

No. 65372-5-I

IN THE COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

MARK LITCHFIELD, on behalf of himself and all others similarly
situated,

Petitioners/Cross-Respondents/Plaintiffs,

v.

KPMG LLP,

Respondent/Cross-Petitioner/Defendant.

**REPLY BRIEF ON CROSS-APPEAL OF
RESPONDENT/CROSS-PETITIONER KPMG LLP**

George E. Greer
(WSBA No. 11050)
ORRICK HERRINGTON &
SUTCLIFFE LLP
701 Fifth Avenue, Suite 5600
Seattle, WA 98104
Telephone: (206) 839-4300
Facsimile: (206) 839-4301

Michael C. Kelley
(*admitted pro hac vice*)
Jennifer Altfeld Landau
(*admitted pro hac vice*)
SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600

Leonard J. Feldman
(WSBA No. 20961)
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: (206) 624-0900
Facsimile: (206) 386-7500

Attorneys for Respondent/Cross-Petitioner/Defendant KPMG LLP

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GLOSSARY

AS	Auditing Standards adopted by the Public Company Accounting Oversight Board (PCAOB)
AU	Auditing Standards promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA)
CPA	Certified Public Accountant
KPMG Br.	KPMG's combined response brief on appeal and opening brief on cross-appeal, filed March 18, 2011
L&I	Washington State Department of Labor & Industries
Litchfield Br.	Litchfield's opening brief on appeal, filed December 30, 2010
Litchfield Reply	Litchfield's reply brief on appeal and response brief on cross-appeal, filed May 19, 2011
MWA	Minimum Wage Act
WHD	Wage & Hour Division of the United States Department of Labor

INTRODUCTION

On KPMG’s cross-appeal, Litchfield argues that even if the MWA does not incorporate *all* of the Accountancy Act’s requirements for licensure into the professional exemption, it selectively incorporates *some* of them – namely, the education and experience requirements. What is most telling about Litchfield’s response is what he does not say. He does not explain why he now abandons his own previous argument that L&I’s regulatory interpretations are entitled to deference. He does not say why this Court should (or could) depart from the Washington Supreme Court’s numerous precedents giving such deference. He also does not identify a single court that has held any professional licensure requirement to be necessary to exempt an employee from the wage and hour laws.

Instead, Litchfield continues to mix and match concepts from the MWA and the Accountancy Act – most significantly, when he argues that the applicability of the professional exemption turns on whether an accountant has satisfied certain of the Accountancy Act’s requirements to be a CPA. *E.g.*, Litchfield Reply 4-7.¹ On the contrary, the MWA, the governing regulations, and their authoritative interpretations by L&I establish that an accountant need not satisfy the education and experience re-

¹ In addition to the abbreviations used in KPMG’s opening brief, this brief abbreviates Litchfield’s opening brief as “Litchfield Br.”; KPMG’s opening brief as “KPMG Br.”; and Litchfield’s reply brief as “Litchfield Reply.” Emphases throughout the brief have been added unless otherwise noted. Finally, consistent with the Court’s rules, this brief is limited to the issues raised on cross-appeal.

quirements that are necessary for CPA licensure (as set forth in WAC 4-30-060(1) and 4-30-070(2)) to qualify for the professional exemption.

The trial court's April 22 Order therefore should be reversed.

ARGUMENT

THE TRIAL COURT ERRED IN CONCLUDING THAT ACCOUNTANTS MUST HAVE THE EDUCATION AND EXPERIENCE SPECIFIED IN THE ACCOUNTANCY ACT IN ORDER TO SATISFY THE MWA'S EXEMPTION FOR "PROFESSIONAL CAPACITY."

A. Litchfield Misstates The Legal Framework.

KPMG previously demonstrated that nothing in the MWA, L&I's regulations, or L&I's Administrative Policy imports the education and experience requirements for CPA licensure into the MWA as criteria for exemption. KPMG Br. 27-36. Litchfield's response mischaracterizes the regulatory scheme, sometimes subtly so. He claims, for example, that "DLI's *regulation* does not state ... which professions are exempt." Litchfield Reply 5. Although the regulation does not say so, the Administrative Policy certainly does. To clarify such issues, it is necessary to review briefly the statutes and governing regulations before responding specifically to Litchfield's arguments.

Under the MWA, an individual "employed in a bona fide ... professional capacity" is not covered by the Act's wage and hour provisions. RCW 49.46.010(5)(c). The MWA then delegates to L&I the responsibility to issue "rules" that "define[] and delimit[]" the statute. *Id.*; *see also*

RCW 43.22.270(4); *Anfinson v. FedEx Ground Package System, Inc.*, 159 Wn. App. 35, 41, 244 P.3d 32 (2010) (“DLI is the state agency charged with interpreting and carrying out Washington’s minimum wage laws.”), *rev. granted*, No. 85949-3 (Wash. Aug. 8, 2011).

Pursuant to that delegation of authority, L&I defined the term “individual employed in a bona fide ... professional capacity.” WAC 296-128-530. That definition imposes no particular educational requirement on individual employees, whether from the Accountancy Act or elsewhere; it focuses on what knowledge the *job duties* require. To qualify for the professional exemption, the employee’s “primary duty” must “consist[] of the performance of work” “[r]equiring knowledge of an advanced type in a field of ... learning.” WAC 296-128-530(1)(a). Within that “field of ... learning,” the knowledge must “customarily” be “acquired by a prolonged course of specialized intellectual instruction and study.” *Id.* Similar requirements are imposed by a short-form test that applies to certain classes of employees, including the plaintiffs here. WAC 296-128-530(5). This definition therefore does not, as Litchfield asserts, require that “*an employee* must have ... ‘advanced knowledge’ of a profession.” Litchfield Reply 1. Rather, the Administrative Policy states that a profession may be learned even though particular members may not have undergone “the specific academic training.” ES.A.9.5.8.

Directly relevant here, the Administrative Policy elaborated on

which jobs require the requisite advanced knowledge. As a general matter, “[t]he learned professions are those requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study that is different from a general academic education.” ES.A.9.5.8. Accounting is one such learned profession: “Generally speaking the requisite knowledge which meet[s] the requirement for a prolonged course of specialized intellectual instruction and study include[s] ... accounting.” *Id.*; *see also id.* (accounting is a “[t]ypical [l]earned [p]rofession[.]”). This is because in accounting (as in the other professions L&I identified), “an advanced academic degree” – which is “[t]he typical symbol of the professional training and the best evidence of its possession” – “is standard.” *Id.* So while “DLI’s *regulation* does not state ... which professions are exempt” (Litchfield Reply 5), the Administrative Policy plainly does.

Although accounting is a learned profession, particular accountants will not be exempt if they do not satisfy the additional requirement – which is not at issue in this appeal, *see infra* at 18 – that they perform “work require[ing] the consistent exercise of discretion and judgment.” WAC 296-128-530(2), (5). Thus, “exemption of accountants ... must be determined *on the basis of the individual employee’s duties* and the other criteria in the regulations.” ES.A.9.5.8.2. This is equally true for accountants – like Litchfield – who are unlicensed: “[A]ccountants who are not

certified public accountants may also be exempt as professional employees *if they actually perform work that requires the consistent exercise of discretion and judgment* and otherwise meet the tests prescribed in the definition of professional employee.” *Id.*; *see also* ES.A.9.5.9 (“In general, the exercise of ‘discretion and independent judgment’ implies that the person applies their advanced knowledge gained from their course of study to the particular circumstances.”).

In short, L&I’s regulations and guidance documents contain no suggestion that any requirement for licensure promulgated by the Washington State Board of Accountancy – whether the education requirement, the 2000-hour experience requirement, or anything else – must be met for an accountant to qualify for professional exemption. *See* KPMG Br. 16-17, 27-31. L&I knew how to rely on licensure requirements when it wanted – it occasionally referred to them for other professions, but did not elect to do so for accountants. *E.g.*, WAC 296-128-530(5) (“holder of a valid license or certificate permitting the practice of law, medicine, or dentistry”); ES.A.9.5.5 (same); *see* KPMG Br. 15, 17 n.6. Under the canon of “*expressio unius est exclusio alterius*,” it is significant that L&I pointed to licensure for some professions but not others. *E.g.*, *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 571, 980 P.2d 1234 (1999). Litchfield’s argument for importing provisions from the Accountancy Act would invent requirements that appear nowhere in the governing authorities.

B. L&I's Policy Deserves Deference.

Prior to this appeal, Litchfield agreed that L&I's interpretations deserve deference. His summary judgment motion was clear that "DLI's interpretation of its governing statutes and regulations is entitled to substantial weight." CP 1630 n.7 (citing cases so holding). Now he argues the opposite: The Administrative Policy, Litchfield says, is "accorded *no* deference." Litchfield Reply 8 (quoting *Ass'n of Wash. Bus. v. Wash. State Dep't of Revenue*, 155 Wn.2d 430, 120 P.3d 46 (2005) ("*AWB*")). Litchfield was right before, and his reliance on *AWB* is misplaced.

Under Washington Supreme Court precedent, an agency's interpretation of its own regulations is entitled to "great deference." *Silverstreak, Inc. v. Dep't of Labor & Indus.*, 159 Wn.2d 868, 884-85, 154 P.3d 891 (2007) (en banc). Numerous decisions confirm that "[t]he construction of a rule by the agency which promulgated it is entitled to great weight." *Wash. State Liquor Control Bd. v. State Pers. Bd.*, 88 Wn.2d 368, 379, 561 P.2d 195 (1977); *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 86, 11 P.3d 726 (2000) ("deference to the agency's interpretation is particularly appropriate where its own regulations are concerned"). This has been the rule for 65 years under federal law, *see* KPMG Br. 17-18 & n.7, and it makes sense: Washington and federal courts defer to an agen-

cy's interpretation even of *statutes*,² and so “[w]hen the construction of an administrative regulation rather than a statute is in issue, deference is even more clearly in order,” *Udall v. Tallman*, 380 U.S. 1, 16 (1965).

Litchfield does not even cite, much less distinguish, the numerous authorities KPMG discussed previously. *See* KPMG Br. 17-18 & n.7.

Instead, Litchfield relies on *AWB*, which did not concern an express delegation of authority to an agency. *AWB* also principally concerned the interpretation of statutes, not regulations. 155 Wn.2d at 440. Even in that domain, it recognized that “interpretive rules” are “advisory” only in the sense that they do not create legally enforceable obligations. *Id.* at 442-43 & n.12; *see also id.* at 447; *id.* at 450 (Alexander, C.J., concurring).³

Moreover, the treatise principally relied upon by *AWB* recognizes that interpretations like the one at issue here – i.e., “agency determinations ... that certain classes of persons are ‘employees’ within the meaning of a relevant statute” – will be followed if they are “reasonable.” Arthur E.

Bonfield, *State Administrative Rule Making* § 6.9.1, at 282 (1986). The

fact that interpretive rules do not themselves create legally binding obliga-

² *E.g.*, *Marquis v. City of Spokane*, 130 Wn.2d 97, 111, 922 P.2d 43 (1996) (“A court must give great weight to the statute’s interpretation by the agency which is charged with its administration, absent a compelling indication that such interpretation conflicts with the legislative intent.”).

³ Litchfield’s reliance (Reply at 8) on *Washington Education Ass’n v. Washington State Public Disclosure Commission*, 150 Wn.2d 612, 80 P.3d 608 (2003) is misplaced for the same reason. The court there simply recognized that interpretive regulations “have no legal or regulatory effect,” *id.* at 619, which is true in the sense that they do not themselves create legally binding obligations on the public. Nothing in that decision purports to overturn the well-established doctrine that agencies are accorded deference when interpreting their own rules.

tions does not change the longstanding principle that agencies are given deference – as *AWB* itself recognizes, *see* 155 Wn.2d at 447 n.17.⁴ Contrary to Litchfield’s current argument, L&I’s Policy deserves deference.

C. L&I’s Policy Is Not Just Reasonable, But Correct.

1. Accounting Is A Learned Profession.

Although Litchfield argues that L&I’s policy deserves “no deference,” he never actually argues that it is unreasonable or even (under the lesser standard he now advocates) that it is unpersuasive. In fact, it was eminently reasonable for L&I to conclude that accounting is a learned profession – among other reasons, because this is the Department of Labor’s longstanding interpretation of the Fair Labor Standards Act, which L&I followed. *See* KPMG Br. 18-19 & n.8. L&I’s policy recognizes that learned professions do “not include the members of such quasi-professions as journalism in which the bulk of the employees have acquired their skill by experience rather than by formal specialized training.” ES.A.9.5.8.

Accounting, by contrast, requires “knowledge of an advanced type.” That

⁴ Even if the language in *AWB* relied upon by Litchfield did conflict with the authorities KPMG cited above and previously, the latter authorities control. The Washington Supreme Court repeatedly has explained that an agency’s interpretation of its own regulations deserves “great deference.” *AWB* did not claim to overrule those authorities, and the sentence primarily relied on by Litchfield (“interpretive rules ... are not binding on the courts and are afforded no deference other than the power of persuasion,” 155 Wn.2d at 447) is clear dicta: *AWB*’s holding concerns the power of the Department of Revenue to issue interpretive rules at all, *id.* at 445; any discussion of the force of interpretive rules was incidental to that holding, and this is particularly true for any discussion about the effect of interpretive rules on the courts, given that the case focused on the effect of interpretive rules on the public at large, *id.* at 446. Finally, even if there were a conflict in the Supreme Court’s decisions, the Courts of Appeals follow the most recent precedent. *See Cornish Coll. of the Arts v. 1000 Va. Ltd. P’ship*, 158 Wn. App. 203, 221 n.10, 242 P.3d 1 (2010). Here, that is *Postema* and *Silverstreak*.

is particularly true in this case, given the job requirements and qualifications of the plaintiff class. The relevant inquiry, after all, is whether the employee’s “primary duty” “require[s] knowledge of an advanced type.”⁵

Here, the evidence is undisputed that KPMG’s Washington Audit Associates were required to have a four-year college degree in accounting or a closely related field, and half of them have master’s degrees as well. CP 1348 (Carlile Decl. ¶ 18). Such knowledge was necessary for the job, and Litchfield has admitted as much. CP 2239 (Litchfield Dep. Tr. 58:11-23). In order to perform their job duties, Audit Associates were responsible for complying with – and thus were charged with knowledge of – professional standards that required them to act with due professional care, skepticism, and judgment. *See* KPMG Br. 8-9 (citing professional standards and the extensive evidence it presented below).

These requirements are consistent with L&I’s recognition that accounting is a profession that requires “knowledge of an advanced type in a field of ... learning,” which is “customarily acquired by a prolonged

⁵ WAC 296-128-530(1)(a), (5); *see also, e.g., Rutlin v. Prime Succession, Inc.*, 220 F.3d 737, 742 (6th Cir. 2000) (“the regulations require that the duties of a professional entail advanced, specialized knowledge”); *DeBejian v. Atl. Testing Labs.*, 64 F. Supp. 2d 85, 88 (N.D.N.Y. 1999) (“The proper focus is on whether the particular position at issue necessitated such advanced knowledge.”).

Litchfield refers disparagingly to this as “KPMG’s job-duties-are-all argument,” Litchfield Reply 2; *see also id.* n.2, but his characterization misstates the issue and misunderstands the statute. Job duties are not “all,” but they are critically important under the regulations: The job duties must “require[e] the consistent exercise of discretion and judgment,” WAC 296-128-530(2), (5), and the “knowledge of an advanced type” must be required for the employee’s “primary duty,” *id.* WAC 296-128-530(1), (5). As KPMG explained previously, “exempt status depends upon the performance of job duties requiring advanced knowledge, not licensure.” KPMG Br. 15; *see also* ES.A.9.5.3.

course of specialized intellectual instruction and study.” WAC 296-128-530(1)(a); *see also* WAC 296-128-530(5). The bachelor’s degree in accounting or a closely related field required of Audit Associates is more than a “general academic education,” WAC 296-128-530(1)(a); ES.A.9.5.8 – and certainly not just “knowledge that [can] be attained at the high school level,” ES.A.9.5.8. Rather, it is a specialized bachelor’s degree with a focus on a specified body of knowledge.

Litchfield errs when he argues that a “Bachelor’s degree,” no matter how specialized, constitutes a mere “general academic education” (WAC 296-128-530). Litchfield Reply 10. This same reasoning motivated the trial court,⁶ and it is mistaken. The federal Department of Labor has long recognized that a specialized bachelor’s degree can constitute the requisite “specialized intellectual instruction,”⁷ and cases interpreting the analogous federal exemption – to which Washington looks for guidance⁸ –

⁶ *See* RP (Apr. 16, 2010 Hr’g Transcript) at 12 (“I have a very hard time accepting that someone who is just graduated from college with the bachelor’s, albeit, with the concentration in accounting, is a professional, who is exempt. I have a hard time with that.”).

⁷ *See, e.g.*, DOL Op. Ltr., 1998 WL 852738 (Feb. 27, 1998) (“A ‘prolonged course [of] study’ has generally been held to include only those employees who have acquired at least a baccalaureate degree or its equivalent which includes an intellectual discipline in a particular course of study as opposed to a general academic course otherwise required for a baccalaureate degree.”); *accord* DOL Op. Ltr., No. FLSA2006-26, 2006 WL 2792440 (July 24, 2006) (no exemption where “four years of specialized post-secondary school instruction is not a standard prerequisite for entry into the field”); DOL Op. Ltr., 1998 WL 852713 (Feb. 19, 1998) (requiring “a baccalaureate degree or its equivalent”); DOL Op. Ltr., 1997 WL 998018 (June 30, 1997); DOL Op. Ltr., No. WH-376 et al., 1976 WL 41728 (Mar. 5, 1976). Multiple provisions of the current federal regulation provide likewise. *See* 29 C.F.R. § 541.301(e)(3) (dental hygienists; “four academic years of pre-professional and professional study”), (e)(4) (physician assistants) (same), (e)(6) (chefs) (same), (e)(8) (athletic trainers) (same), (e)(9) (funeral directors) (same).

⁸ ES.A.9.5.2; *see* KPMG Br. 18-19 & nn.8-9.

explain that the typical “prolonged course of specialized intellectual instruction and study” is at least a four-year college degree with a focus on subject matter related to the duties the employee will perform. “The core requirement of the learned professional exemption is that the duties of the position call for a person who is in a ‘learned profession’ with at least a college degree in a specialized type of learning.” *Bolduc v. Nat’l Semi-conductor Corp.*, 35 F. Supp. 2d 106, 114 (D. Me. 1998).

Thus, in *Reich v. Wyoming*, the Tenth Circuit held that game wardens – whose jobs required “a baccalaureate degree in wildlife management, wildlife biology, or a closely related field” – did have an “advanced specialized degree” that “provide[d] the wardens with [the] requisite knowledge.” 993 F.2d 739, 741 (10th Cir. 1993); *accord Tavassol v. Hewitt-Wash. & Assocs.*, No. 92-3278, 1998 U.S. Dist. LEXIS 17028, at *6 (E.D. La. Oct. 22, 1998) (unlicensed architect “meets the first requirement of prolonged study with his degree in architecture”); *Martin v. Wyoming*, 770 F. Supp. 612, 614, 619 (D. Wyo. 1991) (state game warden exempt; requirement of “prolonged academic study at the college level” satisfied by “a baccalaureate degree in wildlife management, wildlife biology, or a closely related field”).⁹

Litchfield cites *Dybach v. Florida Department of Corrections* to

⁹ See also *Chatfield v. Children’s Servs.*, 555 F. Supp. 2d 532, 537 (E.D. Pa. 2008) (contrasting “a specialized degree in a field related to the work they will perform” – there, “a bachelor’s degree in social work, human services, or a related field” – with a generalized “bachelor’s degree in the ‘social sciences’”).

support his argument that a bachelor's degree is merely "general academic education," but *Dybach* undermines rather than supports Litchfield's argument. See Litchfield Reply 10 (citing 942 F.2d 1562 (11th Cir. 1991)). There, the Eleventh Circuit held that the plaintiff's job (probation officer) did not meet the professional exemption under federal law because "[s]uch a probation officer is required by the Florida department to have a college degree, but that degree may be in a generalized field of study and need not be related to corrections or law enforcement or a similar specialty." 942 F.2d at 1564. The court then embraced the very argument KPMG has made here, holding that to be professionally exempt, "the duties of th[e] position must call for a person who is in a learned profession with at least a college degree *in a specialized type of learning*." *Id.* at 1565. Because Dybach's job description and duties required only a general bachelor's degree, her position was non-exempt. *Id.* ("A college degree of a generalized type does not meet that requirement."). The fact that Dybach herself had a specialized bachelor's degree – the point that Litchfield emphasizes (Litchfield Reply 10) – was irrelevant because the job did not require it. *Id.*¹⁰ Here, by contrast, such a degree was required. *Supra* at 9.

¹⁰ *Fife v. Harmon*, 171 F.3d 1173 (8th Cir. 1999), also does not support Litchfield's argument that an "advanced degree" requires more than a specialized bachelor's degree. Litchfield Reply 10-11. *Fife* held that the plaintiffs were not exempt because their job did not require an advanced degree – the "advertised minimum qualifications for the ... position are a Bachelor's degree in aviation management or a directly related field, or four years of full-time experience in aviation administration, or an equivalent combination of experience and education." 171 F.3d at 1177.

2. Other Courts Have Not Imported Licensure Requirements Into The Evaluation Of Professional Exemption.

Litchfield also argues that it was proper to import the Accountancy Act's education and experience requirements into the determination of whether he is professionally exempt because, he says, courts "routinely" have done so. Litchfield Reply 5-6. Litchfield's characterization of the cases is mistaken.¹¹ *Rutlin v. Prime Succession, Inc.* did not hold that the plaintiff "was a learned professional with advanced knowledge *because he was licensed.*" Litchfield Reply 6 (citing 220 F.3d 737, 742 (6th Cir. 2000)). *Rutlin* nowhere says that licensure is necessary for exemption. Rather, it simply reasoned that, because Rutlin's job (funeral director) in fact required a license, the requirements for getting that license necessarily shed light on Rutlin's own qualifications. 220 F.3d at 742.¹²

That set of circumstances stands in marked contrast to accounting, precisely because a license is *not* necessary to be an accountant or to perform work on an audit engagement team. This is why Litchfield is wrong in arguing that selected licensure requirements should be imported into the

¹¹ And, even if he were correct that this is what other courts have done – and he is not – this would not mean that L&I's interpretation of its own regulation is so unreasonable as not to merit deference.

¹² *Accord Owsley v. San Antonio Indep. Sch. Dist.*, 187 F.3d 521, 524 (5th Cir. 1999) (looking at the "most lenient" licensure standard in order to determine the "minimum" requirements the plaintiffs must have met); *Paul v. Petroleum Equip. Tools Co.*, 708 F.2d 168, 172 (5th Cir. 1983) (considering whether "regulations detailing the requirements for [plaintiff's] [aircraft instrument] ratings establish that [he] had knowledge of an advanced type"; "these regulations demonstrate that a pilot with a commercial license and instrument rating indeed has 'knowledge in a field of science or learning,'" even absent the requirement of a four-year academic degree).

consideration of whether KPMG’s “Audit Associates” – many of whom are *non*-licensed accountants – are exempt. Numerous cases, which KPMG cited and discussed previously, squarely reject the argument that experience requirements may be imported as criteria into the evaluation of exempt status. KPMG Br. 19-20 n.10. Although courts sometimes may look to minimum licensure requirements to determine what knowledge is necessary for a particular job, *see supra* n.12 & accompanying text, they will not import additional licensure requirements that are *not* required for a job to evaluate whether that job satisfies the test for exemption.

Of the cases Litchfield cites, only one – the district court decision in *Campbell v. PricewaterhouseCoopers, LLP*, 602 F. Supp. 2d 1163 (E.D. Cal. 2009) – actually held that an employee was non-exempt because he was unlicensed. *See* Litchfield Reply 6-7. That decision, however, has been reversed by the Ninth Circuit. *See* 642 F.3d 820 (9th Cir. 2011). *Campbell* addressed a California wage order containing that state’s equivalent to Washington’s professional exemption, and it arose in the specific context of unlicensed accountants who performed audit work. *Id.* at 822-23. Relevant here, the Ninth Circuit rejected the plaintiffs’ argument that “an unlicensed accountant could never possibly” qualify for the exemption. *Id.* at 828. Simply put, “unlicensed accountants are not categorically ineligible for the professional exemption as a matter of law.” *Id.* at 830. Furthermore, *Campbell* concluded, a rule like the one advanced by

Litchfield would “produce highly problematic precedent affecting several non-accounting professions,” including lawyers, doctors and engineers. *Id.* at 825, 828-30. Here, *amicus curiae* Association of Washington Business similarly has explained that adopting Litchfield’s arguments would upset numerous employment relationships in Washington State. AWB Amicus Br. 12-18. This is one more reason that Litchfield can cite no case – and KPMG is not aware of any – accepting his argument that an employee qualifies for the professional exemption only if he meets some or all of the separate requirements for licensure.

D. L&I’s Policy Does Address The Relevant Issues, And Its Interpretation Does Not Help Litchfield.

While on the one hand arguing that L&I’s interpretation deserves “no deference,” *see supra* at 6, Litchfield also suggests that L&I did not address the relevant issue at all. “[T]here is no pertinent DLI administrative interpretation,” he argues, “of the applicability of *the Accountancy Act* and its regulations to which the courts could defer.” Litchfield Reply 8-9; *id.* at 7 (“DLI *never* looked at the Accountancy Act, and *has no administrative interpretation of it.*” (emphases in original)); *id.* at 13. *Of course* L&I did not interpret the Accountancy Act, just like it did not interpret Washington’s Rules of Professional Conduct, because it had neither reason nor authority to do so. But L&I *does* have authority to interpret the MWA and its own regulations, which is what matters here. And, when L&I did so, it looked to the sources it thought relevant, and it interpreted

the MWA not to import licensure requirements from the Accountancy Act. By concluding that “accountants who are not certified public accountants” – i.e., who are not licensed – “may also be exempt,” ES.A.9.5.8.2, L&I thereby determined that licensure requirements are not necessary for exemption.

Elsewhere, Litchfield suggests that L&I failed to address which professions are “bona fide.” The MWA, he begins, “does not define what the ‘bona fide’ professions are, nor what is required to be a ‘bona fide professional’ within a specific profession.” Litchfield Reply 5. It is true that the *MWA* itself does not address the issue; the Legislature delegated this task to L&I. RCW 49.46.010(5)(c). Furthermore, Litchfield asserts, the L&I regulations contain only “a general definition of what constitutes a ‘bona fide professional’ for overtime exemption purposes”; they do not state specifically “what the required ‘prolonged course of specialized instruction and study’ is for any specific profession, or which professions are exempt.” Litchfield Reply 5; *see also id.* (“DLI’s interpretive WAC ... is general, not specific”). Thus, Litchfield asserts, “[t]he trial court ... properly looked to the Accountancy Act and its regulations.” *Id.* But, the fact that the regulations do not define these concepts does not justify leaping to a different statute to fill any gap; the proper place to look is the interpretation promulgated by L&I, which does address these issues, and reasonably concludes that accounting is a learned profession.

In addition to Litchfield's arguments that L&I deserves no deference (*see supra* at 6), or did not address the relevant issue (*see supra* at 15-16), he also argues that "the DLI policy statement actually supports the trial court's decision and Litchfield's position." Litchfield Reply 9. Litchfield is correct to recognize that L&I's policy statement is relevant, but his reading of it is not. Contrary to Litchfield's argument, the Administrative Policy expressly recognizes accounting as a learned profession. *Supra* at 4, 8-10. Litchfield's response points to portions of the Policy stating that accountants who perform "routine work," or who are trainees, do not qualify for the professional exemption. Litchfield Reply 11-12 (quoting ES.A.9.5.7, 9.5.8.2). This argument is misplaced for multiple reasons.

As a factual matter, the record demonstrates the opposite – it reflects the complex, substantive work performed by KPMG Audit Associates, as reflected in numerous and extensive declarations submitted by KPMG. *See supra* at 9; KPMG Br. 8-9 (discussing the record evidence).¹³ But more important, this argument is irrelevant: The trial court found "a disputed question of fact," and thus denied summary judgment, on whether "[u]nlicensed accountants performing work on audit engagements are

¹³ *See also, e.g.*, CP 1425-26 (Blair Decl. ¶ 14) ("Before I began my work, I talked with the Senior Associate about different potential methods for auditing inventory at the various carve-out facilities, but the Senior Associate did not direct me regarding the specific thought process to document our audit approach over inventory. Instead ... I thought critically about the overall sufficiency of our audit procedures over inventory...."). Litchfield's own application for a CPA license, and résumés he sent to prospective employers, show likewise. *See* KPMG Br. 10-11.

always required to be so closely supervised that they are precluded from qualifying for the administrative exemption.” CP 2090 ¶ 3. Litchfield did not seek and this Court did not grant review on this or any factual question concerning plaintiffs’ job duties; the questions before this Court are legal issues concerning whether some or all requirements of the Accountancy Act may properly be imported into the MWA.

Moreover, Litchfield’s argument relates to regulatory provisions that are not at issue in this appeal, as Litchfield elsewhere concedes. Litchfield Reply 1 n.1; *see also id.* at 13 n.4 (“[t]his case concerns the ‘advanced knowledge’ necessary to be a bona fide professional, not whether an employee with a professional title is actually performing non-professional job duties”). It is true that employees performing “routine” work, WAC 296-128-530(3), or whose duties do not “require[] the consistent exercise of discretion and judgment,” WAC 296-128-530(2), (5), do not qualify for the professional exemption.¹⁴ But these criteria for exemption are separate from the provision now before the Court – i.e., the “minimum educational requirement” contained in the statute and regulations. CP 2352 (second Issue Presented). On the relevant question, L&I’s interpretation is directly on point and fatal to Litchfield’s arguments.

¹⁴ Litchfield’s bare assertion that “Litchfield and the plaintiff class members ... are being trained on the job,” Litchfield Reply 12, also is beside the point. A professional does not lose exempt status “merely by undergoing further training,” ES.A.9.5.7, and the argument is irrelevant because it is unrelated to the question before the Court concerning the scope of the knowledge requirement in the regulation.

E. “Experience” Is Not Part Of Advanced Knowledge.

For the reasons set forth above, there is no basis to selectively import certain criteria for licensing an accountant as a CPA into the separate question whether an accounting job requires “advanced knowledge” under MWA’s professional exemption. This is especially true for Litchfield’s argument that this Court should import into the MWA the Accountancy Act’s requirement of 2000 hours’ *experience* over 12 months. Litchfield Reply 14-18. As KPMG has demonstrated, “advanced knowledge” and “experience” are distinct. Education properly is defined with regard to advanced knowledge, in contrast with experience. KPMG Br. 29-30. L&I’s Administrative Policy recognizes this distinction, *see id.* at 30-31, as do federal law, *id.* at 31-33, and the Accountancy Act, *id.* at 33-34.

Litchfield offers four principal responses. *First*, he argues, “[a]n employee can obtain the advanced knowledge required to be a learned professional through a combination of education and actual work experience.” Litchfield Reply 14-15; *see also id.* at 6-7 (discussing the same authorities). But the fact that work experience “can” sometimes be part of obtaining advanced knowledge does not support Litchfield’s argument that an accountant *must* have such experience to qualify for the professional exemption, and no case supports his argument.

In *Rutlin*, upon which Litchfield heavily relies (Litchfield Reply 6, 15), the Sixth Circuit did not in fact focus on work experience; it con-

cluded that Rutlin (a funeral director) was exempt because he had “completed a specialized course of instruction directly relating to his primary duty of embalming human remains.” 220 F.3d at 742. This included “a year of mortuary science school and two years of college, including” courses in related fields. Litchfield assumes that Rutlin’s “practice as an apprentice for one year” was part of the “specialized course of instruction,” but the Sixth Circuit does not say so, and that interpretation of *Rutlin* would place it at odds with the federal regulations, which distinguish the requisite “prolonged course of specialized intellectual instruction” from “an apprenticeship.” 29 C.F.R. § 541.3(a)(1) (2003). Notable here, the Sixth Circuit held Rutlin exempt even though he had *less* education than the four-year specialized degree that Litchfield admits KPMG’s Audit Associates all had, which even the dissenter in *Rutlin* concluded was enough for exemption. 220 F.3d at 746 (Moore, J., dissenting).

Similarly, nothing in *Owsley* turned on “actual work experience,” as Litchfield also claims. Litchfield Reply 15. Rather, the Fifth Circuit held that “[t]he trainers’ educational background” was sufficient to render them “learned.” 187 F.3d at 525. And, as in *Rutlin*, the court held specialized education less than a four-year bachelor’s degree sufficient to satisfy the “advanced knowledge” requirement. *Id.* In *Reich v. Wyoming*, which Litchfield cites (Litchfield Reply 15), the focus was on what the Tenth Circuit termed the game wardens’ “advanced specialized degree,” 993

F.2d at 741, 743, not “work experience.” *See supra* at 11 (discussing *Reich*). Likewise, *Piscione v. Ernst & Young* did not look at whether “actual work experience” was how Mr. Piscione obtained “advanced knowledge” (much less whether such experience was *necessary* before he could be treated as exempt); rather, it looked at his job duties to determine whether they required advanced knowledge. 171 F.3d 527, 545-46 (7th Cir. 1999) (cited at Litchfield Reply 15); *see also Hashrop v. Rockwell Space Operations Co.*, 867 F. Supp. 1287, 1296-97 (S.D. Tex. 1994) (“specialized training program” established advanced knowledge). Litchfield’s first argument – that an accountant must have certain experience to qualify for the professional exemption – fails.

Second, Litchfield argues that although the Accountancy Board regulation he would seek to import speaks explicitly in terms of “experience,” it “actually encompasses part of the specialized ‘advanced knowledge.’” Litchfield Reply 16. The *purpose* of this “experience,” he contends, is to “obtain the competencies” that are “needed to practice public accounting.” *Id.* at 15. But even if that were true, it does not transform an experience requirement into a knowledge requirement, and in any event, his characterization proves KPMG’s point rather than his. This experience is necessary *for licensure as a CPA*, which was not required for the job Litchfield held. The proper inquiry under the regulations is whether the employee’s own primary duty consists of work requiring knowledge of an

advanced type – not whether some different position has additional requirements. *See supra* at 3, 9 & n.5. Litchfield points to Robert Carlile’s declaration, *see* Litchfield Reply 15-16, but Carlile confirmed that the Washington “licensing system ... requires that applicants *for a CPA license* obtain work experience supporting attainment of each of the required competencies and abilities.” CP 1352 ¶ 35 (emphasis altered).¹⁵

Litchfield then asserts in passing that, according to the Washington State Board of Accountancy, “the 12-month experience requirement is an ‘apprenticeship.’” Litchfield Reply 16. Initially, this is incorrect.¹⁶ But even if it were correct, the argument would undermine rather than support Litchfield: L&I has expressly recognized that the “knowledge of an advanced type” required for exemption “is different ... from an apprenticeship.” ES.A.9.5.8; *accord* WAC 296-128-530(1)(a). And, the very document that Litchfield cites confirms that this experience is “for licensure,” CP 1630 – which, again, was not a requirement of his job.

¹⁵ Litchfield errs when he states that “an accountant ... must work for a public accounting firm for at least a year to obtain the knowledge and skills needed to practice public accounting.” Litchfield Reply 15. Rather, the experience can be obtained “through the practice of public accounting and/or employment in industry or government. In certain situations, employment in academia may also provide experience to obtain some or all of the competency requirements.” WAC 4-30-070(1).

¹⁶ KPMG’s unlicensed Associates are not serving an “apprenticeship.” Apprenticeship requires registration and approval of an apprenticeship program with the apprenticeship section of L&I, which even Litchfield does not say occurred here. *See* WAC 296-05-003, 296-05-300; RCW 49.46.060. Entire chapters of the RCW and WAC are devoted to regulation of apprenticeship programs, and none refers to unlicensed accountants fulfilling their experience requirements for licensure. *See generally* RCW ch. 49.04; WAC ch. 296-05. The Executive Director of the Washington State Board of Accountancy submitted un rebutted evidence that the term “apprenticeship” is not understood in this fashion and is not properly applied here. CP 2045-46 (Sweeney Decl. ¶ 17).

Third, Litchfield suggests that an experience requirement is permissible on the theory that, under the MWA and L&I's regulations, "medicine, law, teaching [and] nursing" require "on-the-job training and instruction" as part of "the prolonged course of specialized intellectual study and instruction." Litchfield Reply 3. He supports this argument with no citation, and the basis for this assertion is unclear. In fact, these professions are governed by special requirements separate from the general criteria that apply to accountants. Practicing doctors and lawyers are generally exempt, and the Policy makes no mention of "on-the-job training and instruction" with regard to them. ES.A.9.5.5. The provisions concerning nurses, ES.A.9.5.8.1, and teachers, ES.A.9.5.8.3, also do not say that "on-the-job training and instruction" are required for exemption, much less that they are required for the knowledge requirement.¹⁷

Finally, Litchfield reprises his argument that Audit Associates are "assistants" or "junior accountants" who require supervision and who, he insinuates, are insufficiently senior to be exempt. *E.g.*, Litchfield Reply 17-18 ("assistants" "occupy[] entry level jobs"); Litchfield Br. 21-22. As explained above, however, this argument is factually incorrect; it is not part of the Issues Presented; and it concerns statutory and regulatory provisions different from those before this Court. *Supra* at 17-18. To the extent Litchfield means to make a new variation on this argument that turns

¹⁷ To the extent these provisions are relevant at all, it is because they show that L&I knew how to point to extrinsic licensure requirements when it wished to do so. *See supra* at 5.

on the word “assistant,” that argument is incorrect too. “Assistant” is a term of art that includes numerous senior accountants, many of whom are licensed – i.e., “all firm personnel other than the auditor with final responsibility for the audit.” AU 311.02 (1978); *see* KPMG Br. 34-35.¹⁸

Ultimately, Litchfield’s argument about “assistants” is just one aspect of his mistaken focus on “auditors.” Litchfield states repeatedly that the class members were not “bona fide professional auditors.” *E.g.*, Litchfield Reply 3, 4, 5, 14, 16, 19. This phrase, which Litchfield invented by mixing and matching terms from the MWA and the Accountancy Act, appears nowhere in the statute or regulations. KPMG explained previously the numerous errors in Litchfield’s arguments about “auditors,” *see* KPMG Br. 24-27, and Litchfield does not address any of these arguments; he simply persists in referring to the putative plaintiff class as “auditors.” To be clear: There is no “profession” of “auditing” separate from accounting, *see* Litchfield Reply 2; audit work is simply one kind of accounting work, *see* KPMG Br. 26 n.14, and there are no separate qualifications for “auditors,” RCW 18.04.105; CP 2040, 2043 (Sweeney Decl. ¶¶ 4(a), 12). There is no licensure requirement before an accountant may work on au-

¹⁸ Litchfield also mistakenly attributes to KPMG an argument that “professional standards apply only to the auditor in charge.” Litchfield Reply 17. On the contrary, the “professional standards” apply to every member of the engagement team, including both senior accountants and the unlicensed Audit Associates at issue here. KPMG Br. 7-8, 26, 35 n.18.

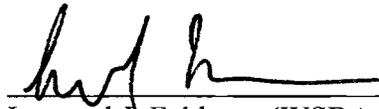
dits. RCW 18.04.350(1). And, most fundamentally, even if there were such a requirement, it would not prove that “Audit Associates” are not “bona fide professionals”; that latter inquiry is governed by the “advanced knowledge” and other requirements specified in the MWA and its regulations. There is no basis to import an experience requirement into the MWA, as the trial court mistakenly did here.

CONCLUSION

For the foregoing reasons, and those set forth in KPMG’s opening brief, KPMG respectfully requests that the Court affirm the trial court’s March 1 Order, reverse the trial court’s April 22 Order, and remand for further proceedings.

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STOEL RIVES LLP



Leonard J. Feldman (WSBA No. 20961)
600 University Street, Suite 3600
Seattle, WA 98101

George E. Greer (WSBA No. 11050)
ORRICK HERRINGTON & SUTCLIFFE LLP
701 Fifth Avenue, Suite 5600
Seattle, WA 98104

Michael C. Kelley (*admitted pro hac vice*)
Jennifer Altfeld Landau (*admitted pro hac vice*)
SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013

Attorneys for KPMG LLP

APPENDIX

RCW 43.22.270
Powers and duties.

The director of labor and industries shall have the power, and it shall be the director's duty:

(1) To study and keep in touch with problems of industrial relations and, from time to time, make public reports and recommendations to the legislature;

(2) To, with the assistance of the industrial statistician, exercise all the powers and perform all the duties in relation to collecting, assorting, and systematizing statistical details relating to labor within the state and systematizing such statistical information to, as far as possible, conform to the plans and reports of the United States department of labor;

(3) To, with the assistance of the industrial statistician, make such special investigations and collect such special statistical information as may be needed for use by the department or division of the state government having need of industrial statistics;

(4) To, with the assistance of the supervisor of employment standards, supervise the administration and enforcement of all laws respecting the employment and relating to the health, sanitary conditions, surroundings, hours of labor, and wages of employees employed in business and industry in accordance with the provisions of chapter 49.12 RCW;

(5) To exercise all the powers and perform all the duties, not specifically assigned to the department of labor and industries, now vested in, and required to be performed by, the commissioner of labor;

(6) To exercise such other powers and perform such other duties as may be provided by law.

[1994 c 164 § 11; 1977 c 75 § 48; 1975 1st ex.s. c 296 § 32; 1973 2nd ex.s. c 16 § 12; 1973 1st ex.s. c 154 § 83; 1965 c 8 § 43.22.270. Prior: 1921 c 7 § 81; RRS 10839.]

Notes:

Effective date -- 1975 1st ex.s. c 296: See RCW 41.58.901.

Severability -- 1973 2nd ex.s. c 16: See RCW 49.12.900.

Severability -- 1973 1st ex.s. c 154: See note following RCW 2.12.030.

Apprenticeships: Chapter 49.04 RCW.

Arbitration of disputes: Chapter 49.08 RCW.

Public employees' collective bargaining, arbitration of disputes: RCW 41.56.100.

Public employment labor relations: Chapter 41.58 RCW.

Wage collection for aggrieved employees: RCW 49.48.040.

Chapter 49.04 RCW
Apprenticeship

RCW Sections

- 49.04.010 Apprenticeship council created – Composition -- Terms -- Compensation -- Duties.
- 49.04.030 Supervisor of apprenticeship -- Duties.
- 49.04.040 Apprenticeship committees -- Composition -- Duties.
- 49.04.050 Apprenticeship program standards.
- 49.04.060 Apprenticeship agreements.
- 49.04.070 Limitation.
- 49.04.080 On-the-job training agreements and projects -- Supervisor to promote.
- 49.04.090 On-the-job training agreements and projects -- Agreements with federal agencies.
- 49.04.100 Apprenticeship programs -- Civil rights act advancement.
- 49.04.110 Woman and racial minority representation in apprenticeship programs -- Noncompliance.
- 49.04.120 Woman and racial minority representation -- Community colleges, vocational, or high schools to enlist woman and racial minority representation in apprenticeship programs.
- 49.04.130 Woman and racial minority representation -- Employer and employee organizations, apprenticeship council and committees, etc., to enlist woman and racial minority representation in apprenticeship programs.
- 49.04.141 Transportation opportunities -- Report.
- 49.04.150 Associate degree pathway.
- 49.04.160 Student opportunities -- Findings.
- 49.04.170 Student opportunities -- Centers of excellence, colleges to provide information.
- 49.04.180 Student opportunities -- Educational outreach program -- Appropriate activities.
- 49.04.190 Student opportunities -- Building and construction-related apprenticeships -- Grants -- Report.
- 49.04.200 Apprenticeship programs for energy audits and energy efficiency services -- Prioritization of workforce training programs -- Outreach efforts.
- 49.04.900 Severability -- 1941 c 231.
- 49.04.910 Chapter not affected by certain laws against discrimination in employment because of age.

Notes:

Apprenticeship agreements, inmates of state school for girls (Maple Lane school): RCW 72.20.090.

Child labor: RCW 26.28.060, 26.28.070.

49.04.010
Apprenticeship council created — Composition — Terms — Compensation — Duties.

*** CHANGE IN 2011 *** (SEE
5584.SL) ***

*** CHANGE IN 2011 *** (SEE 1371-S2.SL) ***

The director of labor and industries shall appoint an apprenticeship council, composed of three representatives each from employer and employee organizations, respectively. The terms of office of the members of the apprenticeship council first appointed by the director of labor and industries shall be as follows: One representative each of employers and employees shall be appointed for one year, two years, and three years, respectively. Thereafter, each member shall be appointed for a term of three years. The governor shall appoint a public member to the apprenticeship council for a three-year term. The appointment of the public member is subject to confirmation by the senate. Each member shall hold office until a successor is appointed and has qualified and any vacancy shall be filled by appointment for the unexpired portion of the term. A designated representative from each of the following: The workforce training and education coordinating board, state board for community and technical colleges, employment security department, and United States department of labor, apprenticeship, training, employer, and labor services, shall be ex officio members of the apprenticeship council. Ex officio members shall have no vote. Each member of the council, not otherwise compensated by public moneys, shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and shall be compensated in accordance with RCW 43.03.240. The apprenticeship council is authorized to approve apprenticeship programs, and establish apprenticeship program standards as rules, including requirements for apprentice-related and supplemental instruction, coordination of instruction with job experiences, and instructor qualifications. The council shall consider recommendations from the state board for community and technical colleges on matters of apprentice-related and supplemental instruction, coordination of instruction with job experiences, and instructor qualifications. The rules for apprenticeship instructor qualifications shall either be by reference or reasonably similar to the applicable requirements established by or pursuant to chapter 28B.50 RCW. The council is further authorized to issue such rules as may be necessary to carry out the intent and purposes of this chapter, including a procedure to resolve an impasse should a tie vote of the council occur, and perform such other duties as are hereinafter imposed.

Not less than once a year the apprenticeship council shall make a report to the director of labor and industries of its activities and findings which shall be available to the public.

[2001 c 204 § 1; 1984 c 287 § 97; 1982 1st ex.s. c 39 § 2; 1979 ex.s. c 37 § 1; 1977 c 75 § 72; 1975-'76 2nd ex.s. c 34 § 143; 1967 c 6 § 1; 1961 c 114 § 1; 1941 c 231 § 1; Rem. Supp. 1941 § 7614-3. Formerly RCW 49.04.010 and 49.04.020.]

Notes:

Legislative findings -- Severability -- Effective date -- 1984 c 287: See notes following RCW 43.03.220.

Effective date -- Severability -- 1975-76 2nd ex.s. c 34: See notes following RCW 2.08.115.

49.04.030

Supervisor of apprenticeship — Duties.

***** CHANGE IN 2011 *** (SEE**

5584.SL) ***

Subject to the confirmation of the state apprenticeship council by a majority vote, the director of labor and industries shall appoint and deputize an assistant director to be known as the supervisor of apprenticeship. Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor shall: (1) Encourage and promote apprenticeship programs conforming to the standards established under this chapter, and in harmony with the policies of the United States department of labor; (2) act as secretary of the apprenticeship council and of state apprenticeship committees; (3) when authorized by the apprenticeship council, register apprenticeship agreements that are in the best interests of the apprentice and conform with standards established under this chapter; (4) keep a record of apprenticeship agreements and upon successful completion issue certificates of completion of apprenticeship; and (5) terminate or cancel any apprenticeship agreements in accordance with the provisions of the agreements.

The supervisor may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally. The director of labor and industries is authorized to appoint such other personnel as may be necessary to aid the supervisor of apprenticeship in the execution of the supervisor's functions under this chapter.

[2001 c 204 § 2; 1979 ex.s. c 37 § 2; 1961 c 114 § 2; 1941 c 231 § 2; Rem. Supp. 1941 § 7614-4.]

Notes:

Rehabilitation services for individuals with disabilities: Chapter 74.29 RCW.

**49.04.040
Apprenticeship committees — Composition — Duties.**

***** CHANGE IN 2011 *** (SEE**

5584.SL) ***

Upon July 22, 2001, all newly approved apprenticeship programs must be represented by either a unilateral or joint apprenticeship committee. Apprenticeship committees must conform to this chapter, the rules adopted by the apprenticeship council, and 29 C.F.R. Part 29 and must be approved by the apprenticeship council. Apprenticeship committees may be approved whenever the apprentice training needs justify such establishment. Such apprenticeship committees shall be composed of an equal number of employer and employee representatives who may be chosen:

(1) From names submitted by the respective local or state employer and employee organizations served by the apprenticeship committee; or

(2) In a manner which selects representatives of management and nonmanagement served by the apprenticeship committee. The council may act as the apprentice representative when the council determines there is no feasible method to choose nonmanagement representatives.

Apprenticeship committees shall devise standards for apprenticeship programs and operate such programs in accordance with the standards established by this chapter and by council-adopted rules. The council and supervisor may provide aid and technical assistance to apprenticeship program sponsors and applicants, or potential applicants.

[2001 c 204 § 3; 1941 c 231 § 3; Rem. Supp. 1941 § 7614-5.]

**49.04.050
Apprenticeship program standards.**

***** CHANGE IN 2011 *** (SEE**

5584.SL) ***

To be eligible for registration, apprenticeship program standards must conform to the rules adopted by the apprenticeship council.

[2001 c 204 § 4; 1979 ex.s. c 37 § 3; 1961 c 114 § 3; 1941 c 231 § 4; Rem. Supp. 1941 § 7614-6.]

**49.04.060
Apprenticeship agreements.**

***** CHANGE IN 2011 *** (SEE**

5584.SL) ***

For the purposes of this chapter an apprenticeship agreement is a written agreement between an apprentice and either the apprentice's employer or employers, or an apprenticeship committee acting as agent for an employer or employers, containing the terms and conditions of the employment and training of the apprentice.

[2001 c 204 § 5; 1941 c 231 § 5; Rem. Supp. 1941 § 7614-7.]

49.04.070
Limitation.

The provisions of this chapter shall apply to a person, firm, corporation or craft only after such person, firm, corporation or craft has voluntarily elected to conform with its provisions.

[1941 c 231 § 6; Rem. Supp. 1941 § 7614-8.]

49.04.080
On-the-job training agreements and projects — Supervisor to promote.

Under the supervision of the director of labor and industries and with the advice and guidance of the apprenticeship council, the supervisor of apprenticeship shall encourage and promote the making of such other types of on-the-job training agreements and projects, in addition to apprenticeship agreements, as the supervisor shall find meritorious.

[2001 c 204 § 6; 1963 c 172 § 1.]

49.04.090
On-the-job training agreements and projects — Agreements with federal agencies.

The director of labor and industries shall have authority to enter into and perform, through the supervisor of apprenticeship, agreements with appropriate federal departments or agencies for the development, administration and servicing of on-the-job training projects. Further, the director of labor and industries, through the supervisor of apprenticeship, shall have power to receive and administer funds provided by the federal government for such purposes.

[1963 c 172 § 2.]

49.04.100
Apprenticeship programs — Civil rights act advancement.

As provided by the rules adopted by the apprenticeship council, apprenticeship programs entered into under authority of this chapter with five or more apprentices shall conform with 29 C.F.R. Part 30 to the extent required by federal law while advancing the nondiscriminatory principles of the Washington state civil rights act, RCW

49.60.400.

[2001 c 204 § 7; 1995 c 67 § 7; 1990 c 72 § 1; 1985 c 6 § 17; 1969 ex.s. c 183 § 2.]

Notes:

Purpose -- Construction -- 1990 c 72; 1969 ex.s. c 183: "It is the policy of the legislature and the purpose of this act to provide every citizen in this state a reasonable opportunity to enjoy employment and other associated rights, benefits, privileges, and to help women and racial minorities realize in a greater measure the goals upon which this nation and this state were founded. All the provisions of this act shall be liberally construed to achieve these ends, and administered and enforced with a view to carry out the above declaration of policy." [1990 c 72 § 5; 1969 ex.s. c 183 § 1.]

Severability -- 1969 ex.s. c 183: "If any provision of this 1969 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 183 § 8.]

49.04.110**Woman and racial minority representation in apprenticeship programs — Noncompliance.**

When it shall appear to the department of labor and industries that any apprenticeship program referred to in RCW

49.04.100 has failed to comply with the woman or racial minority representation requirement hereinabove in such section referred to by January 1, 1970, which fact shall be determined by reports the department may request or in such other manner as it shall see fit, then the same shall be deemed prima facie evidence of noncompliance with RCW 49.04.100 through 49.04.130 and thereafter no state funds or facilities shall be expended upon such program: PROVIDED, That prior to such withdrawal of funds evidence shall be received and state funds or facilities shall not be denied if there is a showing of a genuine effort to comply with the provisions of RCW 49.04.100 through 49.04.130 as to entrance of women and racial minorities into the program. The director shall notify the appropriate federal authorities if there is noncompliance with the woman and racial minority representation qualification under any apprenticeship program as provided for in RCW 49.04.100 through 49.04.130.

[1990 c 72 § 2; 1969 ex.s. c 183 § 3.]

49.04.120**Woman and racial minority representation — Community colleges, vocational, or high schools to enlist woman and racial minority representation in apprenticeship programs.**

Every community college, vocational school, or high school carrying on a program of vocational education shall make every effort to enlist woman and racial minority representation in the apprenticeship programs within the state and are authorized to carry out such purpose in such ways as they shall see fit.

[1990 c 72 § 3; 1969 ex.s. c 183 § 4.]

49.04.130**Woman and racial minority representation — Employer and employee organizations, apprenticeship council and committees, etc., to enlist woman and racial minority representation in apprenticeship programs.**

Every employer and employee organization as well as the apprenticeship council and local and state apprenticeship committees and vocational schools shall make every effort to enlist woman and racial minority representation in the apprenticeship programs of the state and shall be aided therein by the department of labor and industries insofar as such department may be able to so do without undue interference with its other powers and duties. In addition, the legislature, in fulfillment of the public welfare, mandates those involved in apprenticeship training with the responsibility of making every effort to see that woman and racial minority representatives in such programs pursue the same to a successful conclusion.

[1990 c 72 § 4; 1969 ex.s. c 183 § 5.]

49.04.141**Transportation opportunities — Report.**

The apprenticeship council shall work with the department of transportation, local transportation jurisdictions, local and statewide joint apprenticeships, other apprenticeship programs, representatives of labor and business organizations with interest and expertise in the transportation workforce, and representatives of the state's universities and community and vocational colleges to establish technical apprenticeship opportunities specific to the needs of transportation. The council shall issue a report of findings and recommendations to the transportation committees of the legislature by December 1, 2003. The report must include, but not be limited to, findings and

recommendations regarding the establishment of transportation technical training programs within the community and vocational college system and in the state universities.

[2003 c 363 § 202.]

Notes:

Findings -- Intent -- 2003 c 363 §§ 201 through 206: "(1) The legislature finds that a skilled technical workforce is necessary for maintaining, preserving, and improving Washington's transportation system. The Blue Ribbon Commission on Transportation found that state and local transportation agencies are showing signs of a workforce that is insufficiently skilled to operate the transportation system at its highest level. Sections 201 through 206 of this act are intended to explore methods for fostering a stronger industry in transportation planning and engineering.

(2) It is the intent of the legislature that the state prevailing wage process operate efficiently, that the process allow contractors and workers to be paid promptly, and that new technologies and innovative outreach methods be used to enhance wage surveys in order to better reflect current wages in counties across the state.

(3) The legislature finds that in order to enhance the prevailing wage process it is appropriate for all intent and affidavit fees paid by contractors be dedicated to the sole purpose of administering the state prevailing wage program.

(4) To accomplish the intent of this section and in order to enhance the response of businesses and labor representatives to the prevailing wage survey process, the department of labor and industries shall undertake the following activities:

(a) Establish a goal of conducting surveys for each trade every three years;

(b) Actively promote increased response rates from all survey recipients in every county both urban and rural. The department shall provide public education and technical assistance to businesses, labor representatives, and public agencies in order to promote a better understanding of prevailing wage laws and increased participation in the prevailing wage survey process;

(c) Actively work with businesses, labor representatives, public agencies, and others to ensure the integrity of information used in the development of prevailing wage rates, and ensure uniform compliance with requirements of sections 201 through 206 of this act;

(d) Maintain a timely processing of intents and affidavits, with a target processing time no greater than seven working days from receipt of completed forms;

(e) Develop and implement electronic processing of intents and affidavits and promote the efficient and effective use of technology to improve the services provided by the prevailing wage program." [2003 c 363 § 201.]

Part headings not law -- Severability -- 2003 c 363: See notes following RCW 47.28.241.

49.04.150

Associate degree pathway.

(1) An apprenticeship committee may recommend to its community or technical college partner or partners that an associate degree pathway be developed for the committee's program.

(2) In consultation with the state board for community and technical colleges, the apprenticeship committee and the college or colleges involved with the program shall consider the extent apprentices in the program are likely to pursue an associate degree and the extent a pathway could reduce redundancy of course requirements between the apprenticeship and a degree.

(3) If the apprenticeship committee and the college or colleges involved with the program determine that a pathway would be beneficial for apprentices and assist them in obtaining an associate degree, the apprenticeship committee may request that a pathway be established as provided in RCW

28B.50.890.

[2003 c 128 § 2.]

Notes:

Findings -- 2003 c 128: "The legislature finds that:

(1) Apprenticeships are very rigorous and highly structured programs with specific academic and work training requirements;

(2) There is a misperception that apprenticeships are only for noncollege bound students; and

(3) The state should expand opportunities for individuals to progress from an apprenticeship to college by creating pathways that build on the apprenticeship experience and permit apprentices to earn an associate degree." [2003 c 128 § 1.]

49.04.160

Student opportunities — Findings.

(1) The legislature finds that it is in the public interest of the state to encourage and facilitate the formation of cooperative relationships between business and labor and educational institutions that provide for the development and expansion of programs of educational skills training consistent with employment needs.

(2) Further, the legislature finds that it is in the state's interest to make students aware of the educational training programs and career employment opportunities.

(3) Therefore, the following shall be implemented to expand opportunities for secondary school students to prepare for technical careers and related apprenticeships:

(a) Centers of excellence and other colleges with a high density of apprenticeship programs shall act as brokers of relevant information and resources as provided for in RCW

49.04.170;

(b) An educational outreach program coordinated by the Washington state apprenticeship and training council as provided for in RCW 49.04.180; and

(c) The development of direct-entry programs for graduating secondary students, approved and overseen by the Washington state apprenticeship and training council as provided for in RCW 49.04.190.

[2006 c 161 § 1.]

Notes:

Effective date -- 2006 c 161: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2006." [2006 c 161 § 7.]

49.04.170**Student opportunities — Centers of excellence, colleges to provide information.**

(1) Centers of excellence, as designated by the state board for community and technical colleges, and other colleges identified by the state board for community and technical colleges in consultation with the Washington state apprenticeship and training council as having a high density of apprenticeship programs, shall act as a broker of relevant information and resources on available grants, scholarship opportunities, job openings, and industries of growth.

(2) The Washington state apprenticeship and training council, in conjunction with the office of the superintendent of public instruction, shall aid all local school districts in meeting the goals of chapter 161, Laws of 2006.

[2006 c 161 § 2.]

Notes:

Effective date -- 2006 c 161: See note following RCW 49.04.160.

49.04.180**Student opportunities — Educational outreach program — Appropriate activities.**

(1) Within existing resources, the Washington state apprenticeship and training council, in conjunction with individual state-approved apprenticeship training programs and the office of the superintendent of public instruction, shall lead and coordinate an educational outreach program for middle and secondary school students, parents, and educators about apprenticeship and career opportunities and communicate workforce projections to the office of the superintendent of public instruction for distribution to all local school districts.

(2) Appropriate activities of the Washington state apprenticeship and training council under this section include assistance with curriculum development, the establishment of practical learning opportunities for students, and seeking the advice and participation of industry and labor interests.

[2006 c 161 § 3.]

Notes:

Effective date -- 2006 c 161: See note following RCW 49.04.160.

49.04.190**Student opportunities — Building and construction-related apprenticeships — Grants — Report.**

(1) Within existing resources, the Washington state apprenticeship and training council shall approve and oversee direct-entry programs for graduating secondary students into building and construction-related apprenticeships by:

(a) Assisting individual school districts in using and leveraging existing resources; and

(b) Developing guidelines, including guidelines that ensure that graduating secondary school students will receive appropriate education and training and will have the opportunity to transition to local apprenticeship programs. The guidelines must be developed with input from apprenticeship coordinators, the office of the superintendent of public instruction, the state board for community and technical colleges, the workforce training and education coordinating board, and other interested stakeholders for direct-entry programs.

(2) The Washington state apprenticeship and training council shall award up to ten incentive grants for the 2006-07 school year, based on guidelines established under subsection (1)(b) of this section, to school districts statewide solely for personnel to negotiate and implement agreements with local apprenticeship programs based upon state apprenticeship use requirements, as described in RCW

39.04.320, to accept graduating secondary school students with appropriate training into apprenticeship programs. The council shall make every effort to award the grants evenly across the state.

(3) Beginning December 1, 2006, the Washington state apprenticeship and training council shall provide an annual report to the governor and the education and commerce and labor committees of the legislature. The report shall include:

- (a) The guidelines established under subsection (1)(b) of this section;
- (b) The names of the school districts receiving incentive grants under subsection (2) of this section;
- (c) The results of negotiations between school districts receiving incentive grants and local apprenticeship programs;
- (d) A list of apprenticeship programs that have agreed, pursuant to negotiated agreements, to accept qualified graduating secondary students; and
- (e) The number of qualified graduating secondary students entering into apprenticeship programs each year through direct-entry programs.

[2006 c 161 § 4.]

Notes:

Effective date -- 2006 c 161: See note following RCW 49.04.160.

49.04.200

Apprenticeship programs for energy audits and energy efficiency services — Prioritization of workforce training programs — Outreach efforts.

(1) The council must evaluate the potential of existing apprenticeship and training programs that would produce workers with the skills needed to conduct energy audits and provide energy efficiency services and deliver its findings to the *department of community, trade, and economic development, the **leadership team, and the appropriate committees of the legislature as soon as possible, but no later than January 18, 2010.

(2) The council may prioritize workforce training programs that lead to apprenticeship programs in green economy jobs. For purposes of this section, green economy jobs include those in the primary industries of a green economy, including clean energy, the forestry industry, high-efficiency building, green transportation, and environmental protection. Prioritization efforts may include but are not limited to: (a) Prioritization of the use of high employer-demand funding for workforce training programs in green economy jobs; (b) increased outreach efforts to public utilities, education, labor, government, and private industry to develop tailored, green job training programs; and (c) increased outreach efforts to target populations. Outreach efforts shall be conducted in partnership with local workforce development councils.

(3) The definitions in RCW

43.330.010 apply to this section.

[2009 c 536 § 12.]

Notes:

Reviser's note: *(1) The "department of community, trade, and economic development" was renamed the "department of commerce" by 2009 c 565.

** (2) The leadership team was created in 2009 c 536 § 3, which was vetoed.

Short title – 2009 c 536: See note following RCW 43.330.370.

49.04.900**Severability — 1941 c 231.**

If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the chapter, and the application of such provision to other persons and circumstances, shall not be affected thereby.

[1941 c 231 § 8; no RRS.]

49.04.910**Chapter not affected by certain laws against discrimination in employment because of age.**

The amendments made by chapter 100, Laws of 1961 shall not be construed as modifying chapter 231, Laws of 1941 as amended, or as applying to any standards established thereunder or employment pursuant to any bona fide agreements entered into thereunder.

[1961 c 100 § 6.]

Notes:

Reviser's note: (1) Chapter 100, Laws of 1961 amended RCW 49.60.180, 49.60.190, 49.60.200 and reenacted RCW 49.60.310 to include age as an element of discrimination, and such chapter added a new section codified as RCW 49.44.090 relating to unfair practices in employment because of age.

(2) Chapter 231, Laws of 1941 is the apprenticeship law codified in chapter 49.04 RCW.

RCW 49.46.060

Exceptions for learners, apprentices, messengers, disabled.

The director, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations provide for (1) the employment of learners, of apprentices, and of messengers employed primarily in delivering letters and messages, under special certificates issued pursuant to regulations of the director, at such wages lower than the minimum wage applicable under RCW 49.46.020 and subject to such limitations as to time, number, proportion, and length of service as the director shall prescribe, and (2) the employment of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the minimum wage applicable under RCW 49.46.020 and for such period as shall be fixed in such certificates.

[1959 c 294 § 6.]

Chapter 296-05 WAC
Apprenticeship rules**Last Update: 5/4/11**

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296-05-001**Purpose, scope, and authority.**

(1) The Washington State Apprenticeship and Training Act (chapter 49.04 RCW) establishes the Washington state apprenticeship and training council (WSATC) as regulatory and designates as its administrative arm the apprenticeship section of the department of labor and industries. The WSATC, acting in compliance with chapter 49.04 RCW and in harmony with 29 CFR Part 29 and 29 CFR Part 30, has adopted these rules to:

- (a) Establish operating procedures for the WSATC;
- (b) Establish standards for apprenticeship programs;
- (c) Implement the intent and purpose of the Washington State Apprenticeship and Training Act;
- (d) Perform other duties directed by the statute;
- (e) Promote labor standards and the registration of approved programs to protect the welfare of the apprentice;
and

(f) Encourage the establishment of apprenticeship programs and committees.

(2) These rules are necessary to:

- (a) Strengthen apprenticeship and training in the state of Washington;
- (b) Facilitate approval and registration of apprenticeship and training programs;
- (c) Explain factors related to apprenticeship and training in Washington state and federal laws;
- (d) Establish procedures for presenting matters to the WSATC;
- (e) Govern the WSATC's operation and ability to carry out its statutory obligations;
- (f) Establish a specific procedure to resolve an impasse if a tie vote occurs on the WSATC; and
- (g) Regulate registered apprenticeship and training programs.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-001, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-001, filed 10/31/01, effective 1/17/02.]

296-05-003**Definitions.**

The following definitions apply to this chapter:

Adjudicative proceeding: A proceeding before the WSATC in which an opportunity for a hearing before the WSATC is authorized by chapter 49.04 RCW or these rules before or after the entry of an order by the WSATC.

Apprentice: Is a worker at least sixteen years of age who is employed to learn an apprenticeable occupation and is registered with a sponsor in an approved apprenticeship program according to chapter 49.04 RCW and these rules.

Exception: Seventeen years is the minimum age allowed for applicants registering in building and construction trade occupations.

Apprenticeable occupation: Is a skilled occupation which is recognized by the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship or the WSATC and meets the criteria

established in WAC 296-05-305.

Apprenticeship agreement: A written agreement between an apprentice and either the apprentice's employer(s), or an apprenticeship committee acting as agent for employer(s), containing the terms and conditions of the employment and training of the apprentice.

Apprenticeship committee: A quasi-public entity approved by the WSATC to perform apprenticeship and training services for employers and employees.

Apprenticeship program: A plan for administering an apprenticeship agreement(s). The plan must contain all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as the requirement for a written apprenticeship agreement.

Approved: Approved by the WSATC or a person or entity authorized by the WSATC to do so.

CFR: The Code of Federal Regulations.

Cancellation: The termination of the registration or approval status of a program at the request of the supervisor or sponsor. Cancellation also refers to the termination of an apprenticeship agreement at the request of the apprentice, supervisor, or sponsor.

Certificate of completion: A record of the successful completion of a term of apprenticeship (see WAC 296-05-323).

Certification: Written approval by the WSATC of:

(1) A set of apprenticeship standards established by an apprenticeship program sponsor and substantially conforming to the standards established by the WSATC.

(2) An individual as eligible for probationary employment as an apprentice under a registered apprenticeship program.

Committee program: All apprenticeship programs as further described in WAC 296-05-309.

Competent instructor: An instructor who has demonstrated a satisfactory employment performance in his/her occupation for a minimum of three years beyond the customary learning period for that occupation and:

(1) Meets the state board for community and technical colleges requirements for a vocational-technical instructor, or be a subject matter expert, which is an individual, such as a journey worker, who is recognized within an industry as having expertise in a specific occupation; and

(2) Has training in teaching techniques and adult learning styles, which may occur before or within one year after the apprenticeship instructor has started to provide the related technical instruction.

Competitor: A competing apprenticeship program that provides training in the same or overlapping occupation as the proposed program in the same geographic area proposed. In determining whether an occupation is the same or overlapping as the proposed program's occupation, the council may consider the following:

(1) Washington state apprenticeship and training council approved apprenticeship standards;

(2) Collective bargaining agreements;

(3) Dictionaries of occupational titles;

(4) Experts from organized labor, licensed contractors, and contractors' associations;

(5) Recognized labor and management industry practice;

(6) Scope of work descriptions issued by the department.

Completion rate: The percentage of an apprenticeship cohort who receives a certificate of apprenticeship completion within one year of the projected completion date. An apprenticeship cohort is the group of individual apprentices registered to a specific program during a one year time frame, except that a cohort does not include the apprentices whose apprenticeship agreement has been canceled during the initial probationary period.

Compliance review: A comprehensive review conducted by the apprenticeship section of the department of labor and industries regarding all aspects of an apprenticeship program's performance including, but not limited to, determining if apprentices are receiving: On-the-job training in all phases of the apprenticeable occupation; scheduled wage increases consistent with the registered standards; related instruction through appropriate curriculum and delivery systems; and that the registration agency is receiving notification of all new registrations, cancellations, and completions as required in this chapter.

Current instruction: The related/supplemental instructional content is and remains reasonably consistent with the latest occupational practices, improvements, and technical advances.

Department: The department of labor and industries.

Employer: Any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice. "Employer" includes both union and open shop employers.

File: To send to:

Supervisor of Apprenticeship and Training

Department of Labor and Industries

Apprenticeship Section

Post Office Box 44530

Olympia, Washington 98504-4530

Or deliver to and receipt at:

Department of Labor and Industries

7273 Linderson Way SE

Tumwater, Washington 98501

Individual agreement: A written agreement between an apprentice and/or trainee and either the apprentice's employer or an apprenticeship committee acting as agent for the employer.

Industry wide standards: The current, acceptable practices, including technological advancements, being used in the different occupations.

Journey level: An individual who has sufficient skills and knowledge of an occupation, either through formal apprenticeship training or through practical on-the-job work experience, to be recognized by a state or federal registration agency and/or an industry as being fully qualified to perform the work of the occupation. Practical experience must be equal to or greater than the term of apprenticeship.

On-the-job training program: A program that is set up in the same manner as an apprenticeship program with any exceptions authorized by the WSATC and as further described in WAC 296-05-311.

Notice: Where not otherwise specified, notice means posted in United States mail to the last known address of the person to be notified. Notice may be given by telefacsimile where copies are mailed simultaneously or by a commercial parcel delivery company.

Petitions, requests, and correspondence: Any written business brought before the WSATC (examples may include: (1) Requests for new committees; (2) Requests for revisions to the standards; and (3) Appeals).

Probation: (1) Initial: A period of time reasonable in relation to the full apprenticeship term, with full credit given for such period toward completion of apprenticeship. The initial probationary period cannot exceed twenty percent of the term of the program, or one year from the date of registration, whichever is shorter. Initial probationary apprentices are not subject to an appeal under the complaint review procedures as defined in WAC 296-05-009.

Transferred apprentices are not subject to additional initial probationary periods.

(2) **Disciplinary:** A time assessed when the apprentice's progress is not satisfactory. During this time the program sponsor may withhold periodic wage advancements, suspend or cancel the apprenticeship agreement, or take further disciplinary action. A disciplinary probation may only be assessed after the initial probation is completed. During the disciplinary probation, the apprentice has the right to file an appeal of the committee's action with the WSATC (as described in WAC 296-05-009).

Provisional registration: The one-year initial approval of newly registered programs that meet the required standards for program registration, after which the program approval may be made permanent, continued as provisional through the first full training cycle/term, or rescinded following a compliance review by the apprenticeship section of the department.

RCW: The Revised Code of Washington.

Registration: (1) For the purposes of an apprenticeship agreement means the acceptance and recording of an apprenticeship agreement by the apprenticeship section of the department of labor and industries as evidence of the apprentice's participation in a particular registered apprenticeship program.

(2) For the purposes of an apprenticeship program means the acceptance and recording of such program by the WSATC and apprenticeship section of the department of labor and industries, as meeting the basic standards and requirements of the department for approval of such program. Approval is evidenced by a certificate of registration or other written indicia.

Registration agency: The apprenticeship section of the Washington state department of labor and industries is responsible for registering apprenticeship programs and apprentices; providing technical assistance; conducting reviews for compliance with 29 CFR parts 29 and 30, chapters 49.04 RCW and 296-05 WAC.

Regular quarterly meeting: A public meeting held quarterly by the WSATC as described in WAC 296-05-200.

Related/supplemental instruction: An organized and systematic form of instruction designed to provide the apprentice with knowledge of the theoretical and technical subjects related to the apprentice's occupation. Such instruction may be given in a classroom, through occupational or industrial courses, or by correspondence courses of equivalent value, electronic media, or other forms of self-study approved by the registration agency.

Secretary: The individual appointed by the director of the department according to RCW 49.04.030.

Special meeting: A public meeting of the council as described in WAC 296-05-203.

Sponsor: Any person, firm, association, committee, or organization operating an apprenticeship and training program and in whose name the program is registered or is to be registered.

Standards: Is a written agreement containing specific provisions for operation and administration of the apprenticeship program and all terms and conditions for the qualifications, recruitment, selection, employment, and training of apprentices, as further defined in WAC 296-05-316.

Supervision: The necessary education, assistance, and control provided by a journey-level employee that is on the same job site at least seventy-five percent of each working day, unless otherwise approved by the WSATC.

Supervisor: The individual appointed by the director of the department according to RCW 49.04.030 who acts as the secretary of the WSATC. Where these rules indicate a duty of the supervisor or secretary of the WSATC, the supervisor may designate a department of labor and industries' employee to assist in the performance of those duties subject to the supervisor's oversight and direction.

Trainee: An individual registered with the supervisor according to WAC 296-05-311.

Training agent: Employer of registered apprentices approved by the program sponsor to furnish on-the-job training to satisfy the approved apprenticeship program standards who agrees to employ registered apprentices in that work process. The training agent shall use only registered apprentices to perform the work processes of the approved program standards.

Training agreement: A written agreement between a training agent and a program sponsor that contains the provisions of the apprenticeship program applicable to the training agent and the duties of the training agent in providing on-the-job training.

Transfer: A shift of apprenticeship registration from one sponsor to another where there is written agreement between the apprentice and the affected apprenticeship committees or program sponsors.

WAC: The Washington Administrative Code.

WSATC: The Washington state apprenticeship and training council.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-003, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-003, filed 10/31/01, effective 1/17/02.]

296-05-005

Rule development.

(1) In developing and adopting rules, the WSATC:

(a) Seeks the cooperation and assistance of all interested persons, organizations, and agencies affected by its rules.

(b) Promotes the operation of apprenticeship programs to satisfy the needs of employers and employees for high quality training.

(c) Recognizes that rapid economic and technological changes require that workers must be trained to meet the demands of a changing marketplace.

(d) Recognizes employers will benefit if graduates of state approved apprenticeship programs are skilled workers trained to industry wide standards rather than the exclusive standards of an individual employer or group of employers.

(e) Acknowledges that approved apprenticeship programs should be organized and administered to assure the maximum protection of apprentices' rights.

(f) Recognizes that the number of apprentices in an occupation or group of occupations in any geographic area must be sufficient to meet the needs of all employers.

(g) Promotes comprehensive training and a variety of work experiences relevant to the occupations and seeks to assure that during the approval process all apprenticeship standards are open to employers on an equal and nondiscriminatory basis.

(h) Recognizes that quality training, equal treatment of apprentices, and efficient delivery of apprenticeship training are best provided by registered apprenticeship programs.

(2) All amendments to this chapter must be developed and adopted according to the provisions of chapter 49.04 RCW, Apprenticeship Act; chapter 34.05 RCW, Administrative Procedure Act; and Executive Order 97-02. All proposed amendments to these rules must be approved by a two-thirds majority vote of regular WSATC members before they are published for public hearing. All WSATC members, the apprenticeship supervisor, committees and any other interested parties must be promptly notified, in writing, of any proposed rule amendments, public hearings on proposed rule amendments and new rule adoptions.

(3) The specific procedure(s) and form(s) for petitions requesting the making, amendment, or repeal of a rule are in chapter 34.05 RCW, as are the specific procedure and form for requesting declaratory rulings.

(4) Such petitions and requests must be addressed to:

The Washington State Apprenticeship and Training Council

Attention: Supervisor of Apprenticeship and Training

Department of Labor and Industries

Post Office Box 44530

Olympia, Washington 98504-4530

Or e-mail address: apprentice@LNI.wa.gov

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-005, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-005, filed 10/31/01, effective 1/17/02.]

296-05-007

Rules of procedure.

All hearings and adjudication, under chapter 49.04 RCW and these rules, shall be conducted according to chapter 34.05 RCW, the Administrative Procedure Act and chapter 10-08 WAC, Model Rules of Procedure. The chair (or designee) is the presiding officer for adjudicative proceedings, held before the WSATC. The WSATC may either adjudicate matter(s) itself, or refer matter(s) to the office of administrative hearings for initial adjudication.

If the initial adjudication is before the WSATC, the WSATC will enter a final order. If the initial adjudication has been held at the office of administrative hearings, the administrative hearings judge shall issue an initial order. The WSATC, upon review of the initial order shall enter the final order. An initial order shall become final without further WSATC action five business days after the next regular quarterly meeting unless:

- (1) The WSATC upon its own motion determines that the initial order should be reviewed; or
- (2) A party to the proceedings files a petition for review of the initial order.

The WSATC may appoint a person to review the initial order and prepare and enter the final WSATC order.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-007, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010. 04-10-032, § 296-05-007, filed 4/28/04, effective 6/1/04. Statutory Authority: RCW 49.04.010 and 2001 c 204 (SHB 1234). 02-10-083, § 296-05-007, filed 4/29/02, effective 6/1/02. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-007, filed 10/31/01, effective 1/17/02.]

296-05-008

Process for objections to apprenticeship program standards.

(1) If a competitor objects to the proposed standards, proposed amendments to existing standards, or initial committee, the competitor must provide timely and specific written objections. Objections shall be submitted to the department for WSATC consideration twenty calendar days prior to the regular quarterly WSATC meeting on a form provided by the department and approved by the WSATC.

(2) The department shall notify the petitioning program sponsor of objections no more than two business days after the department receives the objection.

(3) In accordance with WAC 296-05-007, the WSATC may either adjudicate matter(s) itself or refer matter(s) to the office of administrative hearings for initial adjudication.

(a) If the WSATC decides to adjudicate all or part of the objections to the apprenticeship program standards, a hearing on the objections shall take place at the regular quarterly WSATC meeting or at a special WSATC meeting convened for purposes of hearing the objections. The department shall notify the competitor making the objections and the program sponsor that the objection is on the agenda for consideration and shall give its recommendation ten calendar days prior to the WSATC meeting.

(b) If the WSATC decides to refer all or part of the objections to the office of administrative hearings, the WSATC shall identify the specific matters on which the WSATC is requesting the office of administrative hearings provide

findings and conclusions for the initial order.

(4) The department may attempt to facilitate a resolution to any objections during the process identified in this section.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-008, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 04-10-032, § 296-05-008, filed 4/28/04, effective 6/1/04.]

296-05-009

Complaint review procedures.

If a local committee or other organization administering the agreement cannot satisfactorily resolve a complaint, any apprentice who has completed his/her initial probationary period may submit the complaint to the apprenticeship program for resolution. Complaints that involve matters covered by a collective bargaining agreement are not subject to the complaint review procedures in this section. The investigation or review of any controversy by the supervisor or the WSATC will not affect any action taken or decision made by a committee or other organization until a final decision resolving the matter is issued.

(1) Within thirty calendar days of documented, written notification of the action leading to the complaint, the apprentice must request the local committee or other organization to reconsider action.

(2) The local committee or other organization must, within thirty calendar days of the apprentice's request, provide written notification to the apprentice of its decision on the request for reconsideration. This notification shall be considered the final action of the committee.

(3) If the apprentice chooses to pursue the complaint further, the apprentice must submit a written complaint describing the controversy to the supervisor of the apprenticeship division within thirty calendar days of the final action taken on the matter by the local committee or other organization. The written complaint must be specific and include all relevant facts and circumstances contributing to the complaint. Any documents or correspondence relevant to the complaint must be attached to the complaint. The apprentice must send a copy of the complaint to the interested local committee or other organization.

(4) The supervisor must investigate complaints received from an apprentice. The supervisor must complete the investigation within thirty business days. During the investigation, the supervisor must attempt to effect a settlement between the parties. During the investigation the apprentice and the committee or other organization must fully cooperate with the supervisor by providing any relevant information or documents requested. The supervisor may delegate the investigation to any employee in the apprenticeship division. If the controversy is not settled during the investigation, the supervisor must issue a written decision resolving the controversy when the investigation is concluded.

(5) If the apprentice, committee or other organization is dissatisfied with the decision of the supervisor, they may request the WSATC to review the decision. The request must be in writing and made within thirty calendar days of the supervisor's decision. It must specify the reasons supporting the request. The party requesting review must provide a copy of the request to the other parties involved in the controversy. The WSATC must conduct an informal hearing to consider the request for review of the supervisor's decision. Unless special circumstances dictate, the hearing must be held in conjunction with the regular quarterly meeting.

At the hearing, the WSATC must review the supervisor's decision and all records of the investigation. The WSATC may also accept testimony or documents from any person, including the supervisor and the supervisor's staff, who has knowledge relating to the controversy. Parties at the informal hearing may be represented by counsel and may, at the WSATC's discretion, present argument concerning the controversy. The WSATC must not apply formal rules of evidence.

(6) Within thirty calendar days after the hearing, the WSATC must issue a written decision resolving the controversy. The WSATC's decision may be to affirm the decision of the supervisor. In that case, the supervisor's decision becomes the decision of the WSATC. All parties to the informal hearing must be sent a copy of the WSATC's decision. The chair may sign the decision for the WSATC.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-009, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-009, filed 10/31/01, effective 1/17/02.]

296-05-011**Compliance reviews.**

(1) The purpose of a compliance review is to systematically and periodically review apprenticeship programs to ensure that the sponsor is complying with the approved program standards and these rules. Compliance reviews consist of a comprehensive analysis and evaluations of each aspect of the apprenticeship program. They must include on-site investigations and audits.

(2) A compliance review may be required:

(a) For all existing programs on a regular and comprehensive basis.

(b) When the WSATC receives a complaint, which has not been referred to a private review body. (See WAC 296-05-009.)

(c) When a sponsor seeks to reregister a program.

(d) When a sponsor seeks to register a new program.

(3) If a compliance review indicates that the sponsor is not operating as required by these rules, the supervisor must notify the sponsor in writing of the results of the review. The supervisor must:

(a) Make a reasonable effort to secure voluntary compliance on the part of the program sponsor within a reasonable time before penalizing as authorized in WAC 296-05-013.

(b) Provide recommendations to the sponsor to assist in achieving compliance.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-011, filed 10/31/01, effective 1/17/02.]

296-05-013**Sanctions for noncompliance.**

The WSATC is responsible to take the necessary action to bring a noncomplying program into compliance with these rules.

When the apprenticeship supervisor, based upon a compliance review or other reason, concludes that an apprenticeship program is not in compliance with the rules of this chapter and that the sponsor will not take voluntary corrective action, the WSATC must:

(1) Institute proceedings to withdraw the program registration;

(2) Refer the matter to the equal employment opportunity commission;

(3) Refer the matter to the attorney general with recommendations for the institution of a court action under Title VII of the Civil Rights Act of 1964, as amended; or

(4) Refer the matter to the attorney general for other court action as authorized by law.

(5) For provisionally approved programs (see WAC 296-05-003) the WSATC may continue approval as provisional through the first full training cycle/term, or rescind approval following a compliance review by the apprenticeship section of the department of labor and industries.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-013, filed 5/4/11, effective 7/25/11. Statutory Authority:

RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-013, filed 10/31/01, effective 1/17/02.]

296-05-100
WSATC composition.

(1) The director of the department appoints three voting representatives each from employer and employee organizations, respectively. Each member shall be appointed for a three-year term.

(2) The governor shall appoint, subject to confirmation by the senate, a voting public member for a three-year term.

(3) The WSATC may also include ex officio members. These members have the right to participate in the discussion of any matter before the council but they may not vote.

(4) An appointed member shall remain on the council until replaced by a qualified successor. When a vacancy does occur, it shall be filled for the remaining portion of the vacated term.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-100, filed 10/31/01, effective 1/17/02.]

296-05-103
Officers.

(1) To carry out the business of the WSATC and to conduct business efficiently the WSATC has three officers:

- Chair;
- Vice-chair; and
- Secretary.

(2) The chair and vice-chair shall be elected by majority vote of the WSATC members present. This election will take place in odd-numbered years at the April regular quarterly meeting. They shall hold office for a term of two years and until the successor(s) are elected, or until death, resignation, or incapacitation. The supervisor of apprenticeship shall be the secretary of the WSATC.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-103, filed 10/31/01, effective 1/17/02.]

296-05-105
Officer duties.

(1) The chair shall preside over all meetings, conducting them in accordance with *Robert's Rules of Order* as modified by these rules and regulations. The chair may vote in all matters before the WSATC as a regular member and may participate in discussion of all matters before the WSATC. The chair may also have other powers and duties that are provided in these rules; and are usual or necessary with the office of the chair; and as provided in *Robert's Rules of Order*.

(2) The vice-chair shall preside over all WSATC meetings in the absence of the chair. When presiding, the vice-chair shall have all of the powers and duties of the chair.

(3) The secretary, with the assistance of a recording secretary, must take and keep minutes of all special and regular meetings on file in the supervisor's office. The secretary must forward copies of minutes of all meetings to all regular and ex officio members of the WSATC. The secretary must also make copies of the minutes of all meetings available to the public upon written request. The secretary may also have other powers and duties that are provided

in these rules or are usual or customary to the office of secretary; and as provided in *Robert's Rules of Order*.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-105, filed 10/31/01, effective 1/17/02.]

296-05-107**Additional duties for the supervisor-administrator of WSATC.**

(1) In addition to being the council secretary, the apprenticeship supervisor (supervisor) is the WSATC administrator. As WSATC administrator, the supervisor must:

- (a) Perform the duties listed in RCW 49.04.030;
- (b) Register all apprenticeship agreements that comply with the rules in this chapter;
- (c) Review apprenticeship programs and recommend cancellation of any committee program, or plant program previously registered which is not operated in conformity with its apprenticeship standards; and
- (d) Receive all documents concerning apprenticeship or training agreements (including revisions to) or any other matters affecting apprenticeship or training.

All written correspondence to the supervisor should be addressed to:

Supervisor of Apprenticeship and Training

Department of Labor and Industries

Apprenticeship Section

P.O. Box 44530

Olympia, Washington 98504-4530

(2) The supervisor and the supervisor's staff:

- (a) May be consulted on any matters concerning apprenticeship and training and will provide on request, any information concerning apprenticeship and training available to them.
- (b) Will conduct systematic reviews of the operation of all programs and investigate any discrepancies between the actual and required operations of any program. The supervisor will notify the noncompliant committee of any violation.
- (c) May recommend sanctions including cancellation of a program not in compliance with its approved program standards.
- (d) Assists in the resolution of any complaints against committees or other organizations administering apprenticeship agreements, which have been filed with the WSATC by apprentice(s) who have completed his/her initial probationary period.
- (e) Must investigate any discrepancies of all complaints as specified in WAC 296-05-009.
- (f) Conducts compliance reviews as specified in WAC 296-05-011.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-107, filed 10/31/01, effective 1/17/02.]

296-05-109
Merit awards.

The WSATC may issue awards when appropriate.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-109, filed 10/31/01, effective 1/17/02.]

296-05-200
Regular meetings.

(1) Each year, regular meetings of the WSATC shall be convened on the third Thursday of January, April, July, and October. These regular quarterly meetings shall be held at locations within the state of Washington. All meetings are open to the general public.

(2) Notice of each regular quarterly meeting shall be given to all WSATC members, ex officio members, and approved program sponsors.

In addition, notices of meetings may be sent to all persons, organizations, agencies, or interested parties whose presence is desired and to any newspaper, news service, television, radio station, or other interested parties who have requested notices of WSATC meetings. The supervisor must distribute the notice of the regular meeting at least thirty calendar days prior to the meeting date.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-200, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-200, filed 10/31/01, effective 1/17/02.]

296-05-203
Special meetings.

(1) Special meetings of the WSATC may be called at the request of the chair or by a majority of the WSATC members. To call a special meeting, a written notice of the meeting must be personally delivered or mailed to:

(a) Each member of the WSATC;

(b) All approved program sponsors; and

(c) Each general circulation newspaper, television or radio station which has on file with the WSATC or the supervisor a written request to be notified of special meetings.

In addition, notices of meetings may be sent electronically to all persons, organizations, agencies, and interested parties whose presence is desired.

(2) To be valid, the written notice must list the date, time and location of the meeting and specify the business to be transacted by the WSATC. The WSATC cannot take final action on any matter that is not specified in the written notice. Special meetings must be open to the general public and adhere to the same open meeting requirements that apply to the regular quarterly WSATC meetings.

(3) Notices of special meetings must be delivered personally or by mail at least seven calendar days before the specified time of the meeting.

(4) The exception is when a special meeting is called to consider rule changes according to chapter 34.05 RCW. In this case, the notice of the special meeting must be delivered at least twenty calendar days before the time specified in the notice.

(5) If the notice requirements in this section are not followed, any action taken by the WSATC at the special meeting will be null and void. However, the notice requirements can be waived if each regular WSATC member signs a written waiver of notice, at or prior to the meeting, and files it with the supervisor. With this filing, the notice shall be

considered waived by any WSATC member present when the meeting convenes. Rule changes may not be made at special meetings where the notice requirements have been waived unless the requirements of chapter 34.05 RCW have been satisfied.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-203, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-203, filed 10/31/01, effective 1/17/02.]

296-05-205**Petitions, requests, and correspondence submitted to the WSATC.**

(1) For the WSATC to act upon petitions or requests at a regular quarterly meeting, the petitions or requests must be submitted in writing to the supervisor at least forty-five calendar days prior to the date of the regular quarterly meeting. Any petitions or requests not submitted forty-five calendar days prior to a quarterly meeting must be deferred to the next regular quarterly meeting. If a petition or request is deferred, the supervisor must notify the petitioner.

(2) Generally, correspondence not related to apprenticeship and training agreements and meetings, petitions and requests, must be submitted in writing to the supervisor of apprenticeship at least fifteen business days before the quarterly meeting at which the WSATC's consideration is requested. However, if the WSATC determines that the correspondence is crucial to any deliberations regarding approval or disapproval of an apprenticeship agreement, the supervisor may waive this fifteen business day requirement.

(3) Noncrucial correspondence submitted less than fifteen business days before the quarterly meeting must be considered by the WSATC at the next quarterly meeting.

(4) When an apprenticeship committee petitions the council or the supervisor, only the signature of the elected chair and secretary of the committee shall be accepted as a valid signature unless the petitioning committee has asked the council to recognize and accept the signature of another person. A petition requesting the recognition of a signature other than that of the elected chair and secretary must be signed by a quorum of the members from the petitioning committee.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-205, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-205, filed 10/31/01, effective 1/17/02.]

296-05-207**Other regulations that apply to council meeting conduct.**

(1) All council meetings must be open to the general public. Members of the public cannot be required to register his/her name, give any information, or fulfill any condition prior to attending council meetings. All council meetings must be conducted according to the provisions of chapter 42.30 RCW, the Open Public Meetings Act and chapter 34.05 RCW, the Administrative Procedure Act. The following WSATC activities must take place in open public meetings:

- (a) All transactions of official business;
- (b) All commitments or promises;
- (c) All collective discussions;
- (d) All collective decisions; and
- (e) All council actions.

(2) The approval or disapproval of committee programs, plant programs, or amendments to those programs can only occur at regular quarterly meetings unless the council is responding to a court mandate, which can occur at a special meeting under WAC 296-05-203.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-207, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-207, filed 10/31/01, effective 1/17/02.]

296-05-209**Voting.**

(1) A quorum is two-thirds of the WSATC members entitled to vote.

(2) All council members appointed by either the director or the governor are voting members of the council. Ex officio members may not vote on any issue.

(3) To resolve tie votes, the chair shall establish a standing tie-breaker committee. The committee shall be comprised of an employer representative, an employee representative, and the public member on the WSATC. In case of a tie vote on any proposed standards brought before the WSATC, the tie-breaker committee shall meet or confer, review the record, and render a decision within thirty calendar days. The supervisor or a designee of the supervisor shall act as secretary to the committee and furnish all information necessary for a decision.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-209, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-209, filed 10/31/01, effective 1/17/02.]

296-05-211**Rules of order.**

Robert's Rules of Order shall prevail at all meetings unless otherwise provided for by these rules.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-211, filed 10/31/01, effective 1/17/02.]

296-05-213**Retroactivity.**

The WSATC may make any action or decision which it takes retroactive to the date of the previous business session.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-213, filed 10/31/01, effective 1/17/02.]

296-05-215**Limitations.**

Nothing in this part or in any apprenticeship agreement will operate to invalidate:

(1) Any apprenticeship provision in any collective bargaining agreement between employers and employees establishing higher apprenticeship standards; or

(2) Any special provision for veterans, minority persons, or women in the standards, apprentice qualifications or operation of the program, or in the apprenticeship agreement, which is not otherwise prohibited by law, executive order, or authorized regulation.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-215, filed 5/4/11, effective 7/25/11.]

296-05-300

Apprenticeship and training programs — Approval.

The WSATC is the body responsible for matters concerning apprenticeship and training in the state of Washington. The principal function of the WSATC is to approve, register, and regulate apprenticeship and training agreements. Persons or organizations desiring to institute an apprenticeship or training program must follow these steps:

(1) Organize an apprenticeship and training committee, if applicable, according to WAC 296-05-303 and file affidavits with the WSATC requesting that the committee be recognized.

(2) In conjunction with the proposed committee, persons or organizations desiring to institute an apprenticeship or training program must propose standards conforming to these rules and to chapter 49.04 RCW. In addition, the standards must include the composition of the committee and general rules that it will follow in administering the program. (The apprenticeship supervisor and department apprenticeship consultants are available to give assistance drafting standards.)

(3) The proposed committee and/or standards must be presented to the supervisor at least forty-five calendar days before the regular quarterly meeting at which the WSATC is requested to consider such proposed standards.

(4) At the regular quarterly meeting, the proposed committee and/or standards will be considered by the WSATC. The WSATC will:

- (a) Approve;
- (b) Approve provided the sponsor accepts the changes recommended by the WSATC; or
- (c) Disapprove.

At the regular quarterly meeting, the WSATC will allow changes to correct clerical errors. The addition of standard language will be allowed if authorized representatives of the sponsor are present and authorized to accept changes. At the regular quarterly meeting, the WSATC will not accept changes to the format, language, or provisions of the submitted program standards which are not reasonably consistent with previously approved program standards.

If the WSATC disapproves the standards, it shall direct the department to inform the sponsor in writing the reason for disapproval.

(5) Once the WSATC approves the program standards, they are provisionally registered for a period of one year and the sponsor is authorized to function and perform its duties as described in WAC 296-05-316.

(6) Objections shall be handled pursuant to WAC 296-05-008.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-300, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010 and 2001 c 204 (SHB 1234). 02-10-083, § 296-05-300, filed 4/29/02, effective 6/1/02. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-300, filed 10/31/01, effective 1/17/02.]

296-05-302

Apprenticeship committee/program approval process.

(4) A committee is responsible for:

- (a) The day-to-day operations of the apprenticeship and training program;
- (b) Operating the program according to WSATC approved standards;
- (c) Accepting or rejecting applicants for apprenticeship or training;
- (d) Registering approved applicants with the supervisor;
- (e) Removing apprentices from the program as provided by the approved program standards;
- (f) Informing the supervisor of any matters that affect the standing of individuals as apprentices; and
- (g) Entering into agreements with other apprenticeship committees for the use of apprentices by training agents that are working outside their approved geographic area served.

The WSATC will only recognize apprentices registered with the supervisor.

(5) Committees approved by the WSATC must offer training opportunities on an equal basis to all employers and apprentices including all rights, appeals, and services available in the existing apprenticeship program. All existing committees that represent multiple employer or employer associations, except for committees that represent individual or plant programs, are expected to provide access to apprenticeship and training opportunities to employers not currently participating in the program. Those opportunities must:

- (a) Ensure that apprentices work only for approved training agents;
- (b) Provide training at a cost equivalent to that incurred by currently participating employers and apprentices;
- (c) Grant equal treatment and opportunity for all apprentices;
- (d) Offer reasonable working and training conditions and apply those conditions to all apprentices uniformly and equally;
- (e) Not require an employer to sign a collective bargaining agreement as a condition of participation in an apprenticeship program;
- (f) Require all employers requesting "approved training agent" status to comply with a WSATC approved agreement and all federal and state apprenticeship rules and the appropriate apprenticeship standards. (The training agent shall employ only registered apprentices when training for a given occupation);
- (g) Require sponsors to approve training agent agreements and to have training agents sign a training agent agreement. The sponsor must furnish the department with a copy of the agreement and/or the list of approved training agents within thirty calendar days of committee approval; and
- (h) Require sponsors who rescind "approved training agent" agreements and/or the list of approved training agents to notify the department that they have done so within thirty calendar days of said action.

(6) If an existing committee fails to or refuses to offer apprenticeship and training opportunities to all employers, the WSATC may take action to remove the restrictions to access in order to comply with the intent of chapter 49.04 RCW and these rules. Action may include, but is not limited to, the decertification of the existing committee and recognition of a new committee.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-303, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010. 05-04-093, § 296-05-303, filed 2/2/05, effective 4/1/05. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-303, filed 10/31/01, effective 1/17/02.]

296-05-305**Apprenticeable occupations.**

An apprenticeable occupation is a skilled occupation which possesses all of the following characteristics:

- (1) Involves skills that are customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning.
- (2) Is clearly identified and commonly recognized throughout an industry.
- (3) Is not part of an occupation previously recognized by the registering agency as apprenticeable, unless such part is practiced industry wide and is identifiable and distinct.
- (4) Involves manual, mechanical, or technical skills and knowledge which require a minimum of two thousand hours of on-the-job work experience.
- (5) Requires a minimum of one hundred forty-four hours of related instruction per year to supplement on-the-job work experience.
- (6) Involves skill sufficient to establish normal career sustaining employment.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-305, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-305, filed 10/31/01, effective 1/17/02.]

296-05-307**Types of apprenticeship agreements recognized by the WSATC.**

The WSATC acting according to RCW 49.04.060, recognizes the following types of written apprenticeship agreements (statements) that describe the apprenticeship training conditions:

- (1) Agreements between an association of employers and an organization of employees.
- (2) An agreement between an employer and an employee organization.
- (3) An employer's statement when there is no bona fide employee organization in the plant affected by the agreement.
- (4) An agreement between an apprenticeship program and an individual apprentice.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-307, filed 10/31/01, effective 1/17/02.]

296-05-309**Apprenticeship programs approved by the WSATC.**

The following apprenticeship programs may be approved by the WSATC. All the following programs with the exception of individual waiver programs must be administered by a committee. A committee may be either joint or nonjoint, as defined in WAC 296-05-303(2).

- (1) Group-joint, or area joint. A program where there is a labor organization. These programs are jointly sponsored by a group of employers and a labor organization. They are administered by employer and employee representatives from an apprenticeship and training committee composed equally from management and labor.
- (2) Individual-joint. A program where there is a labor organization. These programs are jointly sponsored by an individual employer and a labor organization. They are administered by employer and employee representatives from an apprenticeship and training committee composed equally from management and labor.

(3) Group nonjoint, or area group. A program where there is no labor organization. These programs are sponsored by an employer association(s) administered by an apprenticeship committee.

(4) Individual nonjoint. A program where there is no labor organization. These programs are sponsored and administered by an individual employer.

(5) Group waiver. These programs involve an employer association(s) and a labor organization. Either the employer group or the labor organization voluntarily waives participation in the program by notifying the other party in writing.

(6) Individual waiver. These programs involve an individual person, company, plant, firm, and a labor organization. Either management or labor voluntarily waives participation by notifying the other party in writing.

(7) Plant. A program for a single physical location or a group of physical locations owned by the sponsor. The WSATC, based on the authority in RCW 49.04.040, assumes jurisdiction and serves as the committee for appeals and disposition of complaints only. The apprenticeship agreement must specify the number of required hours for completion of the apprenticeship. The hours specified must represent at least two thousand hours of reasonably continuous employment. That agreement must conform to the applicable provisions of chapter 49.04 RCW and these rules.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-309, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW, 01-22-055, § 296-05-309, filed 10/31/01, effective 1/17/02.]

296-05-311

On-the-job training programs.

On-the-job training programs may be set up in the same manner as apprenticeship programs with any exceptions authorized by the WSATC. However, no on-the-job training program must be established or authorized where there is a parallel apprenticeship program in existence. An on-the-job training program shall be any program that requires two thousand or less hours of employment for completion. All of the rules in this chapter that apply to apprenticeship agreements and programs also apply to on-the-job training programs except on-the-job training programs will be approved by the supervisor subject to the review of the WSATC.

A sample standard for an on-the-job training program is available from the supervisor.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW, 01-22-055, § 296-05-311, filed 10/31/01, effective 1/17/02.]

296-05-313

Apprenticeship committees — Composition.

(1) Apprenticeship committees must be composed of an equal number of management and nonmanagement representatives.

(2) For apprenticeship committees that represent one occupation, at least fifty percent of the members of a committee must be occupationally qualified by education and experience in the specific occupation for which the committee is responsible. A committee member, who possesses journey level status as defined in WAC 296-05-003, is occupationally qualified. The committee must be able to verify the occupational qualifications of the members.

(3) For apprenticeship committees that represent multiple occupations, the committee members must either:

(a) Be occupationally qualified by education and experience in the specific occupations for which the committee is responsible and must be able to verify the occupational qualifications of the members; or

(b) Be known to represent the interests of the multiple occupations served.

(4) All committee members must be provided copies of the applicable apprenticeship standards, chapter 49.04

RCW, and these rules, and directed to familiarize themselves with the information contained therein.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-313, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-313, filed 10/31/01, effective 1/17/02.]

296-05-314**Nonjoint and waiver committees — Additional requirements.**

- (1) The WSATC shall only recognize nonjoint and waiver standards for a specific occupation or directly related occupations.
- (2) When multiple related occupations are approved on a single standard, each occupation shall be considered as an individual standard.
- (3) Unrelated occupations shall be submitted under separate standards.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-314, filed 5/4/11, effective 7/25/11.]

296-05-315**Term of apprenticeship — Standards requirement.**

The term of apprenticeship for an individual apprentice may be measured through the completion of the industry standard for on-the-job learning (at least two thousand hours) (time-based approach), the attainment of competency (competency-based approach), or a blend of the time-based and competency-based approaches (hybrid approach).

- (1) The time-based approach measures skill acquisition through the individual apprentice's completion of at least two thousand hours of on-the-job learning as described in a work process schedule.
- (2) The competency-based approach measures skill acquisition through the individual apprentice's successful demonstration of acquired skills and knowledge, as verified by the program sponsor. Programs utilizing this approach must still require apprentices to complete an on-the-job learning component of registered apprenticeship. The program standards must address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies.
- (3) The hybrid approach measures the individual apprentice's skill acquisition through a combination of specified minimum number of hours of on-the-job learning and the successful demonstration of competency as described in a work process schedule.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-315, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-315, filed 10/31/01, effective 1/17/02.]

296-05-316**Apprenticeship agreements — Standards requirements.**

The WSATC shall have the authority to develop, administer, and enforce program standards for the operation and success of an apprenticeship and training program.

The sponsor's proposed program standards must include a list of duties and responsibilities of the program sponsor reasonably consistent with other approved program standards.

All apprenticeship agreements must comply with the approved program standards, chapter 49.04 RCW, and these rules. The standards of apprenticeship agreements must include the following:

(1) A statement of the occupation to be taught and the required hours for completion of apprenticeship which must not be less than two thousand hours of reasonably continuous employment.

(2) A statement identifying the program sponsor, establishing the apprenticeship committee and enumerating the sponsor's and committee's duties and responsibilities. This statement must include provisions to:

(a) Elect a chair and a secretary from employer and employee representatives of the committee.

Exception: This provision is not necessary for a plant program.

(b) Convene at least three annual regular meetings of the program sponsor and apprenticeship committee. The meetings shall be at least three times per year, be attended by a quorum of committee members (as defined in the approved program standards), be documented with minutes which must be periodically submitted to the department and made available to the WSATC upon request. Conference call meetings may be conducted in lieu of regular meetings but must not exceed the number of attended meetings and no disciplinary action shall be taken at conference call meetings.

(c) Explain the program sponsor's request for apprentices in the area covered by the apprenticeship standards established under these rules and a plan to include reasonable continuous employment.

(d) Establish minimum standards of education and skilled occupational experience required of apprentices.

(e) Rotate apprentices in the various processes of the skilled occupation to assure a well-rounded, competent worker.

(f) Determine the adequacy of an employer to furnish proper on-the-job training in accordance with the provisions of the approved standards.

Exception: This does not apply to plant programs.

(g) Recommend competent instructors as defined in WAC 296-05-003 and related/supplemental instruction in accordance with state board for community and technical college requirements.

(h) Coordinate related/supplemental instruction with on-the-job work experience.

(i) Hear and adjust all complaints of violations of apprenticeship agreements.

(j) Adopt, as necessary, program rules to administer the apprenticeship program in compliance with its standards, chapter 49.04 RCW, and these rules.

(k) Periodically review and evaluate apprentices before advancement to the apprentice's next wage progression period.

(l) Maintain apprenticeship records and records of the administrative program as may be required by the WSATC, chapter 49.04 RCW, and these rules. (See WAC 296-05-318.)

(3) The following Equal Employment Opportunity Pledge:

"The recruitment, selection, employment and training of apprentices during their apprenticeship shall be without discrimination because of race, sex, color, religion, national origin, age, disability or as otherwise specified by law. The sponsor shall take positive action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required by the rules of the Washington State Apprenticeship and Training Council and Title 29, Part 30 of the Code of Federal Regulations."

(4) When applicable, an equal employment opportunity plan and selection procedures.

(5) A numeric ratio of apprentices to journey-level workers may not exceed one apprentice per journey-level worker. It must be consistent with proper supervision, training, safety, continuity of employment, and applicable provisions in collective bargaining agreement, if any. The ratio must be described in the program standards and shall be specific and clear as to application in terms of job site, work group, department, or plant. An exception to this

requirement may be granted by the WSATC.

(6) A statement of the related/supplemental instruction including content, format, and hours of study per year. Related/supplemental instruction shall not be less than one hundred forty-four hours per year and shall be defined in the standards per:

- (a) Twelve-month period from date of registration; or
- (b) Defined twelve-month school year; or
- (c) Two thousand hours of on-the-job training.

If a sponsor does not prescribe hours of study, the WSATC shall adopt (a) of this subsection for compliance purposes.

(7) An attendance policy which includes the following provisions:

(a) If the apprentice fails to fulfill the related/supplemental instruction obligations, the sponsor may withhold the apprentice's periodic wage advancement, suspend or cancel the apprenticeship agreement.

(b) That time spent in related/supplemental instruction classes shall not be considered as hours of work and the apprentice is not required to be paid for the classroom time.

(c) That all hours of actual attendance by the apprentice in related/supplemental instruction classes must be reported to the department on a quarterly basis.

(d) That the hours reported to the department will clearly identify unpaid, supervised related/supplemental instruction time versus paid or unsupervised time for industrial insurance purposes.

(8) A provision to ensure that the sponsor provides for instruction of the apprentice during the apprentice's related/supplemental instruction in safe and healthful work practices in compliance with the Washington Industrial Safety and Health Act, and applicable federal and state regulations.

(9) A provision for a formal agreement between the apprentice and the sponsor and for registering that agreement with the supervisor.

(10) A provision for the timely notice to the department of all requests for disposition or modification of apprenticeship agreements including: Certificate of completion; additional credit; suspension; military service; reinstatement; cancellation; and corrections.

(11) A provision for granting of advanced standing or credit for demonstrated competency, acquired experience, training, education, or skills in or related to the occupation and:

(a) In licensed trades regulated by electrical, plumbing, and elevator programs at the department, apprenticeship sponsors may give advanced credit or grant hours to apprentices only up to the hours that have been approved by the appropriate licensing entity prior to the sponsor granting credit to the registered apprentice. Programs are not required to use all hours granted by the regulatory section of the department.

(b) All apprenticeship programs need to ensure that a fair and equitable process is applied to apprentices seeking advanced standing or credit.

(12) A provision for the transfer of an apprentice from one training agent to another training agent or the sponsor in order to provide to the extent possible, continuous employment and diversity of training experiences for apprentices.

(13) A provision for the amendment of the standards or deregistration of the program. This provision must comply with chapter 49.04 RCW, these rules, and WSATC policies and procedures.

(14) An apprenticeship appeal procedure in compliance with chapters 49.04, 34.05 RCW, and these rules.

(15) A statement of the processes within the occupation in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

(16) A statement of the number of hours to be spent by the apprentice in work and the number of hours to be

spent in related/supplemental instruction. For competency based and hybrid models as defined in WAC 296-05-315, the program standards must address how on-the-job learning will be integrated into the program, describe competencies, and identify an appropriate means of testing and evaluation for such competencies.

(17) A statement of the minimum qualifications for persons entering the apprenticeship program including the age of the apprentice which may not be less than sixteen years of age. Note: Seventeen years is the minimum age allowed for applicants registering in building and construction trade occupations. All exceptions to minimum qualifications, if any, must be clearly stated and applied in a nondiscriminatory manner.

(18) Provision that the services of the supervisor and the WSATC may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or as required by the established apprenticeship standards procedure.

(19) Provision that if an individual training agent is unable to fulfill its obligation under the apprenticeship agreement, it will transfer the obligation to the program sponsor.

(20) Such additional standards as may be prescribed in accordance with the provisions of this chapter.

(21) Disciplinary procedures and criteria for apprentices. The procedures may include a committee-imposed disciplinary probation during which the committee may according to expressed criteria:

(a) Withhold periodic wage advancements;

(b) Suspend or cancel the apprenticeship agreement;

(c) Take further disciplinary action; or

(d) The disciplinary procedures must include a notice to the apprentice that the apprentice has the right to file an appeal, of the committee's action, to the WSATC.

(22) A provision for an initial probation which the WSATC or the supervisor of apprenticeship may terminate an apprenticeship agreement at the written request by any affected party. The initial probationary period cannot exceed twenty percent of the term of the program, or one year from the date of registration, whichever is shorter, unless an exemption has been granted for longer probationary periods as specified by Civil Service or law. The initial probationary period must be expressed in hours of employment. During the initial probationary period, the apprenticeship agreement may be terminated by the sponsor or the apprentice without a hearing or stated cause. An appeal process is available to apprentices who have completed the initial probationary period.

(23) Provisions prohibiting discrimination on the race, sex, color, religion, national origin, age, disability or as otherwise specified by law during all phases of apprenticeship.

(24) Provisions to ensure adequate records of the selection process are kept for a period of at least five years and are available to the WSATC or its representative on request. ("Adequate records" means at least a brief summary of any interviews and the conclusions reached on each of the specific factors which are part of the total judgment concerning each applicant.)

(25) Provisions to ensure that local committee rules and regulations be consistent with these rules and the applicable apprenticeship agreement.

(26) Provisions to ensure any proposed standards for apprenticeship are reasonably consistent with any standards for apprenticeship already approved by the WSATC for the industry occupation in question. The goal is to achieve general statewide uniformity of standards in each industry occupation. Proposed standards for a new program shall be considered consistent if they are equal to or exceed the minimum number of hours approved by the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship for a given occupation. If the United States Department of Labor has not established a minimum number of hours for an occupation, the WSATC may utilize its discretion to determine the minimum number of hours that must be achieved. In addition, the course content and delivery method must be designed to achieve reasonably consistent skills as existing standards within the state for that industry occupation.

(27) A provision to ensure progressively increasing wage scales based on specified percentages of journey-level wage. Sponsors must submit the journey-level wage at least annually or whenever changed to the department. Wage reports may be submitted on a form provided by the department.

A sample apprenticeship agreement and a standard form for program standards are available from the supervisor.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-316, filed 5/4/11, effective 7/25/11. Statutory Authority: Chapter 49.04 RCW, 07-22-096, § 296-05-316, filed 11/6/07, effective 1/1/08. Statutory Authority: RCW 49.04.010, 05-10-087, § 296-05-316, filed 5/4/05, effective 6/15/05. Statutory Authority: RCW 49.04.010 and 2001 c 204 (SHB 1234), 02-10-083, § 296-05-316, filed 4/29/02, effective 6/1/02. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW, 01-22-055, § 296-05-316, filed 10/31/01, effective 1/17/02.]

296-05-317

Related/supplemental instruction.

The WSATC may approve apprentice-related/supplemental instruction for apprenticeable occupations based on recommendations from the state board for community and technical colleges.

Program sponsors may allow credit for previously completed related/supplemental instruction under WAC 296-06-316(11).

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-317, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW, 01-22-055, § 296-05-317, filed 10/31/01, effective 1/17/02.]

296-05-318

Records required by the WSATC.

Each sponsor must keep adequate records including, but not limited to, the following:

- (1) Selection of applicants:
 - (a) A summary of the qualifications of each applicant;
 - (b) The basis for evaluation and for selection or rejection of each applicant;
 - (c) The records pertaining to the interviews of applicants; and
 - (d) The original application for each applicant.
- (2) Operation of the apprenticeship program:
 - (a) On-the-job training assignments;
 - (b) Promotion, demotion, layoff, or termination;
 - (c) Rates of pay or other forms of compensation or conditions of work;
 - (d) Hours of training provided on-the-job by work process and in related/supplemental instruction in accordance to the sponsor's approved plan;
 - (e) Signed and approved training agency agreement forms; and
 - (f) Any other records needed by WSATC to determine compliance with these rules.
- (3) Equal employment opportunity plans:
 - (a) A copy of the program's complete equal employment opportunity plan. All data and analysis made to determine enrollment deficiencies;
 - (b) Evidence that equal employment opportunity plans are reviewed on an annual basis; and

(c) Evidence that equal employment opportunity plans, goals and timetables are updated when necessary.

(4) Documentation necessary to establish a sponsor's good faith effort in implementing its equal employment opportunity plan:

- (a) Who was contacted;
- (b) When the contacts were made;
- (c) Where the contacts occurred;
- (d) How the contacts were made; and
- (e) The content of each contact.

(5) Qualification standards: Evidence that the sponsor's qualification standards meet the requirements of WAC 296-05-316.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-318, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-318, filed 10/31/01, effective 1/17/02.]

296-05-319

Apprenticeship agreement — Individual registration.

All individual agreements are subject to the approval of the supervisor and must be registered with the supervisor.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-319, filed 10/31/01, effective 1/17/02.]

296-05-321

Apprenticeship agreement — Cancellation.

The supervisor may recommend that an agreement and program be canceled when a program does not comply with these rules or the program's standards. The procedures for cancellation are as follows:

(1) When any program is found to be operating inconsistently or contrary to these rules or its established program standards, the supervisor must notify the offending committee, person, firm or agency of the violation(s).

(2) The offending committee, firm, or agency has sixty calendar days to correct the violation(s).

(3) If the supervisor does not receive notice, within sixty calendar days, that action has been taken to correct the violations, the supervisor may recommend cancellation of the apprenticeship or training program and agreement to the WSATC.

(4) A recommendation to cancel a program must be in writing, addressed to each WSATC member, and detail the reasons for the recommendation.

(5) A copy of the recommendation, along with a notice that the WSATC will consider the recommendation, must be mailed to the last known address of each member of the committee administering said program, or to those persons responsible for the program.

(6) The WSATC must consider the recommendation at its next regularly scheduled quarterly meeting. However, at least thirty calendar days must pass between the date of the recommendation and the date of the regular quarterly meeting. If thirty calendar days have not passed, the recommendation must be considered at the subsequent regular quarterly meeting.

(7) At the regular quarterly meeting, all interested person(s) may present evidence or testimony regarding the

recommendation.

(8) The WSATC must act on the recommendation by a majority vote of the members present and voting.

(9) Once the WSATC has voted, it must give written notification of its decision to all interested parties along with the reasons supporting it.

(10) The cancellation of any program or agreement automatically cancels any agreement(s) registered under them. However, any organization or firm not responsible for the violations that caused the cancellation may petition the WSATC for approval of the canceled agreement or program as a new program.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-321, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-321, filed 10/31/01, effective 1/17/02.]

296-05-323

Certificate of completion.

At the request of the apprenticeship committee, the WSATC shall issue certificates of completion. An affidavit of the secretary, chair, or authorized official of the committee concerned must accompany the request. The affidavit must state that the apprentice was registered with the department and an active participant of that committee's program for at least six months and has successfully completed his/her apprenticeship. These may be submitted on a form provided by the department.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-323, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-323, filed 10/31/01, effective 1/17/02.]

296-05-325

Union waiver.

(1) When apprenticeship programs allowing for the substantive union participation are proposed for registration by an employer or employers' association and the union does participate, the proposal must be accompanied by a written statement from the union supporting the registration. Such a statement is referred to as a "no objection" statement.

(2) When there is no evidence of any union participation, the employer or employers' association must simultaneously furnish to the union that serves as the collective bargaining agent of the employees to be trained, copies of the registration application and the apprenticeship program. Before taking a final action on the application, the supervisor must give the union a reasonable time period to respond. (A "reasonable time" shall be within forty-five calendar days before final action on the application for registration and/or approval.) If the union fails to comment within the allotted time period, it will have waived its right to participate in the program.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-325, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-325, filed 10/31/01, effective 1/17/02.]

296-05-327

Reciprocity.

(1) For state purposes, reciprocity means that the WSATC may recognize and approve out-of-state apprenticeship programs and standards if certain conditions are met and the out-of-state sponsoring entity requests it. The conditions shall include consideration of, but not be limited to, the following:

(a) Registration with any recognized state apprenticeship agency/council or with the United States Department of

Labor, Employment and Training Administration, Office of Apprenticeship according to the requirements of 29 CFR Part 29;

(b) Present reasonably consistent apprenticeship standards, working conditions and apprentice to journey worker ratios; and

(c) Recognition of occupations as apprenticeable.

The terms and conditions of reciprocity may be suspended or revoked by the WSATC when it is determined that an apprenticeship program sponsor or approved training agent/approved employer is not operating in a manner consistent with these requirements.

(2) For federal purposes, the WSATC will accord reciprocal approval to apprentices, apprenticeship programs and standards that are registered in other states by the office of apprenticeship or a registration agency if such reciprocity is requested by the apprenticeship program sponsor. All program sponsors seeking reciprocal approval for federal purposes must meet the wage and hour provisions and apprentice ratio standards of Washington state.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-327, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-327, filed 10/31/01, effective 1/17/02.]

296-05-329

Certification of apprentice labor standard on renewable energy projects.

The WSATC shall establish the minimum level of apprentice labor hours to qualify for the renewable energy credit pursuant to RCW 19.285.040 (2)(h)(ii) and provide, upon sufficient evidence presented, a letter certifying that the renewable energy project met the apprentice labor standard. This section outlines information and required elements for the WSATC apprentice labor standard certification process. These provisions shall be in effect for projects that commence on or after July 1, 2011.

(1) The minimum level of Washington approved apprentice labor hours necessary to qualify for WSATC apprentice labor certification is fifteen percent of the total labor hours used in the construction of the renewable energy project (WAC 194-37-120(1)).

(a) "Washington approved" extends to reciprocally recognized programs.

(b) The WSATC adopts the definition of "labor hours" as presented in RCW 39.04.310(3) with the noted exception below:

Exception: Hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements must be reported and included in the total labor hours if such individual is counted in satisfying the required apprentice to journey supervision ratio as stated in the standards of apprenticeship.

(c) The WSATC will defer to the prevailing wage statute (chapters 39.04 and 39.12 RCW and 296-127 WAC) as it defines "work" on a site.

(d) Apprentice registration number and occupation title must be provided in tracking documentation for all apprentices on the project.

(2) A letter of intent to request the apprentice labor standard certification is required within forty-five days of the start of on-site construction for a generation facility or work on incremental efficiency improvements. Send letters of intent to:

Washington State Apprenticeship & Training Council

Attn: Program Manager, Apprenticeship Section

P.O. Box 44530

Olympia, WA 98504-4530

Include the following information with the letter of intent:

- (a) Name and location of the renewable energy project;
- (b) A description of the scope of the project and estimated total labor hours;
- (c) Anticipated start and completion dates;
- (d) Anticipated date for final records to be submitted to the department; and
- (e) Plan to record all apprentice and journey labor hours by occupation and employer for the project.

The WSATC may grant exceptions to the letter of intent requirement for a period of two years from the effective date of this rule.

(3) For the WSATC to act upon the request for certification of apprentice labor standard at a regular quarterly meeting, the request and documentation must be submitted in writing to the supervisor at least forty-five calendar days before the next regular quarterly meeting. Documentation required includes:

- (a) The name of each registered apprentice, his/her occupational title and apprentice registration number;
- (b) The number of apprentices and labor hours worked, categorized by occupational title and employer;
- (c) The number of journey level workers and labor hours worked, categorized by occupational title and employer;
- (d) Copies of weekly or monthly reporting forms used to capture the required information throughout the project duration. This must be supported by certified payroll records (electronic copies are acceptable); and
- (e) A statement affirming that reported hours reflect all hours worked on the project as defined in subsection (1)(b) of this section.

Sample affirmation statement: On the (insert name of project), I do hereby affirm that the reported hours presented with this letter reflect all labor hours as defined in WAC 296-05-329 (1)(b) for this project.

(4) The department will review the apprentice labor standard request and supportive records and make a recommendation to the WSATC. Following consideration and action by the WSATC, the chair of the WSATC will provide a letter to the requesting party within thirty calendar days either:

- (a) Certifying that the project met the apprentice labor standard of at least fifteen percent of the total labor hours;
- (b) Denying the request for certification and providing the reasons for denial; or
- (c) Requiring additional information for reconsideration of the request at the next regularly scheduled meeting.

(5) The Washington department of labor and industries, apprenticeship section will maintain a list of renewable energy projects that achieve fifteen percent cumulative level of apprenticeship labor.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-329, filed 5/4/11, effective 7/25/11.]

296-05-400

Equal employment opportunity plan — Purpose, scope and authority.

The WSATC's equal employment opportunity plan is based on the statutory authority granted in chapter 49.04 RCW and according to the provisions of 29 CFR Part 30. The purpose of the equal employment opportunity plan is to promote equality of opportunity in apprenticeship by:

- Prohibiting discrimination in apprenticeship programs based on race, sex, color, religion, national origin, age disability or as otherwise specified by law;
- Requiring equal employment opportunities in apprenticeship programs; and
- Coordinating the WSATC's equal employment opportunity programs with other affirmative action policies and procedures and equal opportunity programs.

The following sections contain the policies and procedures to promote equality of opportunity and equity of treatment of apprentices in apprenticeship programs approved by the WSATC. These policies and procedures are to be used to:

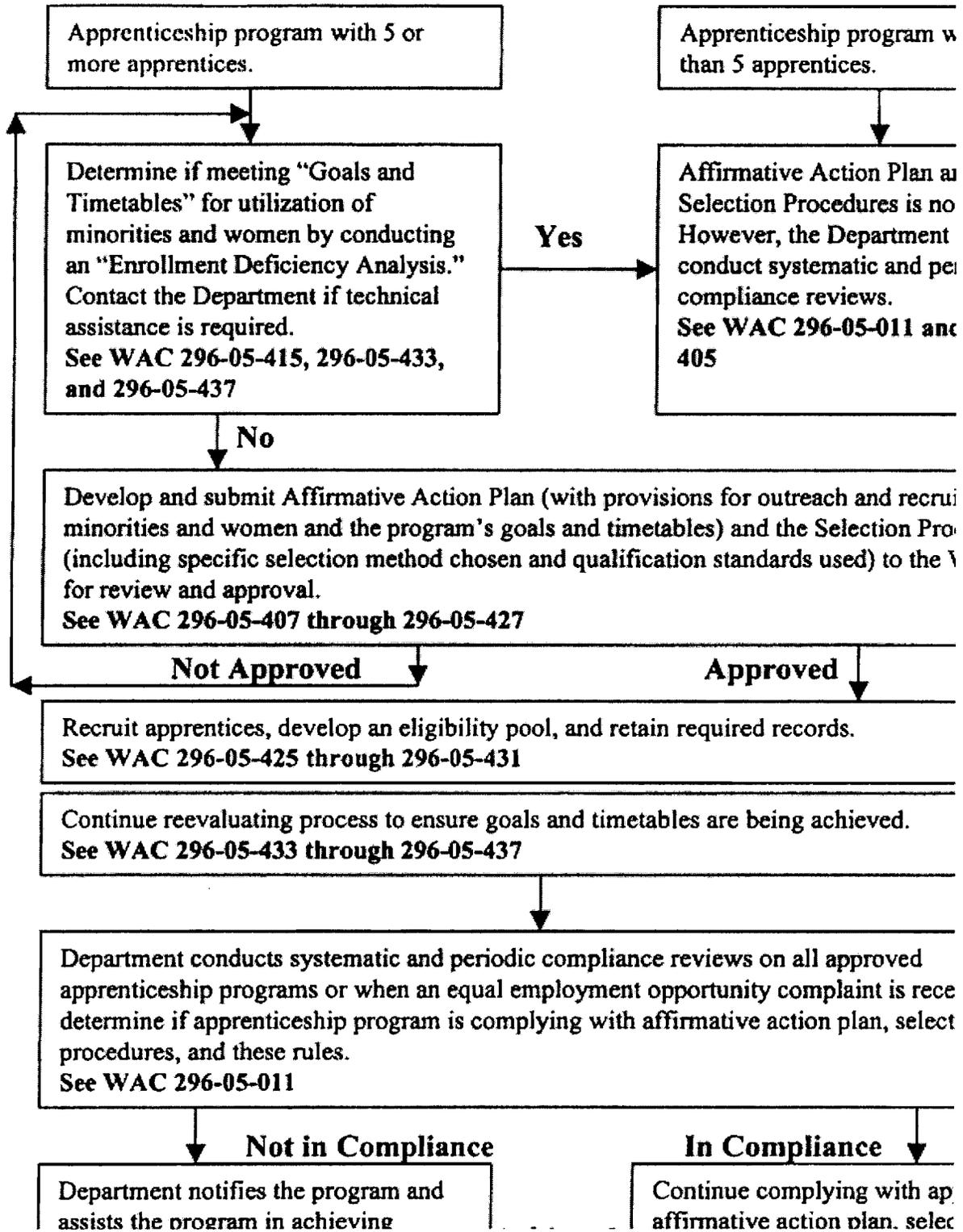
- Recruit and select apprentices;
- Review and revise apprenticeship programs;
- Process equal employment opportunity complaints;
- Take corrective action when appropriate;
- Deregister noncomplying apprenticeship programs; and
- Continue recognition or withdraw recognition of apprenticeship programs.

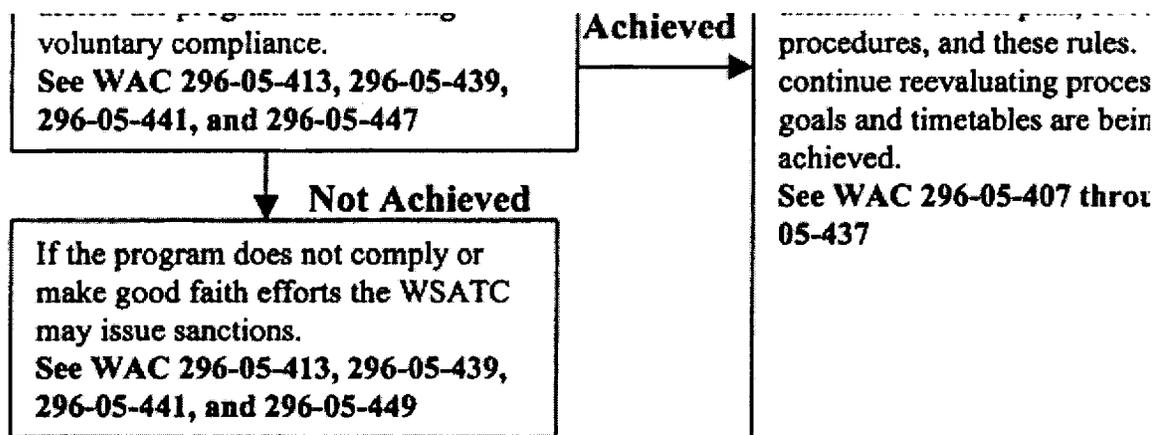
An equal employment opportunity program must not be used to discriminate against any qualified applicant or apprentice on the basis of race, sex, color, religion, national origin, age, disability or as otherwise specified by law.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-400, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW, 01-22-055, § 296-05-400, filed 10/31/01, effective 1/17/02.]

296-05-402**Equal employment opportunity process.**

Equal Employment Opportunity Proc





[Statutory Authority: RCW 49.04.010 and 2001 c 204 (SHB 1234), 02-10-083, § 296-05-402, filed 4/29/02, effective 6/1/02. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-402, filed 10/31/01, effective 1/17/02.]

296-05-403 Definitions for Part D.

The following definitions are to be used with this part.

Underutilization: Enrolling minorities and women in a ratio not proportionate to the participation of minorities and women that is representative of the geographical region served.

Women or female: As used in Part D of this chapter refers to minority women and nonminority women.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-403, filed 10/31/01, effective 1/17/02.]

296-05-405 Exceptions to the requirement for adopting an affirmative action plan and a selection procedure.

(1) A sponsor is not required to adopt an affirmative action plan or a selection procedure if:

- (a) It has fewer than five apprentices; or
- (b) The program is determined by the WSATC to be in compliance with an approved equal employment opportunity program. An approved program is one which:
 - (i) Provides for selection of apprentices;
 - (ii) Provides for affirmative action in apprenticeship;
 - (iii) Includes goals and timetables for participation of minorities and women in the labor force in apprenticeship which meet or exceed the requirements of WAC 296-05-415; and
 - (iv) Meets the requirements of the following laws:

- Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000, et seq.);
- The regulations implementing 42 U.S.C. 2000, et seq.;
- Executive Order 11246 as amended; and
- The regulations (41 CFR Part 60) implementing Executive Order 11246.

(2) A program sponsor must submit satisfactory evidence of its qualification for the exception to the WSATC. If the program sponsor designed the apprenticeship program or the equal opportunity program to circumvent the requirements of these rules, the program will not qualify for an exception.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-405, filed 10/31/01, effective 1/17/02.]

296-05-407

Apprenticeship program sponsor's obligations.

(1) A sponsor of an approved apprenticeship program must:

(a) Promote equal opportunity in its apprenticeship program; and

(b) Recruit, select, employ and train apprentices without discrimination based on race, sex, color, religion, national origin, age, disability or as otherwise specified by law.

(2) A sponsor of an approved apprenticeship program with five or more apprentices must uniformly apply all rules related to apprentices. Such rules include, but are not limited to:

- Equality of wages;
- Periodic advancement;
- Promotion;
- Assignment of work;
- Job performance;
- Rotation among all work processes for the occupation;
- Imposition of penalties or other disciplinary action; and
- All other aspects of the apprenticeship program administered by the program sponsors.

(3) Adopt and implement an equal employment opportunity plan and selection procedure as required by chapter 49.04 RCW, 29 CFR Part 30, and these rules unless the approved apprenticeship program qualifies for an exception (see WAC 296-05-405).

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-407, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-407, filed 10/31/01, effective 1/17/02.]

296-05-409

Affirmative action information required by WSATC.

In addition to the program standards required by WAC 296-05-316, program sponsors seeking new program registration and approval by the WSATC must submit the following:

- (1) The proposed affirmative action plan;
- (2) The proposed selection procedures; and
- (3) Any other information about the sponsor's equal employment opportunity plan required by the WSATC.

The affirmative action plan and additional information is considered in conjunction with the program standards in the WSATC's decision whether to approve or disapprove an apprenticeship program. If the WSATC disapproves the apprenticeship program, it shall direct the department to inform the sponsor in writing the reason for disapproval.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-409, filed 10/31/01, effective 1/17/02.]

296-05-411

Affirmative action plan.

An approved affirmative action plan must:

- (1) Be in writing.
- (2) Be more than passive nondiscrimination.
- (3) Include procedures, methods and programs to:
 - (a) Clearly identify present and potential minority and female apprentices.
 - (b) Establish affirmative action goals and timetables.
 - (c) Equalize opportunity in apprenticeship to allow full utilization of the work potential of minorities and women.
 - (d) Assure equal opportunity in apprenticeship for all individuals participating in or seeking entrance into Washington's labor force.
- (4) Include provisions for outreach and positive recruitment to increase the participation of minorities and women in apprenticeship programs by expanding and promoting apprenticeship opportunities to minorities and women. (See WAC 296-05-413.)

Nothing in a sponsor's approved affirmative action plan may be used to discriminate against any qualified applicant or apprentice on the basis of race, sex, color, religion, national origin, age, disability or as otherwise specified by law.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-411, filed 10/31/01, effective 1/17/02.]

296-05-413

Outreach and recruitment requirements — Specific.

To gain approval, an equal employment opportunity plan must include the following specific provisions for outreach and recruitment criteria:

- (1) To increase minority and female participation in apprenticeship, program sponsors are expected to strengthen program outreach and recruitment efforts. The equal employment opportunity plan must specify the activities they will use to achieve this result.
- (2) The program sponsor is not necessarily required to include all of the listed activities in its equal employment opportunity program. The WSATC, when approving the sponsor's equal employment opportunity plan, will determine the number of specific activities a sponsor must implement to satisfy this outreach and recruitment requirement. The

WSATC will consider all circumstances including the size and type of the program and its resources. When special circumstances exist, the WSATC may provide financial or other assistance it deems necessary to implement the requirements of this section from any funds made available to it for such purpose.

(3) Examples of positive outreach and recruitment activities are:

(a) Distributing information about the nature of apprenticeship programs, program admission requirements, current apprenticeship opportunities, sources of apprenticeship applications, and the equal opportunity policy of the sponsor.

For programs only accepting applications at specific intervals, such information shall be disseminated at least thirty calendar days in advance of each application date. For programs that accept applications throughout the year, this information must be distributed at least semiannually.

To be effective, the information described in this section must be given to the WSATC, local schools, employment service offices, women's centers, outreach programs and community organizations which effectively reach minorities and women. Also it must be published in newspapers which are circulated in the minority community and among women as well as the general areas in which the program sponsor operates.

(b) Participating in workshops conducted by employment service agencies, school districts, and community based organizations to increase apprenticeship program awareness of apprenticeship opportunities.

(c) Cooperating with local school districts, vocational education systems, and school employees to develop programs for preparing students to meet the standards and criteria required to qualify for entry into apprenticeship programs.

(d) Increasing awareness of a sponsor's equal opportunity policy within the sponsor's organization. The goal of this increased awareness within the sponsor's organization is to foster understanding, acceptance, and support among the sponsor's various officers, supervisors, employees, employers, and members. This is to encourage the necessary active assistance in achieving the program's obligations required by these rules.

(e) Participating in existing outreach programs whose focus is the recruitment and preparation of minority and female apprenticeship applicants. Whenever possible, these should provide applicants with pretesting experience and training.

(f) Developing outreach programs whose focus is the recruitment and preparation of minority and female apprenticeship applicants. If apprenticeship outreach programs do not exist, the sponsor should attempt to develop them. This effort may require working with other sponsors and appropriate community organizations. It may require obtaining financial assistance from the WSATC. Also, the sponsor shall initiate programs that prepare and encourage women to enter traditionally male dominated apprenticeship programs and occupations.

(g) Encouraging the development and use of programs for apprenticeship preparation education or other work related experiences that prepare candidates for apprenticeship.

(h) Granting to all applicants, without prejudice, advance standing or credit for previously acquired experience, training, skills, or aptitude.

(i) Engaging in other activities to ensure that the recruitment, selection, employment, and training of apprentices without discrimination based upon race, color, religion, national origin, sex, age, disability or as otherwise specified by law. Some examples of these activities include:

(i) General publication of advertisements, industry reports, articles on apprenticeship opportunities and advantages.

(ii) Use minority and female apprentices and journey-level workers as recruiters.

(iii) Provide career counseling to prospective applicants.

(iv) Periodically audit equal employment opportunity programs to see if goals are being met.

(v) Develop monitoring procedures to ensure that employers are granting equal employment opportunities to apprentices (these procedures may include reporting systems, on-site reviews, or briefing sessions).

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-413, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-413, filed 10/31/01, effective 1/17/02.]

296-05-415**Equal employment opportunity goals and timetables.**

(1) An equal employment opportunity plan must include goals and timetables. The first step in deciding whether goals and timetables are necessary is the completion of an analysis of the sponsor's program to determine whether there is an underutilization of minorities and/or women in the occupations represented by the program. This analysis must be:

- (a) Conducted by the sponsor with technical assistance provided by the department;
- (b) In writing; and
- (c) Included in the sponsor's equal employment opportunity plan.

(2) If the sponsor's analysis demonstrates that minorities and females are underutilized in the program, the program has an enrollment deficiency that must be corrected. Enrollment goals and timetables to correct this deficiency must be established and they must be included in the sponsor's equal employment opportunity plan. (See WAC 296-05-433.)

(3) If the sponsor's analysis demonstrates that no enrollment deficiencies exist, enrollment goals and timetables are not required. However, where no goals and timetables are established, the equal employment opportunity plan must include a detailed explanation why no goals and timetables have been established.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-415, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-415, filed 10/31/01, effective 1/17/02.]

296-05-417**Selection of apprentices for approved apprenticeship programs.**

In addition to development of a written equal employment opportunity plan, the sponsor must submit a written plan for the selection of apprentices. The selection plan must ensure that minorities and women have an equal opportunity to be selected as apprentices and that full utilization and equal opportunity in apprenticeship is achieved promptly. The selection procedures must use one of the methods specified in this section.

(1) A sponsor may not implement any selection method until the WSATC approves the program's equal employment opportunity plan. In the equal employment opportunity plan, the sponsor must identify the approved selection method it has adopted. The WSATC allows the following selection methods to be used:

(a) **Selection on basis of rank from pool of eligible applicants.** With this method, a sponsor selects apprentices from a pool of eligible applicants based upon a rank ordering of applicant qualifying standard scores. A sponsor adopting this method must create a pool of eligible candidates who have either reached the minimum legal working age and meet the sponsor's minimum physical requirements or who have reached the minimum legal working age and meet the sponsor's qualification standards.

(b) **Random selection from pool of eligible applicants.** A pool of eligible applicants must be created from persons who have either reached the minimum legal working age and meet the sponsor's minimum physical requirements or who have reached the minimum legal working age and meet the sponsor's qualification standards. With WSATC approval, a sponsor may randomly select apprentices from a pool of eligible applicants. This method must be supervised by an impartial person(s) not associated with the administration of the apprenticeship program. The time and place of the selection, and the number of apprentices to be selected, must be publicly announced before the selection takes place. The selection process must be open to all applicants and the public. The names of apprentices drawn by this method shall be posted immediately following the selection at the program sponsor's place of business.

(c) **Selection from pool of current employees.** A sponsor may select apprentices from an eligibility pool of

program employees. The actual selection process may be prescribed by a collective bargaining agreement where one exists, or by the sponsor's established promotion policy.

(d) **Alternative selection methods.** In addition to the above specified methods, the WSATC allows a sponsor to select apprentices by alternative methods, including its present selection method. However, the sponsor who adopts an alternative method of selection must submit the following information to the apprenticeship supervisor:

- (i) A detailed discussion of the selection method it proposes to use;
- (ii) A copy of its equal employment opportunity plan;
- (iii) A copy of its enrollment deficiency analysis; and
- (iv) If necessary, its goals and timetables for increasing the number of minority and female applicants and apprentices in the program.

The sponsor may not implement any such alternative method until the WSATC has approved the method and the equal employment opportunity program (including its goals and timetables).

When an alternative selection method is used and the training agent selects the apprentices, the employer must sign an agreement with the WSATC, agreeing to comply with the equal employment opportunity requirements of these rules and 29 CFR Part 30.

(2) Exceptions to selection procedures may be used if:

(a) An employee of an employer not qualifying as a journey-level worker becomes a training agent, he/she shall be evaluated by the apprenticeship program using constant standard nondiscriminatory means and registered at the appropriate period of apprenticeship based on previous work experience and related training.

(b) The individual who signs an authorization card during the organizing effort by an employer wherein fifty percent or more of the employees have signed whether or not the individual is approved as a training agent, an individual not qualifying as a journey-level worker shall be evaluated by the sponsor and registered at the appropriate period of apprenticeship based on previous work experience and related training.

(3) Organizing statements specified in subsection (2) of this section, that result in direct entry into the apprenticeship program, shall be properly placed within the program selection procedure as an exemption.

(4) If the WSATC or the department fails to act upon the sponsor's selection method and equal employment opportunity program within thirty calendar days of its submission to the department, the sponsor may implement the selection method until acted upon by the WSATC.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-417, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW, 01-22-055, § 296-05-417, filed 10/31/01, effective 1/17/02.]

296-05-419 Qualification standards.

Qualification standards are the criteria, used by sponsors to select applicants into an eligibility pool. These qualification standards and the procedures used to determine the standards must be specified in detail in the sponsor's equal employment opportunity plan and must:

- Identify the specific criteria and attributes used to evaluate applicants;
- Specify the acceptable scores required for each qualification standard;
- Demonstrate a direct relationship between each qualification standard, its required score and the expected job performance;
- Establish a significant statistical relationship between the score required for admission to the pool and the applicant's performance in the apprenticeship program. This statistical relationship must be based upon the

procedures discussed in 41 CFR Part 60-3 (Guidelines on employee selection procedures); and

Specify that the applicant has achieved an acceptable score on all the qualification. Unless an applicant achieves an acceptable score on all the qualification standards, the applicant will be ineligible for admission to the pool.

(1) Aptitude test scores for use as qualification standards. Aptitude tests may be used as qualification standards; however, any aptitude test score used as a qualification standard must be directly related to apprenticeship job performance. To demonstrate this relationship, there must be a significant statistical relationship between the aptitude test scores required for admission to the pool and performance in the apprenticeship program. In determining this relationship, the sponsor must follow the procedures discussed in 41 CFR Part 60-3. These requirements also apply to any aptitude tests used by a program sponsor and administered either by a state employment agency or any person, agency or organization engaged in the selection or evaluation of personnel. If a national aptitude test is developed and administered by a national apprenticeship committee, it must meet these requirements before it will be approved by the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship.

(2) Educational achievements for use as qualification standards. Educational achievements can be used as qualification standards; however, all such achievements used to determine admission to a program pool must be directly related to apprenticeship job performance. This direct relationship must be demonstrated by a significant statistical relationship between the achievement scores required for admission and expected performance in the apprenticeship program. In demonstrating such a statistical relationship, the sponsor must meet the requirements of 41 CFR Part 60-3.

Official school records or a certified passing grade on a general educational development (GED) test recognized by state or local public instruction officials shall be evidence of educational achievement. These education achievement requirements must be uniformly applied to all applicants.

(3) Role of the interview in the applicant selection process. Interviews must not be used as a qualification standard for admission to an eligibility pool for programs using the selection methods described in WAC 296-05-417 (1) and (2). However, after an applicant is placed in a pool and before selections are made from that pool, an applicant can be interviewed. When interviews are conducted, they must:

- (a) Consist only of objective questions relevant to the applicant's fitness for the apprenticeship program.
- (b) Not include questions related to qualifications previously used to determine entrance to the pool.
- (c) Require each interviewer to record the questions and the general nature of the applicant's answers.
- (d) Require each interviewer to prepare a summary of any interview conclusions.

Adequate records of the interviews must be kept including a brief summary and conclusion and how the specific factors like applicant motivation, ambition, and willingness to accept direction affected the interviewer's final decision.

(4) Examples of qualification standards include:

- Standardized aptitude tests;
- School diplomas or the equivalent;
- Health requirements essential to the chosen occupation;
- Interviews conducted in a fair manner (see subsection (3) of this section);
- School grades; and
- Previous work experience.

In applying these standards, the sponsor must meet the requirements of 41 CFR Part 60-3.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-419, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-419, filed 10/31/01, effective 1/17/02.]

296-05-427**Notification requirements.**

All applicants who meet the program admission requirements must be notified that they have been placed in an eligibility pool. All program sponsors must give a written notice of rejection to each applicant who is not selected for either an eligibility pool or the apprenticeship program. This rejection notice must include the reasons for rejection, the admission requirements for those admitted to the pool or program and the appeal procedures available.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-427, filed 10/31/01, effective 1/17/02.]

296-05-429**Existing lists of eligibles and public notice.**

(1) A sponsor who adopts a selection method under WAC 296-05-417 must conduct an enrollment deficiency analysis (see WAC 296-05-433). If, as a result of this analysis, the sponsor concludes that there are fewer minorities and/or women on its existing pools and lists than there should be, these pools and lists must be discarded.

(2) Once the existing pools and lists have been discarded, new eligibility pools must be established and lists must be posted at the sponsor's place of business. Sponsors must allow at least a two-week period for accepting applications for admission to the apprenticeship program. There must be at least thirty calendar days of public notice in advance of the earliest date for application for admission to the apprenticeship program (see WAC 296-05-411).

(3) Once an applicant has been placed in an eligibility pool, they must be retained on the eligibility lists for two years unless they request, in writing, that they be removed or unless they fail to respond to an apprentice job opportunity mailed to applicant's last known address by certified mail, return receipt requested. It is the applicant's responsibility to keep the sponsor informed of the applicant's current mailing address. A sponsor, upon receiving a written request from a former applicant whose name was removed from an eligibility list, may restore the applicant's name to the list.

(4) Applicants who have been accepted in the program must be given a reasonable time in which to report for work. A "reasonable time" will be interpreted in light of the customs and practices of the industry for reporting for work. All applicants must be treated equally in the determination and application of "a reasonable time."

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-429, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-429, filed 10/31/01, effective 1/17/02.]

296-05-431**Equal employment opportunity records of the WSATC retained by the department.**

The WSATC must keep the following types of records in the apprenticeship supervisor's office:

- (1) Registration requirements;
- (2) Individual program standards;
- (3) Registration records;
- (4) Program compliance reviews and investigations;
- (5) Any other records pertinent to the determination of compliance with these rules; and
- (6) Any records that must be reported to the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship.

The records required by these rules and any other information relevant to compliance with 29 CFR Part 30 must be maintained for five years. Also, these records and related information must be made available upon request to the United States Department of Labor or other authorized representatives.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-431, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-431, filed 10/31/01, effective 1/17/02.]

296-05-433**Enrollment deficiency analysis.**

(1) In analyzing a program to determine whether a deficiency exists, the sponsor must consider at least the following factors:

- (a) The percentage of the working age minority and female population in the program sponsor's labor market area;
- (b) The percentage of the minority and female labor force in the program sponsor's labor market area;
- (c) The percentage of the minority and female apprentices participating in a particular occupation compared to the percentage of minorities and women in the labor force in the program sponsor's labor market area;
- (d) The percentage of minorities and women participating as journey-level employee(s) employed by the employer (s) participating in the program as compared with the percentage of minorities and women in the sponsor's labor market area and the extent to which the sponsor should be expected to correct any deficiencies through the achievement of goals and timetables for the selection of apprentices; and
- (e) The general availability of minorities and women in the sponsor's labor market that have present or potential capacity for apprenticeship in the program sponsor's labor market area.

(2) To calculate the above percentage(s) or any other percentages for the analysis, the sponsor must use the following formula: Divide the number of minority individuals or females in a particular classification in the labor force or population by the total labor force or population.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-433, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-433, filed 10/31/01, effective 1/17/02.]

296-05-435**Data and information.**

(1) The apprenticeship supervisor must provide program sponsors with data and information on minorities and women labor force characteristics generated by the employment security department or the office of financial management. This information is available for standard metropolitan statistical areas as well as special statistical areas.

(2) The specific data used to calculate the percentages in WAC 296-05-433 must be obtained from records maintained by apprenticeship committees.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-435, filed 10/31/01, effective 1/17/02.]

296-05-437**Developing and evaluating enrollment goals and timetables.**

(1) Goals and timetables must be based upon the sponsor's enrollment analysis of its underutilization of minorities and women and its entire affirmative action program. Specific enrollment goals for minorities and a separate single goal for women may be acceptable unless a particular group is employed in a substantially disparate manner. In such a case, separate goals must be established for the disparate group. An example of such a situation would be where a specific minority group of women were underutilized even though the sponsor had achieved its enrollment goals for women generally. A separate, additional goal should be established to increase the enrollment of this specific group.

(2) In establishing the enrollment goals and timetables, the sponsor should establish reasonable goals that can be achieved through a good faith effort.

(3) In evaluating whether a sponsor has satisfied the affirmative action requirements of these rules, the WSATC must determine whether the sponsor has made a good faith effort to do so.

(4) The sponsor's good faith efforts shall be judged by whether the sponsor is following its affirmative action program and attempting to make it work. A specific example of a good faith effort by a sponsor would be when a sponsor conducts evaluations of its affirmative action program and makes the necessary changes to achieve success in the attainment of its goals.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-437, filed 10/31/01, effective 1/17/02.]

296-05-439**Failure to meet goals and timetables.**

(1) If a sponsor, despite its good faith efforts, fails to meet its goals and timetables within a reasonable period of time, the sponsor may be required to make appropriate changes in its affirmative action program in order to obtain maximum effectiveness toward the attainment of its goals.

(2) If the WSATC determines the failure of a sponsor to meet its goals and timetables is substantially a result of the enrollment selection method adopted, the sponsor may be required to develop and adopt a WSATC prescribed selection method.

(3) If a sponsor's failure to meet its goals is substantially a result of the qualification standard it used to select minorities and/or women, the sponsor may be required to show that the qualification standards directly relate to job performance. Specifically, the sponsor will be expected to demonstrate a significant statistical relationship between the qualification standards used and the required job performance. This statistical relationship must be based upon the procedures discussed in 41 CFR Part 60-3 (Guidelines on employee selection procedures).

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-439, filed 10/31/01, effective 1/17/02.]

296-05-441**Noncompliance with federal and state equal opportunity requirements.**

When a compliance review concludes that a sponsor is not operating according to the federal or state laws or regulations requiring equal opportunity, the apprenticeship supervisor must take action. Such action must include:

(1) Notifying the sponsor in writing of the review results;

(2) Making a reasonable effort to secure voluntary compliance from the program sponsor; and

(3) Giving the sponsor a reasonable amount of time to comply with the review recommendations before undertaking sanctions under WAC 296-05-013.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-441, filed 10/31/01, effective 1/17/02.]

296-05-443**Complaint filing.**

(1) Any apprentice or applicant for apprenticeship who believes they have been discriminated against may file a complaint. The basis of the complaint may be:

(a) Discrimination on the basis of race, sex, color, religion, national origin, age, disability or as otherwise specified by law by a sponsor or a sponsor's program;

(b) The equal opportunity standards have not been followed; or

(c) The sponsor's equal employment opportunity plan does not comply with the requirements of this chapter.

(2) A complaint may be filed in person or through an authorized representative. The complainant may choose to file a complaint with the WSATC or with a private review panel as established in WAC 296-05-445.

(3) A complaint must be in writing and shall be signed by the complainant. The complaint must include the name, address, and telephone number of the person allegedly discriminated against, the program sponsor involved, and a brief description of the circumstances leading to the complaint.

(4) The complaint must be filed not later than one hundred eighty calendar days from the date of the alleged discrimination or violation of the sponsor's equal employment opportunity plan or the rules of this chapter. If a complaint is initially filed with the private review panel and the complainant later wishes to refer the complaint to the WSATC, the referral must occur within one hundred eighty calendar days of the circumstances leading to the complaint or within thirty calendar days of the private review panel's final decision, whichever is later. If good cause is shown, the WSATC may extend these time periods.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-443, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-443, filed 10/31/01, effective 1/17/02.]

296-05-445**Private review panels.**

Sponsors may establish private review panels to resolve affirmative action complaints. The WSATC encourages sponsors to establish, fair, speedy, and effective procedures for the operation of the private review panel. Private review panels should be comprised of three or more responsible persons from the community who will serve without compensation. They should not be directly associated with the administration of an apprenticeship program. If necessary, sponsors may join together to establish a private review panel.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-445, filed 10/31/01, effective 1/17/02.]

296-05-447**Processing of complaints.**

(1) All approved programs must establish procedures explaining the program's complaint review process. These procedures must comply with the requirements of this section. Each sponsor must give a copy of the complaint procedures to each apprenticeship applicant and to all enrolled apprentices.

(2) When the apprenticeship supervisor receives a complaint and the sponsor has a private review panel in place, the complaint must be referred to the panel unless the complainant chooses otherwise or unless the council concludes that the panel will not satisfactorily resolve the complaint.

(3) Once the complaint is referred to the private review panel, the panel has no more than thirty calendar days to resolve it. At the end of the period, the supervisor will obtain the reports from the complainant and the review body as to the disposition of the complaint. If the complaint has been satisfactorily resolved and there is no other indication of failure to apply equal opportunity standards, the case shall be closed and the parties formally notified.

(4) If the private review panel has not satisfactorily resolved the complaint within ninety calendar days, the WSATC may conduct a compliance review and take all necessary steps to resolve the complaint.

(5) If the review panel satisfactorily resolves the complaint but there is evidence that the equal opportunity practices of the sponsor's program are not in compliance with the requirements of this chapter, the council must conduct a compliance review and take all steps necessary to bring the program into compliance.

(6) When a private review panel does not exist, the WSATC may conduct a compliance review to determine the facts of the complaint and any other information necessary to resolve the dispute.

(7) If the WSATC believes that satisfactorily resolving a complaint requires a change in the time limits established in this section, it can modify the time constraints by adopting special processing procedures. However, special processing procedures must only be adopted when circumstances warrant them and only if they will not prejudice any person or party associated with the complaint.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-447, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-447, filed 10/31/01, effective 1/17/02.]

296-05-449**Program registration cancellation procedures.**

(1) If the WSATC decides to withdraw a program's registration, it must give written notice to the sponsor that there is reasonable cause, under WAC 296-05-013, to do so.

(2) If the sponsor requests a hearing, it must be a written request to the apprenticeship supervisor within fifteen business days of the receipt of the WSATC's withdrawal notice. When the supervisor receives the sponsor's request, a hearing must be convened. The WSATC's final decision to withdraw a program's registration must be based on the compliance review file and other evidence presented at the hearing. The WSATC may allow the sponsor a reasonable time to achieve voluntary corrective action. If the WSATC decides that the apprenticeship program is not in compliance and that voluntary corrective action is not an option, the program's registration may be withdrawn. If the WSATC decides to withdraw the program's registration, it must make public notice of the order and give written notice to the sponsor. If the withdrawal was the result of complaint proceedings, the WSATC must give written notice of the withdrawal to the complainant as well.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040, 11-11-002, § 296-05-449, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-449, filed 10/31/01, effective 1/17/02.]

296-05-451**Reinstatement of program registration.**

Any apprenticeship program deregistered as authorized by these rules may be reinstated upon presentation of adequate evidence to the WSATC that the apprenticeship program is operating in compliance with these rules.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-451, filed 10/31/01, effective 1/17/02.]

296-05-453**Adoption of consistent state plans.**

All apprenticeship programs registered with the WSATC must comply with the requirements of these rules and 29 CFR Part 30. If a program fails to comply or is inconsistent with the requirements of these rules and/or 29 CFR Part 30, the WSATC may disapprove or deregister the program. The WSATC must notify the United States Department of Labor, Employment and Training Administration, Office of Apprenticeship of any state apprenticeship program disapproved and deregistered by it. The state apprenticeship program disapproved or deregistered by the WSATC for noncompliance with the requirements of these rules or 29 CFR Part 30 may, within fifteen business days of the receipt of the notice of disapproval or deregistration, appeal to the United States Department of Labor to set aside the determination of the WSATC. The United States Department of Labor must make its determination on the basis of the record. The United States Department of Labor may grant the state program sponsor, the state apprenticeship and training, and the complainant, if any, the opportunity to present oral or written argument.

[Statutory Authority: Chapter 49.04 RCW and RCW 19.285.040. 11-11-002, § 296-05-453, filed 5/4/11, effective 7/25/11. Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-453, filed 10/31/01, effective 1/17/02.]

296-05-455**Intimidatory or retaliatory acts.**

(1) Any intimidation, threat, coercion, or retaliation by or with the approval of a sponsor, against a person who has exercised rights or privilege under Title VII of the Civil Rights Act of 1964 as amended or the amended Executive Order 11246 is a violation of the equal opportunity standards of these rules. Such acts may be investigated by the WSATC and, if appropriate, will be prosecuted.

(2) Identity of a complainant must be kept confidential except when it is necessary to carry out the intent of these rules, for example, the need to conduct an investigation, hearing, or judicial proceeding.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-455, filed 10/31/01, effective 1/17/02.]

296-05-457**Exemptions.**

A sponsor may request an exemption from Part D of these rules. The request may ask exemption from all of the section or from selected ones. The request must be in writing and must be addressed to the apprenticeship supervisor. It must explain why an exemption is needed. An exemption may be granted either by the WSATC or by the secretary of the United States Department of Labor, but can only be granted for good cause. If the WSATC approves an exemption that affects a substantial number of employers, it must notify the United States Department of Labor explaining why the exemption was allowed.

[Statutory Authority: RCW 49.04.010, 2001 c 204, and chapter 49.04 RCW. 01-22-055, § 296-05-457, filed 10/31/01, effective 1/17/02.]

1997 WL 998018 (DOL WAGE-HOUR)

Wage and Hour Division

United States Department of Labor
Opinion Letter Fair Labor Standards Act (FLSA)

June 30, 1997

*1 This is in reply to your letter of January 13 requesting an opinion as to whether licensed veterinary technicians (LVTs) are exempt professional employees under section 13(a)(1) of the Fair Labor Standards Act (FLSA).

You indicate that you employ licensed veterinary technicians who attend a minimum of two years college and are licensed by the State of New York to perform various medical procedures.

Section 13(a)(1) of the FLSA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, professional, or outside sales capacity. In order to qualify for exemption under section 13(a)(1), an employee must meet all the pertinent tests relating to duties, responsibilities, and salary as contained in Regulations, 29 CFR Part 541. One of the tests for professional status under section 541.3(a)(1) requires that the employee perform work which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. For example, the professions of law, medicine, nursing, and theology have been traditionally recognized as professional within the meaning of section 541.3, since such professions require a prolonged course of specialized intellectual instruction. See section 541.301 and 541.302. Further examples of professions meeting the requirement for a prolonged course of specialized intellectual instruction and study are given in section 541.301(e)(1).

A "prolonged course of ... study" has generally been held to include only those employees who have acquired at least a baccalaureate degree or its equivalent which includes an intellectual discipline in a particular course of study as opposed to a general academic course otherwise required for a baccalaureate degree. Work which can be performed by employees with education and training which is less than that required for a bachelor's degree would not be work of a bona fide professional level within the meaning of the regulations.

It is clear that veterinary technician work involves primarily the use of skills and procedures which do not require four years of college or university training to obtain a degree in a professional discipline. The information provided suggests that the LVTs are best characterized as skilled nonexempt technicians. Therefore, it is our opinion that the LVTs do not meet the requirements in Regulation 541.3 for exemption as a professional employee. As a result these employees would be subject to both the minimum wage and overtime requirements of the FLSA and should be paid accordingly.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion than the one expressed herein.

*2 We trust that this satisfactorily responds to your inquiry.
Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy Fair Labor Standards Team

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1998 WL 852713 (DOL WAGE-HOUR)

Wage and Hour Division

United States Department of Labor
Opinion Letter Fair Labor Standards Act (FLSA)

February 19, 1998

*1 This is in response to your request for an opinion as to whether a medical assistant position qualifies for the professional exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA).

The job description that you submitted indicates that the medical assistant checks charts; obtains needed medical information for the doctor or patient; opens, closes, and cleans stock, examination and procedures rooms; gathers information from new patients, and keeps patient flow consistent for the doctor; obtains urine specimens; performs venipuncture for lab tests; assists with examination of female patients; performs bladder instillations and physician directed procedures, such as catheter insertion, change, and irrigation, wound care, post-op care, uroflows, cystometrogram, and LLP; set-up vasectomy trays, I & Ds, circumcision trays, etc.; set-up TRUS and cysto rooms and assists doctors with procedures; charts patient information; performs injections; runs PSAs and maintains the machine; performs CMGs, bladder scans, and BCGs mixing. We were informed by your office that the training requirement for this position is one year of specialized training at a junior college, and certification by the State of Florida.

Section 13(a)(1) of the FLSA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity as those terms are defined in the enclosed Regulations, 29 CFR Part 541. An employee will qualify for exemption as a bona fide professional employee if all the pertinent tests relating to duties, responsibilities, and salary are met. (See section 541.3(a)(1) of the Regulations.)

One of the tests for professional status under section 541.3(a)(1) requires that the employee's primary duty consists of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes.

A "prolonged course of . . . study" has generally been held to include only those employees who have acquired at least a baccalaureate degree or its equivalent which includes a longer intellectual discipline in a particular course of study as opposed to a general academic course otherwise required for a baccalaureate degree. A "longer intellectual discipline in a particular course of study" means the equivalent of four academic years of pre-professional and professional study in an accredited university or college.

The work in question does not require a bachelor's degree and, in fact, only requires one year of training at a junior college. Work that can be performed by an employee with education and training which is less than that required for a bachelor's degree would not be work of a bona fide professional level within the meaning of the Regulations. It is, therefore, our opinion that the medical assistant would not qualify as a bona fide professional employee, as discussed in section 541.3, since the primary duty does not consist of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as required by the Regulations. Consequently, the employee must be paid in accordance with the minimum wage and overtime pay provisions of the FLSA.

*2 We trust that the above information is responsive to your request. If we can be of further assistance, please let us know.
Sincerely,

John R. Fraser
Acting Administrator

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1998 WL 852738 (DOL WAGE-HOUR)

Wage and Hour Division

United States Department of Labor
Opinion Letter Fair Labor Standards Act (FLSA)

February 27, 1998

*1 This is in response to your letter requesting an opinion concerning the application of the professional exemption in section 13(a)(1) of the Fair Labor Standards (FLSA) to architects. You provide a position description detailing the duties of these employees.

In a conversation with a member of your staff, we know that you represent several architectural firms located throughout the United States. Some states require architects to be licensed and others do not. All of these employees receive a salary in excess of \$250 a week, and fall into one of the following categories: (1) degreed/licensed, (2) non-degreed/licensed, (3) degreed/non-licensed, or (4) non-degreed/non-licensed. All of the degreed architects have four or five years of college education. Your primary concern is whether the non-degreed/licensed architects performing the same duties as degreed/licensed architects meet the requirements for the professional exemption.

Section 13(a)(1) of the FLSA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity as those terms are defined in Regulations, 29 CFR Part 541 (copy enclosed). An employee will qualify for exemption if all the pertinent tests relating to duties, responsibilities, and salary, as discussed in the appropriate sections of the Regulations, are met. One such test, as set out in section 541.3(a)(1), requires that the employee perform work which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine manual or physical processes.

Section 541.301(e) of the Regulations states that, generally speaking, the professions which meet the requirements of section 541.3(a)(1) include, among others, the field of architecture. Employees in this field who typically qualify are those that meet the requisite educational and licensure requirements. With respect to employees with a degree in architecture but who have not satisfied the requirements for licensure, you will note in section 541.308 that the exemption of any individual depends upon his or her duties and other qualifications. The exemption does not exempt employees with professional training who are working in professional fields, but whose primary duty consists of the performance of sub-professional or routine work.

A "prolonged course...study" has generally been held to include only those employees who have acquired at least a baccalaureate degree or its equivalent which includes an intellectual discipline in a particular course of study as opposed to a general academic course otherwise required for a baccalaureate degree. Work which can be performed by employees with education and training which is less than that required for a bachelor's degree typically would not be work of a bona fide professional level within the meaning of the Regulations.

*2 Based on the information provided in your letter and if all the requirements of the Regulations are met, we agree that the degreed/licensed architects and the degreed non-licensed architects would meet the requirements for the professional exemption. We also agree that the architects who are non-degreed/non-licensed do not meet the requirements for the exemption under the Regulations. With regard to those architects who are non-degreed/licensed (where such license is required by the state), it is our opinion that these employees would meet the requirements for the professional exemption. This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a different conclusion than the one expressed herein. This opinion is also provided on the basis that it is not sought on behalf of a client or firm which is under investigation by the Wage and Hour Division, or which is in litigation with respect to, or subject to the terms of any agreement or order applying or requiring compliance with the provisions of the FLSA.

We trust that the above information is responsive to your inquiry. If we can be further assistance, please do not hesitate to

Opinion Letter Fair Labor Standards Act (FLSA), 1998 WL 852738 (1998)

contact us.
Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy Fair Labor Standards Team

Enclosure

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2006 WL 2792440 (DOL WAGE-HOUR)

Wage and Hour Division

United States Department of Labor
Opinion Letter Fair Labor Standards Act (FLSA)

FLSA2006-26
July 24, 2006

*** a1

*1 This is in response to your letter and attachments requesting an opinion on the application of section 13 (a)(1) of the Fair Labor Standards Act (FLSA) to certain employees of your subsidiary, the Hospital. We regret the delay in responding to your request. You ask for confirmation that the Hospital's respiratory therapists (RTs) who are paid on a salary basis that meets the regulatory standard are appropriately classified as exempt professionals under the FLSA as the term is defined in 29 C.F.R. Part 541(copy enclosed).

To be employed as an RT at the Hospital, each RT must possess an active state license in respiratory therapy. To obtain such a license, an individual must first obtain the credential of Certified Respiratory Therapist by passing the National Board for Respiratory Care Certification Examination for Entry Level Respiratory Therapists. To sit for this examination, the individual must complete an accredited respiratory therapy educational program. Accredited respiratory care educational programs include two to four years of specialized instruction, leading to an Associate's Degree or a Bachelor's Degree. To be accredited, a respiratory therapy educational program must include in its curriculum "modules and courses of instruction in general studies, basic science, clinical science and respiratory care accompanied or followed by a series of structured laboratory and clinical experiences." Twelve percent of accredited respiratory care educational programs in the country are at the baccalaureate level.

You indicated that the Hospital requires greater levels of academic and professional achievement from its RTs than the state's licensure or Respiratory Care Departments at other hospitals. Your Hospital's RTs must have at least an Associate's Degree in Applied Science, but a Bachelor's Degree is preferred and the Hospital targets its hiring at this higher level. At the time of your request, however, only 20 of 68 of the Hospital's RTs possessed Bachelor's Degrees in respiratory therapy. Of the remaining 48 Associate's Degree level-trained RTs, 15 also held Bachelor's Degrees in some other, complementary field. You also stated that each RT must be certified in both Basic and Advanced Cardiac Life Support, and that the hospital requires RTs to continue studying in their field throughout their tenure at the Hospital through participation in continuing education programming offered both within and outside of the Hospital's Respiratory Care Department.

As you know, section 13(a)(1) (copy enclosed) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees, and certain employees in computer-related occupations, as these terms are defined in the implementing regulations, 29 C.F.R. Part 541. Your particular request concerns the applicability of the "learned professional" exemption to the Hospital's RT employees. Please note that revisions to 29 C.F.R. Part 541 were published as a final rule in the *Federal Register* on April 23, 2004 and became effective on August 23, 2004. See *Defining and Delimiting the Exemption for Executive, Administrative, Professional, Outside Sales and Computer Employees*, 69 Fed. Reg. 22,122 (April 23, 2004) (codified at 29 C.F.R. Part 541 on August 23, 2004). Our response is applicable under both the new and prior versions of the regulations, as there were no substantive changes in the long-standing educational requirements for the learned professional exemption. See 69 Fed. Reg. 22,149 (copy of 69 Fed. Reg. 22,148-22,157 enclosed). This response is consistent with WH Opinion Letters January 10, 1986 and April 2, 1981 (copies enclosed).

*2 Under section 541.300 of the new regulations, the "learned professional" exemption applies to any employee: (1) compensated on a salary or fee basis at a rate of not less than \$455 per week, and (2) whose primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. As explained in section 541.301(b), work requiring advanced knowledge "means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work." Moreover, the requirement that the advanced knowledge be "customarily acquired by a prolonged course of specialized intellectual instruction" restricts the learned professional exemption "to professions where prolonged specialized academic

training is a standard prerequisite for entrance into the profession,” and the “best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree.” 29 C.F.R. § 541.301(d). However, the learned professional exemption is not available for occupations that could customarily be performed with knowledge acquired by an academic degree in any field, with knowledge acquired through an apprenticeship, or with training in the performance of routine mental, manual, mechanical, or physical processes. The learned professional exemption also does not apply to occupations in which most employees have acquired their skill by experience rather than by advanced, specialized intellectual instruction. *Id.*

As further explained in the preamble accompanying the final rule, an individual may work in “a field of science or learning” but still not meet the requirements for the learned professional exemption because the *occupation* does not require knowledge “of an advanced type ... customarily acquired by a prolonged course of specialized intellectual instruction.” See 69 Fed. Reg. 22,149. The proper focus of the inquiry is upon whether all required elements have been satisfied for the particular occupation, not upon any job title or “status” that an individual employee within an occupation might have or on an individual employer’s specified hiring preferences. *Id.* Rather, only occupations that *customarily* require an advanced specialized degree are considered learned professional fields under both the old and new versions of the regulations. Thus, the learned professional exemption is not available for the respiratory therapist because that occupation does not require knowledge of an advanced type that is customarily acquired by a prolonged course of specialized intellectual instruction.

Some jobs require only a four-year degree in any field or a two-year degree as a standard prerequisite for entrance into the particular field. Other jobs may require only completion of some other short course of specialized training. The revised final regulations at section 541.301(d) make it clear that such occupations would not qualify for the learned professional exemption. See 69 Fed. Reg. 22,150. While certain occupations in the health care field are expressly recognized as meeting the duties requirements for the learned professional exemption, many other health care employees generally do not qualify as exempt learned professionals, regardless of work experience and training, because possession of a specialized advanced academic degree is not a *standard prerequisite for entry into such occupations*. See 29 C.F.R. § 541.301(e). These provisions of the regulations are consistent with the prior regulations and long-standing policies of the Wage and Hour Division. See 69 Fed. Reg. 22,156.

*3 The regulations do recognize, however, in section 541.301(f), that the areas in which the learned professional exemption applies are expanding, and that when an advanced specialized degree has become a standard prerequisite for a particular occupation, that occupation may have acquired the characteristics of a learned profession. Furthermore, the regulations note that accrediting and certifying organizations similar to those listed in the regulations may develop similar specialized curriculums and certification programs. However, as further explained in the preamble to the final regulations, “[a]ccredited curriculums and certification programs are relevant to determining exempt learned professional status to the extent they provide evidence that a prolonged course of specialized intellectual instruction has become a standard prerequisite for entrance into the occupation as required under section 541.301.” 69 Fed. Reg. 22,157. Neither the identity of the certifying organization nor the mere fact that certification is required is determinative if certification does not, in fact, involve a prolonged course of specialized intellectual instruction. By way of example, certified physician assistants are considered to meet the duties requirement for the learned professional exemption because certification requires four years of specialized post-secondary school instruction. *Id.*

Based on your description of the requirements for work as an RT, the work of the Hospital’s RTs can be performed by an individual who possesses the minimum qualifications of a licensed and certified respiratory therapist following completion of an accredited respiratory care educational program that involves only two years of specialized instruction leading to an Associate’s Degree. While your Hospital’s RTs may be highly skilled as a result of their training, this level of intellectual instruction and academic training does not qualify the RT occupation as one requiring advanced knowledge “customarily acquired by a prolonged course of specialized intellectual instruction.” Moreover, 12% of accredited programs in the country are at the baccalaureate level, thus indicating that four years of specialized post-secondary school instruction is not a standard prerequisite for entry into the field. Therefore, it is our opinion that the RT positions in question do not qualify for the learned professional exemption.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the

Opinion Letter Fair Labor Standards Act (FLSA), 2006 WL 2792440 (2006)

Wage and Hour Division or the Department of Labor.

*4 We trust that the above information is responsive to your inquiry.
Sincerely,

Alfred B. Robinson, Jr.
Acting Administrator

a1 **Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. 552 (b)(7).**

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1976 WL 41728 (DOL WAGE-HOUR)

Wage and Hour Division

United States Department of Labor
Opinion Letter Fair Labor Standards Act (FLSA)

WH-376
March 5, 1976

*I In accordance with our discussion of January 20, 1976, the Wage and Hour Division and the Office of the Solicitor of Labor have again considered your request that the two-year course of professional study required for registration as a dental hygienist be recognized as meeting the test in section 541.3(a)(1) of Regulations, Part 541.

As defined in Regulations, Part 541, a bona fide professional employee (for exemption from the minimum wage and overtime pay requirements under section 13(a)(1) of the Fair Labor Standards Act) means an employee whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.

The Administrator is constrained by judicial decisions to interpret exemptions from the Act's provisions narrowly. Their application must be limited to those who come plainly and unmistakably within their terms and spirit. This is so because the application of an exemption deprives an employee of the monetary benefits which the Act otherwise provides. The term "professional" must necessarily be limited to those professions which have a recognized status and which are based on the acquisition of professional knowledge acquired through prolonged intellectual instruction and study.

The typical symbol of professional training and the best prima facie evidence of its possession is the appropriate degree, and in the professions a baccalaureate degree is a standard prerequisite. The Regulations have thus been drawn to have as one of the requirements for recognition as a bona fide professional employee such a course of intellectual training and study as that customarily required by colleges and universities to obtain a degree in a professional discipline.

We have again reviewed the material you previously submitted as well as material issued by several institutions which provide professional courses in dental hygiene. Without exception the latter consider the baccalaureate degree the symbol of recognition for completing a professional program of study.

We, therefore, adhere to our previously stated position that within the meaning of section 541.3(a)(1) of the Regulations, "a prolonged course of specialized instruction and study" means four academic years of preprofessional and professional study in an accredited university or college as set out in our letter of December 29, 1975.

Sincerely,

[Signature]
Deputy Administrator
Wage and Hour Division

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NO. 65372-5-I

IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

MARK LITCHFIELD, on behalf of himself and
all others similarly situated,

Petitioners/Cross-Respondents/Plaintiffs,

v.

KPMG, LLP,

Respondent/Cross-Petitioner/Defendant.

PROOF OF SERVICE

George E. Greer,
(WSBA No. 11050)
ORRICK HERRINGTON &
SUTCLIFFE LLP
701 Fifth Avenue, Suite 5600
Seattle, WA 98104
Telephone: (206) 839-4300
Facsimile: (206) 839-4301

Michael C. Kelley
(*admitted pro hac vice*)
Jennifer Altfeld Landau
(*admitted pro hac vice*)
SIDLEY AUSTIN
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600

Leonard J. Feldman
(WSBA No. 20961)
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: (206) 624-0900
Facsimile: (206) 386-7500

Attorneys for Respondent/Cross-Petitioner/Defendant KPMG LLP

ORIGINAL

I hereby certify under penalty of perjury under the laws of the state of Washington that I caused a true and correct copy of the **Respondent/Cross Petitioner/Defendant KPMG LLP's Reply Brief on Cross-Appeal** to be served on the following counsel of record in the manner listed below:

Via Legal Messenger

Catherine W. Smith
Howard Goodfriend
Smith Goodfriend, P.S.
1109 First Avenue, Suite 500
Seattle, WA 98101

Stephen K. Strong
David F. Stobaugh
Bendich, Stobaugh & Strong, P.C.
701 Fifth Avenue, #6550
Seattle, WA 98104

Attorneys for Petitioner/Cross-Respondents/Plaintiffs

William F. Cronin
Barbara J. Kastama
Corr Cronin Michelson Baumgardner & Pree
1001 4th Avenue, Suite 3900
Seattle, WA 98154-1051

Attorneys for Amicus Curiae Washington Society of Certified Public Accountants

Via U.S. Mail

Kristopher Ian Tefft
Association of Washington Business
P.O. Box 658
Olympia, WA 98507-0658

Attorney for Amicus Curiae Association of Washington Business

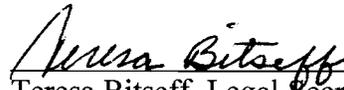
Via Hand-Delivery/Legal Messenger:

Original & 1 Copy to:

Court of Appeals, Division I
600 University Street
One Union Square
Seattle, WA 98101

DATED: August 12, 2011

STOEL RIVES LLP

A handwritten signature in cursive script, appearing to read "Teresa Bitseff", is written over a horizontal line.

Teresa Bitseff, Legal Secretary
600 University Street, Suite 3600
Seattle, WA 98101