AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 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.

C.F.R.: 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.

Federal purposes: Includes any federal contract, grant, agreement or arrangement dealing with apprenticeship; and any federal financial or other assistance, benefit, privilege, contribution, allowance, exemption, preference or right pertaining to apprenticeship.

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 ba-

sic 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 C.F.R. 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.

AMENDATORY SECTION (Amending WSR 13-03-127, filed 1/22/13, effective 3/1/13)

WAC 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, upon review of the initial order shall enter the final order. The WSATC may appoint a person to review the initial order and prepare and enter the final WSATC order.

(3) Final WSATC orders or decisions affecting registration and oversight of apprenticeship programs and agreements for federal purposes may be appealed within thirty calendar days to the director of the department pursuant to the following:

(a) An appellant must file with the director an original and four copies of the notice of appeal.

(i) The notice of appeal must specify findings and conclusions at issue in the appeal.

(ii) The director or designee shall serve notice of receipt of the appeal, including copies of the appeal on all parties within five business days from date of receipt.

(iii) The respondent parties may file with the director or designee written arguments within thirty calendar days after the date the notice of receipt of appeal was served upon them.

(b) The director or designee shall review the record in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director or designee shall issue a final decision affirming, modifying, or reversing the WSATC final order or decision or may remand the matter to the WSATC for further proceedings.

(c) With respect to cancellation of programs only, any aggrieved party may appeal, for federal purposes, a final decision by the director (or director's designee) by following the procedures in WAC 296-05-321(11).

(d) Any aggrieved party may appeal the final decision to superior court pursuant to chapter 34.05 RCW. If no party appeals within the period set by RCW 34.05.542, the director's decision is final and binding on all parties.

AMENDATORY SECTION (Amending WSR 11-11-002, filed 5/4/11, effective 7/25/11)

WAC 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.

(11) An apprenticeship program disputing a notice of involuntary cancellation for federal purposes may obtain an administrative hearing from the U.S. Department of Labor by filing a written request for a hearing.

(a) The request for a federal hearing must be filed within fifteen days from the date of the mailing of the notices of involuntary cancellation sent by the department to the apprenticeship program, as provided by 29 C.F.R. 29.8(b)(5). The request for a federal hearing must identify the apprenticeship program and contain a brief description of the reason why the program believes it should not be involuntarily canceled for federal purposes. The written request for a federal hearing must be sent:

(i) If by mail, to:

Apprenticeship Section
Washington State Department of Labor and Industries
P.O. Box 44530
Olympia, WA 98504-4530;

(ii) If by physical delivery, to:

Apprenticeship Section
Washington State Department of Labor and Industries
7273 Linderson Way S.W.
Tumwater, WA 98501-5414;

(iii) If by facsimile (fax), to 360-902-4248; and
(iv) If by e-mail, to apprentice@lni.wa.gov.

"Filing" or "filed" for purposes of this subsection means actual receipt by the department during regular office hours.

(b) The department must promptly forward the sponsor's request for a federal administrative hearing to the U.S. Department of Labor, Office of Apprenticeship and notify the sponsor that it has done so.

(c) The federal administrative hearing regarding the proposed involuntary cancellation of an apprenticeship program for federal purposes is governed by the provisions of 29 C.F.R. 29.8(b) and by such other federal regulations as deemed applicable by the secretary of the U.S. Department of Labor.

(12) Outcomes of administrative proceedings and appeals under state law only affect the registration status of the program for Washington purposes and projects. Outcomes of administrative proceedings and appeals under federal law only affect the registration status of the program for federal purposes and projects.