension and not touching other pieces of FOOD for INTACT MEAT.

(2) As an alternative to the cooling provisions of subsection (1) of this section, cooling methods identified in WAC 246-215-03520 that meet the following time and temperature criteria are allowed:

(a) Within two hours from 135°F (57°C) to 70°F (21°C); and

(b) Within a total of six hours from 135°F (57°C) to 41°F (5°C) or less(~~(5~~

(c) As alternatives to the cooling provisions of (a) and (b) of this subsection, the following rapid cooling procedures are allowed:

(i) Continuous cooling of FOODS in a shallow layer of two inches or less, uncovered, protected from cross-contamination, in cooling EQUIPMENT maintaining an ambient air temperature of 41°F (5°C) or less; or

(ii) Continuous cooling of intact pieces of MEAT that is not COMMINUTED and is no greater than four inches thick, uncovered, unwrapped, not touching other pieces of FOOD, protected from cross-contamination, in cooling EQUIPMENT maintaining an ambient temperature of 41°F (5°C) or less.

(2) POTENTIALLY HAZARDOUS)),

(3) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD must be cooled within four hours to 41°F (5°C) or less if prepared from ingredients at ambient temperature, such as reconstituted FOODS and canned tuna.

(~~((3))~~) (4) Except as specified in subsection (~~((4))~~) (5) of this section, a ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD received in compliance

with LAWS allowing a temperature above 41°F (5°C) during shipment from the supplier as specified under WAC 246-215-03235(2), must be cooled within four hours to 41°F (5°C) or less.

(~~((4))~~) (5) Raw EGGS must be received as specified under WAC 246-215-03235(3) and immediately placed in refrigerated EQUIPMENT that maintains an ambient air temperature of 45°F (7°C) or less.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03520 Temperature and time control—Cooling methods (~~((2009))~~ FDA Food Code 3-501.15).** (1) Cooling must be accomplished in accordance with the time and temperature requirements specified under WAC 246-215-03515 by using one or more of the following methods based on the type of FOOD being cooled:

(a) Placing the FOOD in shallow pans;

(b) Separating the FOOD into smaller or thinner portions;

(c) Using rapid cooling EQUIPMENT;

(d) Stirring the FOOD in a container placed in an ice water bath;

(e) Using containers that facilitate heat transfer;

(f) Adding ice as an ingredient; or

(g) Other effective methods.

(2) When placed in cooling or cold holding EQUIPMENT, FOOD containers in which FOOD is being cooled must be:

(a) Arranged in the EQUIPMENT to provide maximum heat transfer through the container walls; and

(b) (~~(Loosely covered, or)~~) Uncovered ((if using the alternative cooling provisions in WAC 246-215-03515 (1)(e) and if)) and protected from overhead contamination as specified under WAC 246-215-03351 (1)(~~(b))~~), during the cooling period to facilitate heat transfer from the surface of the FOOD; or

(c) Loosely covered if using the cooling methods in WAC 246-215-03515(2).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03525 Temperature and time control—(~~(Potentially hazardous))~~ Time/temperature control for safety food, hot and cold holding ((2009)) FDA Food Code 3-501.16).** (1) Except during active preparation for up to two hours, cooking, or cooling or when time is used as the public health control as specified under WAC 246-215-03530, and except as specified in subsections (2) and (3) of this section, ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD must be maintained:

(a) At 135°F (57°C) or above, except that roasts cooked to a temperature and for a time specified under WAC 246-215-03400(2) or reheated as specified under WAC 246-215-03440 may be held at a temperature of 130°F (54°C) or above; or

(b) At 41°F (5°C) or less.

(2) EGGS that have not been treated to destroy all viable *Salmonellae* must be stored in refrigerated EQUIPMENT that maintains an ambient air temperature of 45°F (7°C) or less.

(3) (~~POTENTIALLY HAZARDOUS~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD in a homogenous liquid form may be maintained outside the temperature control requirements, as specified under subsection (1) of this section, while contained within specially designed EQUIPMENT that complies with the design and construction requirements as specified under WAC 246-215-04230(5).

#### NEW SECTION

**WAC 246-215-03526 Temperature and time control—Ready-to-eat, time/temperature control for safety food, date marking (FDA Food Code 3-501.17).** (1) Except when PACKAGING FOOD using a REDUCED OXYGEN PACKAGING method as specified under WAC 246-215-03540, and except as specified in subsections (5) and (6) of this section, refrigerated, READY-TO-EAT, TIME/TEMPERATURE CONTROL FOR SAFETY FOOD prepared and held in a FOOD ESTABLISHMENT for more than twenty-four hours must be clearly marked to indicate the date or day by which the FOOD must be consumed on the PREMISES, sold, or discarded when held at a temperature of 41°F (5°C) or less for a maximum of seven days. The day of preparation must be counted as day one.

(2) Except as specified in subsections (5) through (7) of this section, refrigerated, READY-TO-EAT, TIME/TEMPERATURE CONTROL FOR SAFETY FOOD prepared and PACKAGED by a FOOD PROCESSING PLANT must be clearly marked, at the time the original container is opened in a FOOD ESTABLISHMENT and if the FOOD is held for more than twenty-four hours, to indicate the date or day by which the FOOD must be consumed on the PREMISES, sold, or discarded, based on the temperature and time requirements specified in subsection (1) of this section and:

(a) The day the original container is opened in the FOOD ESTABLISHMENT is counted as day one; and

(b) The day or date marked by the FOOD ESTABLISHMENT may not exceed a manufacturer's use-by date if the manufacturer determined the use-by date based on FOOD safety.

(3) A refrigerated, READY-TO-EAT, TIME/TEMPERATURE CONTROL FOR SAFETY FOOD ingredient or a portion of a refrigerated, READY-TO-EAT, TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is combined with additional ingredients or portions of FOOD must retain the date marking of the earliest-prepared or first-prepared ingredient.

(4) A date marking system that meets the criteria stated in subsections (1) and (2) of this section may include:

(a) Using a method APPROVED by the REGULATORY AUTHORITY for refrigerated, READY-TO-EAT, TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft-serve mix or milk in a dispensing machine;

(b) Marking the date or day of preparation, with a procedure to discard the FOOD on or before the last date or day by which the FOOD must be consumed on the premises, sold, or discarded as specified under subsection (1) of this section;

(c) Marking the date or day the original container is opened in a FOOD ESTABLISHMENT, with a procedure to discard the FOOD on or before the last date or day by which the

FOOD must be consumed on the premises, sold, or discarded as specified under subsection (2) of this section; or

(d) Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the REGULATORY AUTHORITY upon request.

(5) Subsections (1) and (2) of this section do not apply to individual meal portions served or REPACKAGED for sale from a bulk container upon a consumer's request.

(6) Subsections (1) and (2) of this section do not apply to SHELLSTOCK.

(7) Subsection (2) of this section does not apply to the following FOODS prepared and PACKAGED by a FOOD PROCESSING PLANT inspected by a REGULATORY AUTHORITY:

(a) Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 C.F.R. 110 Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food;

(b) Hard cheeses containing not more than thirty-nine percent moisture as defined in 21 C.F.R. 133 Cheeses and Related Cheese Products, such as cheddar, gruyere, parmesan and reggiano, and romano;

(c) Semi-soft cheeses containing more than thirty-nine percent moisture, but not more than fifty percent moisture, as defined in 21 C.F.R. 133 Cheeses and Related Cheese Products, such as blue, edam, gorgonzola, gouda, and monterey jack;

(d) Cultured dairy products as defined in 21 C.F.R. 131 Milk and Cream, such as yogurt, sour cream, and buttermilk;

(e) Preserved FISH products, such as pickled herring and dried or salted cod, and other acidified FISH products defined in 21 C.F.R. 114 Acidified Foods;

(f) Shelf stable, dry fermented sausages, such as pepperoni and genoa; and

(g) Shelf stable salt-cured products such as prosciutto and parma ham.

#### NEW SECTION

**WAC 246-215-03527 Temperature and time control—Ready-to-eat, time/temperature control for safety food, disposition (FDA Food Code 3-501.18).** (1) A FOOD specified in WAC 246-215-03526 (1) and (2) must be discarded unless it is cooked or reheated to 165°F (74°C) prior to service, if it:

(a) Exceeds the temperature and time requirements specified in WAC 246-215-03526, except time that the product is frozen;

(b) Is in a container or PACKAGE that does not bear a date or day and no ability to validate the opening date; or

(c) Is inappropriately marked with a date or day that exceeds a temperature and time combination as specified in WAC 246-215-03526(1).

(2) Refrigerated, READY-TO-EAT, TIME/TEMPERATURE CONTROL FOR SAFETY FOOD prepared in a FOOD ESTABLISHMENT and dispensed through a VENDING MACHINE with an automatic shutoff control must be discarded if it exceeds a temperature and time requirement as specified in WAC 246-215-03526(1).

(3) A FOOD ESTABLISHMENT that serves a HIGHLY SUSCEPTIBLE POPULATION may not reheat improperly marked FOOD as specified under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03530 Temperature and time control—Time as a public health control (~~((2009))~~ FDA Food Code 3-501.19).** (1) Except as specified under subsection (3) of this section, if time without temperature control is used as the public health control for a working supply of (~~(POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD before cooking, or for READY-TO-EAT (~~(POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is displayed or held for sale or service for immediate consumption:

(a) Written procedures must be prepared in advance, maintained in the ESTABLISHMENT and made available to the REGULATORY AUTHORITY upon request that specify:

(i) Methods of compliance with subsections (2)(a) through (c) of this section; and

(ii) Methods of compliance with WAC 246-215-03515 for FOOD that is prepared, cooked, and refrigerated before time is used as a public health control.

(2) If time without temperature control is used as the public health control up to a maximum of four hours:

(a) The FOOD must have an internal temperature of 41°F (5°C) or less when removed from cold holding temperature control, or 135°F (57°C) or greater when removed from hot holding temperature control;

(b) The FOOD may have an initial temperature of 70°F (21°C) or less if:

(i) It is a READY-TO-EAT fruit or vegetable that upon cutting is rendered a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD; or

(ii) It is a READY-TO-EAT hermetically sealed FOOD that upon opening is rendered a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;

(iii) The FOOD temperature does not exceed 70°F (21°C) within a maximum time period of four hours from the time it was rendered a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD; and

(iv) The FOOD is marked or otherwise identified to indicate the time that is four hours past the point in time when the FOOD is rendered a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD.

(c) The FOOD must be marked or otherwise identified to indicate the time that is four hours past the point in time when the FOOD is removed from temperature control;

~~((e))~~ (d) The FOOD must be cooked and served, served at any temperature if READY-TO-EAT or discarded, within four hours from the point in time when the FOOD is removed from temperature control; and

~~((e))~~ (e) The FOOD in unmarked containers or packages, or marked to exceed a four-hour limit, must be discarded.

(3) A FOOD ESTABLISHMENT that serves a HIGHLY SUSCEPTIBLE POPULATION may not use time as specified under

subsections (1) and (2) of this section as the public health control for raw EGGS.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03535 Specialized processing methods—Variance requirement (~~((2009))~~ FDA Food Code 3-502.11).** A FOOD ESTABLISHMENT shall obtain a VARIANCE from the REGULATORY AUTHORITY as specified under WAC 246-215-08110 and 246-215-08115 before:

(1) Smoking FOOD as a method of FOOD preservation rather than as a method of flavor enhancement;

(2) Curing FOOD;

(3) Using FOOD ADDITIVES or adding components such as vinegar:

(a) As a method of FOOD preservation rather than as a method of flavor enhancement; or

(b) To render a FOOD so that it is not (~~(POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;

(4) Packaging TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a REDUCED OXYGEN PACKAGING method except where the growth of and toxin formation by *Clostridium botulinum* and the growth of *Listeria monocytogenes* are controlled as specified under WAC 246-215-03540;

(5) Operating a MOLLUSCAN SHELLFISH life-support system display tank used to store or display shellfish that are offered for human consumption;

(6) Custom processing animals that are for personal use as FOOD and not for sale or service in a FOOD ESTABLISHMENT;

(7) Preparing FOOD by another method that is determined by the REGULATORY AUTHORITY to require a VARIANCE; or

(8) Sprouting seeds or beans.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03540 Specialized processing methods—Reduced oxygen packaging without a variance, criteria (~~((2009))~~ FDA Food Code 3-502.12).** (1) Except for a FOOD ESTABLISHMENT that obtains a VARIANCE as specified under WAC 246-215-03535, a FOOD ESTABLISHMENT that packages (~~(POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a REDUCED OXYGEN PACKAGING method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*.

(2) Except as specified under subsection (6) of this section, a FOOD ESTABLISHMENT that packages (~~(POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a REDUCED OXYGEN PACKAGING method shall have a HACCP PLAN that contains the information specified under WAC 246-215-08215 (3) and (4) and that:

(a) Identifies the FOOD to be PACKAGED;

(b) Except as specified under subsections (3) through (5) of this section, requires that the PACKAGED FOOD must be maintained at 41°F (5°C) or less and meet at least one of the following requirements:

- (i) Has an  $A_w$  of 0.91 or less;
- (ii) Has a pH of 4.6 or less;
- (iii) Is a MEAT or POULTRY product cured at a FOOD PROCESSING PLANT regulated by the ((USDA)) USDA using substances specified in 9 C.F.R. 424.21, Use of Food Ingredients and Sources of Radiation, and is received in an intact package; or
- (iv) Is a FOOD with a high level of competing organisms such as raw MEAT, raw POULTRY, or raw vegetables;
- (c) Describes how the ((package)) PACKAGE must be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:
  - (i) Maintain the FOOD at 41°F (5°C) or below; and
  - (ii) Discard the FOOD if within ((fourteen)) thirty calendar days of its packaging it is not served for on-PREMISES consumption, or consumed if served or sold for off-PREMISES consumption;
  - (d) Limits the refrigerated shelf life to no more than ((fourteen)) thirty calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first:
    - (e) Includes operational procedures that:
      - (i) Prohibit contacting READY-TO-EAT FOOD with bare hands as specified under WAC 246-215-03300(2);
      - (ii) Identify a designated work area and the method by which:
        - (A) Physical barriers or methods of separation of raw FOODS and READY-TO-EAT FOODS minimize cross contamination; and
        - (B) Access to the processing EQUIPMENT is limited to responsible trained personnel familiar with the potential hazards of the operation; and
        - (iii) Delineate cleaning and sanitization procedures for FOOD-CONTACT SURFACES; and
      - (f) Describes the training program that ensures that the individual responsible for the REDUCED OXYGEN PACKAGING operation understands the:
        - (i) Concepts required for a safe operation;
        - (ii) EQUIPMENT and facilities; ((and))
        - (iii) Procedures specified under (e) of this subsection and WAC 246-215-08215 (3) and (4); and
        - (g) Is provided to the REGULATORY AUTHORITY prior to implementation as specified under WAC 246-215-08210(2).
    - (3) Except for FISH that is frozen before, during, and after PACKAGING, a FOOD ESTABLISHMENT may not PACKAGE FISH using a REDUCED OXYGEN PACKAGING method.
    - (4) Except as specified under subsections (3) and (6) of this section, a FOOD ESTABLISHMENT that PACKAGES FOOD using a cook-chill or sous vide process shall:
      - (a) ((Implement)) Provide to the REGULATORY AUTHORITY prior to implementation a HACCP PLAN that contains the information as specified under WAC 246-215-08215 (3) and (4);
      - (b) Ensure the FOOD is:
        - (i) Prepared and consumed on the PREMISES, or prepared and consumed off the PREMISES but within the same business entity with no distribution or sale of the PACKAGED product to another business entity or the CONSUMER;

- (ii) Cooked to heat all parts of the FOOD to a temperature and for a time as specified under WAC 246-215-03400 (1) through (3);
- (iii) Protected from contamination before and after cooking as specified under Part 3, Subparts C and D of this chapter;
- (iv) Placed in a package with an oxygen barrier and SEALED before cooking, or placed in a package and SEALED immediately after cooking and before reaching a temperature below 135°F (57°C);
- (v) Cooled to 41°F (5°C) in the SEALED package or bag as specified under WAC 246-215-03515 and ((subsequently)):
  - (A) Cooled to 34°F (1°C) within forty-eight hours of reaching 41°F (5°C) and held at that temperature until consumed or discarded within thirty days after the date of ((packaging)) PACKAGING;
  - (B) ((Cooled to 34°F (1°C) within forty-eight hours of reaching 41°F (5°C), removed from refrigeration EQUIPMENT that maintains a 34°F (1°C) FOOD temperature and then held at 41°F (5°C) or less for no more than seventy-two hours, at which time the FOOD must be consumed or discarded;
  - (C) Cooled to 38°F (3°C) or less within twenty-four hours of reaching 41°F (5°C) and held there for no more than seventy-two hours from packaging, at which time the FOOD must be consumed or discarded;
  - (~~D~~) Held at 41°F (5°C) or less for no more than seven days, at which time the FOOD must be consumed or discarded; or
  - (C) Held frozen with no shelf life restriction while frozen until consumed or used.
- (vi) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily;
- (vii) If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation; and
- (viii) Labeled with the product name and the date PACKAGED; and
- (c) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP PLAN and:
  - (i) Make such records available to the REGULATORY AUTHORITY upon request; and
  - (ii) Hold such records for at least six months after the last date the product was sold or served.
  - (d) Implement written operational procedures as specified under subsection (2)(e) of this section and a training program as specified under subsection (2)(f) of this section.
  - (5) Except as specified under subsection (6) of this section, a FOOD ESTABLISHMENT that PACKAGES cheese using a REDUCED OXYGEN PACKAGING method ((shall)) must:
    - (a) Limit the cheeses PACKAGED to those that are commercially manufactured in a FOOD PROCESSING PLANT with no ingredients added in the FOOD ESTABLISHMENT and that meet the Standards of Identity as specified in 21 C.F.R. 133.150 Hard Cheeses, 21 C.F.R. 133.169 Pasteurized Process Cheese or 21 C.F.R. 133.187 Semisoft Cheeses;

(b) Have a HACCP PLAN that contains the information specified under WAC 246-215-08215 (3) and (4) and as specified under subsection (2)(a), (c)(i), (e), and (f) of this section;

(c) Labels the package on the principal display panel with a "use by" date that does not exceed thirty days from its packaging or the original manufacturer's "sell by" or "use by" date, whichever comes first; and

(d) Discards the (~~reduced oxygen~~) REDUCED OXYGEN PACKAGED cheese if it is not sold for off-PREMISES consumption or consumed within thirty calendar days of its packaging.

(6) A HACCP PLAN is not required when a FOOD ESTABLISHMENT uses a REDUCED OXYGEN PACKAGING method to PACKAGE raw or READY-TO-EAT TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is always:

(a) Labeled with the production time and date;

(b) Held at 41°F (5°C) or less during refrigerated storage; and

(c) Removed from its PACKAGE in the FOOD ESTABLISHMENT within forty-eight hours after PACKAGING.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03600 Accurate representation—Standards of identity ((2009)) FDA Food Code 3-601.11).** PACKAGED FOOD must comply with standard of identity requirements in 21 C.F.R. 131-169 and 9 C.F.R. 319 Definitions and Standards of Identity or Composition, and the general requirements in 21 C.F.R. 130 - Food Standards: General and 9 C.F.R. 319 Subpart A - General.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03605 Accurate representation—Honestly presented ((2009)) FDA Food Code 3-601.12).** (1) FOOD must be offered for human consumption in a way that does not mislead or misinform the CONSUMER.

(2) FOOD ADDITIVES or COLOR ADDITIVES, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a FOOD.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03610 Labeling—Food labels ((2009)) FDA Food Code 3-602.11).** (1) FOOD PACKAGED in a FOOD ESTABLISHMENT must be labeled as specified in LAW, including chapters 69.04 and 15.130 RCW; 21 C.F.R. 101 - Food Labeling; and 9 C.F.R. 317 - Labeling, Marking Devices, and Containers.

(2) Label information must include:

(a) The common name of the FOOD(;) or, absent a common name, (~~and~~) an adequately descriptive identity statement;

(b) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the FOOD;

(c) An accurate declaration of the quantity of contents;

(d) The name and place of business of the manufacturer, packer, or distributor;

(e) The name of the FOOD source for each MAJOR FOOD ALLERGEN contained in the FOOD unless the FOOD source is already part of the common or unusual name of the respective ingredient;

(f) Except as exempted in the Federal Food, Drug, and Cosmetic Act Section 403(((Q))) (q)(3) through (5), nutrition labeling as specified in 21 C.F.R. 101 - Food Labeling and 9 C.F.R. 317 Subpart B Nutrition Labeling; and

(g) For any salmonid FISH containing canthaxanthin or astaxanthin as a COLOR ADDITIVE, the labeling of the bulk FISH container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin or astaxanthin.

(3) Bulk FOOD that is available for CONSUMER self-dispensing must be prominently labeled with the following information in plain view of the CONSUMER:

(a) The manufacturer's or processor's label that was provided with the FOOD; or

(b) A card, sign, or other method of notification that includes the information specified under subsection (2)(a), (b), and (~~(e))~~ (f) of this section.

(4) Bulk(;) unPACKAGED FOODS such as bakery products and unPACKAGED FOODS that are portioned to CONSUMER specification need not be labeled if:

(a) A health, nutrient content, or other claim is not made;

(b) There are no state or local LAWS requiring labeling; and

(c) The FOOD is manufactured or prepared on the PREMISES of the FOOD ESTABLISHMENT or at another FOOD ESTABLISHMENT or a FOOD PROCESSING PLANT that is owned by the same PERSON and is regulated by the FOOD regulatory agency that has jurisdiction.

(5) Whenever unpasteurized milk and FOODS containing unpasteurized milk are offered for sale at a FOOD ESTABLISHMENT, except hard or semi-soft raw milk cheeses properly fermented and aged for a minimum of sixty days in compliance with 21 C.F.R. Part 133, the PERMIT HOLDER and PERSON IN CHARGE shall ensure that:

(a) The product is conspicuously labeled "*raw milk*" or "*contains raw milk*"; and

(b) A sign is posted in a conspicuous manner near the product stating: "*Warning: Raw milk or foods prepared from raw milk may be contaminated with dangerous bacteria capable of causing severe illness. Contact your local health agency for advice or to report a suspected illness.*"

(6) The PERMIT HOLDER and PERSON IN CHARGE shall ensure that required information contained on FOOD labels is in the English language, except that duplicate labeling in other languages is allowed.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03615 Labeling—Other forms of information ((2009)) FDA Food Code 3-602.12).** (1) If required by LAW, CONSUMER warnings must be provided.



(2) FOOD ESTABLISHMENT or manufacturers' dating information on FOODS may not be concealed or altered.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03620 Consumer advisory—Consumption of animal foods that are raw, undercooked, or not otherwise processed to eliminate pathogens ((2009)) FDA Food Code 3-603.11).** (1) Except as specified under WAC 246-215-03400 (3) and (4)(d) and 246-215-03800(3) if an animal FOOD such as beef, EGGS, FISH, lamb, pork, POULTRY, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in a READY-TO-EAT form or as an ingredient in another READY-TO-EAT FOOD, the PERMIT HOLDER shall inform CONSUMERS of the significantly increased RISK of consuming such FOODS by way of a DISCLOSURE and REMINDER, as specified in subsections (2) and (3) of this section using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means.

(2) DISCLOSURE must include:

(a) A description of the animal-derived FOODS such as "oysters on the half shell (raw oysters)," "fresh fish (can be cooked to order)," "raw egg Caesar salad," and "hamburgers (can be cooked to order)"; or

(b) Identification of the animal-derived FOODS by asterisking them to a footnote that states that the items are served raw or undercooked and contain (or might contain) raw or undercooked ingredients.

(3) REMINDER must include asterisking the animal-derived FOODS requiring DISCLOSURE to a footnote that states:

(a) "*Regarding the safety of these items, written information is available upon request((\*)*":

(b) "*Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs might increase your risk of food-borne illness((\*)*":

(c) "*Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs might increase your risk of food-borne illness, especially if you have certain medical conditions((\*)*": or

(d) "*Regarding the safety of consuming fresh partially cooked fish, information is available upon request.*"

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03700 Disposition—Discarding or reconditioning unsafe, adulterated, or contaminated food ((2009)) FDA Food Code 3-701.11).** (1) A FOOD that is unsafe, ADULTERATED, or not honestly presented as specified under WAC 246-215-03100 must be discarded or reconditioned according to an APPROVED procedure.

(2) FOOD that is not from an APPROVED source as specified under WAC 246-215-03200 through 246-215-03230 must be discarded.

(3) READY-TO-EAT FOOD that might have been contaminated by an EMPLOYEE who has been RESTRICTED or EXCLUDED as specified under WAC 246-215-02220 and 246-215-02225 must be discarded.

(4) FOOD that is contaminated by FOOD EMPLOYEES, CONSUMERS, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means must be discarded.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03705 Disposition—Examination, hold orders, condemnation, and destruction of food.** (1) The PERMIT HOLDER or PERSON IN CHARGE of a FOOD ESTABLISHMENT in which FOOD has been improperly handled, stored, or prepared shall:

(a) Voluntarily destroy the questionable FOOD; or

(b) Contact the REGULATORY AUTHORITY to determine if the FOOD is safe for human consumption.

(2) The PERMIT HOLDER or PERSON IN CHARGE of a FOOD ESTABLISHMENT shall denature or destroy any FOOD if the REGULATORY AUTHORITY determines the FOOD presents an imminent or actual health hazard.

(3) The REGULATORY AUTHORITY may examine or collect samples of FOOD as often as necessary for enforcement of these regulations.

(4) The REGULATORY AUTHORITY may, after notice to the PERMIT HOLDER or PERSON IN CHARGE, place a written hold order on any suspect FOOD until a determination on its safety can be made and shall:

(a) Tag;

(b) Label; or

(c) Otherwise identify any FOOD subject to the hold order and complete a form APPROVED by the Washington state department of health for all suspect FOOD.

(5) The hold order issued by the REGULATORY AUTHORITY must include:

(a) Instructions for filing a written request for a hearing with the REGULATORY AUTHORITY within ten calendar days; and

(b) Notification that if a hearing is not requested in accordance with the instructions provided in the hold order, and the REGULATORY AUTHORITY does not vacate the hold order, the FOOD must be destroyed under the supervision of a representative of the REGULATORY AUTHORITY.

(6) When FOOD is subject to a hold order by the REGULATORY AUTHORITY, the PERMIT HOLDER and PERSON IN CHARGE are prohibited from:

(a) Using the FOOD;

(b) Serving the FOOD; or

(c) ~~((Moving))~~ Removing the FOOD from the FOOD ESTABLISHMENT.

(7) The REGULATORY AUTHORITY may allow storage of FOOD under conditions specified in the hold order, unless storage is not possible without RISK to ~~((the))~~ public health, in which case immediate destruction shall be ordered and must be accomplished by the PERMIT HOLDER or PERSON IN CHARGE of the FOOD ESTABLISHMENT.

(8) Based upon evidence provided at the hearing, the REGULATORY AUTHORITY may either:

(a) Vacate the hold order; or

(b) Direct the PERMIT HOLDER or PERSON IN CHARGE of the FOOD ESTABLISHMENT by written order to:

- (i) Denature or destroy such FOOD; or
- (ii) Bring the FOOD into compliance with the provisions of these regulations.

**((Subsection)) Subpart H - Special Requirements for Highly Susceptible Populations**

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-03800 Additional safeguards—Pasteurized foods, prohibited reservice, and prohibited food ((2009) FDA Food Code 3-801.11).** In a FOOD ESTABLISHMENT that serves a HIGHLY SUSCEPTIBLE POPULATION:

- (1) The following requirements apply to JUICE:
  - (a) For the purposes of ~~((this paragraph only))~~ subsection (1) of this section, children who are age nine or less and receive FOOD in a school, day care setting, or similar facility that provides custodial care are included as HIGHLY SUSCEPTIBLE POPULATIONS;
  - (b) PrePACKAGED JUICE or a prePACKAGED BEVERAGE containing JUICE, that bears a warning label as specified in 21 C.F.R., Section 101.17(g) Food Labeling, Warning, Notice and Safe Handling Statements, JUICES that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, or a PACKAGED JUICE or BEVERAGE containing JUICE that bears a warning label as specified under WAC 246-215-03445(2) may not be served or offered for sale; and
  - (c) UnPACKAGED JUICE that is prepared on the PREMISES for service or sale in a READY-TO-EAT form ~~((and not PACKAGED))~~ must be processed under a HACCP PLAN that contains the information specified under WAC 246-215-08215 (2) through (5) and as specified in 21 C.F.R. Part 120 - Hazard Analysis and Critical Control Point (HACCP) Systems, Subpart B Pathogen Reduction, 120.24 Process controls.
- (2) Pasteurized EGGS or EGG PRODUCTS must be substituted for raw EGGS in the preparation of:
  - (a) FOODS such as Caesar salad, hollandaise or Bearnaise sauce, mayonnaise, meringue, eggnog, ice cream, and EGG-fortified BEVERAGES; and
  - (b) Except as specified in subsection (6) of this section, recipes in which more than one EGG is broken and the EGGS are combined;
- (3) The following FOODS may not be served or offered for sale in a READY-TO-EAT form:
  - (a) Raw animal FOODS such as raw FISH, raw marinated FISH, raw MOLLUSCAN SHELLFISH, and steak tartare;
  - (b) A partially cooked animal FOOD such as lightly cooked FISH, rare MEAT, soft cooked EGGS that are made from raw EGGS, and meringue; and
  - (c) Raw seed sprouts.
  - (4) FOOD EMPLOYEES may not contact READY-TO-EAT FOOD as specified under WAC 246-215-03300 (2) and ~~((4))~~ (5).
  - (5) Time only, as the public health control as specified under WAC 246-215-03530(4), may not be used for raw EGGS.
  - (6) Subsection (2)(b) of this section does not apply if:

(a) The raw EGGS are combined immediately before cooking for one CONSUMER'S serving at a single meal, cooked as specified under WAC 246-215-03400 (1)(a), and served immediately such as an omelet, souffle, or scrambled EGGS;

(b) The raw EGGS are combined as an ingredient immediately before baking and the EGGS are thoroughly cooked to a READY-TO-EAT form, such as a cake, muffin, or bread; or

(c) The preparation of the FOOD is conducted under a HACCP PLAN that:

- (i) Identifies the FOOD to be prepared;
- (ii) Prohibits contacting READY-TO-EAT FOOD with bare hands;
- (iii) Includes specifications and practices that ensure:
  - (A) *Salmonella* ~~((Enteritidis))~~ Enteritidis growth is controlled before and after cooking; and
  - (B) *Salmonella* ~~((Enteritidis))~~ Enteritidis is destroyed by cooking the EGGS according to the temperature and time specified under WAC 246-215-03400 (1)(b);
  - (iv) Contains the information specified under WAC 246-215-08215(4) including procedures that:
    - (A) Control cross contamination of READY-TO-EAT FOOD with raw EGGS; and
    - (B) Delineate cleaning and SANITIZING procedures for FOOD-CONTACT SURFACES; and
    - (v) Describes the training program that ensures that the FOOD EMPLOYEE responsible for the preparation of the FOOD understands the procedures to be used.
- (7) Except as specified in subsection (8) of this section, FOOD may be re-served as specified under WAC 246-215-03372 (2)(a) and (b).
- (8) FOOD may not be re-served under the following conditions:
  - (a) Any FOOD served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environmental isolation may not be re-served to others outside.
  - (b) Packages of FOOD from any patients, clients, or other CONSUMERS should not be re-served to persons in protective environmental isolation.
- (9) Reheating, as specified under WAC 246-215-03527 (1), may not be used for improperly marked FOOD.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04100 Multiuse—Characteristics ((2009) FDA Food Code 4-101.11).** Materials that are used in the construction of UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT may not allow the migration of deleterious substances or impart colors, odors, or tastes to FOOD and under normal use conditions must be:

- (1) Safe;
- (2) Durable, CORROSION-RESISTANT, and nonabsorbent;
- (3) Sufficient in weight and thickness to withstand repeated WAREWASHING;
- (4) Finished to have a SMOOTH, EASILY CLEANABLE surface; and
- (5) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04105 Multiuse—Cast iron, use limitation ((2009)) FDA Food Code 4-101.12).** (1) Except as specified in subsections (2) and (3) of this section, cast iron may not be used for UTENSILS or FOOD-CONTACT SURFACES of EQUIPMENT.

(2) Cast iron may be used as a surface for cooking.

(3) Cast iron may be used in UTENSILS for serving FOOD if the UTENSILS are used only as part of an uninterrupted process from cooking through service.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04110 Multiuse—Lead in ceramic, china, and crystal utensils, use limitation ((2009)) FDA Food Code 4-101.13).** (1) Ceramic, china, crystal UTENSILS, and decorative UTENSILS such as hand painted ceramic or china that are used in contact with FOOD must be lead-free or contain levels of lead not exceeding the limits of the following UTENSIL categories:

Utensil Category	Description	Maximum Lead mg/L
((Hot)) BEVERAGE Mugs, Cups, Pitchers	Coffee Mugs	0.5
Large Hollow-ware (excluding pitchers)	Bowls ≥ 1.1 L (1.16 Quart)	1
Small Hollow-ware (excluding cups and mugs)	Bowls < 1.1 L (1.16 Quart)	2.0
Flat TABLEWARE	Plates, Saucers	3.0

(2) Pewter alloys containing lead in excess of 0.05% may not be used as a FOOD-CONTACT SURFACE.

(3) Solder and flux containing lead in excess of 0.2% may not be used as a FOOD-CONTACT SURFACE.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04115 Multiuse—Copper, use limitation ((2009)) FDA Food Code 4-101.14).** (1) Except as specified in subsection (2) of this section, copper and copper alloys such as brass may not be used in contact with a FOOD that has a pH below six such as vinegar, fruit JUICE, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator.

(2) Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below six in the prefermentation steps of a beer brewing operation such as a brewpub or microbrewery.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04120 Multiuse—Galvanized metal, use limitation ((2009)) FDA Food Code 4-101.15).** Galvanized metal may not be used for UTENSILS or FOOD-CONTACT SURFACES of EQUIPMENT that are used in contact with acidic FOOD.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04125 Multiuse—Sponges, use limitation ((2009)) FDA Food Code 4-101.16).** Sponges may not be used in contact with cleaned and SANITIZED or in-use FOOD-CONTACT SURFACES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04130 Multiuse—Wood, use limitation ((2009)) FDA Food Code 4-101.17).** (1) Except as specified in subsections (2), (3), and (4) of this section, wood and wood wicker may not be used as a FOOD-CONTACT SURFACE.

(2) Hard maple or an equivalently hard, close-grained wood may be used for:

(a) Cutting boards; cutting blocks; baker's tables; servicing surfaces; and UTENSILS such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and

(b) Wooden paddles used in confectionary operations for pressure scraping kettles when manually preparing confections at a temperature of 230°F (110°C) or above.

(3) Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.

(4) If the nature of the FOOD requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw FOOD may be kept in:

(a) Untreated wood containers; or

(b) Treated wood containers if the containers are treated with a preservative that meets the requirements specified in 21 C.F.R. 178.3800 Preservatives for Wood.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04135 Multiuse—Nonstick coatings, use limitation ((2009)) FDA Food Code 4-101.18).** Multi-use KITCHENWARE such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating must be used with nonscoring or nonscratching UTENSILS and cleaning aids.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04140 Multiuse—Nonfood-contact surfaces ((2009)) FDA Food Code 4-101.19).** NonFOOD-CONTACT SURFACES of EQUIPMENT that are exposed to

splash, spillage, or other FOOD soiling or that require frequent cleaning must be constructed of a CORROSION-RESISTANT, nonabsorbent, and SMOOTH material.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04145 Single-service and single use—Characteristics (((2009)) FDA Food Code 4-102.11).** Materials that are used to make SINGLE-SERVICE and SINGLE-USE ARTICLES:

- (1) May not:
  - (a) Allow the migration of deleterious substances; or
  - (b) Impart colors, odors, or tastes to FOOD; and
- (2) Must be:
  - (a) Safe; and
  - (b) Clean.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04200 Durability and strength—Equipment and utensils (((2009)) FDA Food Code 4-201.11).** EQUIPMENT and UTENSILS must be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04202 Durability and strength—Food temperature measuring devices (((2009)) FDA Food Code 4-201.12).** FOOD TEMPERATURE MEASURING DEVICES may not have sensors or stems constructed of glass, except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04204 Cleanability—Food-contact surfaces (((2009)) FDA Food Code 4-202.11).** (1) Multiuse FOOD-CONTACT SURFACES must be:

- (a) SMOOTH;
- (b) Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections;
- (c) Free of sharp internal angles, corners, and crevices;
- (d) Finished to have SMOOTH welds and joints; and
- (e) Except as specified in subsection (2) of this section, accessible for cleaning and inspection by one of the following methods:
  - (i) Without being disassembled;
  - (ii) By disassembling without the use of tools; or
  - (iii) By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-ended wrenches, and Allen wrenches.

(2) Subsection (1)(e) of this section does not apply to cooking oil storage tanks, distribution lines for cooking oils, or BEVERAGE syrup lines or tubes.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04206 Cleanability—CIP equipment (((2009)) FDA Food Code 4-202.12).** (1) CIP EQUIPMENT must meet the characteristics specified under WAC 246-215-04204 and must be designed and constructed so that:

- (a) Cleaning and SANITIZING solutions circulate throughout a fixed system and contact all interior FOOD-CONTACT SURFACES; and
- (b) The system is self-draining or capable of being completely drained of cleaning and SANITIZING solutions; and
- (2) CIP EQUIPMENT that is not designed to be disassembled for cleaning must be designed with inspection access points to ensure that all interior FOOD-CONTACT SURFACES throughout the fixed system are being effectively cleaned.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04208 Cleanability—"V" threads, use limitation (((2009)) FDA Food Code 4-202.13).** Except for hot oil cooking or filtering EQUIPMENT, "V" type threads may not be used on FOOD-CONTACT SURFACES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04210 Cleanability—Hot oil filtering equipment (((2009)) FDA Food Code 4-202.14).** Hot oil filtering EQUIPMENT must meet the characteristics specified under WAC 246-215-04204 or 246-215-04206 and must be readily accessible for filter replacement and cleaning of the filter.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04212 Cleanability—Can openers (((2009)) FDA Food Code 4-202.15).** Cutting or piercing parts of can openers must be readily removable for cleaning and for replacement.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04214 Cleanability—Nonfood-contact surfaces (((2009)) FDA Food Code 4-202.16).** NonFOOD-CONTACT SURFACES must be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04216 Cleanability—Kick plates, removable (((2009)) FDA Food Code 4-202.17).** Kick plates must be designed so that the areas behind them are accessible for inspection and cleaning by being:

- (1) Removable by one of the methods specified under WAC 246-215-04204 (1)(e) or capable of being rotated open; and

(2) Removable or capable of being rotated open without unlocking EQUIPMENT doors.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04218 Cleanability—Ventilation hood systems, filters ((2009)) FDA Food Code 4-202.18).** Filters or other grease extracting EQUIPMENT must be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04220 Accuracy—Temperature measuring devices, food ((2009)) FDA Food Code 4-203.11).** (1) FOOD TEMPERATURE MEASURING DEVICES that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit must be accurate to  $\pm 1^{\circ}\text{C}$  in the intended range of use.

(2) FOOD TEMPERATURE MEASURING DEVICES that are scaled only in Fahrenheit must be accurate to  $\pm 2^{\circ}\text{F}$  in the intended range of use.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04222 Accuracy—Temperature measuring devices, ambient air and water ((2009)) FDA Food Code 4-203.12).** (1) Ambient air and water TEMPERATURE MEASURING DEVICES that are scaled in Celsius or dually scaled in Celsius and Fahrenheit must be designed to be easily readable and accurate to  $\pm 1.5^{\circ}\text{C}$  in the intended range of use.

(2) Ambient air and water TEMPERATURE MEASURING DEVICES that are scaled only in Fahrenheit must be accurate to  $\pm 3^{\circ}\text{F}$  in the intended range of use.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04224 Accuracy—Pressure measuring devices, mechanical warewashing equipment ((2009)) FDA Food Code 4-203.13).** Pressure measuring devices that display the pressures in the water supply line for the fresh hot water SANITIZING rinse must have increments of one pound per square inch (seven kilopascals) or smaller and must be accurate to  $\pm$  two pounds per square inch ( $\pm 14$  kilopascals) in the range indicated on the manufacturer's data plate.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04226 Functionality—Ventilation hood systems, drip prevention ((2009)) FDA Food Code 4-204.11).** Exhaust ventilation hood systems in FOOD preparation and WAREWASHING areas including components such as hoods, fans, guards, and ducting must be designed to prevent grease or condensation from draining or dripping onto FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04228 Functionality—Equipment openings, closures and deflectors ((2009)) FDA Food Code 4-204.12).** (1) A cover or lid for EQUIPMENT must overlap the opening and be sloped to drain.

(2) An opening located within the top of a unit of EQUIPMENT that is designed for use with a cover or lid must be flanged upward at least two-tenths of an inch (five millimeters).

(3) Except as specified under subsection (4) of this section, fixed piping, TEMPERATURE MEASURING DEVICES, rotary shafts, and other parts extending into the EQUIPMENT must be provided with a watertight joint at the point where the item enters the EQUIPMENT.

(4) If a watertight joint is not provided:

(a) The piping, TEMPERATURE MEASURING DEVICES, rotary shafts, and other parts extending through the openings must be equipped with an apron designed to deflect condensation, drips, and dust from openings into the FOOD; and

(b) The opening must be flanged as specified under subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04230 Functionality—Dispensing equipment, protection of equipment and food ((2009)) FDA Food Code 4-204.13).** In EQUIPMENT that dispenses or vends liquid FOOD or ice in unPACKAGED form:

(1) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the FOOD must be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the FOOD;

(2) The delivery tube, chute and orifices must be protected from manual contact such as by being recessed;

(3) The delivery tube or chute and orifice of EQUIPMENT used to vend liquid FOOD or ice in unPACKAGED form to self-service CONSUMERS must be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the EQUIPMENT is:

(a) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, wind-blown debris, insects, rodents, and other contaminants that are present in the environment; or

(b) Available for self-service during hours when it is not under the full-time supervision of a FOOD EMPLOYEE; and

(4) The dispensing EQUIPMENT actuating level or mechanism and filling device of CONSUMER self-service BEVERAGE dispensing EQUIPMENT must be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

(5) Dispensing EQUIPMENT in which ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD in a homogenous liquid form is maintained outside of the temperature control requirements as specified under WAC 246-215-03525(1) must:

(a) Be specifically designed and equipped to maintain the commercial sterility of aseptically PACKAGED FOOD in a homogenous liquid form for a specified duration from the time of opening the packaging within the EQUIPMENT; and

(b) Conform to the requirements for this EQUIPMENT as specified in NSF/ANSI 18-2006 - Manual food and Beverage Dispensing Equipment.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04232 Functionality—Vending machine, vending stage closure (((2009)) FDA Food Code 4-204.14).** The dispensing compartment of a VENDING MACHINE including a machine that is designed to vend pre-PACKAGED snack FOOD that is not (~~(POTENTIALLY HAZARDOUS)~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD such as chips, party mixes, and pretzels must be equipped with a self-closing door or cover if the machine is:

(1) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, wind-blown debris, insects, rodents, and other contaminants that are present in the environment; or

(2) Available for self-service during hours when it is not under the full-time supervision of a FOOD EMPLOYEE.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04234 Functionality—Bearings and gear boxes, leakproof (((2009)) FDA Food Code 4-204.15).** EQUIPMENT containing bearings and gears that require lubricants must be designed and constructed so that the lubricant cannot leak, drip, or be forced into FOOD or onto FOOD-CONTACT SURFACES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04236 Functionality—Beverage tubing, separation (((2009)) FDA Food Code 4-204.16).** Except for cold plates that are constructed integrally with an ice storage bin, BEVERAGE tubing and cold-plate BEVERAGE cooling devices may not be installed in contact with stored ice.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04238 Functionality—Ice units, separation of drains (((2009)) FDA Food Code 4-204.17).** Liquid waste drain lines may not pass through an ice machine or ice storage bin.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04240 Functionality—Condenser unit, separation (((2009)) FDA Food Code 4-204.18).** If a condenser unit is an integral component of EQUIPMENT, the

condenser unit must be separated from the FOOD and FOOD storage space by a dustproof barrier.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04242 Functionality—Can openers on vending machines (((2009)) FDA Food Code 4-204.19).** Cutting or piercing parts of can openers on vending machines must be protected from manual contact, dust, insects, rodents, and other contamination.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04244 Functionality—Molluscan shellfish tanks (((2009)) FDA Food Code 4-204.110).** (1) Except as specified under subsection (2) of this section, MOLLUSCAN SHELLFISH life support system display tanks may not be used to store or display shellfish that are offered for human consumption and must be conspicuously marked so that it is obvious to the CONSUMER that shellfish are for display only.

(2) MOLLUSCAN SHELLFISH life-support system display tanks that are used to store or display shellfish that are offered for human consumption must be operated and maintained in accordance with a VARIANCE granted by the REGULATORY AUTHORITY as specified under WAC 246-215-08110 and a HACCP PLAN that:

(a) Is submitted by the PERMIT HOLDER and APPROVED as specified under WAC 246-215-08115; and

(b) Ensures that:

(i) Water used with FISH other than MOLLUSCAN SHELLFISH does not flow into the molluscan tank;

(ii) The safety and quality of the shellfish as they were received are not compromised by the use of the tank; and

(iii) The identity of the source of the SHELLSTOCK is retained as specified under WAC 246-215-03290.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04246 Functionality—Vending machines, automatic shutoff (((2009)) FDA Food Code 4-204.111).** (1) A machine vending (~~(POTENTIALLY HAZARDOUS)~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD must have an automatic control that prevents the machine from vending FOOD:

(a) If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain FOOD temperatures as specified under Part 3 of this chapter; and

(b) If a condition specified under (a) of this subsection occurs, until the machine is serviced and restocked with FOOD that has been maintained at temperatures specified under Part 3 of this chapter.

(2) When the automatic shutoff within a machine vending (~~(POTENTIALLY HAZARDOUS)~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD is activated:

(a) In a refrigerated VENDING MACHINE, the ambient temperature may not exceed 41°F (5°C) for more than thirty

minutes immediately after the machine is filled, serviced, or restocked; or

(b) In a hot holding VENDING MACHINE, the ambient air temperature may not be less than 135°F (57°C) for more than one hundred twenty minutes immediately after the machine is filled, serviced, or restocked.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04248 Functionality—Temperature measuring devices ((2009) FDA Food Code 4-204.112).**

(1) In a mechanically refrigerated or hot FOOD storage unit, the sensor of a TEMPERATURE MEASURING DEVICE must be located to measure the air temperature or a simulated product temperature in the warmest part of a mechanically refrigerated unit and in the coolest part of a hot FOOD storage unit.

(2) Except as specified in subsection (3) of this section, cold or hot holding EQUIPMENT used for(~~POTENTIALLY HAZARDOUS~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD must be designed to include and must be equipped with at least one integral or permanently affixed TEMPERATURE MEASURING DEVICE that is located to allow easy viewing of the device's temperature display.

(3) Subsection (2) of this section does not apply to EQUIPMENT for which the placement of a TEMPERATURE MEASURING DEVICE is not a practical means for measuring the ambient air surrounding the FOOD because of the design, type, and use of the EQUIPMENT, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated FOOD transport containers, and salad bars.

(4) TEMPERATURE MEASURING DEVICES must be designed to be easily readable.

(5) FOOD TEMPERATURE MEASURING DEVICES and water TEMPERATURE MEASURING DEVICES on WAREWASHING machines must have a numerical scale, printed record, or digital readout in increments no greater than 2°F or 1°C in the intended range of use.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04250 Functionality—Warewashing machines, data plate operating specifications ((2009) FDA Food Code 4-204.113).** A WAREWASHING machine must be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operation specifications including the:

(1) Temperatures required for washing, rinsing, and SANITIZING;

(2) Pressure required for the fresh water SANITIZING rinse unless the machine is designed to use only pumped SANITIZING rinse; and

(3) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04252 Functionality—Warewashing machines, internal baffles ((2009) FDA Food Code 4-204.114).** WAREWASHING machine wash and rinse tanks must be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04254 Functionality—Warewashing machines, temperature measuring devices ((2009) FDA Food Code 4-204.115).** A (~~warewashing~~) WAREWASHING machine must be equipped with a TEMPERATURE MEASURING DEVICE that indicates the temperature of the water:

(1) In each wash and rinse tank; and

(2) As the water enters the hot water SANITIZATION final rinse manifold or in the chemical SANITIZING solution tank.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04256 Functionality—Manual warewashing equipment, heaters and baskets ((2009) FDA Food Code 4-204.116).** If hot water is used for SANITIZATION in manual WAREWASHING operations, the SANITIZING compartment of the sink must be:

(1) Designed with an integral heating device that is capable of maintaining water at a temperature not less than 171°F (77°C); and

(2) Provided with a rack or basket to allow complete immersion of EQUIPMENT and UTENSILS into the hot water.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04258 Functionality—Warewashing machines, automatic dispensing of detergents and sanitizers ((2009) FDA Food Code 4-204.117).** A WAREWASHING machine that is installed after adoption of this chapter by the REGULATORY AUTHORITY must be equipped to:

(1) Automatically dispense detergents and SANITIZERS; and

(2) Incorporate a visual means to verify that detergents and SANITIZERS are delivered or a visual or audible alarm to signal if the detergents and SANITIZERS are not delivered to the respective washing and SANITIZING cycles.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04260 Functionality—Warewashing machines, flow pressure device ((2009) FDA Food Code 4-204.118).** (1) WAREWASHING machines that provide a fresh hot water SANITIZING rinse must be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the WAREWASHING machine; and

(2) If the flow pressure measuring device is upstream of the fresh hot water SANITIZING rinse control valve, the device must be mounted in a one-fourth inch (6.4 mm) iron pipe size (IPS) valve.

(3) Subsections (1) and (2) of this section do not apply to a machine that uses only a pumped or recirculated SANITIZING rinse.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04262 Functionality—Warewashing sinks and drainboards, self-draining (((2009)) FDA Food Code 4-204.119).** Sinks and drainboards of WAREWASHING sinks and machines must be self-draining.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04264 Functionality—Equipment compartments, drainage (((2009)) FDA Food Code 4-204.120).** EQUIPMENT compartments that are subject to accumulation of moisture due to conditions such as condensation, FOOD or BEVERAGE drip, or water from melting ice must be sloped to an outlet that allows complete draining.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04266 Functionality—Vending machines, liquid waste products (((2009)) FDA Food Code 4-204.121).** (1) VENDING MACHINES designed to store BEVERAGES that are PACKAGED in containers made from paper products must be equipped with diversion devices and retention pans or drains for container leakage.

(2) VENDING MACHINES that dispense liquid FOOD in bulk must be:

(a) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

(b) Equipped with an automatic shutoff device that places the machine out of operation before the waste receptacle overflows.

(3) Shutoff devices specified under subsection (2)(b) of this section must prevent water or liquid FOOD from continuously running if there is a failure of a flow control device in the water or liquid FOOD system or waste accumulation that could lead to overflow of the waste receptacle.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04268 Functionality—Case lot handling equipment, moveability (((2009)) FDA Food Code 4-204.122).** Apparatuses, such as dollies, pallets, racks, and skids used to store and transport large quantities of PACKAGED FOODS received from a supplier in a cased or over-wrapped lot, must be designed to be moved by hand or by conveniently available apparatuses such as hand trucks and forklifts.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04270 Functionality—Vending machine doors and openings (((2009)) FDA Food Code 4-204.123).** (1) VENDING MACHINE doors and access opening covers to FOOD and container storage spaces must be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than one-sixteenth inch (1.5 millimeters) by:

(a) Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than one-sixteenth inch (1.5 millimeters). Screening of twelve mesh to one inch (twelve or more mesh to 2.5 centimeters) meets this requirement;

(b) Being effectively gasketed;

(c) Having interface surfaces that are at least one-half inch (13 mm) wide; or

(d) Jambs or surfaces used to form an L-shaped entry path to the interface.

(2) VENDING MACHINE service connection openings through an exterior wall of a machine must be closed by sealants, clamps, or grommets so that the openings are no larger than one-sixteenth inch (1.5 mm).

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04272 Acceptability—Food equipment, certification and classification (((2009)) FDA Food Code 4-205.10).** FOOD EQUIPMENT that is certified or classified for sanitation ((~~by an~~) in conformance with a recognized American National Standards Institute (ANSI) - Accredited certification program is deemed to comply with Subparts A and B of this part.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04300 Equipment—Cooling, heating, and holding capacities (((2009)) FDA Food Code 4-301.11).** EQUIPMENT for cooling and heating FOOD, and holding cold and hot FOOD, must be sufficient in number and capacity to provide FOOD temperatures as specified under Part 3.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04305 Equipment—Manual warewashing, sink compartment requirements (((2009)) FDA Food Code 4-301.12).** (1) Except as specified in subsection (3) of this section, a sink with at least three compartments must be provided for manually washing, rinsing, and SANITIZING EQUIPMENT and UTENSILS.

(2) Sink compartments must be large enough to accommodate immersion of the largest EQUIPMENT and UTENSILS. If EQUIPMENT or UTENSILS are too large for the WAREWASHING sink, a WAREWASHING machine or alternative EQUIPMENT as specified in subsection (3) of this section must be used.



(3) Alternative manual WAREWASHING EQUIPMENT may be used when there are special cleaning needs or constraints and its use is APPROVED. Alternative manual WAREWASHING EQUIPMENT includes, but is not limited to:

- (a) High-pressure detergent sprayers;
- (b) Low- or line-pressure spray detergent foamers;
- (c) Other task-specific cleaning EQUIPMENT;
- (d) Brushes or other implements;
- (e) Two-compartment sinks as specified under subsections (4) and (5) of this section; or
- (f) Receptacles that substitute for the compartments of a multicompartment sink.

(4) Before a two-compartment sink is used:

(a) The PERMIT HOLDER shall have its use APPROVED; and

(b) The PERMIT HOLDER shall limit the number of KITCHENWARE items cleaned and SANITIZED in the two-compartment sink, and shall limit WAREWASHING to batch operations for cleaning KITCHENWARE such as between cutting one type of raw MEAT and another or cleanup at the end of a shift, and shall:

(i) Make up the cleaning and SANITIZING solutions immediately before use and drain them immediately after use; and

(ii) Use APPROVED procedures to properly clean and SANITIZE KITCHENWARE.

(5) A two-compartment sink may not be used for WAREWASHING operations where cleaning and SANITIZING solutions are used for a continuous or intermittent flow of KITCHENWARE or TABLEWARE in an ongoing WAREWASHING process.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04310 Equipment—Drainboards ((2009) FDA Food Code 4-301.13).** Drainboards, UTENSIL racks, or tables large enough to accommodate all soiled and cleaned items that might accumulate during hours of operation must be provided for necessary UTENSILS holding before cleaning and after SANITIZING.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04315 Equipment—Ventilation hood systems, adequacy ((2009) FDA Food Code 4-301.14).** Ventilation hood systems and devices must be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04320 Equipment—Clothes washers and dryers ((2009) FDA Food Code 4-301.15).** (1) Except as specified in subsection (2) of this section, if work clothes or LINENS are laundered on the PREMISES, a mechanical clothes washer and dryer must be provided and used.

(2) If on-PREMISES laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as

specified under WAC 246-215-04905, a mechanical clothes washer and dryer need not be provided.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04330 Utensils, temperature measuring devices, and testing devices—Utensils, consumer self-service ((2009) FDA Food Code 4-302.11).** A FOOD dispensing UTENSIL must be available for each container displayed at a CONSUMER self-service unit such as a buffet or salad bar.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04335 Utensils, temperature measuring devices, and testing devices—Food temperature measuring devices ((2009) FDA Food Code 4-302.12).** (1) FOOD TEMPERATURE MEASURING DEVICES must be provided and readily accessible for use in ensuring attainment and maintenance of FOOD temperatures as specified under Part 3.

(2) A TEMPERATURE MEASURING DEVICE with a suitable small-diameter probe that is designed to measure the temperature of thin masses must be provided and readily accessible to accurately measure the temperature in thin FOODS such as MEAT patties and FISH fillets.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04340 Utensils, temperature measuring devices, and testing devices—Temperature measuring devices, manual warewashing ((2009) FDA Food Code 4-302.13).** (1) In manual WAREWASHING operations, a TEMPERATURE MEASURING DEVICE must be provided and readily accessible for frequently measuring the washing and SANITIZING temperatures.

(2) In hot water mechanical WAREWASHING operations, an irreversible registering temperature indicator must be provided and readily accessible for measuring the UTENSIL surface temperature.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04345 Utensils, temperature measuring devices, and testing devices—Sanitizing solutions, testing devices ((2009) FDA Food Code 4-302.14).** A test kit or other device that accurately measures the concentration in mg/L of SANITIZING solutions must be provided.

#### NEW SECTION

**WAC 246-215-04350 Cleaning agents and sanitizers—Cleaning agents and sanitizers availability (FDA Food Code 4-303.11).** (1) Cleaning agents that are used to clean EQUIPMENT and UTENSILS as specified under Part 4, Subpart F of this chapter, must be provided and available for use during all hours of operation.

(2) Except for those that are generated on-site at the time of use, chemical SANITIZERS that are used to sanitize EQUIPMENT and UTENSILS as specified under Part 4, Subpart G of this chapter, must be provided and available for use during all hours of FOOD preparation.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04400 Location—Equipment, clothes washers and dryers, and storage cabinets, contamination prevention (((2009)) FDA Food Code 4-401.11).** (1) Except as specified in subsection (2) of this section, EQUIPMENT, a cabinet used for the storage of FOOD, or a cabinet that is used to store cleaned and SANITIZED EQUIPMENT, UTENSILS, laundered LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES may not be located:

- (a) In locker rooms;
- (b) In toilet rooms;
- (c) In garbage rooms;
- (d) In mechanical rooms;
- (e) Under sewer lines that are not shielded to intercept potential drips;
- (f) Under leaking water lines including automatic fire sprinkler heads or under lines on which water has condensed;
- (g) Under open stairwells; or
- (h) Under other sources of contamination.

(2) A storage cabinet used for LINENS or SINGLE-SERVICE or SINGLE-USE ARTICLES may be stored in a locker room.

(3) If a mechanical clothes washer or dryer is provided, it must be located so that the washer or dryer is protected from contamination and only where there is no exposed FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04405 Installation—Fixed equipment, spacing or sealing (((2009)) FDA Food Code 4-402.11).** (1) EQUIPMENT that is fixed because it is not EASILY MOVABLE must be installed so that it is:

- (a) Spaced to allow access for cleaning along the sides, behind, and above the EQUIPMENT;
- (b) Spaced from adjoining EQUIPMENT, walls, and ceilings a distance of not more than one thirty-second inch (1 mm); or
- (c) SEALED to adjoining EQUIPMENT or walls, if the EQUIPMENT is exposed to spilling or seepage.

(2) COUNTER-MOUNTED EQUIPMENT that is not EASILY MOVABLE must be installed to allow cleaning of the EQUIPMENT and areas underneath and around the EQUIPMENT by being:

- (a) SEALED; or
- (b) Elevated on legs as specified under WAC 246-215-04410.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04410 Installation—Fixed equipment, elevation or sealing (((2009)) FDA Food Code 4-402.12).**

(1) Except as specified in subsections (2) and (3) of this section, floor-mounted EQUIPMENT that is not EASILY MOVABLE must be SEALED to the floor or elevated on legs that provide at least a six inch (15 cm) clearance between the floor and the EQUIPMENT.

(2) If no part of the floor under the floor-mounted EQUIPMENT is more than six inches (15 cm) from the point of cleaning access, the clearance space may be only four inches (10 cm).

(3) This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the CONSUMER shopping areas of a retail FOOD store, if the floor under the units is maintained clean.

(4) Except as specified in subsection (5) of this section, COUNTER-MOUNTED EQUIPMENT that is not EASILY MOVABLE must be elevated on legs that provide at least a four inch (10 cm) clearance between the table and the EQUIPMENT.

(5) The clearance space between the table and COUNTER-MOUNTED EQUIPMENT may be:

- (a) Three inches (7.5 cm) if the horizontal distance of the table top under the EQUIPMENT is no more than 20 inches (50 cm) from the point of access for cleaning; or
- (b) Two inches (5 cm) if the horizontal distance of the table top under the EQUIPMENT is no more than three inches (7.5 cm) from the point of access for cleaning.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04500 Equipment—Good repair and proper adjustment (((2009)) FDA Food Code 4-501.11).**

(1) EQUIPMENT must be maintained in a state of repair and condition that meets the requirements specified under Part 4, Subpart A and Part 4, Subpart B of this chapter.

(2) EQUIPMENT components such as doors, seals, hinges, fasteners, and kick plates must be kept intact, tight, and adjusted in accordance with the manufacturer's specifications.

(3) Cutting or piercing parts of can openers must be replaced as needed to minimize the creation of metal fragments that can contaminate FOOD when the container is opened.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04505 Equipment—Cutting surfaces (((2009)) FDA Food Code 4-501.12).**

Surfaces such as cutting blocks and boards that are subject to scratching and scoring must be resurfaced if they can no longer be effectively cleaned and SANITIZED, or discarded if they are not capable of being resurfaced.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04510 Equipment—Microwave ovens ((2009)) FDA Food Code 4-501.13).** Microwave ovens must meet the safety standards specified in 21 C.F.R. 1030.10 Microwave Ovens.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04515 Equipment—Warewashing equipment, cleaning frequency ((2009)) FDA Food Code 4-501.14).** A WAREWASHING machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing EQUIPMENT, UTENSILS, or raw FOODS, or laundering wiping cloths; and drainboards or other EQUIPMENT used to substitute for drainboards as specified under WAC 246-215-04310 must be cleaned:

- (1) Before use;
- (2) Throughout the day at a frequency necessary to prevent recontamination of EQUIPMENT and UTENSILS and to ensure that the EQUIPMENT performs its intended function; and
- (3) If used, at least every twenty-four hours.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04520 Equipment—Warewashing machines, manufacturer's operating instructions ((2009)) FDA Food Code 4-501.15).** (1) A WAREWASHING machine and its auxiliary components must be operated in accordance with the machine's data plate and other manufacturer's instructions.

(2) A WAREWASHING machine's conveyor speed or automatic cycle times must be maintained accurately timed in accordance with manufacturer's specifications.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04525 Equipment—Warewashing sinks, use limitation ((2009)) FDA Food Code 4-501.16).**

(1) A WAREWASHING sink may not be used for handwashing as specified under WAC 246-215-02315.

(2) If a WAREWASHING sink is used to wash wiping cloths, wash produce, or thaw FOOD, the sink must be cleaned as specified under WAC 246-215-04515 before and after each time it is used to wash wiping cloths or wash produce or thaw FOOD. Sinks used to wash or thaw FOOD must be SANITIZED as specified under subpart G of this part before and after using the sink to wash produce or thaw FOOD.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04530 Equipment—Warewashing equipment, cleaning agents ((2009)) FDA Food Code 4-501.17).** When used for WAREWASHING, the wash compartment of a sink, mechanical warewasher, or wash receptacle of

alternative manual WAREWASHING EQUIPMENT as specified under WAC 246-215-04305(3), must contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04535 Equipment—Warewashing equipment, clean solutions ((2009)) FDA Food Code 4-501.18).** The wash, rinse and SANITIZE solutions must be maintained clean.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04540 Equipment—Manual warewashing equipment, wash solution temperature ((2009)) FDA Food Code 4-501.19).** The temperature of the wash solution in manual WAREWASHING EQUIPMENT must be maintained at not less than 110°F (43°C) or the temperature specified on the cleaning agent manufacturer's label instructions.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04545 Equipment—Mechanical warewashing equipment, wash solution temperature ((2009)) FDA Food Code 4-501.110).** (1) The temperature of the wash solution in spray-type warewashers that use hot water to SANITIZE may not be less than:

- (a) For a stationary rack, single temperature machine, 165°F (74°C);
- (b) For a stationary rack, dual temperature machine, 150°F (66°C);
- (c) For a single tank, conveyor, dual temperature machine, 160°F (71°C);
- (d) For a multitank, conveyor, multitemperature machine, 150°F (66°C).

(2) The temperature of the wash solution in spray-type warewashers that use chemicals to SANITIZE may not be less than 120°F (49°C).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04550 Equipment—Manual warewashing equipment, hot water sanitization temperature ((2009)) FDA Food Code 4-501.111).** If immersion in hot water is used for SANITIZING in a manual operation, the temperature of the water must be maintained at 171°F (77°C) or above.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04555 Equipment—Mechanical warewashing equipment, hot water sanitization temperatures ((2009)) FDA Food Code 4-501.112).** (1) Except as specified in subsection (2) of this section, in a mechanical

operation, the temperature of the fresh hot water SANITIZING rinse as it enters the manifold may not be more than 194°F (90°C) or less than:

- (a) For a stationary rack, single temperature machine, 165°F (74°C); or
  - (b) For all other machines, 180°F (82°C).
- (2) The maximum temperature specified under subsection (1) of this section, does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and SANITIZING of EQUIPMENT such as MEAT saws.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04560 Equipment—Mechanical warewashing equipment, sanitization pressure (~~((2009))~~ FDA Food Code 4-501.113).** The flow pressure of the fresh hot water SANITIZING rinse in a WAREWASHING machine, as measured in the water line immediately downstream or upstream from the fresh hot water SANITIZING rinse control valve, must be within the range specified on the machine manufacturer's data plate and may not be less than five pounds per square inch (35 kilopascals) or more than thirty pounds per square inch (200 kilopascals).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04565 Equipment—Manual and mechanical warewashing equipment, chemical sanitization—Temperature, pH, concentration, and hardness (~~((2009))~~ FDA Food Code 4-501.114).** A chemical SANITIZER used in a SANITIZING solution for a manual or mechanical operation at contact times specified under WAC 246-215-04710(3) must meet the requirements specified under WAC 246-215-07220, must be used in accordance with the EPA-registered label use instructions, and must be used as follows:

- (1) A chlorine solution must have a minimum temperature based on the concentration and pH of the solution as listed in the following chart:

Concentration Range	Minimum Temperature	
	pH 10 or less °F (°C)	pH 8 or less °F (°C)
mg/L		
25-49	120 (49)	120 (49)
50-99	100 (38)	75 (24)
100	55 (13)	55 (13)

- (2) An iodine solution must have a:
  - (a) Minimum temperature of 68°F (20°C);
  - (b) pH of 5.0 or less or a pH no higher than the level for which the manufacturer specifies the solution is effective; and
  - (c) Concentration between 12.5 mg/L and 25 mg/L.
- (3) A quaternary ammonium compound solution must:
  - (a) Have a minimum temperature of 75°F (24°C);

- (b) Have a concentration as specified under WAC 246-215-07220 and as indicated by the manufacturer's use directions included in the labeling; and

- (c) Be used only in water with 500 mg/L hardness or less or in water having a hardness no greater than specified by the EPA-registered label use instructions;

- (4) If another solution of a chemical specified under subsections (1) through (3) of this section is used, the PERMIT HOLDER shall demonstrate to the REGULATORY AUTHORITY that the solution achieves SANITIZATION and the use of the solution must be APPROVED; (~~((e))~~)

- (5) If a chemical SANITIZER other than chlorine, iodine, or a quaternary ammonium compound is used, it must be applied in accordance with the EPA-registered label use instructions; or

(6) If a chemical SANITIZER is generated by a device located on-site at the FOOD ESTABLISHMENT, it must be used as specified in subsections (1) through (4) of this section and must be produced by a device that:

- (a) Complies with regulation as specified in sections 2 (q)(1) and (12) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);
- (b) Complies with 40 C.F.R. 152.500 Requirement for Devices and 40 C.F.R. 156.10 Labeling Requirements;
- (c) Displays the EPA device manufacturing facility registration number on the device; and
- (d) Is operated and maintained in accordance with manufacturer's instructions.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04570 Equipment—Manual warewashing equipment, chemical sanitization using detergent-sanitizers (~~((2009))~~ FDA Food Code 4-501.115).** If a detergent-SANITIZER is used to SANITIZE in a cleaning and SANITIZING procedure where there is no distinct water rinse between the washing and SANITIZING steps, the agent applied in the SANITIZING step must be the same detergent-SANITIZER that is used in the washing step.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04575 Equipment—Warewashing equipment, determining chemical sanitizer concentration (~~((2009))~~ FDA Food Code 4-501.116).** Concentration of the SANITIZING solution must be accurately determined by using a test kit or other device.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04580 Utensils and temperature and pressure measuring devices—Good repair and calibration (~~((2009))~~ FDA Food Code 4-502.11).** (1) UTENSILS must be maintained in a state of repair or condition that complies with the requirements specified under Part 4, Subparts A and B, or must be discarded.

(2) FOOD TEMPERATURE MEASURING DEVICES must be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

(3) Ambient air temperature, water pressure, and water TEMPERATURE MEASURING DEVICES must be maintained in good repair and be accurate within the intended range of use.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04585 Utensils and temperature and pressure measuring devices—Single-service and single-use articles, required use ((2009) FDA Food Code 4-502.12).** A FOOD ESTABLISHMENT without facilities specified under Part 4, Subparts ((6) F and ((7) G of this chapter for cleaning and SANITIZING KITCHENWARE and TABLEWARE must provide only SINGLE-USE KITCHENWARE, SINGLE-SERVICE ARTICLES, and SINGLE-USE ARTICLES for use by FOOD EMPLOYEES and SINGLE-SERVICE ARTICLES for use by CONSUMERS.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04590 Utensils and temperature and pressure measuring devices—Single-service and single-use articles, use limitation ((2009) FDA Food Code 4-502.13).** (1) SINGLE-SERVICE and SINGLE-USE ARTICLES may not be reused.

(2) The bulk milk container dispensing tube must be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04595 Utensils and temperature and pressure measuring devices—Shells, use limitation ((2009) FDA Food Code 4-502.14).** Mollusk and crustacea shells may not be used more than once as serving containers.

~~((Subsection))~~ **Subpart F - Cleaning of Equipment and Utensils**

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04600 Objective—Equipment, food-contact surfaces, nonfood-contact surfaces, and utensils ((2009) FDA Food Code 4-601.11).** (1) EQUIPMENT, FOOD-CONTACT SURFACES, and UTENSILS must be clean to sight and touch.

(2) The FOOD-CONTACT SURFACES of cooking EQUIPMENT and pans must be kept free of encrusted grease deposits and other soil accumulations.

(3) NonFOOD-CONTACT SURFACES of EQUIPMENT must be kept free of an accumulation of dust, dirt, FOOD residue, and other debris.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04605 Objective—Equipment food-contact surfaces and utensils ((2009) FDA Food Code 4-602.11).** (1) EQUIPMENT, FOOD-CONTACT SURFACES, and UTENSILS must be cleaned:

(a) Except as specified in subsection (2) of this section, before each use with a different type of raw animal FOOD such as beef, FISH, lamb, pork, or POULTRY;

(b) Each time there is a change from working with raw FOODS to working with READY-TO-EAT FOODS;

(c) Between uses with raw fruits and vegetables and with ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;

(d) Before using or storing a FOOD TEMPERATURE MEASURING DEVICE; and

(e) At any time during the operation when contamination might have occurred.

(2) Subsection (1)(a) of this section does not apply if the FOOD-CONTACT SURFACE or UTENSIL is in contact with a succession of different ((raw animal FOODS)) types of raw MEAT and POULTRY each requiring a higher cooking temperature as specified under WAC 246-215-03400 than the previous ((FOOD, such as preparing raw FISH followed by cutting raw POULTRY on the same cutting board)) type.

(3) Except as specified in subsection (4) of this section, if used with ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD, EQUIPMENT, FOOD-CONTACT SURFACES, and UTENSILS must be cleaned throughout the day at least every four hours.

(4) Surfaces of UTENSILS and EQUIPMENT contacting ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD may be cleaned less frequently than every four hours if:

(a) In storage, containers of ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD and their contents are maintained at temperatures specified under Part 3 and the containers are cleaned when they are empty;

(b) UTENSILS and EQUIPMENT are used to prepare FOOD in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:

(i) The UTENSILS and EQUIPMENT are cleaned at the frequency in the following chart that corresponds to the temperature; and

Temperature	Cleaning Frequency
41°F or less (5.0°C or less)	24 hours
> 41°F - 45°F (> 5.0°C - 7.2°C)	20 hours
> 45°F - 50°F (> 7.2°C - 10.0°C)	16 hours
> 50°F - 55°F (> 10.0°C - 12.8°C)	10 hours

(ii) The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the FOOD ESTABLISHMENT.

(c) Containers in serving situations such as salad bars, delis, and cafeteria lines hold READY-TO-EAT ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is maintained at the temperatures specified under Part 3, are intermittently combined with additional supplies of the same FOOD that is at the required temperature, and the containers are cleaned every twenty-four hours;

(d) TEMPERATURE MEASURING DEVICES are maintained in contact with FOOD, such as when left in a container of deli FOOD or in a roast, held at temperatures specified under Part 3;

(e) EQUIPMENT is used for storage of PACKAGED or unPACKAGED FOOD such as a reach-in refrigerator and the EQUIPMENT is cleaned at a frequency necessary to preclude accumulation of soil residues;

(f) The cleaning schedule is APPROVED based on consideration of:

- (i) Characteristics of the EQUIPMENT and its use;
- (ii) The type of food involved;
- (iii) The amount of FOOD residue accumulation; and
- (iv) The temperature at which the FOOD is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or

(g) In-use UTENSILS are intermittently stored in a container of water in which the water is maintained at 135°F (57°C) or more or 41°F (5°C) or less and the UTENSILS and container are cleaned at least every twenty-four hours or at a frequency necessary to preclude accumulation of soil residues.

(5) Except when dry cleaning methods are used as specified under WAC 246-215-04620, surfaces of UTENSILS and EQUIPMENT contacting FOOD that is not ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD must be cleaned:

(a) At any time when contamination might have occurred;

(b) At least every twenty-four hours for iced tea dispensers and CONSUMER self-service UTENSILS such as tongs, scoops, or ladles;

(c) Before restocking CONSUMER self-service EQUIPMENT and UTENSILS such as condiment dispensers and display containers; and

(d) In EQUIPMENT such as ice bins and BEVERAGE dispensing nozzles and enclosed components of EQUIPMENT such as ice makers, cooking oil storage tanks and distribution lines, BEVERAGE and syrup dispensing lines or tubes, coffee bean grinders, and water vending EQUIPMENT:

- (i) At a frequency specified by the manufacturer; or
- (ii) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04610 Objective—Cooking and baking equipment ((~~2009~~) FDA Food Code 4-602.12).** (1) The FOOD-CONTACT SURFACES of cooking and baking EQUIPMENT must be cleaned at least every twenty-four hours. This section does not apply to hot oil cooking and filtering EQUIP-

MENT if it is cleaned as specified under WAC 246-215-04605 (4)(f).

(2) The cavities and door seals of microwave ovens must be cleaned at least every twenty-four hours by using the manufacturer's recommended cleaning procedure.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04615 Objective—Nonfood-contact surfaces ((~~2009~~) FDA Food Code 4-602.13).** NonFOOD-CONTACT SURFACES of EQUIPMENT must be cleaned at a frequency necessary to preclude accumulation of soil residues.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04620 Methods—Dry cleaning ((~~2009~~) FDA Food Code 4-603.11).** (1) If used, dry cleaning methods such as brushing, scraping, and vacuuming may only contact surfaces that are soiled with dry FOOD residues that are not ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD.

(2) Cleaning EQUIPMENT used in dry cleaning FOOD-CONTACT SURFACES may not be used for any other purpose.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04625 Methods—Precleaning ((~~2009~~) FDA Food Code 4-603.12).** (1) FOOD debris on EQUIPMENT and UTENSILS must be scraped over a waste disposal unit or garbage receptacle or must be removed in a WAREWASHING machine with a prewash cycle.

(2) If necessary for effective cleaning, UTENSILS and EQUIPMENT must be preflushed, presoaked, or scrubbed with abrasives.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04630 Methods—Loading of soiled items, warewashing machines ((~~2009~~) FDA Food Code 4-603.13).** Soiled items to be cleaned in a WAREWASHING machine must be loaded into racks, trays, or baskets or onto conveyors in a position that:

- (1) Exposes the items to the unobstructed spray from all cycles; and
- (2) Allows the item to drain.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04635 Methods—Wet cleaning ((~~2009~~) FDA Food Code 4-603.14).** (1) EQUIPMENT, FOOD-CONTACT SURFACES, and UTENSILS must be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.

(2) The washing procedures selected must be based on the type and purpose of the EQUIPMENT or UTENSIL, and on the type of soil to be removed.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04640 Methods—Washing, procedures for alternative manual warewashing equipment (((2009)) FDA Food Code 4-603.15).** If washing in sink compartments or a WAREWASHING machine is impractical such as when the EQUIPMENT is fixed or the UTENSILS are too large, washing must be done by using alternative manual WAREWASHING EQUIPMENT as specified under WAC 246-215-04305(3) in accordance with the following procedures:

(1) EQUIPMENT must be disassembled as necessary to allow access of the detergent solution to all parts;

(2) EQUIPMENT components and UTENSILS must be scraped or rough cleaned to remove FOOD particle accumulation; and

(3) EQUIPMENT and UTENSILS must be washed as specified under WAC 246-215-04635(1).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04645 Methods—Rinsing procedures (((2009)) FDA Food Code 4-603.16).** Washed UTENSILS and EQUIPMENT must be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-SANITIZER solution by using one of the following procedures:

(1) Use of a distinct, separate water rinse after washing and before SANITIZING if using:

(a) A three-compartment sink;

(b) Alternative manual WAREWASHING EQUIPMENT equivalent to a three-compartment sink as specified under WAC 246-215-04305(3); or

(c) A three-step washing, rinsing, and SANITIZING procedure in a WAREWASHING system for CIP EQUIPMENT;

(2) Use of a detergent-SANITIZER as specified under WAC 246-215-04570 if using:

(a) Alternative WAREWASHING EQUIPMENT as specified under WAC 246-215-04305(3) that is APPROVED for use with a detergent-SANITIZER; or

(b) A WAREWASHING system for CIP EQUIPMENT;

(3) Use of a nondistinct water rinse that is integrated in the hot water SANITIZATION immersion step of a two-compartment sink operation;

(4) If using a WAREWASHING machine that does not recycle the SANITIZING solution as specified under subsection (5) of this section, or alternative manual WAREWASHING EQUIPMENT such as sprayers, use of a nondistinct water rinse that is:

(a) Integrated in the application of the SANITIZING solution; and

(b) Wasted immediately after each application; or

(5) If using a WAREWASHING machine that recycles the SANITIZING solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the SANITIZING solution.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04700 Objective—Food-contact surfaces and utensils (((2009)) FDA Food Code 4-701.10).** EQUIPMENT, FOOD-CONTACT SURFACES, and UTENSILS must be SANITIZED.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04705 Frequency—Before use after cleaning (((2009)) FDA Food Code 4-702.11).** UTENSILS and FOOD-CONTACT SURFACES of EQUIPMENT must be SANITIZED before use and after cleaning.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04710 Methods—Hot water and chemical (((2009)) FDA Food Code 4-703.11).** After being cleaned, EQUIPMENT, FOOD-CONTACT SURFACES, and UTENSILS must be SANITIZED in:

(1) Hot water manual operations by immersion for at least thirty seconds and as specified under WAC 246-215-04550;

(2) Hot water mechanical operations by being cycled through EQUIPMENT that is set up as specified under WAC 246-215-04520, 246-215-04555, and 246-215-04560 and achieving a UTENSIL surface temperature of 160°F (71°C) as measured by an irreversible registering temperature indicator; or

(3) Chemical manual or mechanical operations, including the application of SANITIZING chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under WAC 246-215-04565. Contact times must be consistent with those on EPA-registered label use instructions by providing:

(a) Except as specified under (b) of this subsection, a contact time of at least ten seconds for a chlorine solution specified under WAC 246-215-04565(1);

(b) A contact time of at least seven seconds for a chlorine solution of 50 MG/L that has a pH of ten or less and a temperature of at least 100°F (38°C) or a pH of eight or less and a temperature of at least 75°F (24°C);

(c) A contact time of at least thirty seconds for other chemical SANITIZING solutions; or

(d) A contact time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields SANITIZATION as defined in WAC 246-215-01115.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04800 Objective—Clean linens (((2009)) FDA Food Code 4-801.11).** Clean LINENS must be free from FOOD residues and other soiling matter.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04805 Frequency—Specifications ((2009)) FDA Food Code 4-802.11).** (1) LINENS that do not come in direct contact with FOOD must be laundered between operations if they become wet, sticky, or visibly soiled.

(2) Cloth gloves used as specified under WAC 246-215-03342(4) must be laundered before being used with a different type of raw animal FOOD such as beef, FISH, lamb, pork, or POULTRY.

(3) LINENS and napkins that are used as specified under WAC 246-215-03336 and cloth napkins must be laundered between each use.

(4) Wet wiping cloths must be laundered daily.

(5) Dry wiping cloths must be laundered as necessary to prevent contamination of FOOD and clean serving UTENSILS.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04810 Methods—Storage of soiled linens ((2009)) FDA Food Code 4-803.11).** Soiled LINENS must be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of FOOD, clean EQUIPMENT, clean UTENSILS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04815 Methods—Mechanical washing ((2009)) FDA Food Code 4-803.12).** (1) Except as specified in subsection (2) of this section, LINENS must be mechanically washed.

(2) In FOOD ESTABLISHMENTS in which only wiping cloths are laundered as specified under WAC 246-215-04320(2), the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a WAREWASHING sink that is cleaned as specified under WAC 246-215-04515.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04820 Methods—Use of laundry facilities ((2009)) FDA Food Code 4-803.13).** (1) Except as specified in subsection (2) of this section, laundry facilities on the PREMISES of a FOOD ESTABLISHMENT must be used only for the washing and drying of items used in the operation of the establishment.

(2) Separate laundry facilities located on the PREMISES for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering FOOD ESTABLISHMENT items.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04900 Drying—Equipment and utensils, air-drying required ((2009)) FDA Food Code 4-**

**901.11).** After cleaning and SANITIZING, EQUIPMENT and UTENSILS:

(1) Must be air-dried or used after adequate draining as specified in the first paragraph of 40 C.F.R. 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (FOOD-CONTACT SURFACE SANITIZING solutions), before contact with FOOD; and

(2) May not be cloth-dried except that UTENSILS that have been air-dried may be polished with cloths that are maintained clean and dry.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04905 Drying—Wiping cloths, air drying locations ((2009)) FDA Food Code 4-901.12).** Wiping cloths laundered in a FOOD ESTABLISHMENT that does not have a mechanical clothes dryer as specified under WAC 246-215-04320(2) must be air-dried in a location and in a manner that prevents contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES and the wiping cloths. This section does not apply if wiping cloths are stored after laundering in a SANITIZING solution as specified under WAC 246-215-04565.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04910 Lubricating and reassembling—Food-contact surfaces ((2009)) FDA Food Code 4-902.11).** Lubricants as specified under WAC 246-215-07240 must be applied to FOOD-CONTACT SURFACES that require lubrication in a manner that does not contaminate FOOD-CONTACT SURFACES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04915 Lubricating and reassembling—Equipment ((2009)) FDA Food Code 4-902.12).** EQUIPMENT must be reassembled so that FOOD-CONTACT SURFACES are not contaminated.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04920 Storing—Equipment, utensils, linens, and single-service and single-use articles ((2009)) FDA Food Code 4-903.11).** (1) Except as specified in subsection (4) of this section, cleaned EQUIPMENT, UTENSILS, laundered LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES must be stored:

(a) In a clean, dry location;

(b) Where they are not exposed to splash, dust, or other contamination; and

(c) At least six inches (15 cm) above the floor.

(2) Clean EQUIPMENT and UTENSILS must be stored as specified under subsection (1) of this section and must be stored:

(a) In a self-draining position that allows air drying; and

(b) Covered or inverted.



(3) SINGLE-SERVICE and SINGLE-USE ARTICLES must be stored as specified under subsection (1) of this section and must be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(4) Items that are kept in closed packages may be stored less than six inches (15 cm) above the floor on dollies, pallets, racks, and skids that are designed as specified under WAC 246-215-04268.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04925 Storing—Prohibitions ((2009)) FDA Food Code 4-903.12.** (1) Except as specified in subsection (2) of this section, cleaned and SANITIZED EQUIPMENT, UTENSILS, laundered LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES may not be stored:

- (a) In locker rooms;
  - (b) In toilet rooms;
  - (c) In garbage rooms;
  - (d) In mechanical rooms;
  - (e) Under sewer lines that are not shielded to intercept potential drips;
  - (f) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
  - (g) Under open stairwells; or
  - (h) Under other sources of contamination.
- (2) Laundered LINENS and SINGLE-SERVICE and SINGLE-USE ARTICLES that are PACKAGED or in a facility such as a cabinet may be stored in a locker room.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04930 Preventing contamination—Kitchenware and tableware ((2009)) FDA Food Code 4-904.11.** (1) SINGLE-SERVICE and SINGLE-USE ARTICLES and cleaned and SANITIZED UTENSILS must be handled, displayed, and dispensed so that contamination of FOOD- and lip-contact surfaces is prevented.

(2) Knives, forks and spoons that are not prewrapped must be presented so that only the handles are touched by EMPLOYEES and by CONSUMERS if CONSUMER self-service is provided.

(3) Except as specified under subsection (2) of this section, SINGLE-SERVICE ARTICLES that are intended for FOOD- or lip-contact must be furnished for CONSUMER self-service with the original individual wrapper intact or from an APPROVED dispenser.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04935 Preventing contamination—Soiled and clean tableware ((2009)) FDA Food Code 4-904.12.** Soiled TABLEWARE must be removed from CONSUMER eating and drinking areas and handled so that clean TABLEWARE is not contaminated.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04940 Preventing contamination—Preset tableware ((2009)) FDA Food Code 4-904.13.** (1) Except as specified in subsection (2) of this section, TABLEWARE that is preset must be protected from contamination by being wrapped, covered, or inverted;

(2) Preset TABLEWARE may be exposed if:

- (a) Unused settings are removed when a CONSUMER is seated; or
- (b) Settings not removed when a CONSUMER is seated are cleaned and SANITIZED before further use.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-04945 Preventing contamination—Rinsing equipment and utensils after cleaning and sanitizing ((2009)) FDA Food Code 4-904.14.** After being cleaned and SANITIZED, EQUIPMENT and UTENSILS may not be rinsed before air drying or use unless:

(1) The rinse is applied directly from a potable water supply by a WAREWASHING machine that is maintained and operated as specified under WAC 246-215-04226 through 246-215-04270 and 246-215-04500 through 246-215-04575; and

(2) The rinse is applied only after the EQUIPMENT and UTENSILS have been SANITIZED by the application of hot water or by the application of a chemical SANITIZER solution whose EPA-registered label use instructions call for rinsing off the SANITIZER after it is applied in a commercial WAREWASHING machine.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05100 Source—Approved system ((2009)) FDA Food Code 5-101.11.** DRINKING WATER must be obtained from an APPROVED source that is a PUBLIC WATER SYSTEM.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05105 Source—System flushing and disinfection ((2009)) FDA Food Code 5-101.12.** A DRINKING WATER system must be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that might introduce contaminants into the system.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05110 Source—Bottled drinking water ((2009)) FDA Food Code 5-101.13.** BOTTLED DRINKING WATER used or sold in a FOOD ESTABLISHMENT must be obtained from APPROVED sources in accordance with 21 C.F.R. 129 - Processing and Bottling of Bottled Drinking Water and chapters 246-290 and 246-291 WAC.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05115 Quality—Standards ((2009)) FDA Food Code 5-102.11).** Water used in FOOD ESTABLISHMENTS must meet DRINKING WATER quality standards in accordance with chapters 246-290 and 246-291 WAC, except as specified under WAC 246-215-05120.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05120 Quality—Nondrinking water ((2009)) FDA Food Code 5-102.12).** (1) A nonDRINKING WATER supply must be used only if its use is APPROVED.

(2) NonDRINKING WATER must be used only for nonculinary purposes such as air conditioning, nonFOOD EQUIPMENT cooling, fire protection and irrigation of nonFOOD landscape foliage.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05125 Quality—Sampling ((2009)) FDA Food Code 5-102.13).** Except when used as specified under WAC 246-215-05120, water from a nonPUBLIC WATER SYSTEM must be sampled and tested at least annually and as required by state water quality regulations.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05130 Quantity and availability—Sample report ((2009)) FDA Food Code 5-102.14).** The most recent sample report for the nonPUBLIC WATER SYSTEM must be retained on file in the FOOD ESTABLISHMENT or the report must be maintained as specified by state water quality regulations.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05135 Quantity and availability—Capacity ((2009)) FDA Food Code 5-103.11).** (1) The water source and system must be of sufficient capacity to meet the peak water demands of the FOOD ESTABLISHMENT.

(2) Hot water generation and distribution systems must be sufficient to meet the peak hot water demands throughout the FOOD ESTABLISHMENT.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05140 Distribution, delivery and retention—Pressure ((2009)) FDA Food Code 5-103.12).** Water under pressure must be provided to all fixtures, EQUIPMENT, and nonFOOD EQUIPMENT that are required to use water except that water supplied as specified under WAC 246-215-05150 (1) and (2) to a TEMPORARY FOOD ESTABLISHMENT or in response to a temporary interruption of a water supply need not be under pressure.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05145 Distribution, delivery and retention—System ((2009)) FDA Food Code 5-104.11).** Water must be received from the source through the use of:

- (1) An APPROVED public water main; or
- (2) One or more of the following that must be constructed, maintained, and operated according to LAW:
  - (a) Nonpublic water main, water pumps, pipes, hoses, connections and other appurtenances;
  - (b) Water transport vehicles; and
  - (c) Water containers.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05150 Distribution, delivery and retention—Alternate water supply ((2009)) FDA Food Code 5-104.12).** Water meeting the requirements specified under Part 5, Subpart A must be made available for a mobile facility, for a TEMPORARY FOOD ESTABLISHMENT, without a permanent water supply, and for a FOOD ESTABLISHMENT with a temporary interruption of its water supply through:

- (1) A supply of containers of commercially BOTTLED DRINKING WATER;
- (2) One or more closed portable water containers;
- (3) An enclosed vehicular water tank;
- (4) An on-PREMISES water storage tank; or
- (5) Piping, tubing, or hoses connected to an adjacent APPROVED source.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05200 Materials—Approved ((2009)) FDA Food Code 5-201.11).** (1) A PLUMBING SYSTEM and hoses conveying water must be constructed and repaired with APPROVED materials according to LAW.

- (2) A water filter must be made of SAFE MATERIALS.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05205 Design, construction and installation—Approved system and cleanable fixtures ((2009)) FDA Food Code 5-202.11).** (1) A PLUMBING SYSTEM must be designed, constructed, and installed according to LAW.

- (2) A PLUMBING FIXTURE such as a handwashing sink, toilet or urinal must be EASILY CLEANABLE.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05210 Design, construction and installation—Handwashing facility, installation ((2009)) FDA Food Code 5-202.12).** (1) A HANDWASHING SINK must be equipped to provide water at a temperature of at least 100°F (38°C) through a mixing valve or combination faucet.

(2) A steam mixing valve may not be used at a handwashing sink.

(3) A self-closing, slow closing or metering faucet must provide a flow of water for at least fifteen seconds without the need to reactivate the faucet.

(4) An automatic handwashing facility must be installed in accordance with manufacturer's instructions.

(5) HANDWASHING SINKS in FOOD ESTABLISHMENTS must be adequately sized to allow a FOOD EMPLOYEE to wash both hands simultaneously.

(6) FOOD EMPLOYEES offering FOOD samples, such as FOOD demonstrators, may have HANDWASHING SINKS that meet the TEMPORARY FOOD ESTABLISHMENT requirements in WAC 246-215-09225 if not handling raw MEAT, FISH or POULTRY.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05215 Design, construction and installation—Backflow prevention, air gap ~~((2009))~~ FDA Food Code 5-202.13.** An air gap between the ~~((water))~~ DRINKING WATER supply inlet and the flood level rim of the PLUMBING FIXTURES ~~((,))~~ OR EQUIPMENT, ~~((or nonFOOD EQUIPMENT must be at least twice the diameter of the water supply inlet and may not be less than one inch (25 mm)))~~ meet the definition of an APPROVED air gap in WAC 246-290-010.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05220 Design, construction and installation—Backflow prevention device, design standard ~~((2009))~~ FDA Food Code 5-202.14.** A backflow or backsiphonage prevention device installed on a water supply system must meet ~~((American Society of Sanitary Engineering (A.S.S.E.)))~~ standards for construction, installation, maintenance, inspection, and testing for that specific application and type of device in accordance with WAC 246-290-490 and 51-56-0600.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05225 Design, construction and installation—Conditioning device, design ~~((2009))~~ FDA Food Code 5-202.15.** A water filter, screen and other water conditioning device installed on water lines must be designed to facilitate disassembly for periodic service and cleaning. A water filter element must be of the replaceable type.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05230 Numbers and capacities—Handwashing sinks ~~((2009))~~ FDA Food Code 5-203.11.** (1) Except as specified in subsection (2) of this section, at least one HANDWASHING SINK, a number of HANDWASHING SINKS necessary for their convenient use by EMPLOYEES in areas specified under WAC 246-215-05255, and not fewer

than the number of HANDWASHING SINKS required by LAW must be provided.

(2) If APPROVED and capable of removing the types of soils encountered in the FOOD operations involved, automatic handwashing facilities may be substituted for HANDWASHING SINKS in a FOOD ESTABLISHMENT that has at least one HANDWASHING SINK.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05235 ~~((Restrooms))~~ Numbers and capacities—Toilets and urinals ~~((2009))~~ FDA Food Code 5-203.12.** (1) At least one toilet and not fewer than the toilets required by LAW must be provided. If authorized by LAW and urinals are substituted for toilets, the substitution must be done as specified by LAW.

(2) Except as specified under WAC 246-215-09150, the FOOD ESTABLISHMENT PERMIT HOLDER shall ensure that toilet rooms are conveniently located within 200 feet of the FOOD ESTABLISHMENT and accessible to EMPLOYEES during all hours of operation.

(3) The FOOD ESTABLISHMENT PERMIT HOLDER shall ensure that toilet rooms are conveniently located and accessible to patrons during all hours of operation if:

(a) The establishment has customer seating for on-PREMISES consumption; and

(b) The establishment was constructed or extensively remodeled after May 1, 1992.

(4) Toilet rooms in FOOD ESTABLISHMENTS may be used jointly by patrons and EMPLOYEES, provided patrons accessing the toilet rooms are excluded from FOOD preparation areas and unPACKAGED FOOD storage areas.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05240 Numbers and capacities—Service sink ~~((2009))~~ FDA Food Code 5-203.13.** (1) At least one service sink or one curbed cleaning facility equipped with a floor drain must be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

(2) Toilets and urinals may not be used as a service sink for the disposal of mop water and similar liquid waste.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05245 Numbers and capacities—Backflow prevention device, when required ~~((2009))~~ FDA Food Code 5-203.14.** A PLUMBING SYSTEM must be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the FOOD ESTABLISHMENT, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by LAW, by:

(1) Providing an air gap as specified under WAC 246-215-05215; or

(2) Installing an APPROVED backflow prevention device as specified under WAC 246-215-05220.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05250 ~~Numbers and capacities—Backflow prevention, carbonator.~~** Backflow prevention systems for carbonators must be installed as specified under WAC 51-56-0600, Chapter 6—Water supply and distribution.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05255 ~~Location and placement ((☞))—Handwashing sinks ((2009)) FDA Food Code 5-204.11).~~** A HANDWASHING SINK must be located:

- (1) To allow convenient use by EMPLOYEES;
- (2) Within ~~((25))~~ twenty-five feet, or as APPROVED, of FOOD preparation, FOOD dispensing, and WAREWASHING areas; and
- (3) In, or immediately adjacent to, toilet rooms.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05260 ~~Location and placement ((☞))—Backflow prevention device ((2009)) FDA Food Code 5-204.12).~~** A backflow prevention device must be located so that it can be serviced and maintained.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05265 ~~Location and placement ((☞))—Conditioning device ((2009)) FDA Food Code 5-204.13).~~** A water filter, screen, and other water conditioning device installed on water lines must be located to facilitate disassembly for periodic servicing and cleaning.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05270 ~~Operation and maintenance—Using a handwashing sink ((2009)) FDA Food Code 5-205.11).~~** (1) A HANDWASHING SINK must be maintained so that it is accessible at all times for EMPLOYEE use.

(2) A HANDWASHING SINK may not be used for purposes other than handwashing.

(3) An automatic handwashing facility must be used in accordance with manufacturer's instructions.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05275 ~~Operation and maintenance—Prohibiting a cross connection ((2009)) FDA Food Code 5-205.12).~~** (1) A PERSON may not create a cross connection by connecting a pipe or conduit between the DRINKING WATER system and a nonDRINKING WATER system or a water system of unknown quality.

(2) The piping of a nonDRINKING WATER system must be durably identified so that it is readily distinguishable from piping that carries DRINKING WATER.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05280 ~~Operation and maintenance—Scheduling inspection, testing, and service for water system device ((2009)) FDA Food Code 5-205.13).~~** A device such as a water treatment device or backflow preventer must be scheduled for inspection, testing, and service, in accordance with manufacturer's instructions and WAC 51-56-0600 and as necessary to prevent device failure based on local water conditions, and records demonstrating inspection, testing, and service must be maintained by the PERSON IN CHARGE.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05285 ~~Operation and maintenance—Water reservoir of fogging devices, cleaning ((2009)) FDA Food Code 5-205.14).~~** (1) A reservoir that is used to supply water to a device such as a produce fogger must be:

(a) Maintained in accordance with manufacturer's specifications; and

(b) Cleaned in accordance with manufacturer's specifications or according to the procedures specified under subsection (2) of this section, whichever is more stringent.

(2) Cleaning procedures must include at least the following steps and must be conducted at least once a week:

(a) Draining and complete disassembly of the water and aerosol contact parts;

(b) Brush cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution;

(c) Flushing the complete system with water to remove the detergent solution and particulate accumulation; and

(d) Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least 50 MG/L hypochlorite solution.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05290 ~~Operation and maintenance—System maintained in good repair ((2009)) FDA Food Code 5-205.15).~~** A PLUMBING SYSTEM must be:

(1) Repaired according to LAW; and

(2) Maintained in good repair.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05300 ~~Materials—Approved ((2009)) FDA Food Code 5-301.11).~~** Materials that are used in the construction of a mobile water tank, MOBILE FOOD UNIT water tank, and appurtenances must be:

(1) Safe;

(2) Durable, CORROSION-RESISTANT and nonabsorbent; and

(3) Finished to have a SMOOTH, EASILY CLEANABLE surface.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05305 Design and construction—Enclosed system, sloped to drain (~~((2009))~~) FDA Food Code 5-302.11).** A mobile water tank must be:

- (1) Enclosed from the filling inlet to the discharge outlet; and
- (2) Sloped to an outlet that allows complete drainage of the tank.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05310 Design and construction—Inspection and cleaning port, protected and secured (~~((2009))~~) FDA Food Code 5-302.12).** If a water tank is designed with an access port for inspection and cleaning, the opening must be in the top of the tank and:

- (1) Flanged upward at least one-half inch (13 mm); and
- (2) Equipped with a port cover assembly that is:
  - (a) Provided with a gasket and a device for securing the cover in place; and
  - (b) Flanged to overlap the opening and sloped to drain.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05315 Design and construction—"V" type threads, use limitation (~~((2009))~~) FDA Food Code 5-302.13).** A fitting with "V" type threads on a water tank or inlet or outlet must be allowed only when a hose is permanently attached.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05320 Design and construction—Tank vent, protected (~~((2009))~~) FDA Food Code 5-302.14).** If provided, a water tank vent must terminate in a downward direction and must be covered with:

- (1) 16 mesh to one inch (16 mesh to 25.4 mm) screen or equivalent when the vent is in a protected area; or
- (2) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05325 Design and construction—Inlet and outlet, sloped to drain (~~((2009))~~) FDA Food Code 5-302.15).** (1) A water tank and its inlet and outlet must be sloped to drain.

(2) A water tank inlet must be positioned so that it is protected from contaminants such as waste discharge, road dust, oil or grease.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05330 Design and construction—Hose, construction and identification (~~((2009))~~) FDA Food**

**Code 5-302.16).** A hose used for conveying DRINKING WATER from a water tank must be:

- (1) Safe;
- (2) Durable, CORROSION-RESISTANT, and nonabsorbent;
- (3) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
- (4) Finished with a smooth interior surface; and
- (5) Clearly and durably identified as to its use if not permanently attached.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05335 Numbers and capacities—Filter, compressed air (~~((2009))~~) FDA Food Code 5-303.11).** A filter that does not pass oil or oil vapors must be installed in the air supply line between the compressor and DRINKING WATER system when compressed air is used to pressurize the water tank system.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05340 Numbers and capacities—Protective cover or device (~~((2009))~~) FDA Food Code 5-303.12).** A cap and keeper chain, closed cabinet, closed storage tube, or other APPROVED protective cover or device must be provided for a water inlet, outlet and hose.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05345 Numbers and capacities—Mobile food unit tank inlet (~~((2009))~~) FDA Food Code 5-303.13).** A MOBILE FOOD UNIT water tank inlet must be:

- (1) Three-fourths inch (19.1 mm) in inner diameter or less; and
- (2) Provided with a hose connection of a size or type that prevents its use for any other service.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05350 Operation and maintenance—System flushing and sanitation (~~((2009))~~) FDA Food Code 5-304.11).** A water tank, pump, and hoses must be flushed and SANITIZED before being placed in service after construction, repair, modification, and periods of nonuse.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05355 Operation and maintenance—Using a pump and hoses, backflow prevention (~~((2009))~~) FDA Food Code 5-304.12).** A PERSON shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05360 Operation and maintenance—Protecting inlet, outlet, and hose fitting (~~((2009))~~ FDA Food Code 5-304.13).** If not in use, a water tank and hose inlet and outlet fitting must be protected using a cover or device as specified under WAC 246-215-05340.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05365 Operation and maintenance—Tank, pump, and hoses, dedication (~~((2009))~~ FDA Food Code 5-304.14).** (1) Except as specified in subsection (2) of this section, a water tank, pump, and hoses used for conveying DRINKING WATER must be used for no other purpose.

(2) Water tanks, pumps, and hoses APPROVED for liquid FOODS may be used for conveying DRINKING WATER if they are cleaned and SANITIZED before they are used to convey water.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05400 Mobile holding tank—Capacity and drainage (~~((2009))~~ FDA Food Code 5-401.11).** A SEWAGE holding tank in a MOBILE FOOD UNIT must be:

(1) Sized fifteen percent larger in capacity than the water supply tank; and

(2) Sloped to a drain that is one inch (25 mm) in inner diameter or greater, equipped with a shutoff valve.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05405 Retention, drainage, and delivery design, construction, and installation—Establishment drainage system (~~((2009))~~ FDA Food Code 5-402.10).** FOOD ESTABLISHMENT drainage systems, including grease traps, that convey SEWAGE must be designed and installed as specified under WAC 246-215-05205(1).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05410 Retention, drainage, and delivery design, construction, and installation—Backflow prevention (~~((2009))~~ FDA Food Code 5-402.11).** (1) Except as specified in subsections (2), (3), and (4) of this section, a direct connection may not exist between the SEWAGE system and a drain originating from EQUIPMENT in which FOOD, portable EQUIPMENT, or UTENSILS are placed.

(2) Subsection (1) of this section does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.

(3) If allowed by LAW, a WAREWASHING machine may have a direct connection between its waste outlet and a floor drain when the machine is located within five feet (1.5 m) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

(4) If allowed by LAW, a WAREWASHING sink may have a direct connection.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05415 Retention, drainage, and delivery location and placement—Grease trap (~~((2009))~~ FDA Food Code 5-402.12).** If used, a grease trap must be located to be easily accessible for cleaning.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05420 Retention, drainage, and delivery operation and maintenance—Conveying sewage (~~((2009))~~ FDA Food Code 5-402.13).** SEWAGE must be conveyed to the point of disposal through an APPROVED sanitary SEWAGE system, on-site SEWAGE system, or other system, including use of SEWAGE transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, installed, maintained, and operated according to LAW.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05425 Retention, drainage, and delivery operation and maintenance—Removing mobile food unit wastes (~~((2009))~~ FDA Food Code 5-402.14).** SEWAGE and other liquid wastes must be removed from a MOBILE FOOD UNIT at an APPROVED waste SERVICING area or by a SEWAGE transport vehicle in such a way that a public health HAZARD or nuisance is not created.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05430 Retention, drainage, and delivery operation and maintenance—Flushing a waste retention tank (~~((2009))~~ FDA Food Code 5-402.15).** A tank for liquid waste retention must be thoroughly flushed and drained in a sanitary manner during the servicing operation.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05435 Disposal facility design and construction—Approved sewage disposal system (~~((2009))~~ FDA Food Code 5-403.11).** SEWAGE must be disposed through an APPROVED facility or system that is:

- (1) A public SEWAGE treatment plant; or
- (2) A SEWAGE disposal system that is sized, constructed, maintained and operated according to LAW.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05440 Disposal facility design and construction—Other liquid wastes and rainwater (~~((2009))~~ FDA Food Code 5-403.12).** Condensate drainage

and other liquids and rainwater that are not SEWAGE must be drained from point of discharge to disposal according to LAW.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05500 Facilities on the premises, materials, design, construction and installation—Indoor storage area ((~~2009~~) FDA Food Code 5-501.10).** If located within the FOOD ESTABLISHMENT, a storage area for REFUSE, recyclables and returnables must meet the requirements specified under WAC 246-215-06100, 246-215-06200, 246-215-06235, 246-215-06260, and 246-215-06265.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05505 Facilities on the premises, materials, design, construction and installation—Outdoor storage surface ((~~2009~~) FDA Food Code 5-501.11).** An outdoor storage surface for REFUSE, recyclables, and returnables must be constructed of nonabsorbent material such as concrete or asphalt and must be SMOOTH, durable and sloped to drain.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05510 Facilities on the premises, materials, design, construction and installation—Outdoor enclosure ((~~2009~~) FDA Food Code 5-501.12).** If used, an outdoor enclosure for REFUSE, recyclables, and returnables must be constructed of durable and cleanable materials.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05515 Facilities on the premises, materials, design, construction and installation—Receptacles ((~~2009~~) FDA Food Code 5-501.13).** (1) Except as specified in subsection (2) of this section, receptacles and waste handling units for REFUSE, recyclables, and returnables and for use with materials containing FOOD residue must be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.

(2) Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the FOOD ESTABLISHMENT, or within closed outside receptacles.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05520 Facilities on the premises, materials, design, construction and installation—Receptacles in vending machines ((~~2009~~) FDA Food Code 5-501.14).** A REFUSE receptacle may not be located within a VENDING MACHINE, except that a receptacle for BEVERAGE bottle crown closures may be located within a VENDING MACHINE.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05525 Facilities on the premises, materials, design, construction and installation—Outside receptacles ((~~2009~~) FDA Food Code 5-501.15).** (1) Receptacles and waste handling units for REFUSE, recyclables, and returnables used with materials containing FOOD residue and used outside the FOOD ESTABLISHMENT must be designed and constructed to have tight fitting lids, doors, or covers.

(2) Receptacles and waste handling units for REFUSE and recyclables such as an on-site compactor must be installed so that accumulation of debris and insect and other rodent attraction and harborage are minimized and effective cleaning is facilitated around, and if the unit is not installed flush with the base pad, under the unit.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05530 Facilities on the premises, numbers and capacities—Storage areas, rooms, and receptacles, capacity and availability ((~~2009~~) FDA Food Code 5-501.16).** (1) An inside storage room and area and outside storage area and enclosure, and receptacles must be of sufficient capacity to hold REFUSE, recyclables, and returnables that accumulate.

(2) A receptacle must be provided in each area of the FOOD ESTABLISHMENT or PREMISES where REFUSE is generated or commonly discarded, or where recyclables or returnables are placed.

(3) If disposable towels are used at HANDWASHING SINKS, a waste receptacle must be located at each HANDWASHING SINK or group of adjacent HANDWASHING SINKS.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05535 Facilities on the premises, numbers and capacities—Toilet room receptacle, covered ((~~2009~~) FDA Food Code 5-501.17).** A toilet room used by females must be provided with a covered receptacle for sanitary napkins.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05540 Facilities on the premises, numbers and capacities—Cleaning implements and supplies ((~~2009~~) FDA Food Code 5-501.18).** (1) Except as specified in subsection (2) of this section, suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent must be provided as necessary for effective cleaning of receptacles and waste handling units for REFUSE, recyclables, and returnables.

(2) If APPROVED, off-PREMISES-based cleaning services may be used if on-PREMISES cleaning implements and supplies are not provided.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05545 Facilities on the premises, location and placement—Storage areas, redeeming machines, receptacles and waste handling units, location (((2009)) FDA Food Code 5-501.19).** (1) An area designated for REFUSE, recyclables, returnables, and, except as specified in subsection (2) of this section, a redeeming machine for recyclables or returnables must be located so that it is separate from FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES and a public health HAZARD or nuisance is not created.

(2) A redeeming machine may be located in the PACKAGED FOOD storage area or CONSUMER area of a FOOD ESTABLISHMENT if FOOD, EQUIPMENT, UTENSILS, LINENS and SINGLE-SERVICE and SINGLE-USE ARTICLES are not subject to contamination from the machines and a public health HAZARD or nuisance is not created.

(3) The location of receptacles and waste handling units for REFUSE, recyclables, and returnables may not create a public health HAZARD or nuisance or interfere with the cleaning of adjacent space.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05550 Facilities on the premises, operation and maintenance—Storing refuse, recyclables, and returnables (((2009)) FDA Food Code 5-501.110).** REFUSE, recyclables and returnables must be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05555 Facilities on the premises, operation and maintenance—Areas, enclosures, and receptacles, good repair (((2009)) FDA Food Code 5-501.111).** Storage areas, enclosures, and receptacles for REFUSE, recyclables, and returnables must be maintained in good repair.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05560 Facilities on the premises, operation and maintenance—Outside storage prohibitions (((2009)) FDA Food Code 5-501.112).** (1) Except as specified in subsection (2) of this section, REFUSE receptacles not meeting the requirements specified under WAC 246-215-05515(1) such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with FOOD residue may not be stored outside.

(2) Cardboard or other packaging material that does not contain FOOD residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05565 Facilities on the premises, operation and maintenance—Covering receptacles (((2009)) FDA Food Code 5-501.113).** Receptacles and waste handling units for REFUSE, recyclables, and returnables must be kept covered:

(1) Inside the FOOD ESTABLISHMENT if the receptacles and units:

(a) Contain FOOD residue and are not in continuous use; or

(b) After they are filled; and

(2) With tight fitting lids or doors if kept outside the FOOD ESTABLISHMENT.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05570 Facilities on the premises, operation and maintenance—Using drain plugs (((2009)) FDA Food Code 5-501.114).** Drains in receptacles and waste handling units for REFUSE, recyclables, and returnables must have drain plugs in place.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05575 Facilities on the premises, operation and maintenance—Maintaining refuse areas and enclosures (((2009)) FDA Food Code 5-501.115).** A storage area and enclosure for REFUSE, recyclables, and returnables must be maintained free of unnecessary items, as specified under WAC 246-215-06565, and clean.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05580 Facilities on the premises, operation and maintenance—Cleaning receptacles (((2009)) FDA Food Code 5-501.116).** (1) Receptacles and waste handling units for REFUSE, recyclables, and returnables must be thoroughly cleaned in a way that does not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, or SINGLE-SERVICE and SINGLE-USE ARTICLES, and waste water must be disposed of as specified under WAC 246-215-05420.

(2) Soiled receptacles and waste handling units for REFUSE, recyclables, and returnables must be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05585 Removal—Frequency (((2009)) FDA Food Code 5-502.11).** REFUSE, recyclables, and returnables must be removed from the PREMISES at a frequency that minimizes the development of objectionable odors and other conditions that attract or harbor insects and rodents.



AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05590 Removal—Receptacles or vehicles ((2009)) FDA Food Code 5-502.12).** REFUSE, recyclables, and returnables must be removed from the PREMISES by way of:

- (1) Portable receptacles that are constructed and maintained according to LAW; or
- (2) A transport vehicle that is constructed, maintained, and operated according to LAW.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-05595 Facilities for disposal and recycling—Community or individual facility ((2009)) FDA Food Code 5-503.11).** Solid waste not disposed of through the SEWAGE system such as through grinders and pulpers must be recycled or disposed of in an APPROVED public or private community recycling or REFUSE facility; or solid waste must be disposed of in an individual REFUSE facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to LAW.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06100 Indoor areas—Surface characteristics ((2009)) FDA Food Code 6-101.11).** (1) Except as specified in subsection (2) of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use must be:

- (a) SMOOTH, durable, and EASILY CLEANABLE for areas where FOOD ESTABLISHMENT operations are conducted;
  - (b) Closely woven and EASILY CLEANABLE carpet for carpeted areas; and
  - (c) Nonabsorbent for areas subject to moisture such as FOOD preparation areas, walk-in refrigerators, WAREWASHING areas, toilet rooms, MOBILE FOOD UNIT SERVICING AREAS, and areas subject to flushing or spray cleaning methods.
- (2) In a TEMPORARY FOOD ESTABLISHMENT:
- (a) If graded to drain, a floor may be concrete, machine laid asphalt, ~~((or))~~ dirt or gravel if it is covered with mats, removable platforms, duckboards, or other APPROVED ~~((materials that are))~~ methods to effectively ~~((treated to))~~ control dust and mud.
  - (b) Walls and ceilings must be constructed from a material that protects the interior from the weather and windblown dust and debris.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06105 Outdoor areas—Surface characteristics ((2009)) FDA Food Code 6-102.11).** (1) The outdoor walking and driving areas must be surfaced with concrete, asphalt or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

(2) Exterior surfaces of buildings and MOBILE FOOD UNITS must be of weather-resistant materials and must comply with LAW.

(3) Outdoor storage areas for REFUSE, recyclables, or returnables must be of materials specified under WAC 246-215-05505 and 246-215-05510.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06200 Cleanability—Floors, walls and ceilings ((2009)) FDA Food Code 6-201.11).** Except as specified under WAC 246-215-06215 and except for antislip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings and ceilings must be designed, constructed, and installed so they are SMOOTH and EASILY CLEANABLE.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06205 Cleanability—Floors, walls, and ceilings, utility lines ((2009)) FDA Food Code 6-201.12).** (1) Utility service lines and pipes may not be unnecessarily exposed.

(2) Exposed utility service lines and pipes must be installed so they do not obstruct or prevent cleaning of the floors, walls or ceilings.

(3) Exposed horizontal utility service lines and pipes may not be installed on the floor.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06210 Cleanability—Floor and wall junctures, covered and enclosed or sealed ((2009)) FDA Food Code 6-201.13).** (1) In FOOD ESTABLISHMENTS in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures must be coved and closed to no larger than one thirty-second inch (1 mm).

(2) The floors in FOOD ESTABLISHMENTS in which water flush cleaning methods are used must be provided with drains and be graded to drain, and the floor and wall junctures must be coved and SEALED.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06215 Cleanability—Floor carpeting, restriction and installation ((2009)) FDA Food Code 6-201.14).** (1) A floor covering such as carpeting or similar material may not be installed as a floor covering in FOOD preparation areas, walk-in refrigerators, WAREWASHING areas, toilet room areas where HANDWASHING SINKS, toilets and urinals are located, REFUSE storage rooms, or other areas where the floor is subject to moisture, flushing or spray cleaning methods.

(2) If carpeting is installed as a floor covering in areas other than those specified under subsection (1) of this section, it must be:

(a) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and

(b) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06220 Cleanability—Floor covering, mats and duckboards ((2009) FDA Food Code 6-201.15).** Mats and duckboards must be designed to be removable and EASILY CLEANABLE.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06225 Cleanability—Wall and ceiling coverings and coatings ((2009) FDA Food Code 6-201.16).** (1) Wall and ceiling covering materials must be attached so that they are EASILY CLEANABLE.

(2) Except in areas used only for DRY STORAGE, concrete, porous blocks, or bricks used for indoor wall construction must be finished and SEALED to provide a SMOOTH, non-absorbent, EASILY CLEANABLE surface.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06230 Cleanability—Walls and ceilings, attachments ((2009) FDA Food Code 6-201.17).** (1) Except as specified in subsection (2) of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments must be EASILY CLEANABLE.

(2) In a CONSUMER area, wall and ceiling surfaces and decorative items and attachments that are provided for ambience need not meet this requirement if they are kept clean.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06235 Cleanability—Walls and ceilings, studs, joists, and rafters ((2009) FDA Food Code 6-201.18).** Except for TEMPORARY FOOD ESTABLISHMENTS, studs, joists, and rafters may not be exposed in areas subject to moisture.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06240 Functionality—Light bulbs, protective shielding ((2009) FDA Food Code 6-202.11).** (1) Except as specified in subsection (2) of this section, light bulbs must be shielded, coated, or otherwise shatter-resistant in areas where there is exposed FOOD, clean EQUIPMENT, UTENSILS, and LINENS, or unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES.

(2) Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing FOOD in unopened packages if:

(a) The integrity of the packages cannot be affected by broken glass falling into them; and

(b) The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.

(3) An infrared or other heat lamp must be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06245 Functionality—Heating, ventilating, air conditioning system vents ((2009) FDA Food Code 6-202.12).** Heating, ventilating, and air conditioning systems must be designed and installed so that make-up air intake and exhaust vents do not cause contamination of FOOD, FOOD-CONTACT SURFACES, EQUIPMENT, or UTENSILS.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06250 Functionality—Insect control devices, design and installation ((2009) FDA Food Code 6-202.13).** (1) Insect control devices that are used to electrocute or stun flying insects must be designed to retain the insect within the device.

(2) Insect control devices must be installed so that:

(a) The devices are not located over a FOOD preparation area; and

(b) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed FOOD, clean EQUIPMENT, UTENSILS, and LINENS, and unwrapped SINGLE-SERVICE or SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06255 Functionality—Toilet rooms, enclosed ((2009) FDA Food Code 6-202.14).** Except where a toilet room is located outside a FOOD ESTABLISHMENT and does not open directly into the FOOD ESTABLISHMENT such as a toilet room that is provided by the management of a shopping mall, a toilet room located on the PREMISES must be completely enclosed and provided with a tight-fitting and self-closing door.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06260 Functionality—Outer openings, protected ((2009) FDA Food Code 6-202.15).** (1) Except as specified in subsections (2) through (5) of this section, outer openings of a FOOD ESTABLISHMENT must be protected against the entry of insects and rodents by:

(a) Filling or closing holes and other gaps along floors, walls, and ceilings;

(b) Closed, tight-fitting windows; and

(c) Solid, self-closing, tight-fitting doors.

(2) Subsection (1) of this section does not apply if a FOOD ESTABLISHMENT opens into a larger structure, such as a mall, airport or office building, or into an attached structure such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.

(3) Exterior doors used as exits need not be self-closing if they are:

(a) Solid and tight-fitting;

(b) Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the FOOD ESTABLISHMENT; and

(c) Limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.

(4) Except as specified in subsections (2) and (5) of this section, if the windows or doors of a FOOD ESTABLISHMENT, or of a larger structure within which a FOOD ESTABLISHMENT is located, are kept open for ventilation or other purposes or a TEMPORARY FOOD ESTABLISHMENT is not provided with windows and doors as specified under subsection (1) of this section, the openings must be protected against entry of insects and rodents by:

(a) 16 mesh to one inch (16 mesh to 25.4 mm) screens;

(b) Properly designed and installed air curtains to control flying insects; or

(c) Other effective means.

(5) Subsection (4) of this section does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06265 Functionality—Exterior walls and roofs, protective barrier (((2009)) FDA Food Code 6-202.16).** Perimeter walls and roofs of a FOOD ESTABLISHMENT must effectively protect the establishment from the weather and entry of insects, rodents, and other animals.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06270 Functionality—Outdoor food vending areas, overhead protection (((2009)) FDA Food Code 6-202.17).** Except for machines that vend canned BEVERAGES, if located outside, a machine used to vend FOOD must be provided with overhead protection.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06275 Functionality—Outdoor servicing areas, overhead protection (((2009)) FDA Food Code 6-202.18).** Except for areas used only for the loading of water or the discharge of SEWAGE and other liquid waste, through the use of a closed system of hoses, SERVICING AREAS must be provided with overhead protection.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06280 Functionality—Outdoor walking and driving surfaces, graded to drain (((2009)) FDA Food Code 6-202.19).** Exterior walking and driving services must be graded to drain.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06285 Functionality—Outdoor refuse areas (((2009)) FDA Food Code 6-202.110).** Outdoor REFUSE areas must be constructed in accordance with LAW.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06290 Functionality—Private homes and living or sleeping quarters, use prohibition (((2009)) FDA Food Code 6-202.111).** A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting FOOD ESTABLISHMENT operations.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06295 Functionality—Living or sleeping quarters, separation (((2009)) FDA Food Code 6-202.112).** Living or sleeping quarters located on the PREMISES of a FOOD ESTABLISHMENT such as those provided for lodging registration clerks or resident managers must be separated from rooms and areas used for FOOD ESTABLISHMENT operations by complete partitioning and solid self-closing doors.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06300 Handwashing ((~~facilities~~)) sinks—Minimum number (((2009)) FDA Food Code 6-301.10).** Handwashing ((~~facilities~~)) sinks must be provided as specified under WAC 246-215-05230.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06305 Handwashing ((~~facilities~~)) sinks—Handwashing cleanser, availability (((2009)) FDA Food Code 6-301.11).** Each HANDWASHING SINK or group of two adjacent HANDWASHING SINKS must be provided with a supply of hand cleaning liquid, powder, or bar soap.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06310 Handwashing ((~~facilities~~)) sinks—Hand-drying provision (((2009)) FDA Food Code 6-301.12).** Each HANDWASHING SINK or group of adjacent HANDWASHING SINKS must be provided with:

(1) Individual, disposable towels;

- (2) A continuous towel system that supplies the user with a clean towel;
- (3) A heated-air hand-drying device; or
- (4) A hand-drying device that employs ~~((and))~~ an air-knife system that delivers high velocity, pressurized air at ambient temperatures.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06315 Handwashing ~~((facilities))~~ sinks—Handwashing aids and devices, use restriction ~~((2009))~~ FDA Food Code 6-301.13.** A sink used for FOOD preparation or UTENSIL washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a HANDWASHING SINK as specified under WAC 246-215-06305, 246-215-06310, and 246-215-05530 (3).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06320 Handwashing ~~((facilities))~~ sinks—Handwashing signage ~~((2009))~~ FDA Food Code 6-301.14.** A sign or poster that notifies FOOD EMPLOYEES to wash their hands must be provided at all HANDWASHING SINKS used by FOOD EMPLOYEES and must be clearly visible to FOOD EMPLOYEES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06325 Handwashing ~~((facilities))~~ sinks—Disposable towels, waste receptacle ~~((2009))~~ FDA Food Code 6-301.20.** A HANDWASHING SINK or group of adjacent HANDWASHING SINKS that is provided with disposable towels must be provided with a waste receptacle as specified under WAC 246-215-05530(3).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06330 Toilets and urinals—Minimum number ~~((2009))~~ FDA Food Code 6-302.10.** Toilets and urinals must be provided as specified under WAC 246-215-05235.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06335 Toilets and urinals—Toilet tissue, availability ~~((2009))~~ FDA Food Code 6-302.11.** A supply of toilet tissue must be available at each toilet.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06340 Lighting—Intensity ~~((2009))~~ FDA Food Code 6-303.11.** The light intensity must be:

- (1) At least 10 foot candles (108 lux) at a distance of 30 inches (75 cm) above the floor, in walk-in refrigeration units and dry FOOD storage areas and in other areas and rooms during periods of cleaning;
- (2) At least 20 foot candles (215 lux):
  - (a) At a surface where FOOD is provided for CONSUMER self-service such as buffets and salad bars or where fresh produce or PACKAGED FOODS are sold or offered for consumption;
  - (b) Inside EQUIPMENT such as reach-in and under-counter refrigerators;
  - (c) At a distance of 30 inches (75 cm) above the floor in areas used for handwashing, WAREWASHING, and EQUIPMENT and UTENSIL storage, and in toilet rooms; and
- (3) At least 50 foot candles (540 lux) at a surface where a FOOD EMPLOYEE is working with FOOD or working with UTENSILS or EQUIPMENT such as knives, slicers, grinders, or saws where EMPLOYEE safety is a factor.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06345 Ventilation—Mechanical ~~((2009))~~ FDA Food Code 6-304.11.** If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke and fumes, mechanical ventilation of sufficient capacity must be provided.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06350 Dressing areas and lockers—Designation ~~((2009))~~ FDA Food Code 6-305.11.** (1) Dressing rooms or dressing areas must be ~~((designed))~~ designated if EMPLOYEES routinely change their clothes in the establishment.

(2) Lockers or other suitable facilities must be provided for the orderly storage of EMPLOYEES' clothing and other possessions.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06355 Service sinks—Availability ~~((2009))~~ FDA Food Code 6-306.10.** A service sink or curbed cleaning facility must be provided as specified under WAC 246-215-05240.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06400 Handwashing ~~((facilities))~~ sinks—Conveniently located ~~((2009))~~ FDA Food Code 6-401.10.** HANDWASHING SINKS must be conveniently located as specified under WAC 246-215-05255.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06405 Toilet rooms—Convenience and accessibility ~~((2009))~~ FDA Food Code 6-402.11.** Toi-

let rooms must be conveniently located and accessible to EMPLOYEES during all hours of operation.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06410 Employee accommodations—Designated areas (((2009)) FDA Food Code 6-403.11).** (1) Areas designated for EMPLOYEES to eat, drink, and use tobacco must be located so that FOOD, EQUIPMENT, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES are protected from contamination.

(2) Lockers or other suitable facilities must be located in a designated room or area where contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES cannot occur.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06415 Distressed merchandise—Segregation and location (((2009)) FDA Food Code 6-404.11).** Products that are held by the PERMIT HOLDER for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, must be segregated and held in designated areas that are separated from FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06420 Refuse, recyclables, and returnables—Receptacles, waste handling units, and designated storage areas (((2009)) FDA Food Code 6-405.10).** Units, receptacles, and areas designated for storage of REFUSE and recyclable and returnable containers must be located as specified under WAC 246-215-05545.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06500 Methods—Repairing (((2009)) FDA Food Code 6-501.11).** PHYSICAL FACILITIES must be maintained in good repair.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06505 Methods—Cleaning, frequency and restrictions (((2009)) FDA Food Code 6-501.12).** (1) PHYSICAL FACILITIES must be cleaned as often as necessary to keep them clean.

(2) Except for cleaning that is necessary due to a spill or other accident, cleaning must be done during periods when the least amount of FOOD is exposed such as after closing.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06510 Methods—Cleaning floors, dustless methods (((2009)) FDA Food Code 6-501.13).** (1) Except as specified in subsection (2) of this section, only dustless methods of cleaning must be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

(2) Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:

(a) Without the use of dust-arresting compounds; and

(b) In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06515 Methods—Cleaning ventilation systems, nuisance and discharge prohibition (((2009)) FDA Food Code 6-501.14).** (1) Intake and exhaust air ducts must be cleaned and filters changed so that they are not a source of contamination by dust, dirt, and other materials.

(2) If vented to the outside, ventilation systems may not create a public health HAZARD or nuisance or unlawful discharge.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06520 Methods—Cleaning maintenance tools, preventing contamination (((2009)) FDA Food Code 6-501.15).** FOOD preparation sinks, HANDWASHING SINKS, and WAREWASHING EQUIPMENT may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06525 Methods—Drying mops (((2009)) FDA Food Code 6-501.16).** After use, mops must be placed in a position that allows them to air dry without soiling walls, EQUIPMENT, or supplies.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06530 Methods—Absorbent materials on floors, use limitations (((2009)) FDA Food Code 6-501.17).** Except as specified under WAC 246-215-06510(2), sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06535 Methods—Cleaning of plumbing fixtures (((2009)) FDA Food Code 6-501.18).** PLUMB-

ING FIXTURES such as HANDWASHING SINKS, toilets, and urinals must be cleaned as often as necessary to keep them clean.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06540 Methods—Closing toilet room doors (((2009)) FDA Food Code 6-501.19).** Except during cleaning and maintenance operations, toilet room doors as specified under WAC 246-215-06255 must be kept closed.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06545 Methods—Using dressing rooms and lockers (((2009)) FDA Food Code 6-501.110).** (1) Dressing rooms must be used by EMPLOYEES if the EMPLOYEES regularly change their clothes in the establishment.

(2) Lockers or other suitable facilities must be used for the orderly storage of EMPLOYEE clothing and other possessions.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06550 Methods—Controlling pests (((2009)) FDA Food Code 6-501.111).** The PREMISES must be maintained free of infestations of insects, rodents, and other pests such that there is not a breeding population of pests in the facility. The presence of insects, rodents, and other pests must be controlled to minimize their presence on the PREMISES by:

- (1) Routinely inspecting incoming shipments of FOOD and supplies;
- (2) Routinely inspecting the PREMISES for evidence of pests;
- (3) Using methods, if pests are found, such as trapping devices or other means of pest control as specified under WAC 246-215-07210, 246-215-07250, and 246-215-07255; and
- (4) Eliminating harborage conditions.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06555 Methods—Removing dead or trapped birds, insects, rodents, and other pests (((2009)) FDA Food Code 6-501.112).** Dead or trapped birds, insects, rodents, and other pests must be removed from control devices and the PREMISES at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06560 Methods—Storing maintenance tools (((2009)) FDA Food Code 6-501.113).** Maintenance tools such as brooms, mops, vacuum cleaners, and similar items must be:

(1) Stored so they do not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES; and

(2) Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06565 Methods—Maintaining premises, unnecessary items and litter (((2009)) FDA Food Code 6-501.114).** The PREMISES must be free of:

(1) Items that are unnecessary to the operation or maintenance of the establishment such as EQUIPMENT that is non-functional or no longer used; and

(2) Litter.

AMENDATORY SECTION (Amending WSR 18-01-081, filed 12/15/17, effective 1/15/18)

**WAC 246-215-06570 Methods—Prohibiting animals (((2009)) FDA Food Code 6-501.115).** (1) Except as specified in subsections (2) ~~((and (3)))~~ through (5) of this section, live animals may not be allowed on the PREMISES of a FOOD ESTABLISHMENT.

(2) Live animals may be allowed in the following situations if the contamination of FOOD; clean EQUIPMENT, UTENSILS, LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES cannot result:

(a) Edible FISH or decorative FISH in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

(b) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(c) ~~((In areas that are not used for FOOD preparation and that are usually open for customers, such as dining and sales areas,))~~ SERVICE ANIMALS that are controlled by an employee or individual with a disability in areas not used for FOOD preparation and usually open for customers, such as dining and sales areas, if a health or safety HAZARD will not result from the presence or activities of the SERVICE ANIMAL;

(d) Pets in the common areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:

(i) Effective partitioning and self-closing doors separate the common dining areas from FOOD storage or FOOD preparation areas;

(ii) Condiments, EQUIPMENT, and UTENSILS are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

(iii) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and

(e) In areas that are not used for FOOD preparation, storage, sales, display or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals.

(3) Live or dead FISH bait may be stored if contamination of FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and

unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES cannot result.

(4) Dogs, under the control of the dog owner, may be allowed in an outdoor area on the PREMISES if all of the following conditions are satisfied:

(a) The PERMIT HOLDER has an APPROVED plan to allow dogs in its outdoor PREMISES.

(b) Dogs are on a leash and under the control of the dog owner or confined in a pet carrier.

(c) Dogs do not go through the FOOD ESTABLISHMENT to reach the outdoor area.

(d) Dogs are not allowed on tables, chairs, benches, seats, or other fixtures in the FOOD ESTABLISHMENT.

(e) The outdoor area is not used for FOOD or drink preparation or the storage of UTENSILS.

(f) If the FOOD ESTABLISHMENT provides FOOD and water containers for dogs, EMPLOYEES shall not wash containers in the FOOD ESTABLISHMENT.

(g) FOOD EMPLOYEES do not have direct contact with dogs.

(h) The outdoor area is maintained clean of animal waste.

(i) The PERMIT HOLDER ensures compliance with local ordinances related to sidewalks, public nuisance, and sanitation.

(j) The PERMIT HOLDER provides signage to notify customers that the facility allows dogs in its outdoor PREMISES.

(5) Dogs, under the control of the dog owner, may be allowed in an indoor area on the PREMISES if all of the following conditions are satisfied:

(a) The PERMIT HOLDER has notified the REGULATORY AUTHORITY in advance.

(b) The FOOD ESTABLISHMENT only pours BEVERAGES produced by a FOOD PROCESSING PLANT and is limited to only nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, READY-TO-EAT FOOD produced in a licensed FOOD ESTABLISHMENT or FOOD PROCESSING PLANT (such as premixed soda pop, powdered creamer, pretzels, cookies, doughnuts, cake, or MEAT jerky) that are served from the original package without direct hand contact directly onto or into a container.

(c) Dogs are not allowed on tables, chairs, benches, seats, or other fixtures in the FOOD ESTABLISHMENT.

(d) If the FOOD ESTABLISHMENT provides FOOD and water containers for dogs, EMPLOYEES shall not wash containers in the FOOD ESTABLISHMENT.

(e) FOOD EMPLOYEES do not have direct contact with dogs.

(f) The PREMISES is maintained clean of animal waste.

(g) The PERMIT HOLDER ensures compliance with local ordinances related to sidewalks, public nuisance, and sanitation.

(h) The PERMIT HOLDER provides signage to notify customers that the facility allows dogs in its indoor PREMISES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07100 Original containers—Identifying information, prominence** (~~(((2009)))~~ FDA Food Code 7-

**101.11).** Containers of POISONOUS OR TOXIC MATERIALS and PERSONAL CARE ITEMS must bear a legible manufacturer's label.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07105 Working containers—Common name** (~~(((2009)))~~ FDA Food Code 7-102.11). Working containers used for storing POISONOUS OR TOXIC MATERIALS such as cleaners and SANITIZERS taken from bulk supplies must be clearly and individually identified with the common name of the material.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07200 Storage—Separation** (~~(((2009)))~~ FDA Food Code 7-201.11). POISONOUS OR TOXIC MATERIALS must be stored so they cannot contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES by:

(1) Separating the POISONOUS OR TOXIC MATERIALS by spacing or partitioning; and

(2) Locating the POISONOUS OR TOXIC MATERIALS in an area that is not above FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE or SINGLE-USE ARTICLES. This subsection does not apply to EQUIPMENT and UTENSIL cleaners and SANITIZERS that are stored in WAREWASHING areas for availability and convenience if the materials are stored to prevent contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07205 Presence and use—Restriction** (~~(((2009)))~~ FDA Food Code 7-202.11). (1) Only those POISONOUS OR TOXIC MATERIALS that are required for the operation and maintenance of a FOOD ESTABLISHMENT, such as for the cleaning and SANITIZING of EQUIPMENT and UTENSILS and the control of insects and rodents, may be allowed in a FOOD ESTABLISHMENT.

(2) Subsection (1) of this section does not apply to PACKAGED POISONOUS OR TOXIC MATERIALS that are for retail sale.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07210 Presence and use—Conditions of use** (~~(((2009)))~~ FDA Food Code 7-202.12). POISONOUS OR TOXIC MATERIALS must be:

(1) Used according to:

(a) LAW and this chapter;

(b) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a FOOD ESTABLISHMENT;

(c) The conditions of certification, if certification is required, for use of the pest control materials; and

(d) Additional conditions that may be established by the REGULATORY AUTHORITY; and

(2) Applied so that:

(a) A HAZARD to EMPLOYEES or other persons is not constituted; and

(b) Contamination including toxic residues due to drip, drain, fog, splash or spray on FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES is prevented, and for a RESTRICTED USE PESTICIDE, this is achieved by:

(i) Removing the items;

(ii) Covering the items with impermeable covers; or

(iii) Taking other appropriate preventative actions; and

(iv) Cleaning and SANITIZING EQUIPMENT and UTENSILS after the application.

(3) A RESTRICTED USE PESTICIDE must be applied only by an applicator certified as defined in 7 U.S.C. 136 Definitions, (e) Certified Applicator, of the Federal Insecticide, Fungicide and Rodenticide Act, or a PERSON under the direct supervision of a certified applicator.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07215 Container prohibitions—Poisonous or toxic material containers ((2009)) FDA Food Code 7-203.11).** A container previously used to store POISONOUS OR TOXIC MATERIALS may not be used to store, transport, or dispense FOOD.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07220 Chemicals—Sanitizers, criteria ((2009)) FDA Food Code 7-204.11).** Chemical SANITIZERS, including chemical sanitizing solutions generated on-site, and other chemical antimicrobials applied to FOOD-CONTACT SURFACES must:

(1) Meet the requirements specified in 40 C.F.R. 180.940 Tolerance Exemptions for Active and Inert Ingredients for Use in Antimicrobial Formulations ((FOOD-CONTACT SURFACE SANITIZING)) food contact surface sanitizing solutions; or

(2) Meet the requirements as specified in 40 C.F.R. 180.2020 Pesticide Chemicals Not Requiring a Tolerance or Exemption from Tolerance Non-food Determinations.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07225 Chemicals—Chemicals for washing, treatment, storage, and processing fruits and vegetables, criteria ((2009)) FDA Food Code 7-204.12. ((4))** Chemicals, including those generated on-site, used to wash or peel raw, whole fruits and vegetables ~~((must meet the requirements specified in 21 C.F.R. 173.315 Chemicals used in washing or to assist in the peeling of fruits and vegetables.~~

~~(2) Ozone as an antimicrobial agent used in the treatment, storage, and processing of fruits and vegetables in a FOOD ESTABLISHMENT must meet the requirements specified~~

~~in 21 C.F.R. 173.368 Ozone)) or used in the treatment, storage, and processing of fruits and vegetables must:~~

~~(1) Be an APPROVED FOOD ADDITIVE listed for this intended use in 21 C.F.R. 173 - Secondary Direct Food Additives Permitted in Food for Human Consumption; or~~

~~(2) Be generally recognized as safe (GRAS) for this intended use; or~~

~~(3) Be the subject of an effective food contact notification for this intended use (only effective for the manufacturer or supplier identified in the notification); and~~

~~(4) Meet the requirements in 40 C.F.R. 156 Labeling Requirements for Pesticide and Devices.~~

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07230 Chemicals—Boiler water additives, criteria ((2009)) FDA Food Code 7-204.13).** Chemicals used as boiler water additives must meet the requirements specified in 21 C.F.R. 173.310 Boiler Water Additives.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07235 Chemicals—Drying agents, criteria ((2009)) FDA Food Code 7-204.14).** Drying agents used in conjunction with SANITIZATION must:

(1) Contain only components that are listed as one of the following:

(a) Generally recognized as safe (GRAS) for use in FOOD as specified in 21 C.F.R. 182 - Substances Generally Recognized as Safe, or 21 C.F.R. 184 - Direct Food Substances Affirmed as Generally Recognized as Safe;

(b) Generally recognized as safe (GRAS) for the intended use as specified in 21 C.F.R. 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe;

(c) Generally recognized as safe (GRAS) for the intended use as determined by experts qualified in scientific training and experience to evaluate the safety of substances added, directly or indirectly, to FOOD as described in 21 C.F.R. 170.30 - Eligibility for Classification as Generally Recognized as Safe (GRAS);

(d) Subject of an effective Food Contact Notification as described in the Federal Food Drug and Cosmetic Act (FFDCA) Section 409(h);

(e) APPROVED for use as a drying agent under a prior sanction specified in 21 C.F.R. 181 - Prior Sanctioned Food Ingredients;

~~((f))~~ (f) Specifically regulated as an indirect FOOD ADDITIVE for use as a drying agent as specified in 21 C.F.R. Parts 175-178; or

~~((g))~~ (g) APPROVED for use as a drying agent under the threshold of regulation process established by 21 C.F.R. 170.39 Threshold of Regulation For Substances Used In Food-Contact Articles; and

(2) When SANITIZATION is with chemicals, the approval required under subsection (1)~~((e))~~ (e) or ~~((f))~~ (f) of this section or the regulation as an indirect FOOD ADDITIVE required under subsection (1)~~((f))~~ (f) of this section, must be specifically for use with chemical SANITIZING solutions.



AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07240 Lubricants—Incidental food contact, criteria (((2009)) FDA Food Code 7-205.11).** Lubricants must meet the requirements specified in 21 C.F.R. 178.3570 – Lubricants with Incidental Food Contact, if they are used on FOOD-CONTACT SURFACES, on bearings and gears located on or within FOOD-CONTACT SURFACES, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into FOOD or onto FOOD-CONTACT SURFACES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07245 Pesticides—Restricted use pesticides, criteria (((2009)) FDA Food Code 7-206.11).** RESTRICTED USE PESTICIDES specified under WAC 246-215-07210(3) must meet the requirements specified in 40 C.F.R. 152 Subpart I - Classification of Pesticides.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07250 Pesticides—Rodent bait stations (((2009)) FDA Food Code 7-206.12).** Rodent bait must be contained in a covered, tamper-resistant bait station.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07255 Pesticides—Tracking powders, pest control and monitoring (((2009)) FDA Food Code 7-206.13).** (1) Except as specified in subsection (2) of this section, a tracking powder pesticide may not be used in a FOOD ESTABLISHMENT.

(2) If used, a nontoxic tracking powder such as talcum or flour may not contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07260 Medicines—Restriction and storage (((2009)) FDA Food Code 7-207.11).** (1) Except for medicines that are stored or displayed for retail sale, only those medicines that are necessary for the health of EMPLOYEES may be allowed in a FOOD ESTABLISHMENT.

(2) Medicines that are in a FOOD ESTABLISHMENT for the EMPLOYEES' use must be labeled as specified under WAC 246-215-07100 and located to prevent the contamination of FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07265 Medicines—Refrigerated medicines, storage (((2009)) FDA Food Code 7-207.12).** Medicines belonging to EMPLOYEES or to children in a day care

center that require refrigeration and are stored in a FOOD refrigerator must be:

(1) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines; and

(2) Located so they are inaccessible to children.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07270 First-aid supplies—Storage (((2009)) FDA Food Code 7-208.11).** First-aid supplies that are in a FOOD ESTABLISHMENT for the EMPLOYEES' use must be:

(1) Labeled as specified under WAC 246-215-07100; and

(2) Stored in a kit or a container that is located to prevent the contamination of FOOD, EQUIPMENT, UTENSILS, and LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07275 Other personal care items—Storage (((2009)) FDA Food Code 7-209.11).** Except as specified under WAC 246-215-07265 and 246-215-07270, EMPLOYEES shall store their PERSONAL CARE ITEMS in facilities as specified under WAC 246-215-06350(2).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-07300 Storage and display—Separation (((2009)) FDA Food Code 7-301.11).** POISONOUS OR TOXIC MATERIALS must be stored and displayed for retail sale so they cannot contaminate FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE and SINGLE-USE ARTICLES by:

(1) Separating the POISONOUS OR TOXIC MATERIALS by spacing or partitioning; and

(2) Locating the POISONOUS OR TOXIC MATERIALS in an area that is not above FOOD, EQUIPMENT, UTENSILS, LINENS, and SINGLE-SERVICE or SINGLE-USE ARTICLES.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08100 Use for intended purpose—Public health protection (((2009)) FDA Food Code 8-101.10).** (1) The REGULATORY AUTHORITY shall apply this chapter to promote its underlying purpose, as specified under WAC 246-215-01105, of safeguarding public health and ensuring that FOOD is safe, UNADULTERATED, and honestly presented when offered to the CONSUMER.

(2) In enforcing the provision of this chapter, the REGULATORY AUTHORITY shall assess existing facilities or EQUIPMENT that were in use before the effective date of this chapter based on the following considerations:

(a) Whether the facilities or EQUIPMENT are in good repair and capable of being maintained in a sanitary condition;

(b) Whether FOOD-CONTACT SURFACES comply with Part 4, Subpart A;

(c) Whether the capacities of cooling, heating, and holding EQUIPMENT are sufficient to comply with WAC 246-215-04300; and

(d) The existence of a documented agreement with the PERMIT HOLDER that the facilities or EQUIPMENT will be replaced as specified under WAC 246-215-08350(7).

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08105 Additional requirements—Preventing health hazards, provision for conditions not addressed (~~((2009))~~ FDA Food Code 8-102.10).** (1) If necessary to protect against public health hazards or nuisances, the REGULATORY AUTHORITY may impose specific requirements in addition to the requirements contained in this chapter that are authorized by LAW.

(2) The REGULATORY AUTHORITY shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation must be provided to the PERMIT applicant or PERMIT HOLDER and a copy must be maintained in the REGULATORY AUTHORITY'S file for the FOOD ESTABLISHMENT.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08110 Variances—Modifications and waivers (~~((2009))~~ FDA Food Code 8-103.10).** The REGULATORY AUTHORITY may grant a VARIANCE by modifying or waiving the requirements of this chapter if in the opinion of the REGULATORY AUTHORITY a health HAZARD or nuisance will not result from the VARIANCE. If a VARIANCE is granted, the REGULATORY AUTHORITY shall retain the information specified under WAC 246-215-08115 in its records for the FOOD ESTABLISHMENT.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08115 Variances—Documentation of proposed VARIANCE and justification (~~((2009))~~ FDA Food Code 8-103.11).** Before a VARIANCE from a requirement of this chapter is APPROVED, the information that must be provided by the PERSON requesting the VARIANCE and retained in the REGULATORY AUTHORITY'S file on the FOOD ESTABLISHMENT includes:

(1) A statement of the proposed VARIANCE of this chapter requirement citing the relevant section;

(2) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant section will be alternatively addressed by the proposal; and

(3) A HACCP PLAN if required as specified under WAC 246-215-08210(1) that includes the information specified under WAC 246-215-08215 as it is relevant to the VARIANCE requested.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08120 Variances—Conformance with approved procedures (~~((2009))~~ FDA Food Code 8-103.12).** If the REGULATORY AUTHORITY grants a VARIANCE as specified under WAC 246-215-08110, or a HACCP PLAN is otherwise required as specified under WAC 246-215-08210, the PERMIT HOLDER shall:

(1) Maintain the APPROVED VARIANCE at the FOOD ESTABLISHMENT; and

(2) Comply with the HACCP PLANS and procedures that are submitted as specified under WAC 246-215-08215 and APPROVED as a basis for the modification or waiver; and

(~~((2))~~) (3) Maintain and provide to the REGULATORY AUTHORITY, upon request, records specified under WAC 246-215-08215 (4) and (5) that demonstrate that the following are routinely employed:

(a) Procedures for monitoring CRITICAL CONTROL POINTS;

(b) Monitoring of the CRITICAL CONTROL POINTS;

(c) Verification of the effectiveness of the operation or process; and

(d) Necessary corrective actions if there is a failure at a CRITICAL CONTROL POINT.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08200 Facility and operating plans—When plans are required (~~((2009))~~ FDA Food Code 8-201.11).** A PERMIT applicant or PERMIT HOLDER shall submit to the REGULATORY AUTHORITY properly prepared plans and specifications for review and approval before:

(1) The construction of a FOOD ESTABLISHMENT;

(2) The conversion of an existing structure for use as a FOOD ESTABLISHMENT; or

(3) The remodeling of a FOOD ESTABLISHMENT, a change of type of FOOD ESTABLISHMENT, or significant changes to the methods of FOOD preparation or style of service as specified under WAC 246-215-08325(3) if the REGULATORY AUTHORITY determines that plans and specifications are necessary to ensure compliance with this chapter.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08205 Facility and operating plans—Contents of the plans and specifications (~~((2009))~~ FDA Food Code 8-201.12).** The plans and specifications for a FOOD ESTABLISHMENT, including a FOOD ESTABLISHMENT specified under WAC 246-215-08210, must include, as required by the REGULATORY AUTHORITY based on the type of operation, type of FOOD preparation, and FOODS prepared, the following information to demonstrate conformance with chapter provisions:

(1) Intended menu;

(2) Anticipated volume of FOOD to be stored, prepared, and sold or served;

(3) Proposed layout, mechanical schematics, construction materials, and finish schedules;

(4) Proposed EQUIPMENT types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;

(5) Evidence that standard procedures that ensure compliance with the requirements of this chapter are developed or are being developed; and

(6) Other information that may be required by the REGULATORY AUTHORITY for the proper review of the proposed construction, conversion or modification, and procedures for operating a FOOD ESTABLISHMENT.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08210 Facility and operating plans—When a HACCP plan is required** ~~((2009))~~ **FDA Food Code 8-201.13**. (1) Before engaging in an activity that requires a HACCP PLAN, a PERMIT applicant or PERMIT HOLDER shall submit to the REGULATORY AUTHORITY for approval a properly prepared HACCP PLAN as specified under WAC 246-215-08215 and the relevant provisions of this chapter if:

(a) Submission of a HACCP PLAN is required according to LAW;

(b) A VARIANCE is required as specified under WAC 246-215-03400 (4)(d), 246-215-03535, and 246-215-04244 (2);

(c) The REGULATORY AUTHORITY determines that a FOOD preparation or processing method requires a VARIANCE based on a plan submittal specified under WAC 246-215-08205, an inspectional finding, or a VARIANCE request.

(2) A PERMIT applicant or PERMIT HOLDER shall have a properly prepared HACCP PLAN as specified under WAC 246-215-03540.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08215 Facility and operating plans—Contents of a HACCP plan** ~~((2009))~~ **FDA Food Code 8-201.14**. For a FOOD ESTABLISHMENT ~~((that is))~~ required under WAC 246-215-08210 to have a HACCP PLAN, the ~~((plan and specifications must indicate))~~ PERMIT applicant or PERMIT HOLDER shall submit to the REGULATORY AUTHORITY a properly prepared HACCP PLAN that includes:

(1) General information such as the name of the PERMIT applicant or PERMIT HOLDER, the FOOD ESTABLISHMENT address, and contact information;

~~((2))~~ (2) A categorization of the types of ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOODS that are ~~((specified in the menu such as soups and sauces, salads, and bulk, solid FOODS such as MEAT roasts, or of other FOODS that are specified by the REGULATORY AUTHORITY))~~ to be controlled under the HACCP PLAN;

~~((3))~~ (3) A flow diagram ~~((by))~~ or chart for each specific FOOD or category type ~~((identifying CRITICAL CONTROL POINTS and providing information on the following))~~ that identifies:

(a) Each step in the process;

(b) The HAZARDS and controls for each step in the flow diagram or chart;

(c) The steps that are CRITICAL CONTROL POINTS;

(d) The ingredients, materials, and EQUIPMENT used in the preparation of that FOOD; and

~~((b))~~ (e) Formulations or recipes that delineate methods and procedural control measures that address the FOOD safety concerns involved~~((;~~

~~((3))~~ FOOD EMPLOYEE and supervisory training plan that addresses the FOOD safety issues of concern;

~~((4))~~ A statement of standard operating procedures for the plan under consideration including clearly identifying~~((;~~

(4) A CRITICAL CONTROL POINT summary for each specific FOOD or category type that clearly identifies:

(a) Each CRITICAL CONTROL POINT;

(b) The CRITICAL LIMITS for each CRITICAL CONTROL POINT;

(c) The method and frequency for monitoring and controlling each CRITICAL CONTROL POINT by the designated FOOD EMPLOYEE ~~((designated by))~~ or the PERSON IN CHARGE;

(d) The method and frequency for the PERSON IN CHARGE to routinely verify that the FOOD EMPLOYEE is following standard operating procedures and monitoring CRITICAL CONTROL POINTS;

(e) Action to be taken by the designated FOOD EMPLOYEE or PERSON IN CHARGE if the CRITICAL LIMITS for each CRITICAL CONTROL POINT are not met; and

(f) Records to be maintained by the PERSON IN CHARGE to demonstrate that the HACCP PLAN is properly operated and managed; and

~~((5))~~ ~~((Additional scientific data or))~~ Supporting documents such as:

(a) FOOD EMPLOYEE and supervisory training plan that addresses the FOOD safety issues of concern;

(b) Copies of blank records forms that are necessary to implement the HACCP PLAN; and

(c) Additional scientific data or other information, as required by the REGULATORY AUTHORITY, supporting the determination that FOOD safety is not compromised by the proposal.

~~((6))~~ Any other information~~((, as))~~ required by the REGULATORY AUTHORITY~~((, supporting the determination that FOOD safety is not compromised by the proposal))~~.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08220 Trade secrets** ~~((2009))~~ **FDA Food Code 8-202.10**. The REGULATORY AUTHORITY shall treat as confidential in accordance with LAW, information that meets the requirements specified in LAW for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under WAC 246-215-08205 and 246-215-08215.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08225 Construction inspection and approval—Preoperational inspections** ~~((2009))~~ **FDA Food Code 8-203.10**. The REGULATORY AUTHORITY shall conduct one or more preoperational inspections to verify that the FOOD ESTABLISHMENT is constructed and equipped in

accordance with the APPROVED plans and APPROVED modifications of those plans, has established standard operating procedures as specified under WAC 246-215-08205(5), and is in compliance with the LAW and this chapter.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08300 Requirement—Prerequisite for operation ((2009) FDA Food Code 8-301.11).** A PERSON may not operate a FOOD ESTABLISHMENT without a valid PERMIT to operate issued by the REGULATORY AUTHORITY.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08305 Exempt from permit ((2009) FDA Food Code 8-301.12)) with approval.** (1) The REGULATORY AUTHORITY may exempt a PERSON from the provisions of WAC 246-215-08600(1) and 246-215-08300 of this chapter in order to operate without a FOOD ESTABLISHMENT PERMIT, if the PERSON meets the other provisions of this chapter, including not using any FOOD prepared in a residential kitchen or other nonAPPROVED facility, and the types of FOOD served are limited to those specified in subsection (4) of this section.

(2) The PERSON requesting a PERMIT exemption under subsection (1) of this section shall submit a written application for an exemption on a form provided by the REGULATORY AUTHORITY at least 14 calendar days before providing FOOD service, or as otherwise required by the REGULATORY AUTHORITY.

(3) The PERSON requesting a PERMIT exemption under subsection (1) of this section shall submit properly prepared plans and specifications of the FOOD service facilities and EQUIPMENT if the REGULATORY AUTHORITY requires it, based on a review of the application for an exemption submitted under subsection (2) of this section.

(4) The PERSON requesting a PERMIT exemption under subsection (1) of this section shall limit FOOD handling to one or more of the following FOODS:

(a) Individual samples of nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD sliced fruits and vegetables;

(b) Popcorn and flavored popcorn prepared from commercially PACKAGED ((~~nonPOTENTIALLY HAZARDOUS~~)) NON-TIME/TEMPERATURE CONTROL FOR SAFETY FOOD ingredients;  
((~~(b) Cotton candy;~~))

(c) Dried herbs and spices processed in an APPROVED facility;

(d) Crushed ice drinks containing only ((~~nonPOTENTIALLY HAZARDOUS~~)) nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD ingredients and dispensed from a self-contained machine that makes its own ice. Drinks with ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD, snow cones, and shaved ice are not included;

(e) Corn on the cob ((~~prepared for IMMEDIATE SERVICE~~));

(f) Whole ((~~peppers~~)) roasted ((~~for IMMEDIATE SERVICE~~)) peppers;

(g) Roasted nuts, roasted peanuts, and roasted candy-coated nuts;

(h) Chocolate-dipped ice cream bars prepared from pre-PACKAGED ice cream bars produced in a FOOD PROCESSING PLANT;

(i) Chocolate-dipped bananas prepared from bananas peeled and frozen in an APPROVED facility; and

(j) ((~~Individual samples of nonPOTENTIALLY HAZARDOUS sliced fruits and vegetables~~)) Cotton candy.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08310 Application procedure—Submission thirty calendar days before proposed opening ((2009) FDA Food Code 8-302.11).** An applicant shall submit an application for a PERMIT at least thirty calendar days before the date planned for opening a FOOD ESTABLISHMENT or the expiration of the current PERMIT for an existing facility.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08315 Application procedure—Form of submission ((2009) FDA Food Code 8-302.12).** A PERSON desiring to operate a FOOD ESTABLISHMENT shall submit to the REGULATORY AUTHORITY a written application for a PERMIT on a form provided by the REGULATORY AUTHORITY.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08320 Application procedure—Qualifications and responsibilities of applicants ((2009) FDA Food Code 8-302.13).** To qualify for a PERMIT, an applicant shall:

(1) Be an owner of the FOOD ESTABLISHMENT or an officer of the legal ownership;

(2) Comply with the requirements of this chapter;

(3) As specified under WAC 246-215-08415, agree to allow access to the FOOD ESTABLISHMENT and to provide required information; and

(4) Pay the applicable PERMIT fees at the time the application is submitted.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08325 Application procedure—Contents of the application ((2009) FDA Food Code 8-302.14).** The application must include:

(1) The name, birth date or Unified Business Identifier, mailing address, telephone number, and signature of the PERSON applying for the PERMIT and the name, mailing address, and location of the FOOD ESTABLISHMENT;

(2) Information specifying whether the FOOD ESTABLISHMENT is owned by an association, corporation, individual, partnership, or other legal entity;

(3) A statement specifying whether the FOOD ESTABLISHMENT:

(a) Is mobile or stationary and temporary or permanent; and

(b) Is an operation that includes one or more of the following:

(i) Prepares, offers for sale, or serves ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD:

(A) Only to order upon a CONSUMER'S request;

(B) In advance quantities based on projected CONSUMER demand and discards FOOD that is not sold or served at an APPROVED frequency; or

(C) Using time as a public health control under WAC 246-215-03530;

(ii) Prepares ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD in advance using a FOOD preparation method that involves two or more steps which may include combining ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing;

(iii) Prepares FOOD as specified under (b)(ii) of this subsection for delivery to and consumption at a location off the PREMISES of the FOOD ESTABLISHMENT where it is prepared;

(iv) Prepares FOOD as specified under (b)(ii) of this subsection for service to a HIGHLY SUSCEPTIBLE POPULATION;

(v) Prepares only FOOD that is not ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD; or

(vi) Does not prepare, but offers for sale only prePACKAGED FOOD that is not ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD.

(4) The name, title, address, and telephone number of the PERSON directly responsible for the FOOD ESTABLISHMENT;

(5) The name, title, address, and telephone number of the PERSON who functions as the immediate supervisor of the PERSON specified under subsection (4) of this section such as the zone, district, or regional supervisor;

(6) The names, titles, and addresses of:

(a) The persons comprising the legal ownership as specified under subsection (2) of this section including the owners and officers; and

(b) The local resident agent if one is required based on the type of legal ownership.

(7) A statement signed by the applicant that:

(a) Attests to the accuracy of the information provided in the application; and

(b) Affirms that the applicant will:

(i) Comply with this chapter; and

(ii) Allow the REGULATORY AUTHORITY access to the establishment as specified under WAC 246-215-08415 and to the records specified under WAC 246-215-03290, 246-215-05280 and 246-215-08215 (4)(f); and

(8) Other information required by the REGULATORY AUTHORITY.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08330 Issuance—New, converted, or remodeled establishments (((2009)) FDA Food Code 8-303.10).** For FOOD ESTABLISHMENTS that are required to submit plans as specified under WAC 246-215-08200 the REGU-

LATORY AUTHORITY shall issue a PERMIT to the applicant after:

(1) A properly completed application is submitted;

(2) The required fee is submitted;

(3) The required plans, specifications, and information are reviewed and APPROVED; and

(4) A preoperational inspection as specified under WAC 246-215-08225 shows that the establishment is built or remodeled in accordance with the APPROVED plans and specifications and that the establishment is in compliance with this chapter.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08335 Issuance—Existing establishments, permit renewal, and change of ownership (((2009)) FDA Food Code 8-303.20).** The REGULATORY AUTHORITY may renew a PERMIT for an existing FOOD ESTABLISHMENT or may issue a PERMIT to a new owner of an existing establishment after a properly completed application is submitted, reviewed and APPROVED, the fees are paid, and an inspection shows that the establishment is in compliance with this chapter.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08340 Issuance—Denial of application for permit, notice (((2009)) FDA Food Code 8-303.30).** If an application for a PERMIT to operate is denied, the REGULATORY AUTHORITY shall provide the applicant with a notice that includes:

(1) The specific reasons and chapter citations for the PERMIT denial;

(2) The actions, if any, that the applicant must take to qualify for a PERMIT; and

(3) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in LAW.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08345 Conditions of retention—Responsibilities of the regulatory authority (((2009)) FDA Food Code 8-304.10).** (1) At the time a PERMIT is first issued, the REGULATORY AUTHORITY shall provide to the PERMIT HOLDER a copy of this chapter so that the PERMIT HOLDER is notified of the compliance requirements and the conditions of retention, as specified under WAC 246-215-08350, that are applicable to the PERMIT.

(2) Failure to provide the information specified in subsection (1) of this section does not prevent the REGULATORY AUTHORITY from taking authorized action or seeking remedies if the PERMIT HOLDER fails to comply with this chapter or an order, warning, or directive of the REGULATORY AUTHORITY.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08350 Conditions of retention—Responsibilities of the permit holder ((2009)) FDA Food Code 8-304.11).** Upon acceptance of the PERMIT issued by the REGULATORY AUTHORITY, the PERMIT HOLDER in order to retain the PERMIT shall:

(1) Post the PERMIT in a location in the FOOD ESTABLISHMENT that is conspicuous to CONSUMERS;

(2) Comply with the provisions of this chapter including the conditions of a granted VARIANCE as specified under WAC 246-215-08120, and APPROVED plans as specified under WAC 246-215-08205;

(3) If a FOOD ESTABLISHMENT is required under WAC 246-215-08210 to operate under a HACCP PLAN, comply with the plan as specified under WAC 246-215-08120;

(4) Immediately contact the REGULATORY AUTHORITY to report an illness of a FOOD EMPLOYEE or CONDITIONAL EMPLOYEE as specified under WAC 246-215-02215;

(5) Immediately discontinue operations and notify the REGULATORY AUTHORITY if an IMMINENT HEALTH HAZARD might exist as specified under WAC 246-215-08455;

(6) Allow representatives of the REGULATORY AUTHORITY access to the FOOD ESTABLISHMENT as specified under WAC 246-215-08415;

(7) Replace existing facilities and EQUIPMENT specified under WAC 246-215-08100 with facilities and EQUIPMENT that comply with this chapter if:

(a) The REGULATORY AUTHORITY directs the replacement because the facilities and EQUIPMENT constitute a public health HAZARD or nuisance or no longer comply with the requirements upon which the facilities and EQUIPMENT were accepted; or

(b) The facilities and EQUIPMENT are replaced in the normal course of operation.

(8) Comply with directives of the REGULATORY AUTHORITY including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the REGULATORY AUTHORITY in regard to the PERMIT HOLDER'S FOOD ESTABLISHMENT or in response to community emergencies;

(9) Accept notices issued and served by the REGULATORY AUTHORITY according to LAW; ((and))

(10) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in LAW for failure to comply with this chapter or a directive of the REGULATORY AUTHORITY, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and

(11) Notify customers that the most recent establishment inspection report or summary provided by the REGULATORY AUTHORITY is available for review by posting a sign or placard in a location in the FOOD ESTABLISHMENT that is conspicuous to customers or by another method acceptable to the REGULATORY AUTHORITY.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08355 Conditions of retention—Permits not transferable ((2009)) FDA Food Code 8-304.20).** A PERMIT may not be transferred from one PERSON to another PERSON, from one FOOD ESTABLISHMENT to another, or from one type of operation to another if the FOOD operation changes from the type of operation specified in the application as specified under WAC 246-215-08325(3) and the change in operation is not APPROVED.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08400 Frequency—Establishing inspection interval ((2009)) FDA Food Code 8-401.10).**

(1) Except as specified in subsections (2) and (3) of this section, the REGULATORY AUTHORITY shall inspect a FOOD ESTABLISHMENT at least once every six months.

(2) The REGULATORY AUTHORITY may increase the interval between inspections beyond six months if:

(a) The FOOD ESTABLISHMENT is fully operating under an APPROVED and validated HACCP PLAN as specified under WAC 246-215-08215 and 246-215-08120 (1) and (2);

(b) The FOOD ESTABLISHMENT is assigned a less frequent inspection frequency based on a written RISK-based inspection schedule developed by the REGULATORY AUTHORITY, or set by state or federal LAW, and uniformly applied throughout the jurisdiction; or

(c) The establishment's operation involves only coffee service and other unPACKAGED or prePACKAGED FOOD that is not ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD such as carbonated BEVERAGES and snack FOOD such as chips, nuts, popcorn and pretzels.

(3) The REGULATORY AUTHORITY shall inspect a TEMPORARY FOOD ESTABLISHMENT during its PERMIT period, unless the REGULATORY AUTHORITY develops a written RISK-based plan for exempting certain categories of TEMPORARY FOOD ESTABLISHMENTS from inspection that is uniformly applied throughout the jurisdiction.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08405 Frequency—Performance- and risk-based ((2009)) FDA Food Code 8-401.20).** Within the parameters specified under WAC 246-215-08400, the REGULATORY AUTHORITY shall prioritize, and conduct more frequent inspections based upon its assessment of a FOOD ESTABLISHMENT'S history of compliance with this chapter and the establishment's potential as a vector of foodborne illness by evaluating:

(1) Past performance, for nonconformance with this chapter or HACCP PLAN requirements;

(2) Past performance, for numerous repeat violations of this chapter or HACCP PLAN requirements;

(3) Past performance, for complaints investigated and found to be valid;

(4) The hazards associated with the particular FOODS that are prepared, stored or served;

(5) The type of operation including the methods and extent of FOOD storage, preparation, and service;

(6) The number of people served;

(7) Whether the population served is a HIGHLY SUSCEPTIBLE POPULATION; and

(8) Whether the establishment is properly implementing an APPROVED self-inspection program.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08410 Frequency—Competency of inspectors ((2009) FDA Food Code 8-402.10).** (1) An authorized representative of the REGULATORY AUTHORITY who inspects a FOOD ESTABLISHMENT or conducts plan review for compliance with this chapter shall have the knowledge, skills, and ability to adequately perform the required duties.

(2) The REGULATORY AUTHORITY shall ensure that authorized representatives who inspect a FOOD ESTABLISHMENT or conduct plan review for compliance with this chapter have access to training and continuing education as needed to properly identify violations and apply the chapter.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08415 Access—Allowed at reasonable times after due notice ((2009) FDA Food Code 8-402.11).** After the REGULATORY AUTHORITY presents official credentials and provides notice of the purpose of, and intent to conduct, an inspection, the PERSON IN CHARGE shall allow the REGULATORY AUTHORITY to determine if the FOOD ESTABLISHMENT is in compliance with this chapter by allowing access to the establishment, allowing inspection, and providing information and records specified in this chapter and to which the REGULATORY AUTHORITY is entitled according to LAW, during the FOOD ESTABLISHMENT'S hours of operation and other reasonable times.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08420 Access—Refusal, notification of right to access, and final request for access ((2009) FDA Food Code 8-402.20).** If a PERSON denies access to the REGULATORY AUTHORITY, the REGULATORY AUTHORITY shall:

(1) Inform the PERSON that:

(a) The PERMIT HOLDER is required to allow access to the REGULATORY AUTHORITY as specified under WAC 246-215-08415 of this chapter; and

(b) Access is a condition of the acceptance and retention of a FOOD ESTABLISHMENT PERMIT to operate as specified under WAC 246-215-08350(6).

(2) Make a final request for access.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08425 Access—Refusal, reporting ((2009) FDA Food Code 8-402.30).** If after the REGULATORY AUTHORITY presents credentials and provides notice as specified under WAC 246-215-08415, explains the authority upon which access is requested, and makes a final request for access as specified under WAC 246-215-08420, the PERSON IN CHARGE continues to ((REFUSE)) refuse access, the REGULATORY AUTHORITY shall provide details of the denial of access on an inspection report form.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08430 Report of findings—Documenting information and observations ((2009) FDA Food Code 8-403.10).** The REGULATORY AUTHORITY shall document on an inspection report form APPROVED by the Washington state department of health:

(1) Administrative information about the FOOD ESTABLISHMENT'S legal identity, street and mailing addresses, type of establishment and operation as specified under WAC 246-215-08325(3), inspection date, and other information such as type of water supply and SEWAGE disposal, status of the PERMIT, and personnel certificates that may be required; and

(2) Specific factual observations of violative conditions or other deviations from this chapter that require correction by the PERMIT HOLDER including:

(a) Failure of the PERSON IN CHARGE to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this chapter specified under WAC 246-215-02105;

(b) Failure of FOOD EMPLOYEES, CONDITIONAL EMPLOYEES, and the PERSON IN CHARGE to demonstrate knowledge of their responsibility to report a disease or medical condition;

(c) Nonconformance with this chapter;

(d) Failure of the appropriate FOOD EMPLOYEES to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the REGULATORY AUTHORITY as specified under WAC 246-215-08120;

(e) Failure of the PERSON IN CHARGE to provide records required by the REGULATORY AUTHORITY for determining conformance with a HACCP PLAN as specified under WAC 246-215-08215 (4)(f); and

(f) Nonconformance with CRITICAL LIMITS of a HACCP PLAN.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08435 Report of findings—Specifying time frame for corrections ((2009) FDA Food Code 8-403.20).** The REGULATORY AUTHORITY shall specify on the inspection report form the time frame for correction of any violations.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08440 Report of findings—Issuing report and obtaining acknowledgment of receipt (((2009)) FDA Food Code 8-403.30).** At the conclusion of the inspection and according to LAW, the REGULATORY AUTHORITY shall provide a copy of the completed inspection report and the notice to correct violations to the PERMIT HOLDER or to the PERSON IN CHARGE, and request a signed acknowledgment of receipt.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08445 Report of findings—Refusal to sign acknowledgment (((2009)) FDA Food Code 8-403.40).** The REGULATORY AUTHORITY shall:

(1) Inform the PERSON who declines to sign an acknowledgment of receipt of inspectional findings as specified under WAC 246-215-08440 that:

(a) An acknowledgment of receipt is not an agreement with the findings;

(b) Refusal to sign an acknowledgment of receipt does not affect the PERMIT HOLDER'S obligation to correct the violations noted in the inspection report within the time frames specified; and

(c) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the REGULATORY AUTHORITY'S historical record for the FOOD ESTABLISHMENT; and

(2) Make a final request that the PERSON IN CHARGE sign an acknowledgment receipt of inspectional findings.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08450 Report of findings—Public information (((2009)) FDA Food Code 8-403.50).** Except as specified under WAC 246-215-08220, the REGULATORY AUTHORITY shall treat the inspection report as a public document and shall make it available for DISCLOSURE to a PERSON who requests it as provided in LAW.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08455 Imminent health hazard—Ceasing operations and reporting (((2009)) FDA Food Code 8-404.11).** (1) Except as specified in subsections (2) and (3) of this section, a PERMIT HOLDER shall immediately discontinue operations and notify the REGULATORY AUTHORITY if an IMMINENT HEALTH HAZARD might exist.

(2) A PERMIT HOLDER need not discontinue operations in an area of an establishment that is unaffected by the IMMINENT HEALTH HAZARD.

(3) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the REGULATORY AUTHORITY may agree to continuing operations in the event of an extended interruption of electrical or water service if:

(a) A written emergency operating plan has been APPROVED;

(b) Immediate corrective action is taken to eliminate, prevent, or control any FOOD safety risk and IMMINENT HEALTH HAZARD associated with the electrical or water service interruption; and

(c) The REGULATORY AUTHORITY is informed upon implementation of the written emergency operating plan.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08460 Imminent health hazard—Resumption of operations (((2009)) FDA Food Code 8-404.12).** If operations are discontinued as specified under WAC 246-215-08455 or otherwise according to LAW, the PERMIT HOLDER shall obtain approval from the REGULATORY AUTHORITY before resuming operations.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08500 Investigation and control—Obtaining information—Personal history of illness, medical examination, and specimen analysis (((2009)) FDA Food Code 8-501.10).** The REGULATORY AUTHORITY shall act when it has reasonable cause to believe that a FOOD EMPLOYEE or CONDITIONAL EMPLOYEE has possibly transmitted disease; might be infected with a disease in a communicable form that is transmissible through FOOD; might be a carrier of infectious agents that cause a disease that is transmissible through FOOD; or is affected with a boil, an infected wound, or acute respiratory infection, by:

(1) Securing a confidential medical history of the FOOD EMPLOYEE or CONDITIONAL EMPLOYEE suspected of transmitting disease or making other investigations as deemed appropriate; and

(2) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected FOOD EMPLOYEE or CONDITIONAL EMPLOYEE.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08505 Investigation and control—Restriction or exclusion of food employee, or summary suspension of permit (((2009)) FDA Food Code 8-501.20).** Based on the findings of an investigation related to a FOOD EMPLOYEE or CONDITIONAL EMPLOYEE who is suspected of being infected or diseased, the REGULATORY AUTHORITY may issue an order to the suspected FOOD EMPLOYEE, CONDITIONAL EMPLOYEE, or PERMIT HOLDER instituting one or more of the following control measures:

(1) RESTRICTING the FOOD EMPLOYEE or CONDITIONAL EMPLOYEE;

(2) EXCLUDING the FOOD EMPLOYEE or CONDITIONAL EMPLOYEE; or

(3) Closing the FOOD ESTABLISHMENT by summarily suspending a PERMIT to operate in accordance with LAW.



AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08510 Investigation and control—Restriction or exclusion order: Warning or hearing not required, information required in order (~~((2009))~~ FDA Food Code 8-501.30).** Based on the findings of the investigation as specified under WAC 246-215-08500 and to control disease transmission, the REGULATORY AUTHORITY may issue an order of RESTRICTION or EXCLUSION to a suspected FOOD EMPLOYEE or the PERMIT HOLDER without prior warning, notice of a hearing, or a hearing if the order:

(1) States the reasons for the RESTRICTION or EXCLUSION that is ordered;

(2) States the evidence that the FOOD EMPLOYEE or PERMIT HOLDER shall provide in order to demonstrate that the reasons for the RESTRICTION or EXCLUSIONS are eliminated;

(3) States that the suspected FOOD EMPLOYEE or PERMIT HOLDER may request an appeal hearing by submitting a timely request as provided in LAW; and

(4) Provides the name and address of the REGULATORY AUTHORITY representative to whom a request for an appeal hearing can be made.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-08515 Investigation and control—Removal of exclusion or restriction (~~((2009))~~ FDA Food Code 8-501.40).** The REGULATORY AUTHORITY or PERSON IN CHARGE shall release a FOOD EMPLOYEE or CONDITIONAL EMPLOYEE from RESTRICTION or EXCLUSION according to LAW and the conditions specified under WAC 246-215-02245, 246-215-02250, and 246-215-02255.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09100 Requirements and restrictions—Requirements.** (1) The PERMIT HOLDER and PERSON IN CHARGE of a MOBILE FOOD UNIT shall comply with the requirements of this chapter, except as otherwise provided in this section.

(2) The PERMIT HOLDER shall obtain approval from other applicable regulating agencies prior to operating a MOBILE FOOD UNIT, including the Washington state department of labor and industries.

(3) The PERSON IN CHARGE of a MOBILE FOOD UNIT shall operate the MOBILE FOOD UNIT from an APPROVED COMMISSARY or SERVICING AREA unless they meet the exemption criteria in RCW 43.20.148 and shall return to such location for supplies, thorough cleaning, and other servicing activities, as APPROVED in a plan of operation.

(4) When not in operation, a MOBILE FOOD UNIT must be stored at an APPROVED SERVICING AREA or other APPROVED location.

(5) If a REGULATORY AUTHORITY suspends a MOBILE FOOD UNIT'S MOBILE PRIMARY PERMIT or MOBILE SECONDARY PERMIT, the PERMIT HOLDER shall immediately notify each REGULATORY AUTHORITY that issued the MOBILE FOOD UNIT a permit about the suspension.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09110 Plan approval—Plan review.** The owner of a MOBILE FOOD UNIT shall submit a properly prepared plan of operation with specifications of the MOBILE FOOD UNIT, COMMISSARY, and SERVICING AREA to the REGULATORY AUTHORITY for approval before:

(1) Beginning a construction or remodeling (~~((begins))~~ project;

(2) Changing the menu, processes, or preparation procedures of the MOBILE FOOD UNIT (~~((is changed))~~);

(3) (~~((The method of FOOD preparation is changed;~~

~~((4))) Changing the vehicle (~~((is changed))~~); or~~

~~((5))) (4) Changing the COMMISSARY (~~((is changed))~~).~~

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09115 Plan approval—Plan contents.** (1) To apply for a PRIMARY MOBILE PERMIT, the owner of a MOBILE FOOD UNIT shall include in the plan required by WAC 246-215-09110:

~~((1))) (a) Menu and FOOD preparation steps;~~

~~((2))) (b) Floor plan;~~

~~((3))) (c) EQUIPMENT specifications and location;~~

~~((4))) (d) Finish schedule;~~

~~((5)) Proposed itinerary or sites to be served;~~

~~((6))) (e) Source of water and specifications of the on-board plumbing;~~

~~((7))) (f) Site used for SEWAGE disposal;~~

~~((8))) (g) Availability of restrooms for EMPLOYEES;~~

~~((9))) (h) Operating procedures; and~~

~~((10))) (i) Cleaning schedule.~~

(2) To apply for a MOBILE SECONDARY PERMIT, the owner of a MOBILE FOOD UNIT shall provide the following information to the REGULATORY AUTHORITY issuing the secondary permit:

(a) A copy of the current MOBILE PRIMARY PERMIT from the original REGULATORY AUTHORITY;

(b) A copy of the complete APPROVED plan review from the original REGULATORY AUTHORITY;

(c) The most recent inspection report of the MOBILE FOOD UNIT from the original REGULATORY AUTHORITY that demonstrates compliance with food safety standards; and

(d) Any COMMISSARY agreements that the applicant is required to maintain under the permit from the original REGULATORY AUTHORITY.

(3) Except as provided in (a) and (b) of this subsection, the REGULATORY AUTHORITY may not require an applicant to submit additional documents or inspections to obtain a MOBILE SECONDARY PERMIT to operate the MOBILE FOOD UNIT.

(a) The REGULATORY AUTHORITY may require an applicant to submit any restroom agreements the REGULATORY AUTHORITY determines are necessary to comply with this chapter;

(b) The REGULATORY AUTHORITY may require an applicant to submit additional COMMISSARY agreements as required by this chapter unless:

(i) A MOBILE FOOD UNIT is exempt from the use of a COMMISSARY under RCW 43.20.148; or

(ii) A MOBILE FOOD UNIT returns to its APPROVED COMMISSARY after each day of service as described in the APPROVED plan.

(4) A REGULATORY AUTHORITY granting a MOBILE SECONDARY PERMIT may charge the applicant an annual PERMIT fee, but may not charge a plan review or inspection fee.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09120 Additional requirements—Standard operating procedures.** The PERSON IN CHARGE of a MOBILE FOOD UNIT shall ensure:

(1) Only EMPLOYEES and other persons authorized by the REGULATORY AUTHORITY are present in the MOBILE FOOD UNIT;

(2) All EMPLOYEES are in compliance with the provisions of chapter 69.06 RCW and chapter 246-217 WAC for obtaining and renewing valid FOOD WORKER CARDS, unless all FOODS are prePACKAGED and are (~~non~~POTENTIALLY HAZARDOUS) nonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD;

(3) All FOODS, including ice, are from an APPROVED source or COMMISSARY;

(4) (~~POTENTIALLY HAZARDOUS~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOODS prepared on the MOBILE FOOD UNIT are served the same day they are prepared;

(5) PrePACKAGED FOODS are properly labeled;

(6) Only SINGLE-SERVICE ARTICLES are provided for use by the customer; and

(7) Condiments not in individual packages are provided in dispenser bottles or in other containers protected from contamination.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09125 (~~Potentially hazardous~~) Time/temperature control for safety food(s)—Temperature control.** The PERSON IN CHARGE of a MOBILE FOOD UNIT shall ensure that (~~POTENTIALLY HAZARDOUS~~) TIME/TEMPERATURE CONTROL FOR SAFETY FOODS are:

(1) Not cooled on the MOBILE FOOD UNIT unless APPROVED;

(2) Properly temperature-controlled during transport to the place of service;

(3) Temperature-monitored by use of a stem-type thermometer or thermocouple capable of measuring all proper FOOD temperatures; and

(4) (~~Reheated, for hot holding, from 41°F (5°C) to 165°F (74°C) or above within one hour on the MOBILE FOOD UNIT when the FOODS were cooked and cooled in an APPROVED food establishment that is not a MOBILE FOOD UNIT;~~

(5) ~~Reheated, for hot holding, from 41°F (5°C) to 135°F (74°C) or above within one hour on the MOBILE FOOD UNIT when the FOODS were produced in a FOOD PROCESSING PLANT;~~

(6) ~~Reheated no more than one time; and~~

(7)) Held in preheated mechanical hot holding EQUIPMENT or prechilled mechanical cold holding EQUIPMENT, or otherwise temperature controlled by an APPROVED method.

#### NEW SECTION

**WAC 246-215-09126 Commissary usage.** (1) The PERSON IN CHARGE of a MOBILE FOOD UNIT shall use a COMMISSARY APPROVED by the REGULATORY AUTHORITY issuing the primary permit unless exempted under RCW 43.20.148.

(2) The PERMIT HOLDER shall obtain a written, signed COMMISSARY agreement from the COMMISSARY operator that must be renewed annually. Any changes to the agreement shall be submitted to the REGULATORY AUTHORITY issuing the MOBILE PRIMARY PERMIT before implementing the changes.

(3) The PERSON IN CHARGE shall return the MOBILE FOOD UNIT to the COMMISSARY at a regular frequency, as determined and APPROVED by the REGULATORY AUTHORITY issuing the primary permit.

(4) The PERSON IN CHARGE shall document presence at the COMMISSARY on a log, maintain records for one year, and shall make the records available for inspection by the REGULATORY AUTHORITY upon request.

(5) Depending on the menu and plan of operation, the MOBILE FOOD UNIT operator must have access at the COMMISSARY to:

(a) A three-compartment sink and other APPROVED WAREWASHING equipment;

(b) Adequate hot and cold holding equipment as necessary for proper food storage;

(c) A service sink with hot and cold water under pressure;

(d) At least one HANDWASHING SINK with pressurized hot and cold water that is conveniently located and used exclusively for handwashing;

(e) A conveniently located toilet room;

(f) APPROVED methods and equipment to clean and sanitize FOOD and nonFOOD contact surfaces within the MOBILE FOOD UNIT; and

(g) Adequate space for the sanitary storage of FOOD, EQUIPMENT, UTENSILS, LINENS, and single-service, or single-use articles.

#### NEW SECTION

**WAC 246-215-09127 Commissary exemption.** (1) The PERSON IN CHARGE of a MOBILE FOOD UNIT shall use the COMMISSARY APPROVED by the REGULATORY AUTHORITY issuing the MOBILE PRIMARY PERMIT unless exempted under RCW 43.20.148.

(2) The REGULATORY AUTHORITY must approve a request for a MOBILE FOOD UNIT to be exempt from this chapter or REGULATORY AUTHORITY requirements to operate from an APPROVED COMMISSARY or SERVICING AREA if:

(a) The MOBILE FOOD UNIT contains all EQUIPMENT and UTENSILS needed for complete onboard preparation of an APPROVED menu;

(b) The MOBILE FOOD UNIT is protected from environmental contamination when not in use;

(c) The MOBILE FOOD UNIT can maintain required food storage temperatures during storage, preparation, service, and transit;

(d) The MOBILE FOOD UNIT has a dedicated HANDWASHING SINK to allow frequent handwashing at all times;

(e) The MOBILE FOOD UNIT has adequate water capacity and WAREWASHING facilities to clean all multiuse utensils used on the MOBILE FOOD UNIT at a frequency specified in this chapter;

(f) The MOBILE FOOD UNIT is able to store tools onboard needed for cleaning and sanitizing;

(g) All FOOD, water, and ice used on the MOBILE FOOD UNIT are prepared onboard or otherwise obtained from APPROVED sources;

(h) Wastewater and garbage will be sanitarily removed from the MOBILE FOOD UNIT following an APPROVED written plan or by a licensed service provider; and

(i) The LOCAL HEALTH OFFICER approves the menu and plan of operations for the MOBILE FOOD UNIT.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09155 Sink compartment requirements—Warewashing facilities.** The PERMIT HOLDER shall ensure:

(1) A three-compartment sink is available on the MOBILE FOOD UNIT with potable hot and cold running water to wash, rinse, and SANITIZE UTENSILS when UTENSILS are reused on the MOBILE FOOD UNIT (~~(except)~~).

(2) The REGULATORY AUTHORITY may waive or modify this requirement ((may be waived or modified by the REGULATORY AUTHORITY when)) in subsection (1) of this section when a MOBILE FOOD UNIT demonstrates the operation:

(a) Includes limited FOOD preparation ((occurs; or)) and

(b) Has additional clean UTENSILS ((are)) available and UTENSIL washing takes place at an APPROVED COMMISSARY or SERVICING AREA.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09160 Required postings—Business name and operating locations.** The PERMIT HOLDER shall:

(1) Provide the REGULATORY AUTHORITY a designated business name and ((ensure that name is posted on the MOBILE FOOD UNIT)) permanently display the business name on the exterior of the MOBILE FOOD UNIT in printed letters at least four inches in height in a manner easily visible ((to customers)) during operation; and

(2) Inform the REGULATORY AUTHORITY of the days, hours and locations intended to vend in a manner acceptable to the REGULATORY AUTHORITY, such as by telephone, electronic mail, written correspondence or social media link.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09210 ((Potentially hazardous)) Time/temperature control for safety food—Temperature control.** The PERSON IN CHARGE of a TEMPORARY FOOD

ESTABLISHMENT shall ensure that ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOODS are:

(1) Not cooled in a TEMPORARY FOOD ESTABLISHMENT;

(2) Properly temperature-controlled during transport to the temporary event location;

(3) Temperature-monitored by use of a stem-type thermometer or thermocouple capable of measuring all proper FOOD temperatures;

(4) Reheated, for hot holding, from 41°F (5°C) to 165°F (74°C) or above within one hour when cooked and cooled in an APPROVED FOOD ESTABLISHMENT;

(5) Reheated, for hot holding, from 41°F (5°C) to 135°F (60°C) or above within one hour when produced in a FOOD PROCESSING PLANT;

(6) Reheated no more than one time; and

(7) Held in preheated mechanical hot holding EQUIPMENT or prechilled mechanical cold holding EQUIPMENT, or otherwise temperature controlled by an APPROVED method.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09215 Thawing thickness—Thawing ((potentially hazardous)) time/temperature control for safety foods.** The PERSON IN CHARGE of a TEMPORARY FOOD ESTABLISHMENT shall ensure ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOODS that are thawed as part of a continuous cooking process are not greater than four inches thick.

**AMENDATORY SECTION** (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09300 Residential kitchen—Requirements and restrictions.** (1) The PERMIT HOLDER and PERSON IN CHARGE of a BED AND BREAKFAST OPERATION shall comply with the requirements of this chapter, except as otherwise provided in this subpart.

(2) The REGULATORY AUTHORITY may impose additional requirements to protect against health hazards related to the FOOD service portion of a BED AND BREAKFAST OPERATION.

(3) FOOD may be handled in the residential kitchen of a BED AND BREAKFAST OPERATION without meeting the provisions of WAC 246-215-02315, 246-215-04212, 246-215-04214, 246-215-04216, 246-215-04224, 246-215-04228, 246-215-04236, 246-215-04250, 246-215-04254, 246-215-04260, 246-215-04264, 246-215-04315, 246-215-04340, 246-215-04345, 246-215-04405, 246-215-04410, 246-215-04500(1), 246-215-04510, 246-215-04525, 246-215-04545, 246-215-04555, 246-215-04560, 246-215-04575, 246-215-04610, 246-215-04710, 246-215-04940, and 246-215-05240((;)); Part 4, Subpart H; Part 5, Subpart E; Part 6 and Part 7, if:

(a) The number of guest bedrooms does not exceed eight;

(b) FOOD service is limited to overnight guests;

(c) Breakfast is the only meal prepared; however, baked goods that are not ((~~POTENTIALLY HAZARDOUS~~)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD may be prepared and served at any time of day;

(d) ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOODS are prepared for IMMEDIATE SERVICE only; and

(e) ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOODS are not cooled for later reheating.

(4) If FOOD service is provided in a BED AND BREAKFAST OPERATION other than under the conditions of subsection (3) of this section, all FOODS must be prepared in an APPROVED nonresidential kitchen meeting the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09400 Requirements and exemptions.**

(1) The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION shall comply with the requirements of this chapter, except as otherwise provided in this section.

(2) A DONATED FOOD DISTRIBUTING ORGANIZATION is exempt from the provisions of WAC 246-215-08600 and Part 8, Subpart C of this chapter, regarding operating with a valid FOOD ESTABLISHMENT PERMIT.

(3) The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION shall notify the REGULATORY AUTHORITY in writing or by another APPROVED manner:

(a) ~~((Annually of))~~ Initially regarding the nature of its FOOD service activities, including ~~((types of FOOD served or distributed))~~ information specified in WAC 246-215-08325; and

~~((b) Whenever there is a significant change in its FOOD service activities:))~~

(i) A valid 501(c) IRS determination letter; or

(ii) A letter of sponsorship from a 501(c) organization with a copy of its current 501(c) IRS determination letter.

(b) Annually of the nature of its FOOD service activities, including types of FOOD served and distributed; and

(c) Whenever the IRS determination letter is revoked or there is a significant change in its FOOD service activities.

(4) A DONATED FOOD DISTRIBUTING ORGANIZATION is exempt from meeting the provisions of WAC 246-215-02315, 246-215-03610, 246-215-04212, 246-215-04214, 246-215-04216, 246-215-04224, 246-215-04228, 246-215-04236, 246-215-04250, 246-215-04254, 246-215-04260, 246-215-04264, 246-215-04315, 246-215-04340, 246-215-04345, 246-215-04405, 246-215-04410, 246-215-04500(1), 246-215-04510, 246-215-04525, 246-215-04545, 246-215-04555, 246-215-04560, 246-215-04575, 246-215-04610, 246-215-04710, 246-215-04940, and 246-215-05240((:)); Part 4, Subpart H; Part 5, Subpart E; and Part 6, ~~((if:~~

(a) All FOODS are donated to needy persons under the provisions of chapter 69.80 RCW;

~~(b) POTENTIALLY HAZARDOUS FOOD items prepared on-site or at a DONOR KITCHEN are served within eight hours of preparation; and~~

~~(c) POTENTIALLY HAZARDOUS FOOD items are not cooled and reheated on-site))~~ of this chapter, except as otherwise provided in this subpart.

(5) The REGULATORY AUTHORITY may impose additional requirements to protect against health hazards related

to the operation of a DONATED FOOD DISTRIBUTING ORGANIZATION and may:

(a) Limit the FOOD preparation steps;

(b) Prohibit some menu items; and

(c) Restrict the mode of operations when the facilities or EQUIPMENT are inadequate to protect public health.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09405 Standard operating procedures—Food protection.** The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION shall ensure:

~~(1) ((EQUIPMENT for cold holding, heating, and hot holding FOODS are sufficient in number and capacity to provide FOOD temperatures specified in Part 3 of this chapter;~~

~~(2) FOOD CONTACT SURFACES are thoroughly cleaned before each use;~~

~~(3) A HANDWASHING SINK is accessible for use by EMPLOYEES during all times of FOOD preparation and service of unwrapped FOODS and is located within 25 feet of FOOD preparation, FOOD dispensing, and WAREWASHING areas;~~

~~(4) Each sink used for handwashing is provided with a supply of hand soap and SINGLE-USE towels or other APPROVED hand-drying device;~~

~~(5)) REFUSE, recyclables, and returnables are stored in a manner that does not create a public health HAZARD or nuisance;~~

~~((6)) (2) The PREMISES are maintained to control insects, rodents, and other pests;~~

~~((7)) (3) Children under age ten and animals are kept out of FOOD preparation areas during the preparation of FOODS; ((and~~

~~(8)) (4) Toxic chemicals are stored in accurately labeled containers away from all FOODS and FOOD service supplies; and~~

(5) EQUIPMENT and FOOD CONTACT SURFACES are maintained in good repair and condition.

NEW SECTION

**WAC 246-215-09406 Standard operating procedures—Food handling.** The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION shall ensure:

(1) Compliance with the food safety requirements outlined in Part 3 of this chapter;

(2) FOOD CONTACT SURFACES are thoroughly cleaned and SANITIZED before each use;

(3) Cooled TIME/TEMPERATURE CONTROL FOR SAFETY FOOD received from a DONOR KITCHEN is reheated to at least 165°F (74°C) within two hours;

(4) Cooled TIME/TEMPERATURE CONTROL FOR SAFETY FOOD rescued from a FOOD ESTABLISHMENT is reheated to at least 165°F (74°C) within two hours; and

(5) MEAT received from licensed hunters is cooked to at least 165°F (74°C).

NEW SECTION

**WAC 246-215-09407 Standard operating procedures—Transportation.** The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION shall ensure:

(1) Vehicles owned and operated by the DONATED FOOD DISTRIBUTING ORGANIZATION for transporting FOOD are cleaned at a frequency necessary to prevent accumulation of soil residues. The interior of the vehicle where food containers are stored must be clean and free of insects, dirt, animals, leakage, and other potential contaminants;

(2) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD is maintained hot or cold during transport using EQUIPMENT that is not packed beyond capacity to maintain cold FOODS at 41°F (5°C) or below and hot FOODS at 135°F (57°C) or above; and

(3) FOOD is handled and transported in separate containers as needed to prevent potential cross contamination.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09410 Sinks—Sink compartment requirements.** The ((PERSON IN CHARGE of a)) DONATED FOOD DISTRIBUTING ORGANIZATION shall have at least the following facilities ((available for handwashing and cleaning of FOOD-contact UTENSILS and EQUIPMENT):

~~(1) A three-compartment sink;~~

~~(2) Two sink basins plus a home-style dishwasher with a SANITIZING cycle providing 155°F (68°C) or hotter water; or~~

~~(3) As otherwise APPROVED.)):~~

(1) A HANDWASHING SINK accessible and convenient for use by EMPLOYEES during all times of FOOD preparation and service of unwrapped FOODS.

(2) Each sink used for handwashing is provided with a supply of hand soap and SINGLE-USE towels or other APPROVED hand-drying device.

(3) A HANDWASHING SINK must be provided in the restroom and food preparation areas. A HANDWASHING SINK in a toilet room is not a replacement for HANDWASHING SINKS in food preparation areas.

(4) If unpackaged food is handled on-site, the DONATED FOOD DISTRIBUTING ORGANIZATION shall have at least the following facilities available for cleaning of FOOD-contact UTENSILS and EQUIPMENT:

(a) A three-compartment sink;

(b) A two-compartment sink as specified in WAC 246-215-04305 (4) and (5);

(c) A two-compartment sink plus a home-style dishwasher with a SANITIZING cycle providing 155°F (68°C) or hotter water; or

(d) As otherwise APPROVED.

(5) If produce is washed on-site, the DONATED FOOD DISTRIBUTING ORGANIZATION must either have:

(a) A separate FOOD preparation sink as specified in WAC 246-215-04325; or

(b) An APPROVED alternative produce washing procedure (e.g., the use of a colander) that ensures produce is not directly placed in WAREWASHING or HANDWASHING SINKS.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09415 Food sources—Donated foods.** The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION may receive FOODS for charitable purposes that include:

~~(1) ((Surplus FOODS from a FOOD ESTABLISHMENT;~~  
~~(2)) APPROVED SOURCES as listed in Part 3, Subpart B of this chapter;~~

(2) FOOD from a FOOD ESTABLISHMENT or FOOD PROCESSING PLANT;

(3) Previously served FOODS from a FOOD ESTABLISHMENT operating under a plan APPROVED by the REGULATORY AUTHORITY;

(4) FOOD from a DONOR KITCHEN that is:

(a) Properly stored and handled to prevent contamination;

(b) Prepared on-site at the DONOR KITCHEN and not in a residential kitchen in a private home; and

(c) Maintained at proper temperatures during storage, preparation and transport.

(5) FOOD from a residential kitchen in a private home that is properly stored and handled to prevent contamination;

(a) NonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, nonREADY-TO-EAT FOOD;

(b) NonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD and READY-TO-EAT FOODS in an intact commercial package; or

(c) Commercially PACKAGED frozen FOOD.

(6) NonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD baked goods from a residential kitchen in a private home that is properly prepared to prevent contamination.

(7) Muscle MEAT of a wild GAME ANIMAL:

(a) Received from a LAW enforcement officer certified by a jurisdiction in the state of Washington or from a hunter licensed by the Washington state department of fish and wildlife;

(b) Field dressed to remove the viscera with or without skin present;

(c) Accompanied by a written statement identifying:

(i) The name and address of the person who harvested the game;

(ii) The license, permit or tag number and kind of animal provided;

(iii) The date killed, the county and area where the animal was taken; and

(iv) The hunter's signature as required by WAC 220-200-120.

(d) Stored and handled to prevent temperature abuse and contamination during transport to the processing facility;

(e) Processed by an APPROVED MEAT cutter; and

((=)) (f) Labeled "Uninspected wild game meat, thoroughly cook to 165°F (74°C) internal temperature";

((=)) (8) Muscle MEAT of a domesticated livestock animal ((, POULTRY, or rabbit));

(a) ((Donated live to the distributing organization;

(b) Raised by a member of an APPROVED youth club, such as 4H;

(e) Processed by an APPROVED MEAT cutter)) Slaughtered in a USDA-inspected slaughter facility;

(b) Stored and handled to prevent temperature abuse and contamination during transport between slaughter and processing facilities;

(c) Processed by a FOOD ESTABLISHMENT permitted by the REGULATORY AUTHORITY; and

(d) Labeled "~~((Uninspected wild game meat, thoroughly cook to 165°F (74°C) internal temperature)) This product was prepared from inspected and passed meat. Some food products may contain bacteria that could cause illness if the product is mishandled or cooked improperly~~";

~~((4) FOODS properly handled, stored, or prepared in a DONOR KITCHEN;~~

~~(5) NONPOTENTIALLY HAZARDOUS)) (9) Fresh FISH:~~

(a) Received from a recreational or commercial fisher licensed by the Washington state department of fish and wildlife;

(b) Received whole or minimally processed to remove the head, viscera or head and viscera; and

(c) Stored and handled to prevent temperature abuse and contamination during transport.

(10) NonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, nonREADY-TO-EAT FOODS handled, stored, or prepared in a residential kitchen in a private home.

~~((6)) (11) Baked goods that are not ((POTENTIALLY HAZARDOUS)) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD handled, stored, or prepared in a residential kitchen in a private home;~~

~~((7) NONPOTENTIALLY HAZARDOUS)) (12) NonTIME/TEMPERATURE CONTROL FOR SAFETY FOOD, READY-TO-EAT FOODS in an intact commercial package stored in a residential kitchen in a private home; and~~

~~((8)) (13) Commercially PACKAGED frozen FOOD.~~

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09420 Receiving food—Food condition.** The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION shall ensure that FOODS are inspected upon receipt and information is obtained from DONORS in order to determine that:

(1) FOODS are safe and unADULTERATED;

(2) ~~((Surplus))~~ FOODS rescued from a FOOD ESTABLISHMENT that have not been previously served to a person, unless as specified in WAC 246-215-09415;

(3) ~~((POTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD meets the temperature specifications in WAC 246-215-03235;

(4) FOODS have been protected from contamination during handling and storage by intact original commercial packaging or sanitary FOOD-grade containers; ~~((and))~~

(5) FOODS have been handled and transported in separate containers as needed to prevent potential cross contamination between READY-TO-EAT and nonREADY-TO-EAT FOODS; and

(6) FOODS were transported in the interior of a vehicle that is clean and free of insects, dirt, animals, leakage, and other potential contaminants.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09425 Prohibited food—Restrictions.**

The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION may not accept, serve or distribute:

(1) Home-canned FOODS;

(2) FOOD from a residential kitchen in a private home, other than those specified in WAC 246-215-09415;

(3) FOOD from a donor kitchen prepared using specialized processing methods as described in WAC 246-215-03535;

(4) Canned FOODS in containers that are rusty or severely damaged;

~~((3))~~ (5) Distressed FOODS (such as from a fire, flood, or prolonged storage) unless the FOODS have been evaluated and APPROVED for charitable distribution; ((or

~~(4))~~ (6) Infant formula that is past the original expiration date set by the processor; or

(7) Raw, unpasteurized milk.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09430 Food labels—Alternative labeling.** ~~((The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION may distribute PACKAGED FOODS))~~

FOOD that is repACKAGED at the DONATED FOOD DISTRIBUTING ORGANIZATION may be distributed without complete label information on each individual container, provided that:

(1) Each container is labeled with the common name of the FOOD;

(2) The name and place of business of the manufacturer, packer, or distributor; and

~~((2))~~ (3) The complete label information, according to the provisions of chapter 69.04 RCW, including complete ingredient and allergen disclosure information, is on the master carton or is posted in plain view on a card, sign, or other method of notice at the point of distribution to the CONSUMER.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09435 Record keeping—Receiving record.**

The PERSON IN CHARGE of a DONATED FOOD DISTRIBUTING ORGANIZATION receiving ~~((POTENTIALLY HAZARDOUS FOODS or nonPOTENTIALLY HAZARDOUS))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOODS or nonTIME/TEMPERATURE CONTROL FOR SAFETY FOODS, READY-TO-EAT FOODS not prePACKAGED in a FOOD PROCESSING PLANT shall keep records for ~~((30))~~ ninety days documenting the source, quantity, type, and receiving date of the FOODS.

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-09500 Requirements and exemptions.**

(1) The PERMIT HOLDER and PERSON IN CHARGE of a PRE-SCHOOL shall comply with the requirements of this chapter, except as otherwise provided in this section. If the PERMIT

HOLDER does not meet the requirements under subsection (2) of this section, the PERMIT HOLDER shall comply with all requirements of this chapter.

(2) A PRESCHOOL is exempt from meeting the provisions of WAC 246-215-02315, 246-215-03610, 246-215-04212, 246-215-04214, 246-215-04216, 246-215-04224, 246-215-04228, 246-215-04250, 246-215-04254, 246-215-04260, 246-215-04264, 246-215-04410, 246-215-04500(1), 246-215-04525, 246-215-04545, 246-215-04555, 246-215-04560, 246-215-04610(2), 246-215-04710, 246-215-05240, 246-215-06100, 246-215-06200, 246-215-06290, and 246-215-06355 if:

(a) FOOD service is limited to enrolled children, staff, and volunteers at the PRESCHOOL;

(b) ~~((POTENTIALLY HAZARDOUS FOODS are))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD is prepared for IMMEDIATE SERVICE; and

(c) TIME/TEMPERATURE CONTROL FOR SAFETY FOOD is cooked, reheated, or hot held ~~((POTENTIALLY HAZARDOUS FOODS are))~~ and not cooled for future service. ~~((They))~~ TIME/TEMPERATURE CONTROL FOR SAFETY FOOD must be either served hot or discarded each day.

(3) The REGULATORY AUTHORITY may impose additional requirements to protect against health hazards related to the operation of the PRESCHOOL and may:

(a) Limit the FOOD preparation steps;

(b) Prohibit some menu items; and

(c) Restrict the mode of operations when the facilities or EQUIPMENT are inadequate to protect public health.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-215-04650 Methods—Returnables, cleaning for refilling (2009 FDA Food Code 4-603.17).
- WAC 246-215-09130 Cooking thickness—Cooking raw meats.
- WAC 246-215-09180 Movable buildings—Lack of permanent plumbing.