

February 2, 2005

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CITATION

Cite all material in the Washington State Register by its issue number and sequence within that issue, preceded by the acronym WSR. Example: the 37th item in the August 5, 1981, Register would be cited as WSR 81-15-037.

PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the code reviser's office, pursuant to chapter 34.05 RCW, is available for public inspection during normal office hours. The code reviser's office is located in the basement of the Pritchard Building in Olympia. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. Telephone inquiries concerning material in the Register or the Washington Administrative Code (WAC) may be made by calling (360) 786-6697.

REPUBLICATION OF OFFICIAL DOCUMENTS

All documents appearing in the Washington State Register are prepared and printed at public expense. There are no restrictions on the republication of official documents appearing in the Washington State Register. All news services are especially encouraged to give wide publicity to all documents printed in the Washington State Register.

CERTIFICATE

Pursuant to RCW 34.08.040, the publication of rules or other information in this issue of the Washington State Register is hereby certified to be a true and correct copy of such rules or other information, except that headings of public meeting notices have been edited for uniformity of style.

DENNIS W. COOPER
Code Reviser

STATE MAXIMUM INTEREST RATE

(Computed and filed by the State Treasurer under RCW 19.52.025)

The maximum allowable interest rate applicable for the month of February 2005 pursuant to RCW 19.52.020 is twelve point zero percent (12.00%) per annum.

The interest rate required by RCW 4.56.110(3) and 4.56.115 for the month of February 2005 is 4.630%.

NOTICE: FEDERAL LAW PERMITS FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE HIGHEST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL INSTITUTION IN THE STATE. THE MAXIMUM ALLOWABLE RATE OF INTEREST SET FORTH ABOVE MAY NOT APPLY TO A PARTICULAR TRANSACTION.

WASHINGTON STATE REGISTER

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The Washington State Register is an official publication of the state of Washington. It contains proposed, emergency, and permanently adopted administrative rules, as well as other documents filed with the code reviser's office pursuant to RCW 34.08.020 and 42.30.075. Publication of any material in the Washington State Register is deemed to be official notice of such information.

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STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following eight sections:

- (a) **PREPROPOSAL**-includes the Preproposal Statement of Inquiry that will be used to solicit public comments on a general area of proposed rule making before the agency files a formal notice.
- (b) **PROPOSED**-includes the full text of formal proposals, continuances, supplemental notices, and withdrawals.
- (c) **EXPEDITED RULE MAKING**-includes the full text of the rule being proposed using the expedited rule-making process. Expedited rule makings are not consistently filed and may not appear in every issue of the register.
- (d) **PERMANENT**-includes the full text of permanently adopted rules.
- (e) **EMERGENCY**-includes the full text of emergency rules and rescissions.
- (f) **MISCELLANEOUS**-includes notice of public meetings of state agencies, rules coordinator notifications, summaries of attorney general opinions, executive orders and emergency declarations of the governor, rules of the state Supreme Court, and other miscellaneous documents filed with the code reviser's office under RCW 34.08.020 and 42.30.075.
- (g) **TABLE**-includes a cumulative table of the WAC sections that are affected in the current year.
- (h) **INDEX**-includes a cumulative index of Register Issues 01 through 24.

Documents are arranged within each section of the Register according to the order in which they are filed in the code reviser's office during the pertinent filing period. Each filing is listed under the agency name and then describes the subject matter, type of filing and the WSR number. The three part number in the heading distinctively identifies each document, and the last part of the number indicates the filing sequence with a section's material.

2. PRINTING STYLE—INDICATION OF NEW OR DELETED MATERIAL

RCW 34.05.395 requires the use of certain marks to indicate amendments to existing agency rules. This style quickly and graphically portrays the current changes to existing rules as follows:

- (a) In amendatory sections—
 - (i) underlined material is new material;
 - (ii) ~~deleted material is ((lined out between double parentheses))~~;
- (b) Complete new sections are prefaced by the heading NEW SECTION;
- (c) The repeal of an entire section is shown by listing its WAC section number and caption under the heading REPEALER.

3. MISCELLANEOUS MATERIAL NOT FILED UNDER THE ADMINISTRATIVE PROCEDURE ACT

Material contained in the Register other than rule-making actions taken under the APA (chapter 34.05 RCW) does not necessarily conform to the style and format conventions described above. The headings of these other types of material have been edited for uniformity of style; otherwise the items are shown as nearly as possible in the form submitted to the code reviser's office.

4. EFFECTIVE DATE OF RULES

- (a) Permanently adopted agency rules normally take effect thirty-one days after the rules and the agency order adopting them are filed with the code reviser's office. This effective date may be delayed or advanced and such an effective date will be noted in the promulgation statement preceding the text of the rule.
- (b) Emergency rules take effect upon filing with the code reviser's office unless a later date is provided by the agency. They remain effective for a maximum of one hundred twenty days from the date of filing.
- (c) Rules of the state Supreme Court generally contain an effective date clause in the order adopting the rules.

5. EDITORIAL CORRECTIONS

Material inserted by the code reviser's office for purposes of clarification or correction or to show the source or history of a document is enclosed in [brackets].

2004-2005

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue Number	Closing Dates ¹			Distribution Date	First Agency Hearing Date ³	Expedited Rule Making ⁴
	Non-OTS and 30 p. or more	Non-OTS and 11 to 29 p.	OTS ² or 10 p. max. Non-OTS	Count 20 days from -	For hearing on or after	First Agency Adoption Date
For Inclusion in -	File no later than 12:00 noon -					
04 - 15	Jun 23, 04	Jul 7, 04	Jul 21, 04	Aug 4, 04	Aug 24, 04	Sep 21, 04
04 - 16	Jul 7, 04	Jul 21, 04	Aug 4, 04	Aug 18, 04	Sep 7, 04	Oct 5, 04
04 - 17	Jul 21, 04	Aug 4, 04	Aug 18, 04	Sep 1, 04	Sep 21, 04	Oct 19, 04
04 - 18	Aug 4, 04	Aug 18, 04	Sep 1, 04	Sep 15, 04	Oct 5, 04	Nov 2, 04
04 - 19	Aug 25, 04	Sep 8, 04	Sep 22, 04	Oct 6, 04	Oct 26, 04	Nov 23, 04
04 - 20	Sep 8, 04	Sep 22, 04	Oct 6, 04	Oct 20, 04	Nov 9, 04	Dec 7, 04
04 - 21	Sep 22, 04	Oct 6, 04	Oct 20, 04	Nov 3, 04	Nov 23, 04	Dec 21, 04
04 - 22	Oct 6, 04	Oct 20, 04	Nov 3, 04	Nov 17, 04	Dec 7, 04	Jan 4, 05
04 - 23	Oct 20, 04	Nov 3, 04	Nov 17, 04	Dec 1, 04	Dec 21, 04	Jan 19, 05
04 - 24	Nov 3, 04	Nov 17, 04	Dec 1, 04	Dec 15, 04	Jan 4, 05	Feb 1, 05
05 - 01	Nov 24, 04	Dec 8, 04	Dec 22, 04	Jan 5, 05	Jan 25, 05	Feb 23, 05
05 - 02	Dec 8, 04	Dec 22, 04	Jan 5, 05	Jan 19, 05	Feb 8, 05	Mar 8, 05
05 - 03	Dec 22, 04	Jan 5, 05	Jan 19, 05	Feb 2, 05	Feb 22, 05	Mar 22, 05
05 - 04	Jan 5, 05	Jan 19, 05	Feb 2, 05	Feb 16, 05	Mar 8, 05	Apr 5, 05
05 - 05	Jan 19, 05	Feb 2, 05	Feb 16, 05	Mar 2, 05	Mar 22, 05	Apr 19, 05
05 - 06	Feb 2, 05	Feb 16, 05	Mar 2, 05	Mar 16, 05	Apr 5, 05	May 3, 05
05 - 07	Feb 23, 05	Mar 9, 05	Mar 23, 05	Apr 6, 05	Apr 26, 05	May 24, 05
05 - 08	Mar 9, 05	Mar 23, 05	Apr 6, 05	Apr 20, 05	May 10, 05	Jun 7, 05
05 - 09	Mar 23, 05	Apr 6, 05	Apr 20, 05	May 4, 05	May 24, 05	Jun 21, 05
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05 - 13	May 25, 05	Jun 8, 05	Jun 22, 05	Jul 6, 05	Jul 26, 05	Aug 23, 05
05 - 14	Jun 8, 05	Jun 22, 05	Jul 6, 05	Jul 20, 05	Aug 9, 05	Sep 7, 05
05 - 15	Jun 22, 05	Jul 6, 05	Jul 20, 05	Aug 3, 05	Aug 23, 05	Sep 20, 05
05 - 16	Jul 6, 05	Jul 20, 05	Aug 3, 05	Aug 17, 05	Sep 6, 05	Oct 4, 05
05 - 17	Jul 27, 05	Aug 10, 05	Aug 24, 05	Sep 7, 05	Sep 27, 05	Oct 25, 05
05 - 18	Aug 10, 05	Aug 24, 05	Sep 7, 05	Sep 21, 05	Oct 11, 05	Nov 8, 05
05 - 19	Aug 24, 05	Sep 7, 05	Sep 21, 05	Oct 5, 05	Oct 25, 05	Nov 22, 05
05 - 20	Sep 7, 05	Sep 21, 05	Oct 5, 05	Oct 19, 05	Nov 8, 05	Dec 6, 05
05 - 21	Sep 21, 05	Oct 5, 05	Oct 19, 05	Nov 2, 05	Nov 22, 05	Dec 20, 05
05 - 22	Oct 5, 05	Oct 19, 05	Nov 2, 05	Nov 16, 05	Dec 6, 05	Jan 3, 06
05 - 23	Oct 26, 05	Nov 9, 05	Nov 23, 05	Dec 7, 05	Dec 27, 05	Jan 24, 06
05 - 24	Nov 9, 05	Nov 23, 05	Dec 7, 05	Dec 21, 05	Jan 10, 06	Feb 7, 06

¹ All documents are due at the code reviser's office by 12:00 noon on or before the applicable closing date for inclusion in a particular issue of the Register; see WAC 1-21-040.

² A filing of any length will be accepted on the closing dates of this column if it has been prepared and completed by the order typing service (OTS) of the code reviser's office; see WAC 1-21-040. Agency-typed material is subject to a ten page limit for these dates; longer agency-typed material is subject to the earlier non-OTS dates.

³ At least twenty days before the rule-making hearing, the agency shall cause notice of the hearing to be published in the Register; see RCW 34.05.320(1). These dates represent the twentieth day after the distribution date of the applicable Register.

⁴ A minimum of forty-five days is required between the distribution date of the Register giving notice of the expedited rule making and the agency adoption date. No hearing is required, but the public may file written objections. See RCW 34.05.230 and 1.12.040.

REGULATORY FAIRNESS ACT

The Regulatory Fairness Act, chapter 19.85 RCW, was enacted in 1982 to minimize the impact of state regulations on small business. Amended in 1994, the act requires a small business economic impact analysis of proposed rules that impose more than a minor cost on twenty percent of the businesses in all industries, or ten percent of the businesses in any one industry. The Regulatory Fairness Act defines industry as businesses within a four digit SIC classification, and for the purpose of this act, small business is defined by RCW 19.85.020 as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees."

Small Business Economic Impact Statements (SBEIS)

A small business economic impact statement (SBEIS) must be prepared by state agencies when a proposed rule meets the above criteria. Chapter 19.85 RCW requires the Washington State Business Assistance Center (BAC) to develop guidelines for agencies to use in determining whether the impact of a rule is more than minor and to provide technical assistance to agencies in developing a SBEIS. All permanent rules adopted under the Administrative Procedure Act, chapter 34.05 RCW, must be reviewed to determine if the requirements of the Regulatory Fairness Act apply; if an SBEIS is required it must be completed before permanent rules are filed with the Office of the Code Reviser.

Mitigation

In addition to completing the economic impact analysis for proposed rules, state agencies must take reasonable, legal, and feasible steps to reduce or mitigate the impact of rules on small businesses when there is a disproportionate impact on small versus large business. State agencies are encouraged to reduce the economic impact of rules on small businesses when possible and when such steps are in keeping with the stated intent of the statute(s) being implemented by proposed rules. Since 1994, small business economic impact statements must contain a list of the mitigation steps taken, or reasonable justification for not taking steps to reduce the impact of rules on small businesses.

When is an SBEIS Required?

When:

The proposed rule has more than a minor (as defined by the BAC) economic impact on businesses in more than twenty percent of all industries or more than ten percent of any one industry.

When is an SBEIS Not Required?

When:

The rule is proposed only to comply or conform with a federal law or regulation, and the state has no discretion in how the rule is implemented;

There is less than minor economic impact on business;

The rule **REDUCES** costs to business (although an SBEIS may be a useful tool for demonstrating this reduced impact);

The rule is adopted as an emergency rule, although an SBEIS may be required when an emergency rule is proposed for adoption as a permanent rule; or

The rule is pure restatement of state statute.

WSR 05-03-010**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF HEALTH**

[Filed January 6, 2005, 10:58 a.m.]

Subject of Possible Rule Making: Chapter 246-562 WAC, J-1 Physician visa waiver regulations.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 70.185 RCW, federal legislation Public Law 108-441.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Changes made to the federal law authorizing the J-1 visa waiver program in November 2004 will permit the use of five of the thirty waivers for physicians to be employed in nondesignated health professional shortage areas. The law also permits waivers for specialist physicians based on criteria established by state agencies. The rules will establish criteria for health care facilities seeking to employ J-1 physicians in nondesignated areas and address criteria for specialist physicians.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: There are federal rules that regulate the J-1 visa waiver program. This program coordinates with the United States Department of State (DOS) and the Bureau of Citizenship and Immigration Services (CIS) to ensure compliance with the federal regulations. DOS and INS [CIS] will be included in all mailings.

Process for Developing New Rule: Program staff will use mailings and community work sessions to solicit input on rule amendments.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jennell Prentice, Office of Community and Rural Health, P.O. Box 47834, Olympia, WA 98504-7834, phone (360) 236-2814, fax (360) 664-9273, e-mail J1rules@doh.wa.gov.

January 5, 2005
M. C. Selecky
Secretary

WSR 05-03-041**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING**

[Filed January 11, 2005, 12:22 p.m.]

Subject of Possible Rule Making: Suspension of real estate licensee address change fees and transfer license fees.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.85.040(1), 18.85.200.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The real estate program proposes suspending the current collection of change of address and transfer fees from real estate licensees, addressed under WAC 308-124A-460. Any such fee reduction would have to be accomplished by rule amendment.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making; and agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Jana L. Jones, Real Estate Program, Department of Licensing, P.O. Box 9015, Olympia, WA 98507-9015.

January 11, 2005
Jana L. Jones, Administrator
Real Estate and Appraiser
Regulatory Programs

WSR 05-03-054**PREPROPOSAL STATEMENT OF INQUIRY
STATE BOARD OF HEALTH**

[Filed January 11, 2005, 4:46 p.m.]

Subject of Possible Rule Making: WAC 246-100-166 Immunization of childcare and school children against certain vaccine preventable diseases.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.20.050, 28A.210.070, 28A.080 [28A.210.-080], 28A.210.100.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The rule may need to be changed to require immunization against varicella (chickenpox) for school entry and child care. The Advisory Council on Immunization Practices, the American Academy of Pediatrics, and the American College of Family Medicine recommend vaccination of children against varicella. The effectiveness and efficacy of this vaccine has been demonstrated. Children who do not contract the disease nor receive a varicella vaccination during childhood face serious complications as adults if they contract the disease later in life. Varicella manifests as herpes zoster (shingles) in adults who contracted the disease as children. There may be significant economic losses associated with parents having to stay home to tend to children with chickenpox. Most states require varicella for school entry.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Superintendent of Public Instruction, under RCW 28A.210.150 and WAC 382-182-020, provides procedures for schools to verify immunization status of students transferring from one school to another before actual immunization records are received. The State Board of Education under RCW 28A.210.160 and WAC 180-38-005 sets procedural and substantive due process requirements governing exclusion of students for failure to comply with immunization requirements. The Department of Social and Health Services sets immunization requirements for children in licensed day care settings under chapter 74.15 RCW and WAC 388-150-220. The State Board of Health and the Department of Health will work with these agencies to assure they have opportunities to review any proposed changes in immunization requirements.

Process for Developing New Rule: Collaborative.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Tara Wolff, Washington State Board of Health, P.O. Box 7990, Olympia, WA 98504, phone (360) 236-4101, fax (360) 236-4088, e-mail Tara.Wolff@doh.wa.gov; or Janna Bardi, Immunization Program, Washington State Department Health, P.O. Box 47843, Olympia, WA 98504, phone (360) 236-3568 or e-mail Janna.Bardi@doh.wa.gov.

January 11, 2005
Craig McLaughlin
Executive Director

WSR 05-03-056**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF HEALTH**

[Filed January 11, 2005, 4:49 p.m.]

Subject of Possible Rule Making: Chapter 246-790 WAC, Special supplemental nutrition program for women, infants, and children, the federal reauthorization bill for the WIC program set forth new regulations for the operation of the WIC program. The new regulations include, among many topics, provisions around cost containment, the type of retailers the states are allowed to contract with to accept WIC checks, the selection criteria the states use to choose their authorized retailers, the time periods in which states may accept applications from retailers to become authorized, and how WIC checks may be transacted.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.70.120.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The WIC program has federal authority to impose sanctions, including monetary penalties. The Administrative Procedure Act (APA) requires a state rule to be in place if a program has the authority to impose monetary penalties. In order to remain in compliance with the federal regulations and the APA, the WIC program needs to revise the existing rule. The regulations have not yet been released. However, Washington WIC has received policy statements from the United States Department of Agriculture (USDA) in advance of the regulations so to begin making the required changes.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The USDA establishes the regulations that govern the operation of the WIC program.

Process for Developing New Rule: Program staff will solicit input from the Retailer Advisory Committee, the Washington food industry, all authorized retailers and owners, local agency staff, and other interested parties. All proposed revisions will also have to be reviewed and approved by the USDA.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Susan Evans, WIC Program, P.O. Box

47886, Olympia, WA 98504-7886, voice (360) 236-3636, fax (360) 586-3890, e-mail susan.evans@doh.wa.gov.

January 10, 2005
Mary C. Selecky
Secretary

WSR 05-03-059**WITHDRAWAL OF
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING**

[Filed January 12, 2005, 1:48 p.m.]

The Department of Licensing hereby withdraws prepropositional WAC 308-96A-307, filed with your office on April 19, 2004, as WSR 04-09-059.

Steve Boruchowitz
Vehicle Services Projects
and Planning Office

WSR 05-03-067**PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed January 13, 2005, 10:08 a.m.]

Subject of Possible Rule Making: Recreational crab fishing rules.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 77.12.047.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Puget Sound crab have been overharvested by recreational fishers under the current allocation model. Rules are needed to keep the recreational harvest within the guidelines set by the commission.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lew Atkins, Fish Program, Assistant Director, 600 Capitol Way North, Olympia, WA 98504-1091, phone (360) 902-2651. Contact by March 3, 2005. Expected proposal filing on or after March 4, 2005.

January 13, 2005
Evan Jacoby
Rules Coordinator

WSR 05-03-074
PREPROPOSAL STATEMENT OF INQUIRY
GAMBLING COMMISSION

[Filed January 14, 2005, 9:14 a.m.]

Subject of Possible Rule Making: Issuing temporary licenses.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 9.46.070.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The director has authority to approve temporary licenses, except for manufacturers and house-banked card rooms. The proposal would streamline our processes by allowing the director the authority to also approve temporary licenses for these two activities.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Rick Day, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3446; Neal Nunamaker, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3449; or Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466.

[Meeting Dates and Locations:] On February 11, 2005, at the Red Lion Hotel - Olympia, 2300 Evergreen Park Drive, Olympia, WA 98502, (360) 943-4000; on March 11, 2005, at the DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220; and on April 15, 2005, at the Red Lion - Vancouver at the Quay, 100 Columbia Street, Vancouver, WA 98660, (360) 694-8341.

January 12, 2005

Susan Arland
 Rules Coordinator

WSR 05-03-075
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF TRANSPORTATION

[Filed January 14, 2005, 2:10 p.m.]

Subject of Possible Rule Making: Rules governing appurtenances designated as measurement exclusive devices located on vehicles operating on state highways.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 46.44.090.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The administrative rule will provide a more efficient method of administering and enforcing federal and state vehicle size and weight parameters. The category of measurement exclusive devices can be very dynamic with changes occurring frequently. By using WAC the department can provide for timely compliance with federal changes and provide timely updates as state requirements change.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Washington State Patrol; Federal Highways - Office of Freight Management.

Process for Developing New Rule: Adoption of federal rule and inclusion of current office policy. Some minor negotiated rule making will also occur.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Barry Diseth, Commercial Vehicle Services, Department of Transportation, P.O. Box 47367, Olympia, WA 98504-7367, phone (360) 705-7805, fax (360) 705-6836, e-mail disethb@wsdot.wa.gov.

January 14, 2005

John F. Conrad

Assistant Secretary
 Engineering and Regional Operations

WSR 05-03-076
PREPROPOSAL STATEMENT OF INQUIRY
SECRETARY OF STATE

[Filed January 14, 2005, 2:57 p.m.]

Subject of Possible Rule Making: Local government grant program.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 29A.04.450.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The federal government passed the Help America Vote Act (HAVA) and made funding available to replace punch card voting and improve the administration of elections. No mechanism was outlined by the federal government as to how to distribute the funds other than a grant method. RCW 29A.04.450 was passed giving the Secretary of State authority to create a local government grant program.

The rules will accomplish the creation of a local government grant program and the distribution of funds to pay for the replacement of punch card voting and the improvement of election administration.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lori Guerrero, Office of the Secretary of State, P.O. Box 40220, Olympia, WA 98504-0220, lguerrero@secstate.wa.gov, (360) 902-4169.

January 14, 2005

Steve Excell

Assistant Secretary of State

PREPROPOSAL

WSR 05-03-083
WITHDRAWAL OF
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Medical Assistance Administration)

[Filed January 17, 2005, 1:04 p.m.]

The Medical Assistance Administration would like to withdraw preproposal statement of inquiry WSR 02-11-127, filed on May 21, 2002.

Andy Fernando, Manager
 Rules and Policies Assistance Unit

WSR 05-03-090
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed January 18, 2005, 10:08 a.m.]

Subject of Possible Rule Making: Chapter 296-17 WAC, General reporting rules, classifications, audit and record keeping, rates and rating system for workers' compensation insurance.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 51.06.035 and 51.16.100.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Labor and industries is required by law to establish and maintain a workers' compensation classification plan that classifies all occupations or industries within the state and sets basic rates of premium for these classifications that are distributed fairly (RCW 51.16.035). The department has conducted a review of various classification and reporting rules and determined that certain rules are in need of revision, such as computer numeric controlled (CNC) machine shops, shake and shingle mills, entertainers, pallet dealers, construction debris cleanup classifications. General housekeeping changes will also be made.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other state, local or federal agency regulates this subject.

Process for Developing New Rule: Labor and industries will solicit input from the business community by way of direct mailings, the internet, focus meetings, and/or informal public meetings. Labor and industries will use this input to formulate proposed changes to the existing rules and advise customers of future rule making by direct mailing and/or the internet.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Labor and industries will mail letters with ideas on possible rule changes to affected employers. Employers will be encouraged to participate in the process to share ideas and/or meetings. Employers can obtain information on our process at the employer services website www.lni.wa.gov/insuranceservices/employerservices and can submit com-

ments electronically to Moom235@lni.wa.gov or by calling (360) 902-4774 or by fax (360) 902-4729.

January 18, 2005
 Paul Trause
 Director

WSR 05-03-091
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed January 18, 2005, 10:09 a.m.]

Subject of Possible Rule Making: Chapter 296-62 WAC, General occupational health standards and chapter 296-855 WAC, Ethylene oxide.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 49.17.010, 49.17.040, and 49.17.050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: WISHA is proposing to rewrite and clarify requirements relating to ethylene oxide. This rule making is part of our long-term goal to rewrite our safety and health rules. The proposal will move all ethylene oxide requirements from chapter 296-62 WAC, General occupational health standards, and place them into new chapter 296-855 WAC.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other state or federal agencies (other than OSHA) are known to regulate this subject.

Process for Developing New Rule: Parties interested in the formulation of these rules for proposal may contact the individual listed below. The public may also participate by commenting after amendments are proposed by providing written comments or giving oral testimony during the public hearing process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Sally Elliott, Department of Labor and Industries, WISHA Services Division, P.O. Box 44620, Olympia, WA 98504-4620, e-mail yous235@lni.wa.gov, phone (360) 902-5484, fax (360) 902-5529.

January 18, 2005
 Paul Trause
 Director

WSR 05-03-092
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed January 18, 2005, 10:09 a.m.]

Subject of Possible Rule Making: Chapter 296-45 WAC, Safety standards for electrical workers.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The Occupational Safety and Health Administration (OSHA) found our rules relating to electrical workers to be less effective than the federal standard. The proposed changes will make our rule at-least-as-effective-as the federal equivalent. Additional housekeeping changes may be made.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other state or federal agencies, other than OSHA are known that regulate this subject. The Washington Industrial Safety and Health Act's (WISHA) rules are required to be at-least-as-effective-as OSHA's rules.

Process for Developing New Rule: Parties interested in the formulation of these rules for proposal may contact the individual listed below. The public may also participate by commenting after amendments are proposed by providing written comments or giving oral testimony during the public hearing process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Cindy Ireland, Regulations Analyst, Department of Labor and Industries, WISHA Services Division, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5522, fax (360) 902-5529.

January 18, 2005

Paul Trause
Director

WSR 05-03-104
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed January 18, 2005, 4:56 p.m.]

Subject of Possible Rule Making: The Securities Division proposes to amend WAC 460-24A-105, concerning requirements imposed on investment advisers who take custody of client funds or securities.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 21.20.450, 21.20.100, 21.20.050-[21.20.]060.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The Securities Division proposes to amend WAC 460-24A-105, addressing investment advisers who take custody of client funds. In general, the amendment would require investment advisors to indicate in their registration application whether they take custody of client funds, require investment advisors to keep such funds with a qualified custodian, and define certain key terms such as "custody." The rule would also update and make more uniform the language in the current rule. The division believes that these amendments will increase investor protection by improving the information given to the division and to clients, while giving the securities industry more structured guidance about safekeeping client funds and the meaning of "custody."

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agen-

cies: This proposal is intended to be consistent with the North American Securities Administrators Association (NASAA) model rule on custody requirements for investment advisers.

Process for Developing New Rule: The NASAA model rule upon which this amendment will be based was subjected to extensive public comment prior to adoption.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Andrew Ledbetter, Securities Division, Department of Financial Institutions, P.O. Box 9033, Olympia, WA 98507-9033, (360) 902-8760, fax (360) 704-6923, aledbetter@dfi.wa.gov. Information is also available on the Securities Division website <http://www.dfi.wa.gov/sd>.

January 5, 2005

Helen P. Howell
Director



WSR 05-03-007

PROPOSED RULES

DEPARTMENT OF HEALTH

(Office of Community and Rural Health)

[Filed January 6, 2005, 10:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-12-121.

Title of Rule and Other Identifying Information: WAC 246-564-010 Volunteer retired provider malpractice insurance program: Qualified practice settings, this proposal is the result of SHB 2788 passed during the 2004 legislative session.

Hearing Location(s): Point Plaza East, Room 152, 310 Israel Road S.E., Tumwater, WA 98501, on March 14, 2005, at 10:00 a.m.

Date of Intended Adoption: March 28, 2005.

Submit Written Comments to: Robin Walker, P.O. Box 47834, Olympia, WA 98504-7834, e-mail <http://www.doh.wa.gov/policyreview/>, fax (360) 664-9273, by March 7, 2004.

Assistance for Persons with Disabilities: Contact Robin Walker by February 28, 2005, TTY (800) 833-6388 or (360) 236-2810.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to expand authorized practice settings for the volunteer retired provider malpractice insurance program (VRP). The proposal will increase the number of VRP practice settings and thus increase the options for health care providers who want to volunteer their time. There are no existing rules for the volunteer retired provider program currently.

Reasons Supporting Proposal: This rule will increase access to healthcare services for low income patients.

Statutory Authority for Adoption: RCW 43.70.460 and 43.70.470.

Statute Being Implemented: RCW 43.70.460 and 43.70.470.

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

Name of Proponent: Department of Health, governmental.

Name of Agency Personnel Responsible for Drafting: Robin Walker, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-2810; Implementation: Diana Ehri, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-2813; and Enforcement: Kris Sparks, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-2800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose costs on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant rule under RCW 34.05.328. The proposal does not subject anyone to penalty, or involve licensure requirements and these rules further clarify operation of an existing program.

January 5, 2005
M. C. Selecky
Secretary

Chapter 246-564 WAC

VOLUNTEER RETIRED PROVIDER MALPRACTICE INSURANCE PROGRAM

NEW SECTION

WAC 246-564-001 Purpose. The volunteer retired provider malpractice insurance program (VRP) was established under RCW 43.70.460 and 43.70.470, and is administered by the department of health. The VRP program serves low-income patients by increasing access to health care services. The program pays the malpractice insurance for volunteer health care providers in qualified practice settings.

NEW SECTION

WAC 246-564-010 Qualified practice settings defined. Qualified practice settings include any of the following:

- (1) Public or tax exempt corporations.
- (2) For-profit practice settings that maintain and hold themselves out to the public as providing health care services to Medicaid patients and post a sliding fee scale.
- (3) For-profit practice settings that have established hours on a regular basis for providing free health care services.
- (4) For-profit practice settings that participate, through a written agreement, in a community-based program to provide access to health care services for uninsured persons.

WSR 05-03-008

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed January 6, 2005, 10:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-24-069.

Title of Rule and Other Identifying Information: WAC 246-915-350 Inactive credential and 246-915-990 Physical therapy fees and renewal cycle, RCW 18.74.073 states any physical therapist licensed not practicing physical therapy or providing services may place his or her license in an inactive status. This statute requires the Washington State Board of Physical Therapy to set requirements for maintaining an inactive status and converting from an inactive or active status.

Hearing Location(s): Department of Health, 1610 N.E., 150th Street, Room S4, Shoreline, WA 98155, on March 15, 2005, at 9:30 a.m.

Date of Intended Adoption: March 15, 2005.

Submit Written Comments to: Kris Waidely, 310 Israel Road S.E., Tumwater, WA 98501, e-mail kris.waidely@doh.wa.gov, fax (360) 664-9077, by March 4, 2005.

Assistance for Persons with Disabilities: Contact Kris Waidely by March 4, 2005, TTY (800) 833-6388 or (360) 236-4847.

PROPOSED

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, if a practitioner's license has expired for over three years and the practitioner has not been in active practice in another United States jurisdiction, the practitioner must retake and pass the national examination. The statute allows physical therapists to place their license in an inactive status. Since the board did not have rules describing the requirements for maintaining and converting from an inactive status, practitioners have been unable to exercise this option. The proposed amendments to WAC 246-915-350 and 246-915-990 address these concerns by allowing a licensee to place his or her license in an inactive status, if the licensee is not practicing physical therapy.

Reasons Supporting Proposal: The proposal ensures the board's rules reflect the statutory requirements for an inactive license category. The proposal also allows practitioners to maintain licenses without being penalized through late fees or the requirement to retake and pass the national examination.

Statutory Authority for Adoption: RCW 18.74.073.

Statute Being Implemented: RCW 18.74.073.

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

Name of Proponent: Department of Health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kris Waidely, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4847.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule change does not impose more than minor costs to the businesses impacted by the rule, therefore a small business economic impact statement is not required under chapter 19.85 RCW.

The proposed rule for the inactive credential poses an annual credential cost of \$35.00. This rule would allow a practitioner to place their credential in an inactive status while they are not practicing or delivering physical therapy services. Under the Regulatory Fairness Act (chapter 19.85 RCW), a small business economic impact statement (SBEIS) is required whenever a regulation imposes "more than minor" costs on a regulated business. The more than minimum cost threshold from "804 Office of Clinics and Other Healthcare Practitioners" is set at \$110.00. The new cost to implement the proposed rule does not exceed the threshold therefore, a small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 because the proposed rule does not subject a person to a penalty. The proposed rule restates existing Washington statute and rule without material change.

December 8, 2004

Kris Waidely
Program Manager

NEW SECTION

WAC 246-915-350 Inactive credential. (1) A physical therapist may obtain an inactive credential. Refer to the requirements of chapter 246-12 WAC, Part 4.

(2) Practitioners with an inactive credential for three years or less who wish to return to active status must meet the requirements of chapter 246-12 WAC, Part 4.

(3) Practitioners with an inactive credential for more than three years, who have been in active practice in another United States jurisdiction, and wish to return to active status must:

(a) Submit verification of active practice from any other United States jurisdiction; and

(b) Meet the requirements of chapter 246-12 WAC, Part 4.

(4) Practitioners with an inactive credential for more than three years, who have not been in active practice in another United States jurisdiction, and wish to return to active status must:

(a) Successfully pass the examination as provided in RCW 18.74.035. The board may waive reexamination if the practitioner presents evidence of continuing competency satisfactory to the board; and

(b) Must meet the requirements of chapter 246-12 WAC, Part 2.

AMENDATORY SECTION (Amending WSR 99-08-101, filed 4/6/99, effective 7/1/99)

WAC 246-915-990 Physical therapy fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$100.00
License renewal	65.00
Late renewal penalty	50.00
<u>Inactive license renewal</u>	<u>35.00</u>
<u>Expired inactive license reissuance</u>	<u>50.00</u>
Expired license reissuance	50.00
Duplicate license	15.00
Certification	25.00

WSR 05-03-018

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 04-12—Filed January 7, 2005, 10:51 a.m.]

Supplemental Notice to WSR 05-01-235.

Preproposal statement of inquiry was filed as WSR 04-14-055.

Title of Rule and Other Identifying Information: Chapter 173-350 WAC, Solid waste handling standards, the chapter applies to facilities and activities that manage solid wastes not defined as municipal solid waste.

Hearing Location(s): Originally a hearing on this rule making was scheduled for February 8, 2005, due to this supplemental filing that hearing will no longer be taking place. A new hearing is scheduled at the Ecology Headquarters

Building, 300 Desmond Drive, Lacey, WA, on February 23, 2005, at 1:00 p.m.

Date of Intended Adoption: March 7, 2005.

Submit Written Comments to: Randy Martin, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail rama461@ecy.wa.gov, fax (360) 407-7157, by March 2, 2005.

Assistance for Persons with Disabilities: Contact Solid Waste and Financial Assistance Program by February 9, 2005, TTY (800) 833-6388 or (360) 407-6900.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology is filing this supplemental CR-102 in order to file the small business economic impact statement (SBEIS) with the Office of the Code Reviser. Ecology has not changed the proposed language filed as WSR 05-01-235.

This rule amendment would clarify the definitions of clean soils and clean dredged materials, contaminated soils and contaminated dredged material.

Reasons Supporting Proposal: This rule change is a temporary fix. We adopted a new solid waste rule, and revised our soil standards to be more clear. Upon implementation, we have found that our new standards are not more clear, and are causing much concern. This rule change takes us back to the old standards. We will file another rule with the final soil standards in the spring of 2005. In that process, we will analyze the concerns and economic impacts.

Statutory Authority for Adoption: RCW 70.95.060, authorizes ecology to adopt rules to implement the requirements of chapter 70.95 RCW.

Statute Being Implemented: Chapter 70.75 RCW, Solid waste management—Reduction and Recycling Act.

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

Name of Proponent: Washington Department of Ecology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Albert W. Krafft, ERO Regional Office, Spokane, (509) 329-3438.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

This proposed rule amendment will amend the definitions of "clean soils and clean dredged material," "contaminated dredged material" and "contaminated soils." This would have the affect of changing ecology's approach to managing soils containing contaminants, as set forth in chapter 173-350 WAC, Solid waste handling standards. Numerous stakeholders have expressed concern with the current approach to managing soils containing contaminants.

COSTS: The proposed rule amendment is not expected to have any cost impact to public or private entities and is not expected to have any impact on the environment for the following reasons:

1. In the last two years, the change from the prior language, which is being used in this proposed amendment, has had little impact.¹

2. For purposes of an SBEIS, no small business was affected in the last two years.

3. Significantly, this proposed rule change is intended as a temporary adjustment lasting only a few months, to deal with implementation problems arising from the adoption of the definitions listed above. This proposal is intended to be a very short-term measure that will give both ecology and stakeholders the opportunity to develop and adopt a rule that will avoid the implementation and compliance problems experienced under the current rule.

This proposed rule amendment is intended as a temporary solution to concerns and problems encountered as ecology attempted to implement the definitions. Ecology expects this proposed amendment to be in effect for a few months. Given the infrequency with which the definitions have been applied and given the expected adoption date of revisions to this proposed rule amendment, it is unlikely that this rule can have any cost impact.

The proposed rule is expected to be adopted in March of 2005.

Ecology expects to submit a CR-101 at the time of the February hearings, a CR-102 with a proposed revision addressing the problems previously encountered by mid-March of 2005, and a CR-103 adopting the final solution in June of 2005. This change is expected to deal with any potential incongruency between definitions from WAC 173-350-100 and 173-304-100.

Given that the rule is unlikely to have a cost impact at all, the likelihood of having an impact on a small business is then extremely small. Thus, no ratios can be constructed for the SBEIS. Further, ecology will soon (spring 2005) revise the soil standards. This process will include an SBEIS and full cost benefit analysis.

BENEFITS: This proposed rule amendment is intended to reduce the burden of uncertainty for individuals, companies, and public sector entities involved in soil movement or dredging. The shift from the definitions of two years ago, to the current definitions and finally to the permanent definitions, and the potential for a discrepancy between definitions in chapters 173-304 and 173-350 WAC, could create unnecessary confusion in the planning of both normal soil movement and cleanups. Thus, this proposed rule amendment could constitute a cost-reducing feature under chapter 19.85 RCW and a lowering of burden under RCW 34.05.328.

The benefit of this rule amendment is that individuals and companies will be able to move forward in planning their work in the way that they are accustomed to doing soil movement, dredging, and cleanup without having to change their planned compliance activities twice.

This proposed rule reverts to the definitions that were in place two years ago before the current definitions were adopted. The proposed definitions are comparable to the definitions that have been in effect in WAC 173-304-100 since 1985.

Given that the definitions being revised have not affected the environment over the last two years and given that the proposed rule amendment is expected to be temporary, it is unlikely that there will be any environmental impact. There may be some potential that reduced confusion will allow cleanup planning to proceed more quickly, thus benefiting the environment.

We will begin a second rule making in the spring of 2005 to address soils management. In that revision, we will include topsoil brokers, contractors, and landscapers. These are the majority of impacted small businesses working with soils. If other small businesses are identified, we will attempt to work with them as well.

¹ The existing definitions have only been applied to two cases and has not really had an effect in either case:

1. Port Angeles Graving Dock - The proponent (WSDOT) wanted to take slightly contaminated soils to a topsoil broker named Shotwell. The local health jurisdiction, with our backing, asked that soils go either to the nearby landfill or to a nearby cleanup site for grading use. WSDOT didn't like our options, which they claimed would cost more (this is a matter of dispute). We worked with the locals to craft a way whereby soils could go to Shotwell. This caused neither delay nor any additional costs. No small business was affected.

2. Blair Waterway Dredge Material - Dredge spoils from a Commencement Bay cleanup were destined for the LRI landfill several miles away. This would have cost the clean-up PRP significant transportation and disposal monies. We worked with the local health department to find an alternate solution. Another Commencement Bay clean-up site at the former Kaiser plant needed soils for grading. Because we had knowledge of the dredge spoils and the Kaiser site, we quickly concluded that the dredge material would be suitable for use at the Kaiser site. This saved costs. However, there is flexibility on cleanups and the cost savings may have resulted in some other way. Further, for purposes of an SBEIS no small business was affected.

A copy of the statement may be obtained by contacting Randy Martin, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6136, fax (360) 407-7157, e-mail rama461@ecy.wa.gov; or downloading a copy from the following website <http://www.ecy.wa.gov/laws-rules/activity/wac173350.html>.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Randy Martin, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6136, fax (360) 407-7157, e-mail rama461@ecy.wa.gov, or the following website <http://www.ecy.wa.gov/laws-rules/activity/wac173350.html>.

January 7, 2005
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending Order 99-24, filed 1/10/03, effective 2/10/03)

WAC 173-350-100 Definitions. When used in this chapter, the following terms have the meanings given below.

"**Active area**" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being, are proposed to be, or have been conducted. Setbacks shall not be considered part of the active area of a facility.

"**Agricultural composting**" means composting of agricultural waste as an integral component of a system designed to improve soil health and recycle agricultural wastes. Agricultural composting is conducted on lands used for farming.

"**Agricultural wastes**" means wastes on farms resulting from the raising or growing of plants and animals including, but not limited to, crop residue, manure and animal bedding, and carcasses of dead animals weighing each or collectively in excess of fifteen pounds.

"**Agronomic rates**" means the application rate (dry weight basis) that will provide the amount of nitrogen or other critical nutrient required for optimum growth of vegetation, and that will not result in the violation of applicable standards or requirements for the protection of ground or surface water as established under chapter 90.48 RCW, Water pollution control and related rules including chapter 173-200 WAC, Water quality standards for ground waters of the state of Washington, and chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington.

"**Air quality standard**" means a standard set for maximum allowable contamination in ambient air as set forth in chapter 173-400 WAC, General regulations for air pollution sources.

"**Below ground tank**" means a device meeting the definition of "tank" in this chapter where a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface of the tank that is in the ground.

"**Beneficial use**" means the use of solid waste as an ingredient in a manufacturing process, or as an effective substitute for natural or commercial products, in a manner that does not pose a threat to human health or the environment. Avoidance of processing or disposal cost alone does not constitute beneficial use.

"**Biosolids**" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all applicable requirements under chapter 173-308 WAC, Biosolids management. Biosolids includes a material derived from biosolids and septic tank sludge, also known as septage, that can be beneficially recycled and meets all applicable requirements under chapter 173-308 WAC, Biosolids management.

"**Buffer**" means a permanently vegetated strip adjacent to an application area, the purpose of which is to filter runoff or overspray from the application area and protect an adjacent area.

"**Cab cards**" means a license carried in a vehicle that authorizes that vehicle to legally pick up waste tires and haul to a permitted, licensed facility or an exempt facility for deposit.

"**Captive insurance companies**" means companies that are wholly owned subsidiaries controlled by the parent company and established to insure the parent company or its other subsidiaries.

"**Channel migration zone**" means the lateral extent of likely movement of a stream or river channel along a stream reach.

"**Clean soils and clean dredged material**" means soils and dredged material ~~((that do not contain contaminants at concentrations which could negatively impact the existing quality of air, waters of the state, soils, or sediments; or pose a threat to the health of humans or other living organisms))~~ which are not dangerous wastes, contaminated soils, or contaminated dredged material as defined in this section.

"**Closure**" means those actions taken by the owner or operator of a solid waste handling facility to cease disposal operations or other solid waste handling activities, to ensure that all such facilities are closed in conformance with appli-

cable regulations at the time of such closures and to prepare the site for the post-closure period.

"Closure plan" means a written plan developed by an owner or operator of a facility detailing how a facility is to close at the end of its active life.

"Composted material" means organic solid waste that has undergone biological degradation and transformation under controlled conditions designed to promote aerobic decomposition at a solid waste facility in compliance with the requirements of this chapter. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.

"Composting" means the biological degradation and transformation of organic solid waste under controlled conditions designed to promote aerobic decomposition. Natural decay of organic solid waste under uncontrolled conditions is not composting.

"Conditionally exempt small quantity generator (CESQG)" means a dangerous waste generator whose dangerous wastes are not subject to regulation under chapter 70.105 RCW, Hazardous waste management, solely because the waste is generated or accumulated in quantities below the threshold for regulation and meets the conditions prescribed in WAC 173-303-070 (8)(b).

"Conditionally exempt small quantity generator (CESQG) waste" means dangerous waste generated by a conditionally exempt small quantity generator.

"Container" means a portable device used for the collection, storage, and/or transportation of solid waste including, but not limited to, reusable containers, disposable containers, and detachable containers.

"Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in the environment or that occurs at concentrations greater than natural background levels.

"Contaminate" means the release of solid waste, leachate, or gases emitted by solid waste, such that contaminants enter the environment at concentrations that pose a threat to human health or the environment, or cause a violation of any applicable environmental regulation.

"Contaminated dredged material" means dredged material resulting from the dredging of surface waters of the state where contaminants are present in the dredged material at concentrations not suitable for open water disposal and the dredge spoils are not dangerous wastes and are not regulated by section 404 of the Federal Clean Water Act (P.L. 95-217).

"Contaminated soils ((and ~~contaminated dredged material~~))" means soils ((and ~~dredged material that contain~~ contaminants at concentrations which could negatively impact the existing quality of air, waters of the state, soils or sediments, or pose a threat to the health of humans or other living organisms)) removed during the cleanup of a hazardous waste site, or a dangerous waste facility closure, corrective actions or other clean-up activities and which contain harmful substances but are not designated dangerous wastes.

"Corrosion expert" means a person certified by the National Association of Corrosion Engineers (NACE) or a registered professional engineer who has certification or licensing that includes education and experience in corrosion control.

"Crop residues" means vegetative material leftover from the harvesting of crops, including leftover pieces or whole fruits or vegetables, crop leaves and stems. Crop residue does not include food processing waste.

"Dangerous wastes" means any solid waste designated as dangerous waste by the department under chapter 173-303 WAC, Dangerous waste regulations.

"Department" means the Washington state department of ecology.

"Detachable containers" means reusable containers that are mechanically loaded or handled, such as a dumpster or drop box.

"Disposable containers" means containers that are used once to handle solid waste, such as plastic bags, cardboard boxes and paper bags.

"Disposal" or **"deposition"** means the discharge, deposit, injection, dumping, leaking, or placing of any solid waste into or on any land or water.

"Domestic septage" means Class I, II or III domestic septage as defined in chapter 173-308 WAC, Biosolids management.

"Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of domestic wastewater together with such industrial waste as may be present.

"Drop box facility" means a facility used for the placement of a detachable container including the area adjacent for necessary entrance and exit roads, unloading and turn-around areas. Drop box facilities normally serve the general public with loose loads and receive waste from off-site.

"Energy recovery" means the recovery of energy in a useable form from mass burning or refuse-derived fuel incineration, pyrolysis or any other means of using the heat of combustion of solid waste that involves high temperature (above twelve hundred degrees Fahrenheit) processing.

"Existing facility" means a facility which is owned or leased, and in operation, or for which facility construction has begun, on or before the effective date of this chapter and the owner or operator has obtained permits or approvals necessary under federal, state and local statutes, regulations and ordinances.

"Facility" means all contiguous land (including buffers and setbacks) and structures, other appurtenances, and improvements on the land used for solid waste handling.

"Facility construction" means the continuous on-site physical act of constructing solid waste handling unit(s) or when the owner or operator of a facility has entered into contractual obligations for physical construction of the facility that cannot be canceled or modified without substantial financial loss.

"Facility structures" means constructed infrastructure such as buildings, sheds, utility lines, and piping on the facility.

"Garbage" means animal and vegetable waste resulting from the handling, storage, sale, preparation, cooking, and serving of foods.

"Ground water" means that part of the subsurface water that is in the zone of saturation.

"Holocene fault" means a plane along which earthen material on one side has been displaced with respect to that

on the other side and has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene to the present.

"Home composting" means composting of on-site generated wastes, and incidental materials beneficial to the composting process, by the owner or person in control of a single-family residence, or for a dwelling that houses two to five families, such as a duplex or clustered dwellings.

"Household hazardous wastes" means any waste which exhibits any of the properties of dangerous wastes that is exempt from regulation under chapter 70.105 RCW, Hazardous waste management, solely because the waste is generated by households. Household hazardous waste can also include other solid waste identified in the local hazardous waste management plan prepared pursuant to chapter 70.105 RCW, Hazardous waste management.

"Hydrostratigraphic unit" means any water-bearing geologic unit or units hydraulically connected or grouped together on the basis of similar hydraulic conductivity which can be reasonably monitored; several geologic formations or part of a geologic formation may be grouped into a single hydrostratigraphic unit; perched sand lenses may be considered a hydrostratigraphic unit or part of a hydrostratigraphic unit, for example.

"Incineration" means reducing the volume of solid wastes by use of an enclosed device using controlled flame combustion.

"Incompatible waste" means a waste that is unsuitable for mixing with another waste or material because the mixture might produce excessive heat or pressure, fire or explosion, violent reaction, toxic dust, fumes, mists, or gases, or flammable fumes or gases.

"Industrial solid wastes" means solid waste generated from manufacturing operations, food processing, or other industrial processes.

"Industrial wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of industrial wastewater.

"Inert waste" means solid wastes that meet the criteria for inert waste in WAC 173-350-990.

"Inert waste landfill" means a landfill that receives only inert wastes.

"Intermediate solid waste handling facility" means any intermediate use or processing site engaged in solid waste handling which is not the final site of disposal. This includes material recovery facilities, transfer stations, drop boxes, baling and compaction sites.

"Intermodal facility" means any facility operated for the purpose of transporting closed containers of waste and the containers are not opened for further treatment, processing or consolidation of the waste.

"Jurisdictional health department" means city, county, city-county or district public health department.

"Land application site" means a contiguous area of land under the same ownership or operational control on which solid wastes are beneficially utilized for their agronomic or soil-amending capability.

"Land reclamation" means using solid waste to restore drastically disturbed lands including, but not limited to, con-

struction sites and surface mines. Using solid waste as a component of fill is not land reclamation.

"Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on land including facilities that use solid waste as a component of fill.

"Leachate" means water or other liquid within a solid waste handling unit that has been contaminated by dissolved or suspended materials due to contact with solid waste or gases.

"Limited moderate risk waste" means waste batteries, waste oil, and waste antifreeze generated from households.

"Limited moderate risk waste facility" means a facility that collects, stores, and consolidates only limited moderate risk waste.

"Limited purpose landfill" means a landfill which is not regulated or permitted by other state or federal environmental regulations that receives solid wastes limited by type or source. Limited purpose landfills include, but are not limited to, landfills that receive segregated industrial solid waste, construction, demolition and landclearing debris, wood waste, ash (other than special incinerator ash), and dredged material. Limited purpose landfills do not include inert waste landfills, municipal solid waste landfills regulated under chapter 173-351 WAC, Criteria for municipal solid waste landfills, landfills disposing of special incinerator ash regulated under chapter 173-306 WAC, Special incinerator ash management standards, landfills regulated under chapter 173-303 WAC, Dangerous waste regulations, or chemical waste landfills used for the disposal of polychlorinated biphenyls (PCBs) regulated under Title 40 CFR Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions.

"Liquid" means a substance that flows readily and assumes the form of its container but retains its independent volume.

"Liquid waste" means any solid waste which is deemed to contain free liquids as determined by the Paint Filter Liquids Test, Method 9095, in *"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,"* EPA Publication SW-846.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete or asphalt, or unconsolidated earth materials, soil or regolith lying at or near the earth's surface.

"Local fire control agency" means a public or private agency or corporation providing fire protection such as a local fire department, the department of natural resources or the United States Forest Service.

"Lower explosive limits" means the lowest percentage by volume of a mixture of explosive gases that will propagate a flame in air at twenty-five degrees centigrade and atmospheric pressure.

"Material recovery facility" means any facility that collects, compacts, repackages, sorts, or processes for transport separated solid waste for the purpose of recycling.

"**Mobile systems and collection events**" means activities conducted at a temporary location to collect moderate risk waste.

"**Moderate risk waste (MRW)**" means solid waste that is limited to conditionally exempt small quantity generator (CESQG) waste and household hazardous waste (HHW) as defined in this chapter.

"**MRW facility**" means a solid waste handling unit that is used to collect, treat, recycle, exchange, store, consolidate, and/or transfer moderate risk waste. This does not include mobile systems and collection events or limited MRW facilities that meet the applicable terms and conditions of WAC 173-350-360 (2) or (3).

"**Municipal solid waste (MSW)**" means a subset of solid waste which includes unsegregated garbage, refuse and similar solid waste material discarded from residential, commercial, institutional and industrial sources and community activities, including residue after recyclables have been separated. Solid waste that has been segregated by source and characteristic may qualify for management as a non-MSW solid waste, at a facility designed and operated to address the waste's characteristics and potential environmental impacts. The term MSW does not include:

- Dangerous wastes other than wastes excluded from the requirements of chapter 173-303 WAC, Dangerous waste regulations, in WAC 173-303-071 such as household hazardous wastes;

- Any solid waste, including contaminated soil and debris, resulting from response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601), chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act, chapter 173-340 WAC, the Model Toxics Control Act cleanup regulation or a remedial action taken under those rules; nor

- Mixed or segregated recyclable material that has been source-separated from garbage, refuse and similar solid waste. The residual from source separated recyclables is MSW.

"**Natural background**" means the concentration of chemical, physical, biological, or radiological substances consistently present in the environment that has not been influenced by regional or localized human activities. Metals at concentrations naturally occurring in bedrock, sediments and soils due solely to the geologic processes that formed the materials are natural background. In addition, low concentrations of other persistent substances due solely to the global use or formation of these substances are natural background.

"**New solid waste handling unit**" means a solid waste handling unit that begins operation or facility construction, and significant modifications to existing solid waste handling units, after the effective date of this chapter.

"**Nuisance odor**" means any odor which is found offensive or may unreasonably interfere with any person's health, comfort, or enjoyment beyond the property boundary of a facility.

"**One hundred year flood plain**" means any land area that is subject to one percent or greater chance of flooding in any given year from any source.

"**Open burning**" means the burning of solid waste materials in an open fire or an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

"**Overburden**" means the earth, rock, soil, and topsoil that lie above mineral deposits.

"**Permeability**" means the ease with which a porous material allows liquid or gaseous fluids to flow through it. For water, this is usually expressed in units of centimeters per second and termed hydraulic conductivity.

"**Permit**" means an authorization issued by the jurisdictional health department which allows a person to perform solid waste activities at a specific location and which includes specific conditions for such facility operations.

"**Person**" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatever.

"**Pile**" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

"**Plan of operation**" means the written plan developed by an owner or operator of a facility detailing how a facility is to be operated during its active life.

"**Point of compliance**" means a point established in the ground water by the jurisdictional health department as near a possible source of release as technically, hydrogeologically and geographically feasible.

"**Post-closure**" means the requirements placed upon disposal facilities after closure to ensure their environmental safety for at least a twenty-year period or until the site becomes stabilized (i.e., little or no settlement, gas production, or leachate generation).

"**Post-closure plan**" means a written plan developed by an owner or operator of a facility detailing how a facility is to meet the post-closure requirements for the facility.

"**Premises**" means a tract or parcel of land with or without habitable buildings.

"**Private facility**" means a privately owned facility maintained on private property solely for the purpose of managing waste generated by the entity owning the site.

"**Processing**" means an operation to convert a material into a useful product or to prepare it for reuse, recycling, or disposal.

"**Product take-back center**" means a retail outlet or distributor that accepts household hazardous waste of comparable types as the products offered for sale or distributed at that outlet.

"**Public facility**" means a publicly or privately owned facility that accepts solid waste generated by other persons;

"**Putrescible waste**" means solid waste which contains material capable of being readily decomposed by microorganisms and which is likely to produce offensive odors.

"**Pyrolysis**" means the process in which solid wastes are heated in an enclosed device in the absence of oxygen to vaporization, producing a hydrocarbon-rich gas capable of being burned for recovery of energy.

"**Recyclable materials**" means those solid wastes that are separated for recycling or reuse, including, but not limited to, papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan.

"Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport.

"Representative sample" means a sample that can be expected to exhibit the average properties of the sample source.

"Reserved" means a section having no requirements and which is set aside for future possible rule making as a note to the regulated community.

"Reusable containers" means containers that are used more than once to handle solid waste, such as garbage cans.

"Runoff" means any rainwater, leachate or other liquid that drains over land from any part of the facility.

"Run-on" means any rainwater or other liquid that drains over land onto any part of a facility.

"Scavenging" means the removal of materials at a disposal facility, or intermediate solid waste-handling facility, without the approval of the owner or operator and the jurisdictional health department.

"Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in two hundred fifty years.

"Setback" means that part of a facility that lies between the active area and the property boundary.

"Sewage sludge" means solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated.

"Soil amendment" means any substance that is intended to improve the physical characteristics of soil, except composted material, commercial fertilizers, agricultural liming agents, unmanipulated animal manures, unmanipulated vegetable manures, food wastes, food processing wastes, and materials exempted by rule of the department, such as biosolids as defined in chapter 70.95J RCW, Municipal sewage sludge—Biosolids and wastewater, as regulated in chapter 90.48 RCW, Water pollution control.

"Solid waste" or **"wastes"** means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.

"Solid waste handling" means the management, storage, collection, transportation, treatment, use, processing or final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from such wastes or the conversion of the energy in such wastes to more useful forms or combinations thereof.

"Solid waste handling unit" means discrete areas of land, sealed surfaces, liner systems, excavations, facility structures, or other appurtenances within a facility used for solid waste handling.

"Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

"Storage" means the holding of solid waste materials for a temporary period.

"Surface impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), and which is designed to hold an accumulation of liquids or sludges. The term includes holding, storage, settling, and aeration pits, ponds, or lagoons, but does not include injection wells.

"Surface water" means all lakes, rivers, ponds, wetlands, streams, inland waters, salt waters and all other surface water and surface water courses within the jurisdiction of the state of Washington.

"Tank" means a stationary device designed to contain an accumulation of liquid or semisolid materials meeting the definition of solid waste or leachate, and which is constructed primarily of nonearthen materials to provide structural support.

"Transfer station" means a permanent, fixed, supplemental collection and transportation facility, used by persons and route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a solid waste handling facility.

"Treatment" means the physical, chemical, or biological processing of solid waste to make such solid wastes safer for storage or disposal, amenable for recycling or energy recovery, or reduced in volume.

"Twenty-five-year storm" means a storm of twenty-four hours duration and of such intensity that it has a four percent probability of being equaled or exceeded each year.

"Type 1 feedstocks" means source-separated yard and garden wastes, wood wastes, agricultural crop residues, wax-coated cardboard, preconsumer vegetative food wastes, other similar source-separated materials that the jurisdictional health department determines to have a comparable low level of risk in hazardous substances, human pathogens, and physical contaminants.

"Type 2 feedstocks" means manure and bedding from herbivorous animals that the jurisdictional health department determines to have a comparable low level of risk in hazardous substances and physical contaminants when compared to a type 1 feedstock.

"Type 3 feedstocks" means meat and postconsumer source-separated food wastes or other similar source-separated materials that the jurisdictional health department determines to have a comparable low level of risk in hazardous substances and physical contaminants, but are likely to have high levels of human pathogens.

"Type 4 feedstocks" means mixed municipal solid wastes, postcollection separated or processed solid wastes, industrial solid wastes, industrial biological treatment sludges, or other similar compostable materials that the jurisdictional health department determines to have a comparable

high level of risk in hazardous substances, human pathogens and physical contaminants.

"Universal wastes" means universal wastes as defined in chapter 173-303 WAC, Dangerous waste regulations. Universal wastes include, but may not be limited to, dangerous waste batteries, mercury-containing thermostats, and universal waste lamps generated by fully regulated dangerous waste generators or CESQGs.

"Unstable area" means a location that is susceptible to forces capable of impairing the integrity of the facility's liners, monitoring system or structural components. Unstable areas can include poor foundation conditions and areas susceptible to mass movements.

"Vadose zone" means that portion of a geologic formation in which soil pores contain some water, the pressure of that water is less than atmospheric pressure, and the formation occurs above the zone of saturation.

"Vector" means a living animal, including, but not limited to, insects, rodents, and birds, which is capable of transmitting an infectious disease from one organism to another.

"Vermicomposting" means the controlled and managed process by which live worms convert organic residues into dark, fertile, granular excrement.

"Waste tires" means any tires that are no longer suitable for their original intended purpose because of wear, damage or defect. Used tires, which were originally intended for use on public highways that are considered unsafe in accordance with RCW 46.37.425, are waste tires. Waste tires also include quantities of used tires that may be suitable for their original intended purpose when mixed with tires considered unsafe per RCW 46.37.425.

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

"Wood derived fuel" means wood pieces or particles used as a fuel for energy recovery, which contain paint, bonding agents, or creosote. Wood derived fuel does not include wood pieces or particles coated with paint that contains lead or mercury, or wood treated with other chemical preservatives such as pentachlorophenol, copper naphthanate, or copper-chrome-arsenate.

"Wood waste" means solid waste consisting of wood pieces or particles generated as a by-product or waste from the manufacturing of wood products, construction, demolition, handling and storage of raw materials, trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hogged fuel, and log sort yard waste, but does not include wood pieces or particles containing paint, laminates, bonding agents or chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

"Yard debris" means plant material commonly created in the course of maintaining yards and gardens and through horticulture, gardening, landscaping or similar activities. Yard debris includes, but is not limited to, grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, and vegetable garden debris.

"Zone of saturation" means that part of a geologic formation in which soil pores are filled with water and the pressure of that water is equal to or greater than atmospheric pressure.

WSR 05-03-024

PROPOSED RULES

CRIMINAL JUSTICE TRAINING COMMISSION

[Filed January 7, 2005, 2:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-23-015.

Title of Rule and Other Identifying Information: Chapter 139-03 WAC, Procedures.

Hearing Location(s): Washington State Criminal Justice Training Commission, 19010 1st Avenue South, Burien, WA 98148, on Wednesday, March 9, 2005, at 10:00 a.m.

Date of Intended Adoption: March 9, 2005.

Submit Written Comments to: Sharon M. Tolton, Deputy Director, 19010 1st Avenue South, Burien, WA 98148, e-mail stolton@cjtc.state.wa.us, fax (206) 439-3860, by March 2, 2005.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, Confidential Secretary, by March 2, 2005, TTY (206) 835-7300.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify, streamline, and reform agency procedures.

Reasons Supporting Proposal: Per Executive Order 97-02, each state agency shall begin a review of its rules that have significant effects on business, labor, consumers, and the environment. Agencies shall determine if their rules should be (a) retained in their current form or (b) amended or repealed, if they do not meet the review criteria specified in the executive order.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Staff and Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sharon M. Tolton, Burien, (206) 835-7345.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025(2); therefore, a small business economic impact statement is not required.

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

December 14, 2004

Sharon M. Tolton

Deputy Director

PROPOSED

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-03-010 Adoption of model rules of procedure. ~~((In those contested cases, declaratory proceedings, and requests for rule making in which the commission has authority to conduct hearings,))~~ Practice and procedure before the commission shall be in accordance with the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended. The model rules hereby adopted are found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this title, the procedural rules adopted in this title shall govern.

Peace officer certification proceedings before the commission are governed by chapter 139-06 WAC.

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-03-020 ((Review and appeal of action.)) Request for adjudicative proceedings. (1) ~~((Except as otherwise provided in this section or in WAC 139-03-030, a person aggrieved by a commission "action" as defined under the Administrative Procedure Act may appeal that action by filing a notice of appeal to the commission on an appeal form provided by the commission. Notice of appeal forms are available from the commission at the following address: 621 Woodland Square Loop, P.O. Box 40905, Olympia, WA 98504. This section shall not apply to a request for a variance or exemption pursuant to WAC 139-03-030.~~

~~((2) Unless otherwise provided in this title, student dismissal for academic or disciplinary reasons may be reviewed at the request of such individual, or the head of such individual's employing agency, and shall be considered in accordance with the process hereinafter provided.~~

~~((3) An individual requesting review shall submit a request in writing to the executive director and shall therein specify and include, where applicable:))~~ All applications requesting that the commission conduct an adjudicative proceeding shall be made on a form provided by the commission for that purpose. The application must specify the issue to be brought before the commission, including:

(a) The action for which review is requested, identified by date and description of action;

(b) The direct and adverse effects of such action;

(c) The corrective or remedial action or other relief sought;

(d) The name and mailing address of the requesting party ~~((, any witness to be called by the requesting party, and any person who will personally appear in support of the requesting party, including legal counsel));~~ and

(e) A statement that the person signing the request for review has read it and that to the best of ~~((his or her))~~ their knowledge or information and belief the contents thereof are true.

(2) Applications for adjudicative proceedings shall be made within thirty calendar days of:

(a) Service upon the applicant of the proposed commission action giving rise to the application; or

(b) Notice to the applicant from any source of action by the commission or commission staff which the applicant believes will adversely affect the applicant.

(3) Failure of an applicant to file an application for an adjudicative proceeding within the time limits set forth in subsection (2) of this section, constitutes a default and results in the loss of the applicant's right to an adjudicative proceeding. The commission may proceed to resolve the matter pursuant to RCW 34.05.440(1).

~~((A request))~~ An application for ((review)) adjudicative proceeding must be ((mailed to or)) served personally ((served)) or delivered by certified mail upon the director of the commission ((within thirty days of the date of written communication of commission staff action. "Mailing" for purposes of this regulation means posting in the United States mail, properly addressed, postage prepaid)).

~~((A requesting party may notify the director of the commission within seven days of filing the request for a hearing that the requesting party chooses to first meet with the executive director and ask him or her to informally review the staff action. The executive director will conduct such informal review within thirty days of such request for informal review or within such additional period as is agreed to between the requesting party and the executive director. If the executive director then affirms staff action, or if the requesting party elects to forgo this informal review step, the matter will proceed to a formal hearing by an administrative law judge from the state office of administrative hearings.))~~ The commission will process applications for adjudicative proceedings in accordance with RCW 34.05.416 and 34.05.419.

(6) If the commission decides to proceed with an adjudicative proceeding, the director will designate a presiding officer, which may be an administrative law judge from the state office of administrative hearings. The ((administrative law judge)) presiding officer will:

~~((a))~~ Schedule and conduct an adjudicative proceeding under chapter 34.05 RCW; and

~~((b))~~ Issue an initial decision of the commission in the matter.

The commission staff or the requesting party may then pursue review by the commission subject to the time limits and any other jurisdictional requirements of chapter 34.05 RCW and of this section.

~~((6) A petition for review of the initial decision must be filed with the commission within thirty days of mailing of the initial decision to the parties. Extensions of the time for filing petitions for review may be granted for good cause shown in the discretion of the chairperson of the commission on timely written request of a party. The petition for review shall set forth in detail the grounds for review, and the party filing the petition shall be deemed to have waived all objections or claims of irregularities not specifically set forth therein. At the next succeeding regularly scheduled meeting of the commission at which review can practicably be conducted, the commission shall consider the whole record, or such portions of it as are cited by the parties. The commission shall afford the parties an opportunity to present written argument, and may, as a matter of discretion, allow oral argument. Thereaf-~~

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ter, a final decision shall be entered within thirty days of the meeting, either finally disposing of the action or remanding the matter for further proceedings before the initial reviewer.) (7) Upon receiving a request for adjudicative proceeding, the commission may at the request of the applicant, or on its own initiative, schedule an informal settlement conference that shall be without prejudice to the rights of the parties.

(8) This section shall not apply to a request for a variance or exemption pursuant to WAC 139-03-030.

NEW SECTION

WAC 139-03-045 Prehearing conferences. The presiding officer shall hold one or more prehearing conferences in each case, which may be held telephonically and shall be attended by the parties or their attorneys. The parties shall be prepared to discuss the timing and filing of any motions, and witness and exhibit lists, as well as the need for discovery, in addition to those matters identified in WAC 10-08-130(1). A prehearing order shall be issued at the conclusion of the conference.

NEW SECTION

WAC 139-03-075 Review of initial orders. The initial order will become final unless, within thirty days of mailing of the initial order to the parties, the commission determines that the initial order should be reviewed or a party to the proceedings files a petition for review of the initial order. A petition for review shall set forth in detail the grounds for review and the party filing the petition shall be deemed to have waived all objections or claims of irregularities not specifically set forth therein. The initial order will be considered by the commission at the next succeeding regularly scheduled meeting of the commission at which review can practicably be conducted. The commission shall thereafter enter a final order.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 139-03-040 Method of recording.
- WAC 139-03-050 Discovery.
- WAC 139-03-060 Procedure for closing parts of hearings.

**WSR 05-03-025
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION**

[Filed January 7, 2005, 2:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-23-016.

Title of Rule and Other Identifying Information: Chapter 139-02 WAC, Public disclosure.

Hearing Location(s): Washington State Criminal Justice Training Commission, 19010 1st Avenue South, Burien, WA 98148, on Wednesday, March 9, 2005, at 10:00 a.m.

Date of Intended Adoption: March 9, 2005.

Submit Written Comments to: Sharon M. Tolton, Deputy Director, 19010 1st Avenue South, Burien, WA 98148, e-mail stolton@cjtc.state.wa.us, fax (206) 439-3860, by March 2, 2005.

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Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify, streamline, and reform agency procedures.

Reasons Supporting Proposal: Per Executive Order 97-02, each state agency shall begin a review of its rules that have significant effects on business, labor, consumers, and the environment. Agencies shall determine if their rules should be (a) retained in their current for [form] or (b) amended or repealed, if they do not meet the review criteria specified in the executive order.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Staff and Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sharon M. Tolton, Burien, (206) 835-7345.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025(2); therefore, a small business economic impact statement is not required.

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

December 14, 2004

Sharon M. Tolton

Deputy Director

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-02-020 Definitions. ~~((1)) "Public records" include any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by the commission regardless of physical form or characteristics.~~

~~((2)) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof; and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.~~

~~((3)) The definitions set forth in RCW 42.17.020 shall apply to this chapter.~~

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In addition, "commission" means the criminal justice training commission.

~~((4) "Client" means any person or organization about whom the commission has a record.~~

~~(5) "Disclosure" means inspection and/or copying.~~

~~(6) "Denial of disclosure" denotes any exempting from disclosure of any public record.)~~

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-02-030 Public records available. (1) Requests for any identifiable public record may be initiated by mail or in person at the business office of the commission during normal business hours.

(2) The commission shall at all times take the most timely possible action on requests for disclosure~~((;))~~ and shall be required to respond in writing within five business days of receipt of the request for disclosure.

(3) Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-02-050 Request for public records. (1) ~~((Unless waived by a public disclosure officer,))~~ All requests for the disclosure of a public record must be in writing identifying the record sought with reasonable certainty. The written request ~~((may))~~ must be on a form adopted by the commission and shall include:

- (a) The name of the person requesting the record;
- (b) The calendar date on which the request is made; and
- (c) The nature of the request.

(2) An in-person request for disclosure shall be made during customary business hours.

(3) If the public record contains material exempt from disclosure pursuant to law, the commission must provide the person requesting disclosure with a written explanation for the nondisclosure~~((, pursuant to WAC 137-08-130.~~

~~(4) When a person's identity is relevant to an exemption, that person may be required to provide personal identification.~~

~~(5) Nothing in this section or elsewhere in this chapter shall be construed to require the commission to compile statistics or other information from material contained in public records, where doing so would unduly interfere with other essential functions of the commission and is not required for litigation by rules of pretrial discovery).~~

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-02-070 Fees—~~((Inspection and))~~ Copying. (1) No fee shall be charged for the inspection of public records.

(2) The commission shall collect a fee of ~~((twenty))~~ fifteen cents per page plus postage as reimbursement for the cost of providing copies of public records.

(3) The commission may charge the actual cost for providing copies of public records, including duplication of photographs, audio tapes, video tapes, diagrams and/or drawings.

(4) Nothing contained in this section shall preclude the commission from agreeing to exchange or provide copies of manuals or other public records with other state or federal agencies, whenever doing so is in the best interest of the commission.

~~((4) The director of the commission or his or her designee is authorized to waive any of the foregoing copying costs.)~~ (5) The public records officer may waive the fee for copies when the expense of processing the payment exceeds the cost of providing the copies.

(6) Payment should be by check to the criminal justice training commission. The commission may require that all charges be paid in advance to the release of copies of records.

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-02-080 Protection of public records. Public records shall be disclosed and inspected only in the presence of the public disclosure officer or ~~((his or her))~~ their designee~~((, who))~~ and shall not be removed from the place designated for their inspection. The public disclosure officer or their designee shall withdraw the records if the person requesting disclosure acts in a manner which will damage or substantially disorganize the records or interfere excessively with other essential functions of the commission. This section shall not be construed to prevent the commission from accommodating a person by use of the mails in the disclosure process.

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-02-090 Disclosure and exemption procedures. (1) The public disclosure officer shall review file materials prior to disclosure.

(2) If the file does not contain materials exempt from disclosure, the public disclosure officer shall ensure full disclosure.

(3) If the file ~~((does))~~ contain material~~((s))~~ exempt from disclosure, the public disclosure officer shall deny disclosure of those exempt portions of the file, and shall, at the time of the denial, in writing, clearly specify the reasons for the denial of disclosure~~((, including)).~~ A statement of the specific exemptions or reasons authorizing the withholding of the record and a brief explanation of how the exemption or reason applies. The remaining, nonexempt materials shall be fully disclosed.

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

WAC 139-02-110 Records index. ~~((1) The commission finds that it would be unduly burdensome and would interfere with agency operations to maintain an index of records because of the complexity and diversity of its operations and the resulting volume of manuals, correspondence, reports, surveys, staff studies, and other materials.~~

~~(2) The commission will make available for public disclosure all indices which may at a future time be developed for agency use.)~~ The commission will maintain and make available for public inspection and copying an appropriate index or indices in accordance with RCW 42.17.260.

NEW SECTION

WAC 139-02-120 Review of denials of public records requests. (1) Any person who objects to the commission's denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review to the public records officer. The written request shall specifically refer to the written statement by the public records officer or other staff member, which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the director of the commission or their designee. The director or their designee shall immediately consider the matter and either affirm or reverse such denial within two business days following the receipt of the written request for review of the denial of the public record.

(3) Administrative remedies shall not be considered exhausted until the director or their designee has returned the petition with a decision or until the close of the second business day following receipt of the written request for review of the denial of the public record, whichever occurs first.

NEW SECTION

WAC 139-02-130 Adoption of form. The commission hereby adopts for use by all persons requesting inspection and/or copies of its records, the following form entitled, "Request for public records":

WASHINGTON STATE
CRIMINAL JUSTICE TRAINING COMMISSION
REQUEST FOR PUBLIC RECORDS
Date..... Time.....
Name.....
Address.....
Daytime phone number.....
Description of records:
.....
.....
.....

If my request is for a list of individuals, I certify that the information obtained through this request will not be sued for commercial purposes.

.....
Signature

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 139-02-060 Disclosure to client's representative.
- WAC 139-02-100 Qualifications on nondisclosure.

**WSR 05-03-028
PROPOSED RULES
HORSE RACING COMMISSION**

[Filed January 10, 2005, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-07-050.

Title of Rule and Other Identifying Information: WAC 260-60-300 Who may claim and 260-60-320 Limit to number.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98001, on March 10, 2005, at 9:30 a.m.

Date of Intended Adoption: March 10, 2005.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by March 7, 2005.

Assistance for Persons with Disabilities: Contact Patty Sorby by March 7, 2005, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 260-60-300 Who may claim, to specify under what conditions a prospective owner may claim a horse, and to add three subsections to WAC 260-60-300: (1) To allow an authorized agent to claim more than one horse in a race if the claims are on behalf of different owners and as long as the owners do not have common interest, (2) no more than one claim may be entered if the claim is made on behalf of a stable consisting of horses owned by more than one person, but trained by the same trainer, and (3) in claiming races no more than two horses in the same interest or under the control of the same trainer can start. This proposal also repeals WAC 260-60-320 Limit to number.

Reasons Supporting Proposal: Increases horse ownership by enhancing the claiming rules to allow more people to participate in claiming.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

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

Name of Proponent: Washington Horse Racing Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

PROPOSED

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

January 7, 2005

R. M. Leichner

Executive Secretary

AMENDATORY SECTION (Amending WSR 04-24-019, filed 11/22/04, effective 12/23/04)

WAC 260-60-300 Who may claim. (~~Who may claim: Owner, authorized agent or prospective owner possessing a claiming certificate.~~)

(1) In claiming races, any horse is subject to be claimed for its entered price by any licensed owner (~~(at that meeting)~~), including a prospective owner who has been issued a claiming certificate, or by a licensed authorized agent for the account of such owner. (~~For the purpose of this rule an "owner" shall be deemed to be an owner as defined in WAC 260-12-010. Furthermore, such owner shall be registered in good faith for racing and has had a horse or horses occupying assigned stall space for the race meeting. The right to claim shall not be forfeited even though all horses occupying such stall space may have been eliminated.~~)

(2) (~~In addition to the above rule, any horse is subject to be claimed by a person or a licensed authorized agent for the account of such person, providing such person has applied to and has been approved by the commission as a prospective owner and has been issued a claiming certificate.~~) In order to claim a horse as a prospective owner, a person shall submit to the stewards a completed application for a prospective owner's license and the name of a licensed trainer who will assume the care and responsibility for any horse claimed. The stewards shall issue a claiming certificate to the applicant upon satisfactory evidence that the applicant is eligible for an owner's license. Once the prospective owner has successfully claimed a horse and made payment of labor and industry fees due, he/she shall be considered an owner. The prospective owner should contact a commission office for a new identification badge.

(3) The names of (~~persons obtaining~~) licensed prospective owners who have been issued a claiming certificate shall be prominently displayed in the offices of the commission and the racing secretary. (~~Once the prospective owner has successfully claimed a horse he/she must secure an owner's license on a timely basis. An applicant for a claim certificate shall submit to the Stewards:~~

(a) ~~A completed application for a claiming permit and the licensing fee;~~

(b) ~~The name of a licensed trainer who will assume the care and responsibility for any horse claimed;~~

(c) ~~The stewards shall issue a claim certificate upon satisfactory evidence that the applicant is eligible for an owner's license;~~

(d) ~~(4) The ((claim)) claiming certificate shall expire with the conclusion of the race meeting at which it was issued, ((or)) upon the claim of a horse, or upon issuance or denial of an owner's license, whichever comes first((;~~

(e) ~~A claim certificate may be renewed by the stewards during the same year with no additional fee;~~

(f) ~~A claiming certificate may be issued to a person who had been licensed as an owner during a previous race meet).~~

(5) No person shall claim more than one horse in any one race, except that an authorized agent may claim more than one horse if done on behalf of different owners, and as long as the owners do not have a common interest.

(6) When a stable consists of horses owned by more than one person but trained by the same trainer, not more than one claim may be entered on behalf of such stable in any one race.

(7) In claiming races not more than two horses in the same interest or under the control of the same trainer can start.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-60-320

Limit to number.

WSR 05-03-035

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed January 10, 2005, 3:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-19-001.

Title of Rule and Other Identifying Information: Amendment to WAC 446-20-630 Department of social and health services—Child care licensing—Fees.

Hearing Location(s): Washington State Patrol, Criminal Records Division, 3000 Pacific Avenue, Suite 202, Olympia, WA 98504-2619, on February 23, 2005, at 9:00 a.m.

Date of Intended Adoption: March 22, 2005.

Submit Written Comments to: Mr. Benjamin Carruth, P.O. Box 42633, Olympia, WA 98504-2633, e-mail Benjamin.Carruth@wsp.wa.gov, fax (360) 570-5274, by February 22, 2005.

Assistance for Persons with Disabilities: Contact Mr. Benjamin Carruth by February 22, 2005, (360) 570-5230.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment will change the fees for background checks to coincide with the amendment proposal for WAC 446-20-600 Fees. The amendment to WAC 446-20-630 will also reduce the number of fingerprint cards being submitted to the Washington State Patrol (WSP) from 2 to 1. Currently only one fingerprint card is required for processing. WSP sends the fingerprints electronically to the FBI.

Reasons Supporting Proposal: The last fee study for background checks was conducted in 1993. Since then, the costs associated with conducting background checks have increased. The ways to obtain criminal history have expanded from mailed inquiries to include walk-in customers and internet access.

Statutory Authority for Adoption: RCW 43.43.830 - 43.43.845.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mr. Benjamin Carruth, P.O. Box 42633, Olympia, WA 98504-2633, (360) 570-5230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The fee changes will not impose more than minor costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Mr. Benjamin Carruth, P.O. Box 42633, Olympia, WA 98504-2633, phone (360) 570-5230, fax (360) 570-5274, e-mail Benjamin.Carruth@wsp.wa.gov.

January 10, 2005

Lowell Porter
Chief

AMENDATORY SECTION (Amending WSR 96-18-017, filed 8/26/96, effective 9/26/96)

WAC 446-20-630 Department of social and health services—Child care licensing—Fees. (1) In addition to the state search, an FBI search is required for requests submitted under chapter 74.15 RCW. ((Two)) One fingerprint card((s are)) is required to be submitted to the Washington state patrol identification and criminal history section.

(2) Department of social and health services (DSHS) shall process fingerprint background checks under chapter 74.15 RCW. Under "reason fingerprinted," cards will be marked "DSHS Child Care Licensing RCW 74.15.030" or "DSHS Child Care Licensing RCW 74.15.030 DDD."

(3) Department of social and health services, division of children and family services (DCFS) shall pay the expense and submit a waiver of fee form on licensees if the background check expense would work a hardship on the licensee. The six-dollar processing fee will not be applicable when a waiver of fee form is submitted to the Washington state patrol or the fingerprint card is marked "volunteer."

(4) A monthly billing account will be established for the DSHS division of developmental disabilities (DDD). The six-dollar processing fee will not be applicable on any fingerprint cards indicated as "DDD."

(5) Each month the Washington state patrol shall prepare a billing statement and detail report for waiver of fee forms from DCFS and for all DDD fingerprint cards submitted.

(6) All fees collected under chapter 74.15 RCW, will be deposited into the Washington state patrol fingerprint identification account.

(7) Nonrefundable fees are to be charged to:

(a) "DSHS child care licensing RCW 74.15.030" (division of children and family services (DCFS)) as follows:

(i) The fee for the state search is ((twenty-five)) thirty dollars.

(ii) The fee for the FBI search is twenty-four dollars.

(iii) A six-dollar processing fee.

(b) "DSHS division of children and family services (DCFS) for fee waivers" as follows:

(i) The fee for the state search is ((twenty-five)) thirty dollars.

(ii) The fee for the FBI search is twenty-four dollars.

(c) "DSHS child care licensing RCW 74.15.030 division of developmental disabilities (DDD)" as follows:

(i) The fee for the state search is ((twenty-five)) thirty dollars.

(ii) The fee for the FBI search is twenty-four dollars.

(d) "DSHS child care licensing RCW 74.15.030" division of developmental disabilities "volunteers" as follows:

(i) The fee for the state search is ((twenty-five)) thirty dollars.

(ii) The FBI fee shall be eighteen dollars on those fingerprint cards clearly designated as "volunteer" pursuant to provisions under Section 3e of the National Child Care Protection Act of 1993 as amended by the Crime Control Act of 1994.

(iii) "Chapter 74.15 RCW" and "volunteer" must be entered in the "reason fingerprinted" box on both the state and FBI fingerprint cards submitted. Failure to indicate "volunteer" and the RCW citation on fingerprint cards will result in full fees being charged.

WSR 05-03-036

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed January 10, 2005, 3:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-19-003.

Title of Rule and Other Identifying Information: Amendment to WAC 446-20-610 Superintendent of public instruction—Prospective educational employees—Fees.

Hearing Location(s): Washington State Patrol, Criminal Records Division, 3000 Pacific Avenue, Suite 202, Olympia, WA 98504-2619, on February 23, 2005, at 9:00 a.m.

Date of Intended Adoption: March 22, 2005.

Submit Written Comments to: Mr. Benjamin Carruth, P.O. Box 42633, Olympia, WA 98504-2633, e-mail Benjamin.Carruth@wsp.wa.gov, fax (360) 570-5274, by February 22, 2005.

Assistance for Persons with Disabilities: Contact Mr. Benjamin Carruth by February 22, 2005, (360) 570-5230.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Propose to increase the background check fees charged to school district employees, certifications, and contractual employees to coincide with an amendment proposal for WAC 446-20-600 Fees. This amendment will also increase the amount reimbursed to the Office of the Superintendent of Public Instruction from \$10.00 to \$11.00.

Reasons Supporting Proposal: The last fee study for background checks was conducted in 1993. Since then, the costs associated with conducting background checks have increased. The ways to obtain criminal history have expanded from mailed inquiries to include walk-in customers and internet access.

WSR 05-03-071

PROPOSED RULES

UNIVERSITY OF WASHINGTON

[Filed January 14, 2005, 9:11 a.m.]

Statutory Authority for Adoption: RCW 43.43.830 - 43.43.845.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mr. Benjamin Carruth, P.O. Box 42633, Olympia, WA 98504-2633, (360) 570-5230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The fee changes will not impose more than minor costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Mr. Benjamin Carruth, P.O. Box 42633, Olympia, WA 98504-2633, phone (360) 570-5230, fax (360) 570-5274, e-mail Benjamin.Carruth@wsp.wa.gov.

January 10, 2005

Lowell Porter

Chief

AMENDATORY SECTION (Amending WSR 98-19-039, filed 9/11/98, effective 10/12/98)

WAC 446-20-610 Superintendent of public instruction—Prospective educational employees—Fees. (1) In addition to the state search, an FBI search is required for requests submitted under chapter 28A.410 RCW. ((Two)) One fingerprint card((s are)) is required to be submitted to the Washington state patrol identification and criminal history section.

(2) Appropriate nonrefundable fees are to be charged and made payable to the Washington state patrol for searches conducted under chapter 28A.410 RCW as follows:

(a) The fee for the state search is ((fifteen)) twenty dollars for school district employees.

(b) The fee for the state search is ((twenty-five)) thirty dollars for persons applying for their certification or for contractual employees.

(c) The fee for the FBI search is twenty-four dollars.

(d) In addition, ((a ten-dollar)) an eleven-dollar processing fee will be charged for each fingerprint background check processed under chapter 28A.410 RCW. The Washington state patrol will reimburse the superintendent of public instruction ((ten)) eleven dollars for each fingerprint background check processed under this chapter for applicants who are certificated, contractual or classified.

(3) Prospective employees hired by the superintendent of public instruction, educational service districts, school districts and/or their contractors shall pay the appropriate fees for state and federal fingerprint checks conducted under chapter 28A.410 RCW.

(4) Fees are to be deposited in the Washington state patrol fingerprint identification account.

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-21-015.

Title of Rule and Other Identifying Information: Chapter 478-118 WAC, Parking and traffic rules of the University of Washington, Tacoma.

Hearing Location(s): Carwein Auditorium, First Floor, Keystone Building, University of Washington, Tacoma, Washington 98402-3100, on February 28, 2005, at 12:30 p.m.

Date of Intended Adoption: March 17, 2005.

Submit Written Comments to: Rebecca Goodwin Deardorff, Director of Rules Coordination, 4014 University Way N.E., Seattle, WA 98105-6203, campus mail Box 355509, e-mail rules@u.washington.edu, fax (206) 616-6294, by February 28, 2005.

Assistance for Persons with Disabilities: Contact UW Disability Services Office by February 18, 2005, TTY (206) 543-6452 or (206) 543-6450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: After two years of implementation, parking and traffic rules originally promulgated for the UW Tacoma campus in 2002, now need further refinement to meet the needs of this growing campus. Proposed amendments seek to clarify existing rules and to provide additional definitions, rules for visitor parking, and further rules for bicycle and skateboard use.

Statutory Authority for Adoption: RCW 28B.10.560 and 28B.20.130.

Statute Being Implemented: RCW 28B.10.560 and 28B.20.130.

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

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steven G. Olswang, Interim Chancellor, University of Washington, Tacoma, GWP 312, Academic Building, UWT, Tacoma, Washington, (253) 692-5646.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 478-118 WAC does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 478-118 WAC is not considered a significant legislative rule by the University of Washington.

January 13, 2005

Rebecca Goodwin Deardorff

UW Director of Rules Coordination

PROPOSED

PART I

GENERAL INFORMATION AND DEFINITIONS

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

WAC 478-118-010 Objectives of parking and traffic rules. The objectives of these rules are:

- (1) To protect and control pedestrian and vehicular traffic on the campus of the University of Washington, Tacoma;
- (2) To assure access at all times for emergency vehicles and equipment;
- (3) To minimize traffic disturbances;
- (4) To facilitate the operation of the university by assuring access to its vehicles;
- (5) To allocate limited parking space for the most efficient use; ~~((and))~~
- (6) To protect state property; and
- (7) To encourage travel to the campus by means other than a single occupancy vehicle (SOV).

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

WAC 478-118-020 Definitions. The following definitions apply to this chapter:

- (1) Bicycle: Any device defined as a bicycle in chapter 46.04 RCW.
- (2) Campus: The campus of University of Washington, Tacoma.
- ~~((2))~~ (3) Employee: An employee of the university.
- ~~((3))~~ (4) Fee: A charge for the use of the permit issued.
- (5) Hours of operation: The hours of operation established by the university for a particular parking area, parking lot, or parking space.
- (6) Impoundment: The removal of a vehicle to a storage area by either a public safety officer or agent of the university.
- (7) Motorcycles and scooters: A motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to be steered with a handle bar. For the purposes of these rules, motorcycles, motorized bicycles, and motorized scooters are considered to be motor vehicles and are subject to all traffic and parking rules controlling motor vehicles.
- (8) Nonmotor/nonmotorized vehicle: A device other than a motor vehicle used to transport persons. Nonmotorized vehicles include, but are not limited to, bicycles, skateboards, rollerblades and rollerskates.
- (9) Operator or driver: Every person who drives or is in actual physical control of a motor vehicle or a nonmotorized vehicle.

(10) Parking space: A space for parking one motor vehicle designated by: Lines painted on either side of the space, at the rear of the space, a wheelstop positioned in front of the space, a sign or signs, or other markings.

(11) Public safety officers: Employees of the university who are responsible for campus security, safety, and parking and traffic control.

~~((4))~~ (12) Registered owner: The person who has the lawful right of possession of a vehicle most recently recorded with any state department of licensing.

(13) Rollerskate/rollerblade: A device used to attach wheels to the foot or feet of a person.

(14) Skateboard: Any oblong board of whatever composition, with a pair of wheels at each end, which may be ridden by a person.

(15) Student: A person enrolled in the university.

~~((5))~~ (16) Traffic: Motorized and nonmotorized modes of transportation defined in chapter 46.04 RCW.

(17) University: The University of Washington, Tacoma, and collectively those responsible for its control and operations.

~~((6))~~ (18) Vehicle: ~~((An automobile, truck, motorcycle, motorized scooter, or bicycle.~~

~~((7))~~ Any motorized vehicle or nonmotorized vehicle.

(19) Visitor: A person who is neither an employee nor a student of the university.

NEW SECTION

WAC 478-118-045 Liability of the university. Except for vehicles that the university owns or operates, the university assumes no liability under any circumstances for vehicles on the campus.

PART II

PARKING AND TRAFFIC RULES

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

WAC 478-118-050 Permits required for vehicles on campus. Except as provided in WAC 478-118-055, no person shall park or leave any vehicle (other than bicycles), whether attended or unattended, upon the campus unless the person first purchases a permit from the university or from the operator of the parking lot in which the vehicle is parked. Permission to park on campus will be shown by display of a valid permit, or (if a parking lot does not issue permits) by payment of the fee for parking.

(1) A valid permit is:

(a) A current vehicle permit displayed in accordance with WAC ~~((478-118-110))~~ 478-118-100. Vehicle permits are valid until revoked;

(b) A temporary permit authorized by the university and displayed in accordance with instructions. Temporary permits are valid through the date or time on the permit;

(c) A parking permit issued by a gate attendant and displayed on the vehicle in accordance with instructions; or

(d) A parking permit dispensed by machine at the campus and displayed in accordance with instructions.

(2) Parking permits are not transferable, except as provided in WAC 478-118-060 and 478-118-080.

(3) The university reserves the right to refuse to issue parking permits.

(4) This section does not apply to vehicles that the university owns or operates.

(5) The university may allow persons without permits to drive through the campus without parking.

(6) A public safety officer may require visitors to wait at the entrances to the campus when pedestrian or vehicular traffic congestion is above normal.

NEW SECTION

WAC 478-118-055 Visitor parking. (1) No permit shall be required for the following motor vehicles:

(a) Public safety and emergency vehicles while performing services;

(b) Marked taxis, tow trucks, commercial delivery; and media vehicles which have agreed to comply with university guidelines and received prior written approval of the university; and

(c) School buses and tour buses parking in spaces designated by the university.

(2) University departments may pay for all or part of the parking fees for their official visitors and guests based on the established fee schedule.

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

WAC 478-118-060 Carpool and disability parking permits. (1) Carpool permits may be issued to employees and students. One transferable permit will be issued by the university for each carpool. This permit is transferable only among the registered members of the carpool. This permit must be displayed in accordance with the instructions provided with the permit. A carpool is a group of two or more employees or students who commute to the campus in the same vehicle.

(2) The university provides parking for the disabled in accordance with the requirements of federal and state law (~~including parking spots reserved for persons who display a state of Washington disabled driver permit~~).

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

WAC 478-118-080 Transfer of permits limited. (1) Permit holders may transfer one valid permit between motor vehicles (~~when used by the permit holder~~). Improper transfer of a permit shall include, but is not limited to, the wrongful sale, lending, or bad faith transfer of a parking permit.

(2) Permits displaying license plate numbers shall be (~~used~~) valid only in the vehicles whose license number (~~is~~) matches the number written on the permit.

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

WAC 478-118-100 Display of permits. (1) Parking permits, other than hourly permits (receipts) dispensed from parking machines and motorcycle and scooter permits, shall be displayed either by hanging from the rear view mirror(~~or~~) or by placing face-up on the driver's side dashboard and shall be fully visible from the exterior of the motor vehicle.

(2) Hourly permits dispensed from parking machines are not required to be displayed on or in the vehicle.

(3) When applicable, the area designator (numeral, letter, or combination) shall be affixed to the vehicle permit and shall be fully visible from the exterior of the motor vehicle.

~~((3))~~ (4) Motorcycle and scooter (~~permits~~) license numbers shall be registered with the university. Motorcycle and scooter permits need not be displayed.

~~((4))~~ (5) When required to be displayed, permits not fully visible from the exterior of a motor vehicle are not valid and are subject to citation for no valid permit displayed.

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

WAC 478-118-200 Parking fees. The regents of the University of Washington shall adopt parking fees, specifying the charge per hour, day, quarter, (~~and~~) or year.

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

WAC 478-118-210 Allocation of parking spaces. The parking spaces available on (~~the~~) campus shall be allocated in a manner that will best attain the objectives of these rules.

During special occasions causing additional or heavy traffic and during emergencies, the university may impose additional traffic and parking policies to achieve the specified objectives of this chapter.

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

WAC 478-118-270 Motorcycles(~~, bicycles,~~) and scooters. (1) Motorcycles(~~, bicycles,~~) and scooters are subject to all traffic rules controlling other motor vehicles.

(2) Motorcycles and (~~motorized~~) scooters may only be parked in areas designated (~~in addition to the regular parking lots~~) for motorcycles.

(3) Motorcycles and (~~motorized~~) scooters are not permitted on paths, sidewalks, or authorized bicycle or pedestrian areas, or in buildings at any time.

~~((4) Bicycles shall be parked in designated areas only. Improperly parked bicycles may be impounded and a citation and fine imposed upon the owner.~~

~~(5) No bicycles or foot-propelled devices shall be operated in campus corridors, hallways, or buildings unless their use is required as part of the educational process in an authorized program, or authorized by campus personnel. A "foot-propelled device" is a wheeled device designed or used for recreation or transportation, including, but not limited to, skateboards, roller skates, and roller blades.)~~

NEW SECTION

WAC 478-118-290 Bicycle parking and traffic rules. (1) The primary aim of the bicycle control program is safety. This aim will be achieved by keeping bicycles out of buildings, away from building exits, and parking them off paths and sidewalks.

(2) Bicycles may be ridden any place where vehicles are permitted. They may be ridden on most sidewalks, though pedestrians always have the right of way. It shall be a violation of this section for any bicycle rider to fail to yield to pedestrians, or to ride a bicycle on paths, sidewalks, or streets where signs indicate such is prohibited. An audible signal or warning must be given by the bicyclist whenever there is any appreciable risk of injury to a pedestrian not otherwise aware of the presence of the bicycle.

(3) Bicycles operated on paths, sidewalks, and roadways shall be subject to all relevant state statutes regulating bicycle use. Violation of those statutes shall be considered a violation of this section.

(4) Bicycles shall be operated in a safe manner at all times on paths, sidewalks, and roadways. Riding at speeds too fast for conditions, weaving in and out of vehicular or pedestrian traffic, or similar unsafe actions shall be considered "negligent riding." Negligent riding shall be a violation of this section.

(5) Bicycles shall be parked only in bicycle racks. All bicycle owners are encouraged to secure their bicycles with a secure lock. At no time shall a bicycle be parked in a building, except where bicycle storage rooms are provided, near a building exit, on a path or sidewalk, in planted areas nor chained or otherwise secured to trees, lamp standards, railings, or sign posts.

(6) Moving a bicycle into any unauthorized area such as a building or construction zone is prohibited.

(7) Bicycle racks in campus areas are for parking and shall not be used for overnight storage.

(8) Impoundment for illegal parking.

(a) Bicycles parked in violation of subsections (5), (6), and (7) of this section will be subject to seizure and impoundment by the university.

(b) A bicycle abandoned or parked on university land for fourteen consecutive days or longer is presumed abandoned and is subject to seizure and impoundment by the university. A bicycle will not be considered abandoned when the owner/operator is unable to remove it and so notifies the campus safety and security office. A bicycle that has been obviously stripped or vandalized may be immediately impounded.

(c) Impounded bicycles will be stored by the campus safety and security office. Bicycles will be released at specified times and upon presentation of proof of ownership and payment of any fine that has been imposed. Owners of impounded bicycles, if identifiable, will be notified as soon as reasonably possible after impoundment and must reclaim their bicycle within fifteen consecutive days. Bicycles unclaimed after sixty consecutive days will be subject to disposal, including sale at public auction, in accordance with university property disposal rules.

(d) The university and its officers, agents, and employees shall not be liable for loss or damage of any kind resulting from impoundment, storage, or sale of any item under this section.

(e) Impoundment or sale of any bicycle under this section shall not substitute for, nor release any person from liability for, damage to persons or property caused by the use of a bicycle.

NEW SECTION

WAC 478-118-300 Skateboard rules. (1) Skateboard use in pedestrian areas including, but not limited to, walkways, ramps, concourses, plazas, and staircases, and on internal university streets and loading areas on the campus is restricted solely to transporting an individual from one campus destination to another. Any recreational, athletic, or other exhibitional use of skateboards unrelated to transportation is strictly prohibited, unless expressly approved in advance by the committee on the use of university facilities, pursuant to chapter 478-136 WAC and use of university facilities policies and procedures.

(2) Skateboard use in violation of this section shall result in the following:

(a) For the first offense, the campus safety and security office will record the name of the individual and provide a written warning against further skateboard use in violation of this section. Individuals who cannot produce satisfactory identification will be given a receipt for their skateboard, which will be impounded by the campus safety and security office until they are able to return with the receipt and identification. There will be no impoundment fee.

(b) For a second offense, within twenty-four months of any previous offense or warning, the skateboard will be impounded for not less than forty-eight hours and the offender shall be subject to a fine and/or impoundment fee.

(c) For a third or subsequent offense, within twenty-four months of any previous two offenses, warnings, or combination thereof, the skateboard will be impounded for not less than thirty days and the offender shall be subject to a fine and impoundment fee.

(d) Impounded skateboards will be held by the campus safety and security office and released only during regular business hours to individuals with satisfactory identification.

(3) Skateboards impounded under this section which are unclaimed sixty consecutive days after the applicable minimum impoundment time period has elapsed will be presumed abandoned and be subject to disposal, including sale at public auction, in accordance with university property disposal rules.

(4) The university and its officers, agents, and employees shall not be liable for loss or damage of any kind resulting from impounding, storage, or sale of any item under this section.

(5) Impoundment or sale of any skateboard under this section shall not substitute for, nor release any person from liability for, damage to persons or property caused by use of a skateboard at the university.

PART III TRAFFIC AND PARKING VIOLATIONS AND ENFORCEMENT

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

WAC 478-118-400 Issuance of traffic and parking citations. Upon probable cause to believe that a violation of these rules has occurred, a public safety officer or designated contractor may issue a citation setting forth the date, the

approximate time, the locality, the nature of the violation, the permit number, license number, infraction, officer, and the amount of fine(s). The citation shall be served on the person responsible for the violation by: Attaching a copy of the citation to, or placing it prominently within, the vehicle allegedly involved in the violation; mailing a copy of the citation to the person responsible; or serving a copy of the citation personally on the person responsible.

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

WAC 478-118-410 Fines and impounding. (1) The current schedule of fines shall be published by the university and made available for review in the safety and security office.

(2) All fines must be paid as designated on the citation within twenty calendar days from the date of the citation. Fines must be delivered in person to the university's ((~~finance~~) cashier) office or postmarked on or before the due date specified in these rules to avoid additional penalties. If any citation has neither been paid nor appealed after twenty calendar days from the date of the citation, the university shall impose an additional fine of ten dollars per offense and may:

- (a) Withhold the violator's degrees, transcripts, grades, refunds, or credits until all fines are paid;
- (b) Delay registration for the following quarter;
- (c) Impound the violator's vehicle;
- (d) Deny future parking privileges to the violator; or
- (e) Refuse to issue keys to a violator who is an employee or student.

(3) In addition to imposing fines, public safety officers may impound or immobilize any vehicle parked on campus in violation of these rules. The expenses of impounding, immobilization, and storage shall be charged to the owner or operator, or both, of the vehicle and must be paid before the vehicle's release. Grounds for impounding vehicles shall include, but not be limited to, the following:

- (a) Blocking a roadway so as to impede the flow of traffic;
- (b) Blocking a walkway so as to impede the flow of pedestrian traffic;
- (c) Blocking a fire hydrant or fire lane;
- (d) Creating a safety hazard;
- (e) Blocking another legally parked vehicle;
- (f) Parking in a marked "tow-away" zone;
- (g) Leaving a vehicle unattended on campus for longer than two days;
- (h) Failing to pay a fine imposed under this chapter; or
- (i) Parking a nonuniversity vehicle in a spot reserved for university use.

Not more than twenty-four hours after impoundment of any vehicle (excluding bicycles and skateboards), the university shall mail a notice to the registered owner of the vehicle and to any other person who claims the right to possession of the vehicle, if those persons can be identified. The university shall not be liable for loss or damage of any kind resulting from impounding, immobilization, or storage. Impounding a

vehicle does not remove the obligation for any fines associated with the violation.

(4) An accumulation of traffic violations by a student may be cause for discipline under the student conduct code of the university.

AMENDATORY SECTION (Amending WSR 02-15-174, filed 7/24/02, effective 8/24/02)

WAC 478-118-420 Appeals of fines and impoundments. (1) Except for skateboards, any impoundment or fine under this chapter may be appealed in writing within twenty calendar days from the date of the citation or the notice of impoundment. The notice of appeal must be addressed to the location indicated on the citation or notice of impoundment. The university will make appeal forms available at the university's ((~~finance~~) cashier) office. The notice of appeal must explain the reasons for contesting the citation or impoundment. If the person who files a notice of appeal desires an opportunity to make an oral statement in the appeal, the request to make an oral statement must be included in the notice of appeal.

(2) The hearing on the appeal shall be a brief adjudicative hearing as provided by RCW 34.05.482 et seq. If a request for an oral statement was made, the presiding officer or officers shall provide reasonable notice of the time and place for receiving the oral statement. The presiding officer(s) shall review the notice of appeal and provide a written decision to the person submitting the appeal within ten days of taking action. If the appeal is denied or modified to a warning, dismissal, reduction, or suspension, the decision shall include a brief statement of its reasons and information about the opportunity for further review. Any fine owed on a written decision that is not further appealed as provided in subsection (3) of this section shall be paid within twenty-one days after service of the decision.

(3) A person wishing to contest the written decision may request a review by contacting the designated university reviewing officer in writing within twenty-one days after service of the decision. The request for review shall explain why the decision was incorrect. The reviewing officer shall, within twenty days of the date of the request, review the matter and render a final written decision to uphold or modify (warning, dismissal, reduction, or suspension), which shall include a brief statement of its reasons and information about the opportunity to appeal the decision to the district court. Any final decision of the reviewing officer not appealed as provided in subsection (4) of this section shall be paid within ten days after service of the decision.

(4) A person wishing to appeal a final decision of the ((~~citation hearing office~~) reviewing officer) to the district court may, within ten days of service of the final decision, file a written notice with the university's finance office. The written notice must be submitted on the "Notice of Appeal" form provided by the university. Documents relating to the appeal shall immediately be forwarded to the district court, which shall have jurisdiction to hear the appeal de novo. No appeal to the district court may be taken unless the citation has been contested as provided in subsections (2) and (3) of this section.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 478-118-510 Liability of the university.

WSR 05-03-080
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Medical Assistance Administration)
 [Filed January 17, 2005, 12:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-20-101.

Title of Rule and Other Identifying Information: Amending WAC 388-535-1070 Dental-related services provider information.

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on February 22, 2005, at 10:00 a.m.

Date of Intended Adoption: Not sooner than February 23, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 22, 2005.

Assistance for Persons with Disabilities: Contact Fred Swenson, DSHS Rules Consultant, by February 17, 2005, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To establish standards of coverage for billing codes to ensure the protection of the health and safety of medical assistance clients by restricting billable services to dentists who are entitled to a specialty designation under WAC 246-817-420 and who meet MAA's certification requirements to perform oral and maxillofacial surgery.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.500, 74.09.520.

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

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45533, Olympia, WA 98504, (360) 725-1342; Implementation and Enforcement: Dr. John Davis, P.O. Box 45506, Olympia, WA 98504, (360) 725-1748.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule amendment and concludes that it will impose no new costs on small businesses. The prepara-

tion of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed amendments do not "make significant amendments to a policy or regulatory program" (see RCW 34.05.328 (5)(c)(iii)), MAA has determined that the proposed rule is not "significant" as defined by the legislature. This rule is being amended to clarify current standards of coverage for current procedural terminology (CPT) and current dental terminology (CDT) codes.

January 11, 2005
 Andy Fernando, Manager
 Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-19-077, filed 9/12/03, effective 10/13/03)

WAC 388-535-1070 Dental-related services provider information. (1) The following providers are eligible to enroll with the medical assistance administration (MAA) to furnish and bill for dental-related services provided to eligible clients:

(a) Persons currently licensed by the state of Washington to:

- (i) Practice dentistry or specialties of dentistry.
- (ii) Practice as dental hygienists.
- (iii) Practice as denturists.
- (iv) Practice anesthesia by:

(A) Providing conscious sedation with ~~((parental))~~ parenteral or multiple oral agents, deep sedation, or general anesthesia as an anesthesiologist or dental anesthesiologist;

(B) Providing conscious sedation with ~~((parental))~~ parenteral or multiple oral agents, deep sedation, or general anesthesia as a certified registered nurse anesthetist (CRNA) ~~((, when the performing dentist has the appropriate conscious sedation permit or general anesthesia permit from the department of health (DOH)))~~ under WAC 246-817-180; or

(C) Providing conscious sedation with parenteral or multiple oral agents ~~((, deep sedation, or general anesthesia))~~ as a dentist, when the dentist has a conscious sedation permit ~~((or general anesthesia permit from DOH))~~ issued by the department of health (DOH) that is current at the time the billed service(s) is provided; or

(D) Providing deep sedation or general anesthesia as a dentist when the dentist has a general anesthesia permit issued by DOH that is current at the time the billed service(s) is provided.

(v) Practice medicine and osteopathy for:

- (A) Oral surgery procedures; or
- (B) Providing fluoride varnish under EPSDT.

(b) Facilities that are:

(i) Hospitals currently licensed by the ~~((department of health))~~ DOH;

(ii) Federally-qualified health centers (FQHCs);

(iii) Medicare-certified ambulatory surgical centers (ASCs);

(iv) Medicare-certified rural health clinics (RHCs); or

(v) Community health centers.

(c) Participating local health jurisdictions.

PROPOSED

(d) ~~((Border area))~~ Bordering city or out-of-state providers of dental-related services who are qualified in their states to provide these services.

(2) Subject to the restrictions and limitations in this section and other applicable WAC, MAA pays licensed providers participating in the MAA dental program for only those services that are within their scope of practice.

(3) For the dental specialty of oral and maxillofacial surgery:

(a) MAA requires a dentist to:

(i) Be currently entitled to such specialty designation (to perform oral and maxillofacial surgery) under WAC 246-817-420; and

(ii) Meet the following requirements in order to be reimbursed for oral and maxillofacial surgery:

(A) The dentist must have participated at least three years in a maxillofacial residency program; and

(B) The dentist must be board certified or designated as "board eligible" by the American Board of Oral and Maxillofacial Surgery.

(b) A dental provider who meets the requirements in (3)(a) of this section must bill claims using appropriate current dental terminology (CDT) codes or current procedural terminology (CPT) codes for services that are identified as covered in WAC and MAA's published billing instructions or numbered memoranda.

(4) See WAC 388-502-0020 for provider documentation and record retention requirements. MAA requires additional dental documentation under specific sections in this chapter and as required by chapter 246-817 WAC.

~~((4))~~ (5) See WAC 388-502-0100 and 388-502-0150 for provider billing and payment requirements. Enrolled dental providers who do not meet the conditions in (3)(a) of this section must bill all claims using only the CDT codes for services that are identified in WAC and MAA's published billing instructions or numbered memoranda. MAA does not reimburse for billed CPT codes when the dental provider does not meet the requirements in subsection (3)(a) of this section.

~~((5))~~ (6) See WAC 388-502-0160 for regulations concerning charges billed to clients.

~~((6))~~ (7) See WAC 388-502-0230 for provider review and appeal.

~~((7))~~ (8) See WAC 388-502-0240 for provider audits and the audit appeal process.

WSR 05-03-081
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Medical Assistance Administration)

[Filed January 17, 2005, 1:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-14-097.

Title of Rule and Other Identifying Information:
Amending WAC 388-462-0015 Medical eligibility for pregnant women.

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on February 22, 2005, at 10:00 a.m.

Date of Intended Adoption: Not sooner than February 23, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 22, 2005.

Assistance for Persons with Disabilities: Contact Fred Swenson, DSHS Rules Consultant, by February 17, 2005, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendment removes the requirement for a licensed medical practitioner to verify that the client is pregnant. Also the other subsections were rewritten to clarify the rule.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.04.050, and 74.04.057.

Statute Being Implemented: RCW 74.09.415.

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

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Wendy Forslin, MAA, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1343.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This change does not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This rule revision, regarding client medical eligibility, is exempt from the provisions of RCW 34.05.328 per RCW 34.05.328 (5)(b)(vii).

January 11, 2005

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-17-030, filed 8/12/02, effective 9/12/02)

WAC 388-462-0015 Medical ~~((programs))~~ eligibility for pregnant women. Eligibility requirements for pregnancy medical are described below.

(1) ~~A pregnant woman is eligible for ((medical services described in this chapter only when her pregnancy is confirmed by a licensed medical practitioner, licensed laboratory, community clinic, family planning clinic, or health department clinic.~~

~~A pregnant woman is eligible for CN Medicaid coverage if she meets the following requirements as described in WAC 388-503-0505) categorically needy (CN) scope of care if she meets the following requirements:~~

(a) ~~Citizenship or immigration status (chapter 388-424 WAC); and~~

(b) Social security account number (chapter 388-474 WAC); and

(c) ~~Is a~~ Washington state ~~((residence))~~ resident (chapter 388-468 WAC); and

(d) ~~Has countable income ((meets the standard))~~ as described in WAC 388-478-0075.

~~((3))~~ (2) A pregnant woman is considered for medically needy (MN) ~~((program coverage))~~ scope of care if she meets the requirements in subsection ~~((2))~~ (1)(a) through (c) of this section and:

(a) ~~((Her))~~ Has countable income ((is greater than)) that exceeds the standard in subsection ((2)) (1)(d) of this section; and

(b) ~~((Her))~~ Has countable resources that do not exceed the standard in WAC 388-478-0070.

~~((4))~~ (3) A pregnant woman ~~((is))~~ may be eligible for ((CN scope of care under the state funded pregnant woman program)) non-citizen pregnancy medical if she is not eligible for ~~((programs))~~ medical described in subsections (1) and (2) of this section due to citizenship, immigrant status, or social security number requirements.

~~((5))~~ (4) A pregnant woman ~~((is considered for MN scope of care under the state funded pregnant woman program if))~~ meeting the eligibility criteria in subsection (3) is eligible for:

(a) ~~((She is not eligible for the program under subsection (4) of this section because her income exceeds the standard))~~ CN scope of care when the countable income is at or below the income standard described in subsection (1)(d); ((and)) or

(b) ~~((Her resources do not exceed the standard in WAC 388-478-0070.))~~ MN scope of care when:

(i) The countable income exceeds the standard in subsection (1)(d); and

(ii) The resources do not exceed the standard described in WAC 388-478-0070.

~~((6) A pregnant woman is considered for the medically indigent (MI) program if her resources exceed the standards in WAC 388-478-0070.~~

~~(7) Only the)~~ (5) Consider as income ((of an unmarried father of an unborn child)) to the pregnant woman the amount that is actually contributed to ((a pregnant woman is considered as income to her.

~~(8) There are no resource limits for the programs described in subsections (2) and (4) of this section.~~

~~(9))~~ her by the father of her unborn child when the pregnant woman is not married to the father.

(6) The assignment of child support and medical support rights as described in chapter 388-422 WAC do not apply to pregnant women.

~~((10) Unless stated otherwise, this section contains the only eligibility requirements for pregnant women to qualify for medical coverage.~~

~~((11))~~ (7) A woman who was eligible for and received medical coverage on the last day of pregnancy is eligible for extended medical benefits for postpartum care ~~((through the end of the month:~~

~~(a) Which includes the sixtieth day from the end of the pregnancy, for a pregnant woman receiving medical in any program except medically indigent (MI); or~~

~~(b) The pregnancy ends, for a pregnant woman receiving MI benefits)) for a minimum of sixty days from the end of her pregnancy. This extension continues through the end of the month in which the sixteenth day falls.~~

~~((12))~~ (8) A woman who was eligible for ~~((a))~~ medical ((program)) coverage on the last day of pregnancy is eligible for family planning services for twelve months from the end of the pregnancy even when eligibility for pregnancy was determined after the pregnancy ended.

WSR 05-03-082
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed January 17, 2005, 1:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-08-068.

Title of Rule and Other Identifying Information: Chapter 388-25 WAC, Child welfare services—Foster care, child support good cause rules. The proposed new, amended and repealed WAC sections are proposed to comply with changes adopted under chapter 183, Laws of 2004, specifically to RCW 74.20A.030 (1)(4).

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on February 22, 2005, at 10:00 a.m.

Date of Intended Adoption: Not before February 23, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 22, 2005.

Assistance for Persons with Disabilities: Contact Fred Swenson, DSHS Rules Consultant, by February 17, 2005, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes to the child support good cause rules under chapter 388-25 WAC, Child welfare services—Foster care, are being proposed due [to] changes in RCW 74.13.031(11) and 74.20A.030 (1)(4). The proposed rules allow for the collection of child support and establishment of paternity for a foster child with a developmental disability. The good cause exemptions are amended to reflect these changes.

The anticipated effects are that some parents of foster children with a developmental disability will be assessed for child support and/or the establishment of paternity.

Reasons Supporting Proposal: Changes are needed due to additions and amendments in statute, chapter 183, Laws of 2004, that were effective July 1, 2004. When adopted as permanent, the proposed rules will replace the emergency rules adopted November 9, 2004, as WSR 04-23-038.

Statutory Authority for Adoption: RCW 74.08.090 and 74.20.040.

Statute Being Implemented: RCW 74.13.031(11) and 74.20A.030 (1)(4).

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

Name of Proponent: Department of Social and Health Services, Children's Administration, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jean L. Croisant, P.O. Box 45710, Olympia, WA 98504-5710, (360) 902-7992; and Enforcement: CA/Division of Field Operations, P.O. Box 45700, Olympia, WA 98504-5700.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The new and amended rules do not create costs for businesses or are exempt under RCW 34.05.310 (4)(c).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5)(b)(iii) and (vii). WAC 388-25-0225(3), subsection is materially the same as the change in chapter 183, Laws of 2004, amending RCW 74.20A.030(4) with regard to the liability for the care of dependents. Other rules in this proposal are related to liability for care of dependents.

January 12, 2005

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 01-08-047, filed 3/30/01, effective 4/30/01)

WAC 388-25-0225 What cases must ~~((the department refer))~~ be referred to the division of child support (DCS)? ~~((1) The DCFS office must refer to the division of child support every foster care placement in which DCFS participates in payment for care, except:~~

~~(a) Cases, if any, in which the division of child support has determined it))~~ Each case where the department participates in the payment of foster care must be referred to the division of child support, except when:

(1) Collection would not be cost effective ~~((to pursue collection)),~~ including placements of seventy-two hours or less; ~~((or~~

~~(b) Cases exempt by law from collection action; or~~

~~(2) The children's administration must refer to DCS cases in which the department determines that sufficient good cause exists to not pursue collection. The following constitute good cause for requesting that DCS not pursue collection action on foster care cases referred to DCS:~~

~~(a) The department's division of developmental disabilities (DDD) has determined that the child is developmentally disabled. DCS still must establish paternity.~~

~~(b) The parent or other legally obligated person, or the parent or other person's child, spouse, or spouse's child was the victim of the offense for which the child was committed to the custody of the juvenile rehabilitation administration (JRA) and the child is being placed directly into foster care from a JRA facility until this placement episode closes.~~

~~(c) Adoption proceedings for the child are pending in court or the custodial parent is being helped by a private or public agency to decide if the child will be placed for adoption.~~

~~(d) The child was conceived as a result of incest or rape and establishing paternity would not be in the child's best interest.~~

~~(e) The juvenile or Tribal court in the dependency proceeding finds that the parents will be unable to comply with an agreed reunification plan with the child due to the financial hardship caused by paying child support. The social worker also may determine that financial hardship caused by paying child support will delay or prevent family reunification.~~

~~(f) The custodial parent and/or the child may be placed in danger as a result of the presence of or potential for domestic abuse perpetrated by the other parent or responsible person))~~

(2) Collection is exempt by law; or

(3) A child with developmental disabilities is eligible for admission to or discharged from a residential habilitation center as defined by RCW 71A.10.020(8), unless the child is placed as a result of an action taken under chapter 13.34 RCW.

NEW SECTION

WAC 388-25-0226 Does children's administration refer foster care cases to the division of child support where good cause exists? The children's administration must refer to the division of child support foster care cases in which sufficient good cause exists to not pursue collection or establish support or paternity.

NEW SECTION

WAC 388-25-0227 What constitutes good cause for not pursuing the collection or establishment of child support or paternity? Children's administration uses the following criteria to determine whether sufficient good cause exists for requesting that DCS not pursue collection or establish child support or paternity on foster care cases:

(1) It is not in the child's best interest;

(2) The parent or other legally obligated person, or the parent or other person's child, spouse, or spouse's child was the victim of the offense for which the child was committed to the custody of the juvenile rehabilitation administration (JRA) and the child is being placed directly into foster care from a JRA facility until this placement episode closes;

(3) Adoption proceedings for the child are pending in court or the custodial parent is being helped by a private or public agency to decide if the child will be placed for adoption;

(4) The child was conceived as a result of incest or rape and establishing paternity would not be in the child's best interest;

(5) The juvenile or Tribal court in the dependency proceeding finds that the parents will be unable to comply with an agreed reunification plan with the child due to the financial hardship caused by paying child support. The social worker also may determine that financial hardship caused by paying child support will delay or prevent family reunification; or

(6) The custodial parent and/or the child may be placed in danger as a result of the presence of or potential for domes-

tic abuse perpetrated by the person that the division of child support would be pursuing for collection action.

NEW SECTION

WAC 388-25-0228 Does the division of child support pursue collection or establish child support or paternity on cases in which good cause has been determined? If children's administration determines that there is good cause the division of child support does not pursue collection or establish support or paternity on a foster care case.

NEW SECTION

WAC 388-25-0229 Who may request a good cause determination? The department or a parent, including an adoptive parent or legal guardian, may initiate a request for good cause determination at any time.

NEW SECTION

WAC 388-25-0231 When may a good cause determination be requested? A request for determination of good cause may be made at any time.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-25-0230 Are adoption support cases exempt from referral to the division of child support (DCS) for collection?

WSR 05-03-087

WITHDRAWAL OF PROPOSED RULES

ENERGY FACILITY SITE EVALUATION COUNCIL

(By the Code Reviser's Office)

[Filed January 18, 2005, 7:58 a.m.]

WAC 463-60-382, 463-60-385, 463-60-435, 463-60-525, 463-60-625, 463-60-645, 463-60-655, 463-60-665, 463-60-675, 463-60-680, 463-60-685, 463-60-690, 463-64-060, 463-66-010, 463-70-080, 463-76-020, 463-76-030, 463-76-040, 463-76-050 and 463-76-060, proposed by the Energy Facility Site Evaluation Council in WSR 04-13-154 appearing in issue 04-14 of the State Register, which was distributed on July 21, 2004, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 05-03-088

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF LABOR AND INDUSTRIES

(By the Code Reviser's Office)

[Filed January 18, 2005, 7:59 a.m.]

WAC 296-17-310041, 296-17-310042, 296-17-310043, 296-17-310044, 296-17-310045, 296-17-310046, 296-17-310047, 296-17-31031, 296-17-31032 and 296-17-31033, proposed by the Department of Labor and Industries in WSR 04-14-081 appearing in issue 04-14 of the State Register, which was distributed on July 21, 2004, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 05-03-095

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Division of Child Support)

[Filed January 18, 2005, 12:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-07-113 and 03-23-107.

Title of Rule and Other Identifying Information: Chapter 388-14A WAC, Division of Child Support (DCS) rules, this notice of proposed rule making combines two CR-101 filings with rule making on two subjects which both involve amendments to WAC 388-14A-3304. A list of rule sections is shown below, identifying all proposed WAC sections, and then breaking the sections into Project 1 (Assessment of Interest on Child Support Arrears) and Project 2 (changes to the rules re: the notice of support owed and notice of support debt).

Amending WAC 388-14A-3304 The division of child support serves a notice of support debt when it is enforcing a ((foreign)) support order issued in Washington state, a foreign court order or a foreign administrative order for support, 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order, 388-14A-3320 What happens at a hearing on a notice of support ((debt or notice of support)) owed?, and 388-14A-7100 An order from another state may be registered in Washington for enforcement or modification.

New sections WAC 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?, 388-14A-3321 What happens if the custodial parent requests a hearing on a notice of support debt and demand for payment?, 388-14A-7110 The division of child support may assess and collect interest on amounts owned under support orders entered or established in a jurisdiction other than Washington state, 388-14A-7120 When does DCS update the interest assessed

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on a case?, and 388-14A-8600 Does the division of child support enforce interest on unpaid support arrears?

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on March 8, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 9, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., March 8, 2005.

Assistance for Persons with Disabilities: Contact Fred Swenson, DSHS Rules Consultant, by March 4, 2005, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) DCS is adopting rules regarding the assessment and collection of interest on support arrearages on child support cases, in accordance with the requirements of the Uniform Interstate Family Support Act, while providing that DCS will continue its policy and practice of not assessing or collecting interest on support arrearages under Washington orders unless such interest is reduced to judgment; and

(2) DCS seeks to clarify the procedures for the notice of support debt and notice of support owed.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 26.21.016 for Rules in Project 1 - Assessment of Interest on Child Support Arrears, 388-14A-3304, 388-14A-7100, 388-14A-7110, 388-14A-7120 and 388-14A-8600; and RCW 74.08.090, 26.23.035, 34.05.220(1), and 74.20A.310 for Rules in Project 2 - Notice of Support Debt and Notice of Support Owed, WAC 388-14A-3304, 388-14A-3310, 388-14A-3317, 388-14A-3320, and 388-14A-3321.

Statute Being Implemented: RCW 26.21.016 for Rules in Project 1 - Assessment of Interest on Child Support Arrears, WAC 388-14A-3304, 388-14A-7100, 388-14A-7110, 388-14A-7120 and 388-14A-8600; and RCW 26.23.110 and 74.20A.040 for Rules in Project 2 - Notice of Support Debt and Notice of Support Owed, WAC 388-14A-3304, 388-14A-3310, 388-14A-3317, 388-14A-3320, and 388-14A-3321.

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

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS rules relating to the liability

for care of dependent children are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

January 12, 2005

Andy Fernando, Manager

Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-04 issue of the Register.

WSR 05-03-096

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 18, 2005, 12:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-19-100.

Title of Rule and Other Identifying Information: New chapter 388-106 WAC, Long-term care services; chapter 388-71 WAC, Home and community services and programs; chapter 388-72A WAC, Comprehensive assessment reporting and evaluation (CARE) tool; and WAC 388-515-1540 through 388-515-1550, Medically needy residential waiver and medically needy in-home waiver. See below for a conversion chart of current long-term care rules and where same subject matter is located in the proposed rules.

This chart indicates the proposed WAC number which will replace those WACs currently adopted in chapters 388-71 and 388-72A WAC.

CURRENT WAC SECTIONS IN CHAPTER 388-71 WAC	PROPOSED WAC NUMBER
HOME AND COMMUNITY PROGRAMS	
388-71-0194 Home and community services—Nursing services.	388-106-0200, 388-106-0300, 388-106-0305, 388-106-0400, 388-106-0500
388-71-0202 Long-term care services—Definitions.	388-71-0215
388-71-0203 Long-term care services—Assessment of task self-performance and determination of required assistance.	388-71-0230
388-71-0205 Long-term care services—Service plan.	388-71-0235
388-71-0400 What is the intent of the department's home and community programs?	Repeal
388-71-0405 What are the home and community programs?	388-106-0015

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CURRENT WAC SECTIONS IN CHAPTER 388-71 WAC	PROPOSED WAC NUMBER
388-71-0410 What services may I receive under HCP?	388-106-0300, 388-106-0305, 388-106-0400, 388-106-0500, and 388-106-0600
388-71-0415 What other services may I receive under the COPEs program?	388-106-0300, 388-106-0305
388-71-0420 What services are not covered under HCP?	388-106-0020
388-71-0425 Who can provide HCP services?	388-106-0040
388-71-0430 Am I eligible for one of the HCP programs?	388-106-0210, 388-106-0310, 388-106-0410, 388-106-0510, and 388-106-0610
388-71-0435 Am I eligible for COPEs-funded services?	388-106-0310
388-71-0440 Am I eligible for MPC-funded services?	388-106-0210
388-71-0442 Am I eligible for Medically Needy Residential waiver services?	388-106-0410
388-71-0445 Am I eligible for Chore-funded services?	388-106-0610
388-71-0450 How do I remain eligible for services?	388-106-0220, 388-106-0320, 388-106-0420, 388-106-0520, and 388-106-0620
388-71-0455 Can my services be terminated if eligibility requirements for HCP change?	388-106-0220, 388-106-0320, 388-106-0420, 388-106-0520, and 388-106-0620
388-71-0460 Are there limitations to HCP services I can receive?	388-106-0130
388-71-0465 Are there waiting lists for HCP services?	388-106-0235, 388-106-0335, 388-106-0435, and 388-106-0535
388-71-0470 Who pays for HCP services?	388-106-0225, 388-106-0325, 388-106-0425, 388-106-0525, and 388-106-0625
388-71-0480 If I am employed, can I still receive HCP services?	388-106-0230, 388-106-0330, 388-106-0430, 388-106-0530, and 388-106-0630
INDIVIDUAL PROVIDER AND HOME CARE AGENCY PROVIDER QUALIFICATIONS	Kept in chapter 388-71 WAC

CURRENT WAC SECTIONS IN CHAPTER 388-71 WAC	PROPOSED WAC NUMBER
RESIDENTIAL CARE SERVICES	
388-71-0600 What are residential services?	388-106-0010
388-71-0605 Am I eligible for residential services?	388-106-0905
388-71-0610 Who pays for residential care?	388-106-0225, 388-106-0325, 388-106-0425, and 388-106-0525
388-71-0613 For what days will the department pay the residential care facility?	388-106-0225, 388-106-0325, 388-106-0425, and 388-106-0525
388-71-0615 If I leave a hospital, residential facility, or nursing facility, are there resources available to help me find a place to live?	388-106-0950
388-71-0620 Am I eligible for a residential discharge allowance?	388-106-0955
NURSING FACILITY CARE AND PAYMENT	
388-71-0700 What are the requirements for nursing facility eligibility, assessment, and payment?	388-106-0350, 388-106-0355, and 388-106-0360
ADULT DAY SERVICES (IN CHAPTER 388-71 WAC EXCEPT FOR THE FOLLOWING)	
388-71-0704 Adult day care—Services.	388-106-0800
388-71-0706 Adult day health—Services.	388-106-0805
388-71-0708 Adult day care—Eligibility.	388-106-0810
388-71-0710 Adult day health—Eligibility.	388-106-0815
PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)	
388-71-0800 What is PACE?	388-106-0015
388-71-0805 What services does PACE cover?	388-106-0700
388-71-0810 Who provides these services?	Repeal
388-71-0815 Where are these services provided?	Repeal
388-71-0820 How do I qualify for Medicaid-funded PACE services?	388-106-0705
388-71-0825 What are my appeal rights?	388-106-1305

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CURRENT WAC SECTIONS IN CHAPTER 388-71 WAC	PROPOSED WAC NUMBER
388-71-0830 Who pays the PACE provider?	388-106-0710
388-71-0835 How do I enroll into the PACE program?	388-106-0705
388-71-0840 How do I disenroll from the PACE program?	388-106-0715
388-71-0845 What are my rights as a PACE client?	388-106-1300
PRIVATE DUTY NURSING	
388-71-0900 What is the intent of WAC 388-71-0900 through 388-71-0960?	388-106-1000
388-71-0905 What is private duty nursing (PDN) for adults?	388-106-1005
388-71-0910 Am I financially eligible for Medicaid-funded private duty nursing services?	388-106-1010
388-71-0915 Am I medically eligible to receive private duty nursing services?	388-106-1010
388-71-0920 How is my eligibility determined?	388-106-1015
388-71-0925 Am I required to pay participation toward PDN services?	388-106-1020
388-71-0930 Are PDN costs subject to estate recovery?	388-106-1020
388-71-0935 Who can provide my PDN services?	388-106-1025
388-71-0940 Are there limitations or other requirements for PDN?	388-106-1030
388-71-0945 What requirements must a home health agency meet in order to provide and get paid for my PDN?	388-106-1035
388-71-0950 What requirements must a private RN or LPN meet in order to provide and get paid for my PDN services?	388-106-1040
388-71-0955 Can I receive PDN in a licensed adult family home (AFH)?	388-106-1045
388-71-0960 Can I receive services in addition to PDN?	388-106-1050
388-71-0965 Can I choose to self-direct my care if I receive PDN?	388-106-1055
SENIOR CITIZEN'S SERVICES	
388-71-1000 What is the Senior Citizens Services Act?	388-106-0015

CURRENT WAC SECTIONS IN CHAPTER 388-71 WAC	PROPOSED WAC NUMBER
388-71-1005 Who administers the Senior Citizens Services Act funds?	Repeal
388-71-1010 What services does the SCSA fund?	388-106-1100
388-71-1015 How do I apply for SCSA-funded services?	388-106-1105
388-71-1020 Am I eligible for SCSA-funded services at no cost?	388-106-1110
388-71-1025 What income and resources are exempt when determining eligibility?	388-106-1115
388-71-1030 What if I am not eligible to receive SCSA-funded services at no cost?	388-106-1120
388-71-1035 What are my rights under SCSA?	388-106-1300
RESPITE CARE SERVICES	
388-71-1065 What is the purpose of the respite care program?	388-106-0015, 388-106-1205
388-71-1070 What definitions apply to respite care services?	388-106-1200
388-71-1075 Who is eligible to receive respite care services?	388-106-1210
388-71-1080 Who may provide respite care services?	388-106-1215
388-71-1085 How are respite care providers reimbursed for their services?	388-106-1220
388-71-1090 Are participants required to pay for the cost of their services?	388-106-1225
388-71-1095 Are respite care services always available?	388-106-1230
VOLUNTEER CHORE	
388-71-1100 What is volunteer chore services (VCS)?	388-106-0015, 388-106-0650
388-71-1105 Am I eligible to receive volunteer chore services?	388-106-0655
388-71-1110 How do I receive information on applying for volunteer chore services?	Repeal

CURRENT WAC SECTIONS IN CHAPTER 388-72A WAC	PROPOSED WAC NUMBER
APPLICATION	
388-72A-0005 When do the rules in chapter 388-72A WAC apply to me?	Repeal

CURRENT WAC SECTIONS IN CHAPTER 388-72A WAC	PROPOSED WAC NUMBER
388-72A-0010 Does chapter 388-71 WAC apply to me?	Repeal
388-72A-0015 If the department did not use the CARE tool for my last assessment, may I have my assessments done on the assessment form used for my last assessment?	Repeal
ASSESSMENT AND SERVICE PLANNING	
388-72A-0020 What is an assessment?	388-106-005
388-72A-0025 What is the process for conducting an assessment?	388-106-0065
388-72A-0030 What is the purpose of an assessment?	388-106-0055
388-72A-0035 What are personal care services?	388-106-0015
388-72A-0036 How are my needs for personal care services determined?	388-106-0075
388-72A-0037 How are self-performance and support provided for the activities of daily living (ADLs) scored?	388-106-0075
388-72A-0038 How are the ADLs bathing, body care, and medication management scored?	388-106-0075
388-72A-0039 How are self-performance and difficulty for the instrumental activities of daily living (IADLs) scored?	388-106-0075
388-72A-0042 How are ADLs and IADLs scored for children?	388-106-0213
388-72A-0043 How are other elements in CARE scored for children age seventeen and younger and foster care clients?	388-106-0213
388-72A-0045 How will the department plan to meet my care needs?	Repeal
388-72A-0050 What if I disagree with the result of the assessment or the decisions about what services I may receive?	388-106-1305
CARE ELIGIBILITY	
388-72A-0053 Am I eligible for one of the HCP programs?	388-106-0210, 388-106-0310, 388-106-0410, 388-106-0510, and 388-106-0610

CURRENT WAC SECTIONS IN CHAPTER 388-72A WAC	PROPOSED WAC NUMBER
388-72A-0055 Am I eligible for COPEs-funded services?	388-106-0310
388-72A-0057 Am I eligible for medically needy residential waiver (MNRW)-funded services?	388-106-0410
388-72A-0058 Am I eligible for medically needy in-home wavier (MNIW)-funded services?	388-106-0510
388-72A-0060 Am I eligible for MPC-funded services?	388-106-0210
388-72A-0065 Am I eligible for Chore-funded services?	388-106-0610
388-72A-0069 How does CARE use the information the assessor gathers?	388-106-0055
CLASSIFICATION FOR IN-HOME AND RESIDENTIAL CARE	
388-72A-0070 What are the in-home hours and residential rate based on?	388-106-0080
388-72A-0080 What are the elements that the CARE tool evaluates for each of the criteria in WAC 388-72A-0075?	388-106-0085
388-72A-0081 How is cognitive performance measured in the CARE tool?	388-106-0090
388-72A-0082 How is clinical complexity measured within the CARE tool?	388-106-0095
388-72A-0083 How are mood and behaviors measured within the CARE tool?	388-106-0100
388-72A-0084 How are ADL scores measured within the CARE tool?	388-106-0105
388-72A-0085 How does the CARE tool evaluate for the two exceptional care classifications of in-home care?	388-106-0110
388-72A-0086 How is the information in WAC 388-72A-0081 through 388-72A-0084 used to determine the client's classification payment group for residential settings?	388-106-0115
388-72A-0087 How is the information in WAC 388-72A-0081 through 388-72A-0085 used to determine the classification payment group for in-home clients?	388-106-0125

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CURRENT WAC SECTIONS IN CHAPTER 388-72A WAC	PROPOSED WAC NUMBER
PAYMENT METHODOLOGY FOR IN-HOME SERVICES	
388-72A-0090 What are the maximum hours that I can receive for in-home services?	388-106-0135
388-72A-0092 How are my in-home hours determined?	388-106-0130
388-72A-0095 What additional criteria are considered to determine the number of hours I will receive for in-home services?	388-106-0130
388-72A-0100 Are there other in-home services I may be eligible to receive in addition to those described in WAC 388-72A-0095(3)?	388-106-0300
388-72A-0105 What would cause a change in the maximum hours authorized?	388-106-0140
HOME AND COMMUNITY PAYMENT RATES	
388-72A-0110 How much will the department pay for my care?	388-106-0120
388-72A-0115 When the department adjusts an algorithm, when does the adjustment become effective?	Repeal
388-72A-0120 When a client requests a fair hearing to have the client's CARE tool assessment results reviewed and there is (are) a more recent CARE assessment(s), which CARE tool assessment does the administrative law judge review in the fair hearing?	388-106-1310

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on March 22, 2005, at 10:00 a.m.

Date of Intended Adoption: Not early than March 23, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., March 22, 2005.

Assistance for Persons with Disabilities: Contact Fred Swenson, DSHS Rules Consultant, by March 18, 2005, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New WAC chapters and rules are required to phase out rules that no longer apply, due to the implementation of the comprehensive assessment reporting and evaluation (CARE) tool. In addition, ADSA is reorganizing, amending and streamlining rules to ensure that all rules are current and clear.

This rule making includes the following significant changes:

- Clarifies requirements for how to conduct an assessment when other who are present impede the process.
- Adds a client rights section.
- Includes the right to contest "Other decisions by the department" in the fair hearing section.
- Includes a new program, community transition services, under the COPEs, MNIW, and MNRW waiver.
- Incorporates changes to the eligibility and number of hours you may receive under private duty nursing.
- Included CARE deductions (e.g., one meal is thirty minutes).
- Changes to how residential care discharge allowance can be authorized.
- Sets a minimum standards for determining eligibility under respite.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.-520.

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

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Brooke Buckingham, P.O. Box 45600, Olympia, WA 98504-5600, (425) 670-6458.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the rules and determined that no new costs will be imposed on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed new rules are exempt by RCW 34.05.328 (5)(b)(vii), rules relating to client medical eligibility. Amended rules are exempted by RCW 34.05.328 (5)(b)(iv), making address and name changes, and clarifying a rule without changing its effect.

January 12, 2005

Andy Fernando, Manager

Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-05 issue of the Register.

WSR 05-03-102

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed January 18, 2005, 4:40 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Repeal Regulation II, Section 3.11 and Regulation III, Section 3.05.

Hearing Location(s): Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on February 24, 2005, at 9:15 a.m.

Date of Intended Adoption: February 24, 2005.

Submit Written Comments to: Lynn Hughes, Puget Sound Clean Air Agency, 110 Union Street, #500, Seattle, WA 98101, e-mail lynn@pscleanair.org, fax (206) 343-7522, by February 23, 2005.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by February 17, 2005, TTY (800) 833-6388 or (800) 833-6385 (braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repealing Regulation II, Section 3.11 (Coatings and Ink Manufacturing), the purpose is to remove an unnecessary rule. NESHAP 40 C.F.R. 63, Subpart HHHHH has been issued by EPA and is more stringent than the agency rule. Analysis and compliance now rely on this rule and T-BACT (see below).

Repealing Regulation III, Section 3.05 (Solvent Metal Cleaners), the purpose is to remove an unnecessary rule and eliminate sources' concerns regarding applicability of the regulation.

Reasons Supporting Proposal: NESHAP 40 C.F.R. 63, Subpart HHHHH can be used to regulate coating and ink manufacturers in our jurisdiction; and NESHAP 40 C.F.R. 63, Subpart T, and T-BACT (chapter 173-460 WAC) provide sufficient control and guidance to issue permits for solvent metal cleaners.

Statutory Authority for Adoption: Chapter 70.94 RCW.
Statute Being Implemented: RCW 70.94.141.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The state implementation plan will be updated to reflect the repeal of Regulation II, Section 3.11.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Kwame Agyei, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4054; Implementation and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

January 14, 2005

Kwame Agyei

Engineer

REPEALER

REGULATION II SECTION 3.11 COATINGS AND INK MANUFACTURING

REPEALER

REGULATION III SECTION 3.05 SOLVENT METAL CLEANERS

WSR 05-03-103

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed January 18, 2005, 4:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-24-058.

Title of Rule and Other Identifying Information: Standards of conduct for students.

Hearing Location(s): Conference Room 401, Lighty Student Services Building, Washington State University, Pullman, Washington 99164, on February 23, 2005, at 2:00 p.m.

Date of Intended Adoption: March 4, 2005.

Submit Written Comments to: Ralph T. Jenks, P.O. Box 641225, Pullman, WA 99164-1225, e-mail forms@mail.wsu.edu, fax (509) 335-3969, by February 18, 2005.

Assistance for Persons with Disabilities: Contact Deborah Bartlett by February 18, 2005.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies WSU's requirements for student conduct. Rules will also streamline the hearing, disciplinary, and appeals processes.

Reasons Supporting Proposal: To clarify WSU's requirements for student conduct. Rules will also streamline the hearing, disciplinary, and appeals processes.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Office of Student Affairs, Washington State University.

Name of Agency Personnel Responsible for Drafting: Dr. Charlene Jaeger and Dr. Elaine Voss, Lighty Student Services Building, Room 360, (509) 335-4531; Implementation and Enforcement: Dr. Charlene Jaeger, Lighty Student Services Building, Room 360, (509) 335-4531.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

January 14, 2005

Ralph T. Jenks, Director

Office of Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-001 (~~((Terms of enrollment.))~~) **Standards of conduct.** (~~((Washington State University aims to create an environment that cultivates individual virtues and institutional integrity in the university community.))~~) The (~~((mission of the))~~) university's **mission** is supported when stu-

dents take responsibility for their conduct both in and out of the classroom. Under the terms of enrollment, ~~((students acknowledge))~~ the ~~((university's))~~ university has the authority to ~~((take disciplinary action for))~~ enforce the standards of conduct on or off university property if a person is in student status. ~~((Off-campus conduct may be addressed when it is detrimental to the university's mission.))~~

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-003 ~~((Definition of a))~~ Student status. ~~((A))~~ "Student ~~((is any person who is enrolled at Washington State University for the current academic period. A student is also defined as one who has an ongoing relationship with the university between academic periods at the time the misconduct occurred))~~ status" for conduct purposes includes the following:

- (1) The person is enrolled for one or more credit hours;
- (2) The person is enrolled in a special noncredit program approved by the university;
- (3) The person is between academic periods, such as the summer or winter break, or was enrolled at the time the misconduct occurred.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-011 Good standing. ~~((The award of a degree is conditioned upon the student's good standing in the university and satisfaction of all university graduation requirements. "Good standing" means the student has resolved any unpaid fees or acts of academic or behavioral misconduct, and complied with all sanctions imposed as a result of the misconduct.))~~ The university shall deny award of a degree ~~((if the))~~ to any student who is ~~((dismissed))~~ expelled from the university ~~((based on his or her))~~ for misconduct. (See also Rule 45 in the General Catalog.)

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-013 Responsibility for guests. A student ~~((or student organization))~~ is responsible for the conduct of guests on ~~((or in))~~ university property and at functions sponsored by the university or ~~((sponsored by))~~ any registered university organization.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-020 Discrimination. (1) Discrimination on the basis of race, national or ethnic origin, creed, age, sex, marital status, veteran status, sexual orientation, or disability is prohibited in conformity with federal and state laws.

(2) Discrimination includes sexual or racial harassment ~~((by students. Sexual and racial harassment are)),~~ which is defined as conduct that is (a) sexually or racially motivated and (b) has the purpose or effect of unreasonably interfering with a person's work or educational performance or creating an intimidating, hostile, or offensive environment.

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-025 Sexual ~~((offenses))~~ misconduct. ~~((1))~~ Sexual ~~((offenses))~~ misconduct of any kind, including, but not limited to ~~((acquaintance))~~ rape, indecent liberties, assault of a sexual nature, voyeurism, and/or other unwanted sexual contact are prohibited.

~~((a))~~ (1) Rape is defined under state law as sexual intercourse with a person who did not consent by his or her words or conduct. Consent to sexual activity means actual words or conduct indicating the person has freely and voluntarily agreed to have sexual intercourse.

~~((b))~~ (a) Silence or mere passivity from a state of intoxication or unconsciousness does not imply consent to sexual intercourse.

~~((c))~~ (b) Lack of consent is implied if violence is threatened or used.

~~((d))~~ (2) Indecent liberties means knowingly causing sexual contact with a person ~~((by forcible compulsion or))~~ when the person is incapable of consent by reason of mental defect, mental incapacitation, or physical helplessness. Sexual contact is defined as any nonconsensual touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party.

~~((e))~~ ~~The university prohibits sexual contact when such contact amounts to assault under Washington law. Assault includes harmful and offensive contact with another person.))~~

(3) A person commits the violation of voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy.

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-030 Physical ~~((abuse))~~ harm or threatened physical ~~((abuse))~~ harm. ~~((Attempting or causing injury to an individual is prohibited.))~~ Causing or ~~((provoking))~~ threatening physical contact ~~((with another is prohibited when the person knows or should reasonably believe))~~ that ~~((the other))~~ a reasonable person ~~((will))~~ would consider ~~((the contact))~~ harmful or offensive is prohibited.

NEW SECTION

WAC 504-25-032 Group conduct. Sororities, fraternities, and recognized groups are expected to comply with the standards of conduct for students (this chapter) and with university policies.

When a member or members of a student organization violates the standards of conduct for students (this chapter), the student organization or individual members may be subject to appropriate sanctions authorized by this code.

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-035 Hazing is prohibited. ~~((+))~~ No student ~~((or other person enrolled))~~ at Washington State University may conspire to engage in hazing or participate in hazing of another.

~~((a))~~ (1) Hazing includes any ~~((method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger))~~ activity expected of someone joining a group (or maintaining full status in a group) that humiliates, degrades, or creates a risk of emotional and/or physical harm, ~~((or serious mental or emotional harm to any student or other person attending a public or private institution of higher education or other postsecondary educational institution of higher education or other postsecondary educational institution in this state))~~ regardless of the person's willingness to participate.

~~((b))~~ (2) Hazing activities may include, but are not limited to, the following: Use of alcohol during new member activities; paddling in any form; creation of excessive fatigue; physical and/or psychological shock; quests, treasure hunts, scavenger hunts, road trips; requiring public wearing of apparel that is conspicuous and not normally in good taste; engaging in public stunts and buffoonery; morally degrading or humiliating games or activities.

(3) Hazing does not include customary athletic events or other similar contests or competitions.

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-040 Harassment. Conduct by ~~((physical, verbal, graphic, written, or electronic))~~ any means that ~~((is sufficiently severe, pervasive or persistent so as to))~~ unreasonably threatens an ~~((individual or limit the))~~ individual's ability to work, study, or participate in ~~((the activities of))~~ the university is prohibited.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-041 Malicious harassment. Maliciously ~~((and intentionally committing one of the following acts because of))~~ harming, threatening, or attempting to harm another person or person's property based on a perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap is prohibited~~((+))~~

(1) ~~Causing physical injury to the victim or another person;~~

(2) ~~Causing physical damage to or destruction of the property of the victim or another person;~~

(3) ~~Threatening a specific person or group of persons and placing that person, or members of the specific group of persons, in reasonable fear of harm to person or to property).~~

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-042 Stalking. Following or ~~((intentionally and))~~ repeatedly harassing ~~((another))~~ a person, and ~~((placing))~~ causing the person being followed or harassed ~~((in reasonable))~~ fear ~~((that the stalker intends to injure a person or property))~~ is prohibited.

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-043 ~~((Abuse of))~~ Harm to self or others. ~~((Prohibited behavior includes but is not limited to:~~

(1) ~~Inflicting mental or bodily harm upon any person (including one's self);~~

(2) ~~Engaging in any intentional or reckless action that ((may)) is likely to result in mental or bodily harm ((+)) to any person, including to one's self((+));~~

(3) ~~Causing a person to believe that the offender may cause mental or bodily harm)), is prohibited.~~

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-045 Reckless endangerment. Engaging in conduct that creates ~~((a substantial))~~ an unreasonable risk of ~~((physical))~~ harm to another person or property is prohibited.

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-050 Alcohol. Illegal use, manufacture, possession, or sale of intoxicating beverages is prohibited by local, state, and federal law, and university policy. ~~((Consumption, possession, sale, or distribution of alcohol by students in public areas of any university owned or controlled property or at university functions must comply with all local, state and federal laws.))~~

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-051 Effect of alcohol or drugs. ~~((Any conduct that may have been influenced by))~~ The voluntary use of alcohol or drugs will not limit or excuse ~~((the))~~ a student's responsibility for his or her action.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-055 Drugs and drug paraphernalia. The use, sale, possession, manufacture, and/or distribution of illegal drugs and drug paraphernalia ~~((is))~~ are prohibited.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-060 Firearms and dangerous weapons. (1) No student may carry, possess, or use any firearm, explosive ~~((including fireworks)), dangerous chemical, or dangerous~~

weapon (~~((including, but not limited to, shotguns, rifles, pistols, airguns, pellet guns, longbows, hunting bows, throwing weapons, etc.)))~~) on university property (~~((except in transit to or from approved storage, to leave campus, or when authorized by the university))~~) or university-approved housing.

(2) ~~((Any student who wants access to his or her firearm while enrolled at the university must store the))~~ Firearms must be stored with the Washington State University Department of Public Safety.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-065 Illegal entry and trespassing. Illegal or attempted illegal entry or trespassing (~~((on university property))~~) is prohibited.

AMENDATORY SECTION (Amending Order 89-1, Resolution No. 3-31-89-16, filed 5/18/89, effective 7/1/89)

WAC 504-25-070 Theft or damage of property or services. Actual or attempted theft (~~((of)), or damage to((-))~~) property or services (~~((belonging to the university, any member of its community, or a campus visitor))~~) is prohibited. Knowing possession of stolen property is also prohibited.

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-085 Computer abuses. Conduct that violates the university's electronic use policy, executive policy manual section EP4, is prohibited (~~((and includes:~~

(1) ~~Copying university owned or licensed software or data for personal or external use without prior approval;~~

(2) ~~Copying another computer user's software or data without permission of its owner, even if it is readily accessible by electronic means;~~

(3) ~~Knowingly accepting or using software or data which has been obtained by unauthorized means;~~

(4) ~~Modifying or damaging, attempting to modify or damage, computer equipment, software, data bases, or communication lines without permission;~~

(5) ~~Disrupting or attempting to disrupt computer operations;~~

(6) ~~Invading the privacy of an individual by using electronic means to ascertain confidential information, even if an individual or department inadvertently allows access to such information;~~

(7) ~~Abusing or harassing another computer user through electronic means;~~

(8) ~~Using the university's computing facilities in the commission of a crime;~~

(9) ~~Using computer services without authorization;~~

(10) ~~Allowing another individual to use one's computer identity/account or using another individual's computer identity/account;~~

(a) ~~This includes, but is not limited to, logging on to the account, accessing programs, and reading or altering computer records. The university, through information technology, must authorize and allocate time on the mainframe computers)).~~ Policy may be viewed at: <http://www.wsu.edu/~>

forms/HTML/EPM/EP4 Electronic Publishing Policy.htm.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-090 Disruption. ~~((1))~~ Students have the right to freedom of speech, including the right to dissent or protest, but this expression cannot interfere with the rights of others or disrupt the university's educational process or activities. ~~((The following conduct will not be permitted:~~

(a) ~~Disruption of classes, laboratories, offices, services, meetings, or ceremonies;~~

(b) ~~Obstruction of free movement of people or vehicles; provided, peaceful picketing is permitted so long as it takes place outside buildings and does not interfere with the flow of traffic;~~

(c) ~~Conduct which threatens harm, incites violence, or endangers the health and safety of any person;~~

(d) ~~Threats of disruption, including bomb threats;~~

(e) ~~Damaging, defacing or abusing university facilities, equipment, or property, or the property of university community members; or~~

(f) ~~Inciting others to engage in prohibited conduct.)~~

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-115 Violation of local ordinances, state or federal law. Students shall comply with local, state, and federal laws and may be subject to university discipline (~~((or))~~) for any violation.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-135 Failure to cooperate with a university investigation. Failure to cooperate with a university investigation or interfering with an investigation by lying or withholding evidence((-or)) is prohibited. Encouraging or threatening another to interfere with an investigation or encouraging or threatening another to lie is also prohibited. However, the student has the right to remain silent and not incriminate himself or herself if the allegation may lead to criminal liability.

~~((1) Any student who fears for his or her safety may request that testimony be given by telephone or other means.))~~

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-138 Misuse of identification. Unauthorized possession or use of university- or state-issued identification is prohibited, (~~((which includes))~~) including but (~~((is))~~) not limited to: Lending, selling, processing, or duplicating the identification.

PART II
DISCIPLINARY PROCESS ~~((AND PROCEDURES))~~

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-200 Disciplinary ~~((action))~~ process. The university's disciplinary process is educational, but students ~~((can))~~ may be suspended or ~~((dismissed))~~ expelled for serious violations of the standards of conduct. University disciplinary action is independent of any civil or criminal proceeding and is not ~~((influenced by))~~ dependent on the outcome of ~~((those))~~ court proceedings. The university ~~((shall))~~ strives to address allegations of student misconduct in a timely manner ~~((in its sole discretion))~~.

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-201 Student rights. ~~((+))~~ A student ~~((or student organization))~~ that has allegedly violated the standards of conduct has the following rights:

~~((a))~~ (1) The right to notice ~~((and the basis for the allegation))~~ and the opportunity to be heard.

~~((b))~~ (2) The right to ~~((remain silent and not incriminate oneself if the allegation may lead to criminal liability.~~

~~((c))~~ The right to) a hearing.

~~((d))~~ (3) The right to seven calendar days' notice prior to a hearing (the student may waive this notice period).

~~((e))~~ (4) The right to present written information to the university officer or the conduct board prior to the hearing, including signed witness statements.

~~((f))~~ (5) The right to ~~((consult an adviser and))~~ have one adviser present at the hearing. The adviser ~~((may advise the student or student organization during the hearing, but))~~ is not ~~((permitted))~~ allowed to directly ~~((address the university officer or the conduct board. The adviser is prohibited from examining witnesses))~~ participate in the hearing.

~~((g))~~ (6) The right to one appeal. ~~((However, no appeal is available if the conduct board finds the student responsible for multiple violations of the university's drug/alcohol policy.~~

~~((2))~~ A student or student organization has the following additional rights if the conduct board hears the matter:

~~((a))~~ The right to request the removal of a conduct board member for prejudice. The request must be made in writing and support the basis for the alleged prejudice.

~~((b))~~ (7) The right to review ~~((any written material to be presented to the conduct board))~~ the conduct file at least ~~((48))~~ forty-eight hours prior to ~~((the))~~ a hearing~~((, including the names of witnesses expected to testify. Any new information or evidence shall be released to the accused student or student organization within 24 hours of receipt)).~~

~~((c))~~ (8) The right to hear the testimony of all witnesses in conduct board hearings.

~~((d))~~ (9) In conduct board proceedings, the right to question witnesses subject to the chairperson's discretion.

~~((e))~~ The right to have an audio recording made of the hearing.)

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-202 Emergency interventions and interim action. (1) ~~((A student or student organization involved in alleged misconduct is entitled to a hearing prior to the imposition of any disciplinary action. However,))~~ If there is cause to believe that the student ~~((or student organization))~~ poses an imminent threat to ~~((himself, herself, itself, to))~~ self or others ~~((or to property))~~, immediate action may be taken prior to a hearing. ~~((An interim suspension shall not create a presumption of guilt. The vice president for student affairs or designee may take one or more of the following interim actions:))~~

(a) Interim restrictions. A student may be restricted from university facilities or assigned to alternate university housing. Students may also be restricted from contacting a person or a group.

(b) Interim suspension. A student may be suspended pending a hearing.

(2) The ~~((vice president for student affairs or designee shall notify the))~~ student ~~((or student organization))~~ is notified in writing of the ~~((terms of the emergency restriction,))~~ basis for the interim suspension~~((, and the reasons for the decision)).~~

(3) If interim action is taken, ~~((the student or student organization is entitled to))~~ a hearing ~~((as soon as is reasonably possible, but not later than))~~ is held within ten ~~((calendar))~~ days ~~((after the action is taken)).~~

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-203 Parental notification. The Family Educational Right to Privacy Act (FERPA) provides that an educational institution may notify a student's parent or legal guardian ~~((if the student is under the age of twenty one and has violated a federal, state, or local law involving the use or possession of alcohol or a controlled substance))~~ under certain circumstances. Refer to: <http://www.registrar.wsu.edu/Registrar/Apps/FERPA.ASPX>.

NEW SECTION

WAC 504-25-211 Group conduct. Sororities, fraternities, or recognized groups charged with violation of the standards of conduct (this chapter) are represented in the conduct process by the president, principal officer, contact person, or other students designated by the group to act as agent on behalf of the group.

(1) If the designated person fails to appear at a conduct proceeding, a decision is made without group representation.

(2) The person representing the group is afforded all the procedural rights set forth in the code.

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-215 ~~((University officer,))~~ Conduct board ~~((s))~~ and appeal board. (1) ~~((The university officer is~~

~~a student affairs staff member or a graduate assistant in the office of student affairs.~~

~~(2))~~ The vice-president for student affairs appoints the university conduct board members and chairperson. ~~((This))~~ Each board is generally composed of two faculty members, two students, and a faculty or staff chairperson. ~~((The chairperson is appointed by the vice-president for student affairs and conducts the proceedings.~~

~~(3))~~ (2) In matters involving an academic integrity violation, the faculty members shall be teaching faculty. If the accused student is a graduate student, at least one graduate student shall be on the conduct board when possible.

~~((4))~~ (3) The appeal board is composed of three university administrators appointed by the vice-president for student affairs.

~~((5))~~ (4) All university officers and hearing board members shall be impartial.

~~((a))~~ Impartial means the person is not personally involved in the alleged act or does not have a personal interest in the outcome of the disciplinary proceeding.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-221 Complaint. ~~((1))~~ Any person with direct knowledge of an incident may file a complaint ~~((in writing))~~ with the office of student ~~((affairs against a student or student organization.~~

~~(a)~~ The complainant must have direct knowledge of the alleged misconduct and be willing to appear at a hearing if necessary.

~~(b)~~ The university officer determines if the alleged misconduct constitutes a violation of the standards of conduct.

~~(c)~~ If the university officer determines there may be a violation, the student or student organization is requested to attend a preliminary conference.

~~(d)~~ The student or student organization is notified in writing of the allegation against them.

~~(2)~~ If a student withdraws after a complaint has been filed, the hearing may be conducted in the student's absence. If the student is found responsible for a violation of the standards of conduct, the university may impose disciplinary sanctions.

~~(a)~~ Failure to comply with a university sanction or failure to resolve a conduct complaint shall affect a student's good standing in the university) conduct.

AMENDATORY SECTION (Amending WSR 02-15-075, filed 7/15/02, effective 8/15/02)

WAC 504-25-223 Notice. (1) Any student or student organization charged with violating the standards of conduct shall be notified in writing at least seven calendar days prior to the hearing. The notice shall include(:

~~(a)~~ The specific charges, including the university policy or regulation allegedly violated;

~~(b)~~ The approximate time and place of the alleged act;

~~(c)~~ The time and place of the hearing) the basis of the allegation and the time and place of the meeting.

(2) Each student is responsible for keeping an updated address on file.

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-226 ((Administrative)) Hearings. (1) ~~An administrative hearing~~ ~~((s are informal hearings))~~ is conducted solely by a ~~((university))~~ conduct officer. ~~((a) The university))~~ The conduct officer has the ~~((sole))~~ discretion to ~~((send))~~ recommend that a university conduct board hear the matter ~~((to a conduct board at any time before a decision is issued. A student may request that a conduct board hear the case, but the final decision on the matter is made by the university officer and is not subject to appeal)).~~

~~(2)~~ ~~((If the student or student organization fails to appear at a hearing after proper notice,))~~ A student is responsible for presenting his or her own case.

~~(3)~~ The university ~~((officer))~~ has the discretion to proceed ~~((in))~~ with a hearing if the student ~~((or organization's absence and determine responsibility and appropriate sanctions))~~ fails to appear.

~~((3) The))~~ (4) University hearings are not legal proceedings and the university conduct officer is not bound by formal rules of evidence.

(5) Hearings are closed to the public in conformity with federal privacy law.

~~((4) The administrative hearing is not a legal proceeding.~~

~~(5) The university officer is not bound by the rules of evidence and may admit any relevant information, but shall exclude immaterial or unduly repetitious information. A student's adviser is not permitted to directly address the university officer.)~~

(6) The university must prove the allegation by a preponderance of the evidence(:

~~(a) Preponderance of the evidence means evidence that would lead a reasonable person to conclude that))~~ which means it is more likely than not that a violation occurred.

(7) ((A hearing may be continued to another time if any person disrupts the proceedings:

~~(8) At the conclusion of the hearing))~~ The student is informed in writing of the ((university officer's)) decision((; the reasons for the decision, the sanction, and the right to appeal the decision:

~~(9) The written decision is the initial order))~~ within ten days.

~~((10))~~ (8) If the student does not appeal the ((university officer's)) decision within ((twenty-one calendar)) fourteen days from the date of the decision letter, ((it becomes the university's)) the decision is final ((order)).

~~((11) Administrative hearing))~~ (9) Decisions involving individual students are confidential. However, the university may disclose the outcome of a disciplinary decision in compliance with the Family Educational Right to Privacy Act (FERPA) under the following exemptions:

(a) Disclosure to other university officials with a legitimate educational interest;

(b) Disclosure to an alleged victim of any crime of violence; and

(c) Disclosure in connection with a health or safety emergency((; and

~~(d) Future exemptions that may apply as amended by federal law. Students will be notified annually of any new exemptions that may apply.~~

~~(12) The university officer shall keep a written record of the hearing. This record shall include all documents relevant to the university officer's decision.~~

~~(10) Hearing decisions involving student organizations may be disclosed pursuant to the Public Disclosure Act (PDA) via a public records request. (Personally identifiable student information is redacted.)~~

~~(11) An audio record is made in conduct board hearings.~~

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-227 ~~((Administrative))~~ Hearing appeal.

(1) The appeal is a review of the record and ~~((the appeal letter, it))~~ is not a new hearing.

(2) The ~~((university officer's written decision is the university's initial order.~~

~~(3) The university officer's))~~ decision may be appealed in writing to the ~~((vice president for))~~ office of student affairs ~~((or designee)).~~

~~((4) If the student does not appeal the university officer's decision within twenty-one calendar days from the date of the decision letter, it becomes the university's final order.~~

(5) An appeal letter shall be in writing and filed with the office of student affairs. The university officer may address the appeal letter by submitting a written response to the reviewing official. The university officer's response, if any, will be copied to the appellant.

~~(6) The appeal letter shall clearly state the basis for appeal.)~~ (3) The following shall be the basis for an appeal:

(a) The university ~~((s disciplinary))~~ did not follow its process ~~((was not properly followed))~~ and that ~~((procedural))~~ error ~~((would have))~~ substantially affected the decision;

(b) New information not available at the time of the hearing would have substantially affected the decision;

(c) There was not enough evidence to justify the decision~~((:));~~

(d) The sanction was too severe ~~((or inappropriate for the violation)).~~

~~((7))~~ (4) The student bears the burden of proof on appeal.

~~((a))~~ Burden of proof means the student ~~((or student organization))~~ must prove he~~((:))~~ or she~~((, or it))~~ is not responsible for the violation of the standards of conduct.

~~((8))~~ (5) The ~~((vice president for student affairs or designee shall review the record and make one of the following determinations))~~ university's final decision is made within ~~((twenty calendar))~~ ten days ~~((from the date))~~ of the appeal letter~~((:~~

~~(a) Affirm the university officer's decision;~~

~~(b) Reverse the university officer's decision;~~

~~(c) Affirm, reverse or modify the sanctions imposed by the university officer.~~

(9) ~~The decision letter is the university's final order and shall advise the student or student organization that judicial review may be available).~~ The decision is affirmed.

reversed, and/or sanctions may be modified. This is the university's final decision.

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-230 Sanctions. Any of the following sanctions or any combinations of sanctions may be imposed on a student or student organization for a violation of the standards of conduct.

(1) Written warning. ~~((A letter notifying the student that the allegation is not a violation under the standards of conduct, but repeated behavior may result in a violation.))~~

(2) Education. The university ~~((has the discretion to))~~ may require the student to ~~((seek specific education or))~~ complete an educational project ~~((designed to create an awareness of the student's misconduct)).~~

(3) Assessment. The student is required to have an ~~((alcohol and/or drug))~~ assessment by a certified professional ~~((and to comply with the professional's recommendations)).~~

(4) Community service. ~~((Assignment of labor or responsibilities to any student or student organization within the university or local community may be imposed up to a maximum))~~ Imposition of service hours ~~((not to exceed eighty hours per student or per member of an organization)).~~

(5) Disciplinary probation. ~~((Disciplinary probation means))~~ Formal conditions are imposed on a student's ~~((continued))~~ attendance at the university for a specific period of time. ~~((Disciplinary probation serves as a warning that future misconduct may result in more severe sanctions.))~~ Students ~~((on disciplinary probation))~~ are not eligible to run for or ~~((hold office))~~ be in leadership positions in any student groups or organizations ~~((although they can be members of any group or organization));~~ they are not eligible for certain jobs on campus ~~((including but not limited to resident advisor or orientation counselor), and they are not eligible to serve on the University conduct board)).~~

(6) Restitution. ~~((Restitution may include))~~ Reimbursement for damaged or stolen property and/or any medical expenses incurred by a person injured as a result of the student's ~~((or student organization's))~~ misconduct.

(7) No contact order. ~~((This may include))~~ A prohibition of direct or indirect physical ~~((and/or)), verbal, and/or written~~ contact with another individual or group.

(8) Trespass. A student may be restricted from university property based on his or her misconduct.

(9) Loss of privileges. Loss of the right to reside in a specific housing unit or in any university-owned or approved housing, or loss of the right to participate in extracurricular activities for a specific period of time.

~~((9))~~ (10) Loss of recognition or charter. A student organization's recognition or charter may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing freshmen. Loss of recognition is defined as withholding university services or administrative approval from a student organization. Services and approval to be withdrawn from a student organization include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, campus

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involvement office organizational activities and advising services, new student programs participation, community services learning center organizational activities, student advising and learning center organizational services, and office of Greek life advising and freshmen residency.

~~((10))~~ (11) Hold on transcript and/or registration. This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold shall be released.

~~((11))~~ (12) Revocation of degree. A student's degree may be revoked if it was falsely or fraudulently obtained ~~(or if the student was dismissed from the university based on his or her misconduct).~~

~~((12))~~ (13) Suspension. The student is suspended for a specific period of time. ~~((A student may be excluded from specific areas of campus for safety reasons. Upon satisfactory completion of stated conditions, the university may grant reinstatement at its discretion.~~

~~(a) The suspension is effective immediately if the conduct board determines that the student poses a safety risk to himself/herself or to the university community.~~

~~(b))~~ Students shall be automatically suspended for a minimum of one semester for multiple violations of the university's alcohol/drug policy.

~~((13) Dismissal)~~ (14) Expulsion. The student's enrollment is immediately terminated. ~~((Dismissal means that a student's academic relationship with the university is permanently ended.~~

~~((14))~~ (15) Special sanctions for hazing. Pursuant to ~~((RCW 28B.10.902, additional sanctions will be imposed in cases where there is a finding of responsibility for hazing as provided in RCW 28B.10.900 and))~~ WAC 504-25-035 ~~((as amended))~~:

~~((i))~~ (a) A person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a specific period of time.

~~((ii))~~ (b) Any organization, association, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by Washington State University and may be subject to additional sanctions.

AMENDATORY SECTION (Amending WSR 03-16-035, filed 7/30/03, effective 8/30/03)

WAC 504-25-245 Records. (1) Disciplinary records will be maintained for a minimum of seven years after the case is resolved, in accordance with the university's retention schedule.

(2) The disciplinary record is confidential.

(3) A student may request a copy of his or her own disciplinary record at his or her own reasonable expense by making a written request to the office of student ~~((affairs))~~ conduct.

~~((a))~~ Personally identifiable student information shall be redacted to protect another student's privacy rights.

(4) A student may authorize the release of his/her own disciplinary record to a third party in compliance with the Federal Educational Rights and Privacy Act (FERPA) by

making a written request to the office of student ~~((affairs))~~ conduct.

~~((a))~~ Identifying student information shall be redacted to protect another student's privacy rights.

(5) ~~((The university may inform an alleged victim of the outcome of any disciplinary proceeding involving a crime of violence as defined by Federal Educational Rights and Privacy Act (FERPA).~~

~~((6))~~ The university may not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law.

(a) The student's parents or legal guardians may review these records if the student is a minor or a dependent for tax purposes as defined by the Federal Educational Rights and Privacy Act (FERPA).

(b) The university provides annual notification of a student's privacy rights in accordance with federal law.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 504-25-002	Washington State University.
WAC 504-25-015	Academic dishonesty.
WAC 504-25-018	Copyright and intellectual property.
WAC 504-25-095	Disturbing the peace.
WAC 504-25-205	Types of hearings.
WAC 504-25-224	Service of notice.
WAC 504-25-228	Conduct board hearing.
WAC 504-25-229	Conduct board appeal.

WSR 05-03-105

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed January 19, 2005, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-23-075.

Title of Rule and Other Identifying Information: Chapter 308-96A WAC, Vehicle license, WAC 308-96A-311 General provisions and 308-96A-314 Individual with disabilities special license plates—Individual.

Hearing Location(s): Department of Licensing, Conference Room, 1125 Washington Street S.E., Olympia, WA 98507, on February 22, 2005, at 11:00 a.m.

Date of Intended Adoption: March 22, 2005.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-3827, by February 21, 2005.

Assistance for Persons with Disabilities: Contact Dale R. Brown by February 21, 2005, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose and anticipated effects of the proposal will establish terms and conditions for use of a individual with disabilities emblem for certain vehicle license plates. It clarifies that emblem means a special year tab.

Reasons Supporting Proposal: The rule will specify the kinds of special license plates to which the emblem may be applied.

Statutory Authority for Adoption: RCW 46.16.381.

Statute Being Implemented: RCW 46.16.385.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Katherine Iyall Vasquez, 1125 Washington Street S.E., Olympia, WA, (360) 902-3718.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

January 18, 2005

Steve Boruchowitz

Policy and Projects Office

AMENDATORY SECTION (Amending WSR 04-14-077, filed 7/6/04, effective 8/6/04)

WAC 308-96A-311 General provisions. (1) How do I qualify for an individual with disabilities parking privilege?

In order to qualify for a temporary or permanent individual with disabilities parking privilege, a licensed physician or advanced registered nurse practitioner (ARNP) must certify, on a department approved application form, that you have a disability that limits or impairs your ability to walk and that you meet the requirements listed in RCW 46.16.381(1). For the purpose of implementing this rule, a physician is defined as a health care provider to include: Chiropractor (DC), naturopath (ND), physician or surgeon (MD or DO), podiatrist (DPM). Licensed physician does not include persons licensed in the professions of dentistry and optometry. The physician or ARNP as defined above must sign a declaration under penalty of perjury that you have a disability that limits or impairs the ability to walk and that you meet one of the following criteria allowed by RCW 46.16.381:

- (a) Cannot walk two hundred feet without stopping to rest;
- (b) Are severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;
- (c) Are so severely disabled, that you cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;
- (d) Use portable oxygen;

(e) Are restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry, is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;

(f) Are impaired by cardiovascular disease or cardiac condition to the extent that your functional limitations are classified as class III or IV under standards accepted by the American Heart Association; or

(g) Have a disability resulting from an acute sensitivity to automobile emissions which limits or impairs your ability to walk. Your personal physician or advanced registered nurse practitioner must document that your disability is comparable in severity to the others listed in this subsection.

The medical (~~certification~~) declaration is required for all original applications for permanent and temporary disability privileges and for permanent disability privileges that have been expired more than thirty days. (~~Certification~~) Declaration is not required for renewal of existing Washington privileges for an individual with disabilities.

(2) How do I apply for an individual with disabilities parking privilege?

Once the licensed physician or ARNP portion of the application is completed, you must complete and sign your portion of the application and submit it to the department or file the form in person at most Washington vehicle licensing offices, as noted on the application.

(3) Who may sign the application for an individual with disabilities who is unable to sign or is a minor?

When an individual with disabilities is unable to sign or is a minor, the application may be signed by an authorized representative of the individual with disabilities. The application must then be accompanied by a copy of one of the following:

- (a) A power of attorney;
- (b) A Washington state court order or certification from the clerk of court confirming the court's action; or
- (c) (~~An affidavit~~) A declaration under penalty of perjury explaining why the applicant is unable to sign and explaining the signing person's association with the applicant. Example: Signature, Jane Doe, daughter.

(4) When is the individual with disabilities parking privilege no longer valid?

The individual with disabilities parking privilege is no longer valid:

- (a) Upon expiration of the privilege;
- (b) Upon death of the individual with disabilities;
- (c) If the disability no longer exists; or
- (d) If the privilege was issued in error.

(5) What happens if I do not renew my permanent parking privilege prior to the expiration date?

When an individual with disabilities parking privilege is expired for more than thirty calendar days, a new original application with physician or ARNP's certification will be required.

(6) What will I receive once my application is approved?

You will receive an individual with disabilities identification card and:

- (a) If you have a temporary disability you will receive one red temporary placard;

(b) If you have a permanent disability you may choose to receive:

(i) Up to two blue permanent placards; or
 (ii) One blue permanent placard and one set of individual with disabilities license plates. The individual with disabilities must be a registered owner to receive these special license plates.

(iii) In lieu of the individual with disabled parking license plates, a qualifying individual may request the issuance of an individual with disabilities year tab, which may be displayed on the following types of special license plates:

(A) Stadium plates authorized under RCW 46.16.301;

(B) Congressional Medal of Honor Plates authorized under RCW 46.16.305;

(C) Pearl Harbor survivor plates authorized under RCW 46.16.305;

(D) Collegiate plates authorized under RCW 46.16.324;

(E) Any plates created after January 1, 2003, per RCW 46.16.745;

(F) Disabled veteran plates authorized under RCW 73.04.110;

(G) Former prisoner of war plates authorized under RCW 73.04.110;

(H) Former prisoner of war plates for surviving spouses authorized under RCW 73.04.115;

(I) Square dancer plates authorized under RCW 46.16.301 as it existed before amendment by section 5, chapter 291, Laws of 1997;

(J) Purple heart plates authorized under RCW 46.16.301 as it existed before amendment by section 5, chapter 291, Laws of 1997.

(7) When can the individual with disabilities parking privileges be used?

The parking privileges may only be used when the person to whom the plate or placard is issued is being transported.

(8) Why is the individual with disabilities identification card issued?

The individual with disabilities identification card must be available for law enforcement or parking enforcement officials to verify the identity of the individual with disabilities and to ensure the parking privilege is only used by those who qualify for that privilege.

If you have just applied for and not yet received an individual with disabilities identification card, show the receipt you received at the time of application.

(9) How do I display the individual with disabilities parking placard?

(a) The placard is (~~made to be~~) hung from the rearview mirror post; or

(b) In the absence of the rearview mirror post, the placard may be placed on the dashboard.

However displayed, the entire placard must be visible through the vehicle windshield.

AMENDATORY SECTION (Amending WSR 04-14-077, filed 7/6/04, effective 8/6/04)

WAC 308-96A-314 Individual with disabilities special license plates(~~—Individual~~). (1) **Where can I obtain**

an individual with disabilities special license plate and identification card?

You may apply for an individual with disabilities special license plate at most Washington vehicle licensing offices. You will receive the identification card and individual with disabilities special license plates in the mail.

In lieu of the individual with disabled parking license plates, a qualifying individual may request the issuance of an individual with disabilities year tab, which may be displayed on the following types of special license plates:

(a) Stadium plates authorized under RCW 46.16.301;

(b) Congressional Medal of Honor Plates authorized under RCW 46.16.305;

(c) Pearl Harbor survivor plates authorized under RCW 46.16.305;

(d) Collegiate plates authorized under RCW 46.16.324;

(e) Any plates created after January 1, 2003, per RCW 46.16.745;

(f) Disabled veteran plates authorized under RCW 73.04.110;

(g) Former prisoner of war plates authorized under RCW 73.04.110;

(h) Former prisoner of war plates for surviving spouses authorized under RCW 73.04.115;

(i) Square dancer plates authorized under RCW 46.16.301 as it existed before amendment by section 5, chapter 291, Laws of 1997; and

(j) Purple heart plates authorized under RCW 46.16.301 as it existed before amendment by section 5, chapter 291, Laws of 1997.

(2) How do I qualify for individual with disabilities special license plates?

To receive special license plates:

(a) Your name must be shown on the department's record as being a registered owner of the vehicle; and

(b) (~~You must be certified by a licensed physician or ARNP as having a permanent disability or have already been granted a permanent individual with disabilities parking privilege established with the department.~~) A licensed physician or ARNP must declare that you have a permanent disability that qualifies you for the privileges identified under RCW 46.16.381 or that you have already been granted the privileges under that chapter.

(3) When do the individual with disabilities special license plates and identification card expire?

These special license plates carry the expiration date of your vehicle registration and must be renewed annually. The privilege to use the individual with disabilities special license plate must be renewed every fifth year from the month of issuance of the privilege.

(4) When are the individual with disabilities special license plates no longer valid?

These special license plates are no longer valid when:

(a) The plates expire;

(b) The privilege expires;

(c) Upon death of the individual with disabilities;

(d) If the disability no longer exists;

(e) The special license plates have been canceled by department administrative action;

(f) If the privilege was issued in error; or

(g) If the individual with the disability is no longer shown on the department's record as being a registered owner of the vehicle.

(5) How do I replace the individual with disabilities special license plates if they become lost, mutilated, destroyed, or stolen?

You shall complete and sign a statement explaining what happened to the individual with disabilities special license plate(s) and pay replacement plate fees. Replacement special individual with disabilities license plates will be issued indicating the current expiration date. See note following subsection (6) of this section.

(6) When I am required to replace my individual with disabilities special license plate(s), will I receive the same number/letter combination? Yes. Upon request and with payment of the plate retention fee in RCW 46.16.233, you will receive replacement individual with disabilities parking special license plate(s) with the same number/letter combination as shown on the vehicle computer record.

Note: If the license plate(s) has been reported stolen or if the department record indicates the vehicle has been stolen, the same number/letter combination will not be used. This is a law enforcement issue and is for the protection of the public.

**WSR 05-03-106
PROPOSED RULES
DEPARTMENT OF LICENSING**

[Filed January 19, 2005, 8:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-17-064.

Title of Rule and Other Identifying Information: Chapter 308-56A WAC, Certificates of title—Motor vehicles, etc., specifically WAC 308-56A-500 Definitions and 308-56A-530 Vehicle brands and comments.

Hearing Location(s): Department of Licensing, Conference Room 107, 1125 Washington Street S.E., Olympia, WA 98507, on February 22, 2005, at 11:00 a.m.

Date of Intended Adoption: March 22, 2005.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-3827, by February 21, 2005.

Assistance for Persons with Disabilities: Contact Dale R. Brown by February 21, 2005, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule is to allow the inclusion of brands from other jurisdictions than Washington to be added to the vehicle certificate of ownership and registration documents.

The anticipated effects are to educate and protect the public by allowing more brands on the vehicle record.

Reasons Supporting Proposal: This would accomplish greater public awareness and safety.

Statutory Authority for Adoption: RCW 46.01.110.

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

Name of Agency Personnel Responsible for Drafting: Katherine Iyall Vasquez, 1125 Washington Street S.E., Olympia, WA, (360) 902-3718; Implementation and Enforcement: Eric Andersen, 1125 Washington Street S.E., Olympia, WA, (360) 902-4045.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictate by statute.

January 18, 2005

Steve Boruchowitz

Policy and Projects Office

AMENDATORY SECTION (Amending WSR 04-08-081, filed 4/6/04, effective 5/7/04)

WAC 308-56A-500 Definitions. The following definitions apply to terms used in chapters 46.12 and 46.16 RCW and chapter 308-56A WAC:

~~(1) ("Affidavit in lieu of title" is a written declaration confirming the certificate of ownership, registration certificate, validation tab are unavailable, lost, stolen, destroyed or mutilated. The affidavit in lieu of title may be used to release interest in the vehicle. The signature of the owner completing the affidavit in lieu of title must be notarized or certified as described in WAC 308-56A-270.~~

~~(2) "Affidavit of loss" is a written statement confirming the certificate of ownership, registration certificate, validation tab or decal has been lost, stolen, destroyed or mutilated. The affidavit of loss release of interest form may be used to release interest in the vehicle and transfer gross weight license for that vehicle to a new owner. The signature of the owner completing the affidavit of loss release of interest must be notarized or certified as described in WAC 308-56A-270.~~

~~(3)) "Affixed" means attached.~~

~~((4)) (2) "Brands" means a permanent notation on the certificate of ownership and vehicle registration certificate that records a circumstance or condition involving a vehicle.~~

~~((5)) (3) "Brands incident date" is the date that a brand was first applied to a vehicle. For states/jurisdictions participating in the National Motor Vehicle Title Information System (NMVTIS), it's the date the brand was first reported. For all other states/jurisdictions, it is established by using the date the current title was issued. Brands on Washington records prior to the effective date of this rule will reflect a brand incident date equal to the date the last Washington certificate of ownership was issued.~~

~~(4) "Certificate of ownership" (or "title") is a legal document indicating proof of ownership.~~

~~((6)) (5) "Comment" means an indication on the certificate of ownership, vehicle title/registration application or vehicle registration certificate that relates to tax liability, type of ownership, title transaction type or a previous condition of the vehicle.~~

~~((7)) (6) "Commercial parking company" means any business directly engaged in providing vehicle parking upon~~

property owned or controlled by the business and approved for public parking of vehicles.

~~((8))~~ (7) "Current license plate registration" means the current registration or one that has been expired less than one year.

~~((9))~~ (8) "Declaration in lieu of title" is a written statement confirming the certificate of ownership, registration certificate, validation tab is unavailable, lost, stolen, destroyed, or mutilated. The declaration in lieu of title may be used to release interest in the vehicle. The signature of the owner completing the declaration in lieu of title must be signed under penalty of perjury, as described in WAC 308-56A-270.

(9) "Declaration of loss" is a written statement confirming the certificate of ownership, registration certificate, validation tab or decal has been lost, stolen, destroyed, or mutilated. The declaration of loss release of interest form may be used to release interest in the vehicle and transfer gross weight license for that vehicle to a new owner. The signature of the owner completing the declaration of loss release of interest must be signed under penalty of perjury, as described in WAC 308-56A-270.

(10) "Department" means the same as described in RCW 46.04.162.

~~((10))~~ (11) "Department temporary permit" is a permit issued temporarily in lieu of permanent registration and license plates when required documentation is unavailable.

~~((11))~~ (12) "Electronic filing" is the use of an electronic method to transmit information to the department that may include, but is not limited to, the use of the internet and facsimile.

~~((12))~~ (13) "Involuntary divestiture" means a change in vehicle ownership without the registered owner's involvement.

~~((13))~~ (14) "Joint tenancy with rights of survivorship" (JTWROS) means two or more people who own a vehicle in joint tenancy with the right to own individually if one of them dies.

~~((14))~~ (15) "Jurisdiction code" means an abbreviation assigned by the department generally based on the U.S. Postal Service designation that indicates state, province, district, or country.

~~((15))~~ (16) "Legal owner" means the same as described in RCW 46.04.270.

~~((16))~~ (17) "Lien holder" means a person or entity that has a legal right or interest in another's property until a debt or duty that it secures is satisfied.

~~((17))~~ (18) "Not eligible for road use" (NEFRU) means a vehicle that does not meet Federal Motor Vehicle Safety standards, other federal and/or state standards for public road use as adopted, applied, and enforced by the Washington state patrol described in RCW 46.37.005.

~~((18))~~ (19) "Penalty of perjury" means a statement signed by the applicant to the effect - "I declare under penalty of perjury that the information I have provided on this form is true and understand per RCW 40.16.030 that providing false information is a Class C felony, or RCW 46.12.210 that providing false information is a Class B felony."

(20) "Person" means the same as described in RCW 46.04.405.

~~((19))~~ (21) "Personal representative" means:

(a) An individual appointed by the court; or

(b) An individual named in the last will and testament and confirmed by the court to manage the estate of a deceased person.

Personal representative may also include executor, administrator, special administrator, and guardian or limited guardian and special representative as defined in RCW 11.02.005(1).

~~((20))~~ (22) "Registered owner" means the same as described in RCW 46.04.460.

~~((21))~~ (23) "Security interest" means a property interest created by agreement or by operation of law to secure performance of an obligation (repayment of a debt).

~~((22))~~ (24) "Security interest holders" means in this instance, the same as "lien holder" as defined in subsection (16) of this section.

~~((23))~~ (25) "Secured party" means in this instance the same as "lien holder" as defined in subsection (16) of this section.

~~((24))~~ (26) "Standard brand" is a brand found on the brands list maintained by the National Motor Vehicle Title Information System (NMVTIS) program.

(27) "Transferee" means a person to whom a vehicle is transferred, by purchase, gift, or any means other than by creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferee, when applicable.

~~((25))~~ (28) "Transferor" means a person who transfers ownership in a vehicle by sale, gift, or any means other than by creation of a security interest and any person who, as agent, signs an odometer disclosure statement for the transferor, when applicable.

~~((26))~~ (29) "Unique brand" means a brand issued by a state that is not participating in the National Motor Vehicle Title Information System (NMVTIS) program and does not appear on the brands list maintained by NMVTIS.

(30) "Washington vehicle licensing office" means an office that is operated by the department or an agent or sub-agent appointed under RCW 46.01.140 for the purpose of carrying out the vehicle titling and registration provisions in Title 46 RCW.

AMENDATORY SECTION (Amending WSR 02-19-016, filed 9/9/02, effective 10/10/02)

WAC 308-56A-530 Vehicles brands and comments.

(1) **What is a brand?** For the purposes of this section a brand is a notation on the certificate of ownership or vehicle registration certificate that records a special circumstance or condition involving a vehicle.

(2) **What brands are assigned to vehicles by the department?** Brands used by the department include, but are not limited to:

(a) Former exempt, as defined in RCW 46.16.020;

(b) Former for hire, as defined in RCW 46.72.010;

(c) Former taxicab, as described in RCW 46.72.010;

(d) Rebuilt as required in RCW 46.12.075, when a vehicle reported destroyed under RCW 46.12.070 or 46.80.090

and WAC 308-56A-460 meets the definition of salvage vehicle in RCW 46.12.005;

(e) Street rod as defined in RCW 46.04.571;

(f) Nonconformity uncorrected or safety defect uncorrected as defined in RCW 19.118.021 (13) and (18);

(g) ~~((Former rental, designation used on a certificate of ownership when a vehicle is removed from a rental fleet and sold as nonrental;~~

~~(h))~~ Nonconformity corrected or safety defect corrected as defined in RCW 19.118.021 (13) and (18);

~~((i) Not eligible for road use as described in RCW 46.09.020.)~~ (h) Returned to manufacturer;

(i) Odometer - Not actual;

(j) Odometer - Exceeds mechanical limits;

(k) Repaired - Wrecker/insurance bill of sale.

(3) What brands are carried forward from the other states/jurisdictions by the department?

(a) Brands for states/jurisdictions participating in the National Motor Vehicle Title Information System (NMV-TIS) program (known as "Standard Brands,") are maintained in the brands list by NMVTIS and include, but are not limited to:

(i) Rebuilt;

(ii) Junk;

(iii) Destroyed;

(iv) Salvage - Damaged;

(v) Salvage - Retention;

(vi) Salvage - Stolen;

(vii) Salvage - Other;

(viii) Flood damage;

(ix) Hail damage;

(x) Saltwater damage;

(xi) Totaled.

(b) Brands from states/jurisdictions not participating in NMVTIS that do not appear on the brands list maintained by NMVTIS (known as "unique brands") will be carried forward on Washington certificates of ownership and registration certificates exactly (or abbreviated if too long) as they appear on the foreign title.

More than one brand may appear on the vehicle registration or certificate of ownership.

~~((The department will carry forward all brands and jurisdiction codes shown on foreign certificates of ownership/titles. Brands that do not match Washington terminology or that are not listed below will be shown as "nonstandard." Brands carried forward from foreign certificates of ownership/titles may use the same terminology as a Washington brand, but may not have the same definition as the Washington brand. Other brands not used in Washington but carried forward from other jurisdictions are:~~

~~(A) Junk;~~

~~(B) Destroyed;~~

~~(C) Salvage.))~~ **(4) Will a brand be applied to destroyed vehicles that have been sold on an out-of-state wrecker or insurance bill of sale, then repaired, and inspected? Yes.**

Vehicles not reported to DOL as destroyed and then sold using an insurance or wrecker bill of sale in lieu of a certificate of ownership/title, then brought into Washington from another jurisdiction that is not subject to reporting under RCW 46.12.070 repaired, and inspected will be branded ((in

accordance with RCW 46.12.075 whether or not the vehicle had been reported as destroyed in any other jurisdiction)). The brand will appear as "repaired-wrecker/insurance bill of sale."

The jurisdiction code will be identified as "~~((XX))~~ WA."

~~((3) What brands are carried forward from other jurisdictions? In addition to the brands listed in subsection (2) of this section, the department will apply the following brands assigned by other jurisdictions together with the applicable jurisdiction code: Destroyed, salvage, junk. Any other brands assigned by another jurisdiction will be identified by the words "nonstandard."~~

~~(4))~~ **(5) Why is a brand used?** A brand is used in the circumstances above for consumer protection. The brand is used to inform any subsequent owners of the current or former condition or use of the vehicle.

~~((5))~~ **(6) Will the department remove a brand? Brands stay on vehicle records indefinitely.** The department will only remove a brand if(~~(:~~

~~(a))~~ the brand was applied to a Washington certificate of ownership in error; or

~~((b) A vehicle branded not eligible for road use has been modified according to the manufacturer specifications and federal and state standards in such a way to qualify the vehicle for highway use;~~

~~(c) The lemon law administrator certifies that a vehicle branded nonconformity uncorrected should be branded nonconformity corrected;~~

~~(d) The lemon law administrator certifies that a vehicle branded safety defect uncorrected should be branded safety defect corrected.))~~ (a) If a former rental brand was applied prior to the effective date of this rule, it will remain on the certificate of ownership and/or vehicle registration unless applied in error.

~~((6))~~ (b) If a nonstandard brand was applied prior to the effective date of this rule, it will remain on the certificate of ownership and/or vehicle registration unless applied in error.

(7) Where are brands located on the documents? ~~((The brand is))~~ Brands are located in the ~~((comments/))~~ brands section of the certificate of ownership and vehicle registration. ~~((The))~~ Brands will display beginning with Washington issued brands, followed by unique brands, then standard brands. If applicable, "WA REBUILT" will show as a banner across the certificate of ownership.

~~((7))~~ **(8) What is a comment?** For the purposes of this section a comment is an indication on the certificate of ownership, vehicle title/registration application or vehicle registration certificate that relates to tax liability, type of ownership, title transaction type ~~((or a previous condition of the vehicle)).~~

~~((8))~~ **(9) What comments could the department print on certificates of ownership?**

(a) Comments relating to the ownership that include: Bonded, leased, JTWR0S.

(b) Comments relating to tax liability that include: Use tax waived - gift, value code, value year.

(c) Comments relating to the type of title transaction, which include duplicate, and reprint.

(d) Miscellaneous comments that include: ~~((Safety defect uncorrected, safety defect corrected, nonconformity~~

~~uncorrected, nonconformity corrected, return to manufacturer,))~~ ~~Not eligible for road use.~~

~~((9))~~ **(10) What ~~(brands and/or)~~ comments could the department print on vehicle registration certificates? ~~(Brands and/or)~~ Comments printed on vehicle registration certificates may include, but are not limited to:**

(a) ~~("Vehicle Driver And Owner Subject To Federal Drug Program" Title 49 CFR Part 382;~~

(b) ~~"Rebuilt" or "wa rebuilt";~~

(c) ~~"CVSEF PAID" or "commercial vehicle safety enforcement fee paid";~~

(d) ~~"Because scale weight exceeds gross weight, D.O.T. permit also required";~~

(e) ~~"Commercial vehicle safety enforcement fee not paid";~~

(f) ~~"Display tab on back license plate" only - front plate is still required;~~

(g) ~~"*Check vehicle data base record for actual expiration date";~~

(h) ~~"Replica";~~

(i) ~~"Proof of FHVUT verified";~~

(j) ~~"Safety defect";~~

(k) ~~"Safety defect corrected";~~

(l) ~~"Nonconformity uncorrected";~~

(m) ~~"Noneconformity corrected";~~

(n) ~~"No title issued" or "no title issued - ownership in doubt";~~

(o) ~~"Excise exempt NRM";~~

(p) ~~"Excise exempt native American";~~

(q) ~~"Excise exempt van pool";~~

(r) ~~"Excise exempt rideshare";~~

(s) ~~"Registration only";~~

(t) ~~"Prorated gross weight to be more than 16,000";~~

(u) ~~"Additional owners on record";~~

(v) ~~"Not eligible for road use";~~

(w) ~~"Perm plt";~~

(x) ~~"Use tax waived: Gift";~~

(y) ~~"Return to mfg.";~~

(z) ~~"Permanent fleet vehicle";~~

(aa) ~~"*Perm";~~

(bb) ~~"Color";~~

(cc) ~~"Comments relating to the ownership; bonded, leased, JTWROS, registration only;~~

(dd) ~~"Tax liability DAV, native American, NRM, value code/year, use tax option, rideshare, POW, tax code 95, double transfer;~~

(ee) ~~"Title transaction type duplicate, reprint, NTI, dual registration, corrected title data, corrected registration;~~

(ff) ~~"Miscellaneous gift, ride, previous plate VIN flag, farm vehicle restrictions, Federal Drug Program (Title 49 CFR Part 382) vehicle color, odometer code, RETURN TO MFG, not eligible for road use (NEFRU).~~

~~((10))~~ **(11) What comments would the department carry forward from other jurisdictions?** The department does not carry forward comments assigned by other jurisdictions.

~~((11))~~ **(12) Why are comments used?** Comments are used for consumer protection, to inform any subsequent own-

ers and vehicle licensing personnel of the current tax liability, type of ownership, or title transaction type.

~~((12))~~ **(13) Will the department remove a comment?** The department will remove a comment if:

- (a) The comment was applied in error; or
- (b) The comment no longer applies.

WSR 05-03-109

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medical Assistance Administration)

[Filed January 19, 2005, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-16-027.

Title of Rule and Other Identifying Information: WAC 388-513-1350, defining the maximum amount of resources allowed and determining resources availability for long-term care (LTC) services; and WAC 388-513-1380, determining a client's participation in the cost of care for long-term care (LTC) services.

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on February 22, 2005, at 10:00 a.m.

Date of Intended Adoption: Not sooner than February 23, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., February 22, 2005.

Assistance for Persons with Disabilities: Contact Fred Swenson, DSHS Rules Consultant, by February 17, 2005, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: MAA is amending the rules to comply with the January 1, 2005, federal increase in the long-term care program standards for spousal allocations and maintenance.

Reasons Supporting Proposal: The department is required to adopt the federal standards under 42 U.S.C. 1396 r-5.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, and 74.08.090.

Statute Being Implemented: RCW 74.09.500.

Rule is necessary because of federal law, 42 U.S.C. 1396 r-5.

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Wendy Forslin, MAA, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1343.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This change does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules for medical assistance pro-

grams are exempt from the cost benefit analysis requirement according to RCW 34.05.328 (5)(b)(vii).

January 11, 2005

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-04-072, filed 2/2/04, effective 3/4/04)

WAC 388-513-1350 Defining the maximum amount of resources allowed and determining resources availability for long-term care (LTC) services. This section describes how the department defines the resource standard and available resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (5) through (8); or

(b) Three thousand dollars for a legally married couple, unless subsection (2) applies.

(2) If the department has already established eligibility for one spouse, then it applies the standard described in subsection (1)(a) to each spouse, unless doing so would make one of the spouses ineligible.

(3) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility and limits;

(b) WAC 388-475-0250, How to determine who owns a resource;

(c) WAC 388-470-0060(6), Resources of an alien's sponsor; and

(d) WAC 388-506-0620, SSI-related medical clients.

(4) For LTC services the department determines a client's nonexcluded resources as follows:

(a) For an SSI-related client, the department reduces available resources by excluding resources described in WAC 388-475-0350 through 388-475-0550;

(b) For an SSI-related client who has a community spouse, the department:

(i) Excludes resources described in WAC 388-513-1360; and

(ii) Adds together the available resources of both spouses according to subsection (5)(a) or (b) as appropriate;

(c) For a client not described in subsection (4)(a) or (b), the department applies the resource rules of the program used to relate the client to medical eligibility.

(5) The department determines available resources of a legally married client, when both spouses are institutionalized, by following WAC 388-506-0620 (5) and (6). For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of nonexcluded resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(6) If subsection (5)(b) applies, the department determines the amount of resources that are allocated to the community spouse before determining nonexcluded resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. The maximum allocation amount is ~~((ninety-two))~~ ninety-five thousand ~~((seven))~~ one hundred ~~((sixty))~~ dollars effective January 1, ~~((2004))~~ 2005; or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined nonexcluded resources as of the beginning of the current period of institutional status, up to the amount described in subsection (6)(a); or

(ii) The state spousal resource standard of forty thousand dollars.

(7) The amount of the spousal share described in (6)(b)(i) is determined sometime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client will be required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(8) The amount of allocated resources described in subsection (6) can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC or by consent order, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(9) The department considers resources of the community spouse unavailable to the institutionalized spouse the

month after eligibility for LTC services is established, unless subsection (10)(a), (b), or (c) applies.

(10) A redetermination of the couple's resources as described in subsections (4)(b) or (c) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(b) The institutionalized spouse's nonexcluded resources exceed the standard described in subsection (1)(a), if subsection (5)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (6) or (8) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

AMENDATORY SECTION (Amending WSR 04-04-072, filed 2/2/04, effective 3/4/04)

WAC 388-513-1380 Determining a client's participation in the cost of care for long-term care (LTC) services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care (in the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical facility, the department applies all subsections of this rule.

(2) For a client receiving waived services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, the department applies rules used for the community options program entry system (COPES).

(4) Excess resources are reduced in an amount equal to incurred medical expenses (for definition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:

(a) Health insurance and Medicare premiums, deductions, and co-insurance charges;

(b) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; and

(c) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program, the amount described in WAC 388-513-1315(3); or

(ii) For LTC services provided under the medically needy (MN) program, the amount described in WAC 388-513-1395 (2)(a) or (b).

(5) The department allocates nonexcluded income up to a total of the medically needy income level (MNIL) in the following order:

(a) A personal needs allowance (PNA) of:

(i) One hundred sixty dollars for a client living in a state veterans' home;

(ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives a VA improved pension and does not live in a state veterans' home; or

(iii) Forty-one dollars and sixty-two cents for all other clients in a medical facility.

(b) Federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC 388-503-0510(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(6) The department allocates nonexcluded income after deducting amounts described in subsection (5) in the following order:

(a) Income garnisheed for child support:

(i) For the time period covered by the PNA; and

(ii) Not deducted under another provision in the post-eligibility process.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, ~~(2004)~~ 2005, two thousand three hundred ~~((nineteen))~~ seventy-eight dollars, unless a greater amount is allocated as described in subsection (8) of this section. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) An amount added to the community spouse's gross income to provide a total of one thousand ~~((six))~~ five hundred ~~((ninety-two))~~ sixty-two dollars; and

(B) Excess shelter expenses as specified under subsection (7) of this section; and

(ii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community or institutionalized spouse who:

(i) Resides with the community spouse, equal to one-third of the amount that one thousand ~~((six))~~ five hundred ~~((ninety-two))~~ sixty-two dollars exceeds the dependent family member's income.

(ii) Does not reside with the community spouse, equal to the MNIL for the number of dependent family members in the home less the income of the dependent family members.

(iii) Child support received from noncustodial parent is the child's income.

(d) Incurred medical expenses described in subsections (4)(a) and (b) not used to reduce excess resources.

(e) Maintenance of the home of a single client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents initial need for the income exemption and reviews the client's circumstances after ninety days.

(7) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (7)(b) less the standard shelter allocation under subsection (7)(a). For the purposes of this rule:

(a) The standard shelter allocation is four hundred ~~((fifty-five))~~ sixty-nine dollars, effective April 1, ~~((2003))~~ 2004; and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(8) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(9) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

WSR 05-03-110

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2004-04—Filed January 19, 2005, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-15-155.

Title of Rule and Other Identifying Information: Continuing education.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98501, on February 23, 2005, at 9:00 a.m.

Date of Intended Adoption: March 7, 2005.

Submit Written Comments to: Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0255, e-mail kacys@oic.wa.gov, fax (360) 586-3109, by February 22, 2005.

Assistance for Persons with Disabilities: Contact Lori Villaflores by February 21, 2005, TDD (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of

these proposed regulations is to update the current continuing education regulations to accommodate changes in the delivery of continuing education and changes in insurance laws and practices. These proposed regulations also update curriculum requirements and procedures.

Reasons Supporting Proposal: These proposed regulations will result in a more educated insurance producer community providing more appropriate insurance products to Washington consumers and improved service to licensees from the Office of Insurance Commissioner (OIC). These proposed regulations further the commissioner's commitment to the review of Title 284 WAC to improve the clarity and efficiency.

Statutory Authority for Adoption: RCW 48.02.060, 48.17.150, 48.17.563, 48.85.040.

Statute Being Implemented: RCW 48.17.150, 48.17.563, and 48.85.040.

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

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Georgia Cooper, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7145; Implementation and Enforcement: Scott Jarvis, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7262.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed regulation should have no negative economic impact on small businesses regulated by the OIC.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is not a significant legislative rule for the purposes of RCW 34.05.328.

January 19, 2005

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Order R 89-10, filed 9/15/89, effective 10/16/89)

WAC 284-17-200 ((Purpose.)) What is the purpose of the continuing education regulation? The purpose of ~~((this regulation))~~ WAC 284-17-200 through 284-17-320 is to implement the provisions of RCW 48.17.150 ~~((, promoting licensee competence, by establishing))~~. This regulation establishes the minimum continuing education requirements that must be met prior to the renewal of an insurance agent, solicitor or broker license, and ~~((by specifying))~~ specifies minimum criteria ~~((which))~~ that must be met in order to qualify insurance courses for approval.

AMENDATORY SECTION (Amending Order R 89-10, filed 9/15/89, effective 10/16/89)

WAC 284-17-210 ((Definitions.)) What definitions are important throughout this chapter? As used in this continuing education regulation, unless the context requires otherwise:

~~((1))~~ "Provider" means "insurance education provider" as defined in section 2, chapter 323, Laws of 1989.

(2) "Approved course" includes courses, programs of instructions, correspondence courses and seminars.

(3) "Licensee" means each natural person licensed as a resident insurance agent, solicitor or broker to sell life, disability, property, or casualty insurance. An individual holding a limited license to sell credit life and disability insurance, or travel insurance, or holding a license to sell only vehicle insurance or surety insurance, need not satisfy the continuing education requirement.

(4) "Credit hours" means the value assigned to a course by the commissioner, upon review and approval of course materials and content outline.

The number of credit hours assigned to a course will normally be based upon the number of classroom contact hours or their equivalent. However, based upon the evaluation of the course content, the number of credit hours assigned may be less than the total amount of time spent by the licensee in the course.

For college level work entirely on approved subjects:

(a) Twelve credit hours will be assigned for each quarter "credit hour."

(b) Sixteen credit hours will be assigned for each semester "credit hour."

(5) "Certificate of completion" means a document signed by the course instructor or other responsible officer of the provider signifying satisfactory completion of the course and reflecting credit hours earned. Such certificate shall be in standard form, completed in its entirety, and containing such identifying information as is prescribed by the insurance commissioner.) (1) "Approved course" means an educational insurance related program including correspondence courses and seminars that have been approved by OIC.

(2) "Credit hours" means the value assigned to a course by the OIC.

(3) "Certificate of completion" means a document signed by the course instructor or other responsible officer of the provider signifying satisfactory completion of the course and reflecting credit hours earned. The certificate shall be in standard format, completed in its entirety, and containing such identifying information as is prescribed by the OIC.

(4) "Course number" means the identifying number assigned by OIC for an approved course.

(5) "Course outline" includes summary content and the time allotted by topic.

(6) "Days" means calendar days including Saturday and Sunday.

(7) "Designation course" includes professional studies taken to achieve nationally recognized professional distinctions.

(8) "Instructor" means an individual knowledgeable in topic(s) of discussion.

(9) "Licensee" means an individual licensed under Title 48 RCW, as a resident insurance agent, solicitor or broker to sell life, disability, property, casualty or vehicle insurance. An individual holding a limited license to sell credit life and disability insurance, or travel insurance, or holding a license to sell surety insurance, need not satisfy the continuing education requirement.

(10) "Long-term care (LTC) special education" means education required by individual resident and nonresident

agents and brokers prior to transacting long-term care insurance.

(11) "Long-term care (LTC) special education refresher course" means a condensed version of the LTC special education course.

(12) "Monitor" is an individual responsible for verifying class attendance and course content completion.

(13) "Override commission" means compensation received for the sale of insurance by a licensee who is not directly involved with a consumer.

(14) "OIC" means the Washington state office of insurance commissioner.

(15) "Provider" means any insurer, health care service contractor, health maintenance organization, professional association, educational institution created by Washington statutes, or vocational school or independent contractor to which the OIC has granted authority to conduct and certify completion of a course satisfying the insurance education requirements of resident individual agents and brokers.

(16) "Provider number" is the identifying number assigned by OIC to an approved provider of insurance education.

(17) "Refresher LTC special education" means a condensed version of the LTC special education course.

(18) "Reinstatement" means the reissuance of a license that has expired more than sixty days but less than two years from the expiration date of the previous license.

(19) "Request for approval" is a submission of information required for approval of a provider and course.

(20) "Resident" means a licensee who resides in Washington state.

(21) "Roster" is a course attendance record or course purchase and completion record maintained by the provider.

(22) "Schedule" means written notification of when a course will be offered.

(23) "Self-study" means a method of study independent of a classroom setting.

(24) "Surety" insurance includes credit insurance, bail bonds, fidelity, insurance contract performance guarantees, bonds, guarantee undertakings, and contracts of suretyship, and indemnification of banks, bankers, brokers, financial or moneyed corporations or associations against certain losses enumerated in RCW 48.11.080(5).

(25) "Transacting" means solicitation, negotiations preliminary to execution, execution of an insurance contract, transaction of matters subsequent to execution of the contract and arising out of it and insuring.

(26) "Vehicle insurance" includes insurance against loss or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therefrom, and against any liability resulting from or incident to ownership.

(27) "Waiver" means an OIC approved exemption from the continuing education requirement.

LICENSEES

AMENDATORY SECTION (Amending Matter No. R 98-9, filed 5/20/98, effective 6/20/98)

~~WAC 284-17-220 ((Continuing education requirement.)) Who is required to meet continuing education (CE) requirements? (((1) Twenty four credit hours of approved continuing education must be presented as a prerequisite to each license renewal or reinstatement.~~

~~(2)(a) Effective July 1, 1996, the number of required continuing education credit hours will be increased from twenty four to thirty two hours for each two year licensing period.~~

~~(b)(i) Resident and nonresident licensees engaged in the transaction of long term care insurance, long term care partnership insurance, or both, are required to take an approved six hour course on long term care, long term care partnership, or both, every two years. The commissioner shall prescribe the content of the course. Each course shall be approved by the commissioner in advance.~~

~~(ii) Effective January 1, 1998, a resident or nonresident licensee shall not submit an application for a long term care or long term care partnership policy to an issuer unless he or she has completed the approved course.~~

~~(iii) The approved six hour course may count towards the thirty two required continuing education credit hours set forth in (a) of this subsection.~~

~~(iv) An issuer of long term care or long term care partnership policies shall annually certify to the commissioner that:~~

~~(A) Its affiliated resident and nonresident licensees involved in the transaction of long term care or long term care partnership policies have completed the approved six hour course requirement every two years; and~~

~~(B) The issuer has only accepted applications from resident and nonresident licensees in compliance with the provisions of (b)(i) of this subsection.~~

~~The certification shall be filed with the commissioner on or before March 31 of each year.~~

~~(e) Each course credit applied toward satisfaction of the continuing education requirement must have been completed within the twenty four month period immediately preceding the licensee's assigned license renewal date and the credit may not have been used previously to comply with the continuing education requirement.~~

~~(3) The course participated in and for which credit is received shall be reported to the commissioner as part of the application for license renewal and shall be subject to verification by audit.~~

~~(4) An approved course for which the licensee has previously claimed credit may be repeated for credit after a period of three years from the previous completion date.~~

~~(5) The licensee must retain the certificate of completion for three years from the date on the certificate and must present the original of such certificate upon request of or audit by the commissioner.) All individual resident agents and brokers licensed to sell life, disability, property and casualty lines of insurance must meet the continuing education requirement.~~

Individual agents licensed to sell vehicle insurance must meet the continuing education requirement beginning with January 1, 2007, renewals.

NEW SECTION

WAC 284-17-222 Who is exempt from the continuing education requirements? All individual resident agents licensed under chapter 48.17 RCW to sell credit life and disability, credit casualty, travel, and surety lines of insurance are exempt from the continuing education requirement. Resident adjusters are exempt from the continuing education requirement.

NEW SECTION

WAC 284-17-224 How many continuing education credits do I need? Currently you are required to complete thirty-two hours of approved continuing education for each license renewal cycle. Effective January 1, 2006, you will be required to complete twenty-four hours of approved continuing education, including three hours of ethics education.

NEW SECTION

WAC 284-17-226 What is required as proof of completion of a course? The course provider will issue you a certificate of completion within fifteen days of completion of the course. For designation courses the passing grade report will be accepted in lieu of a certificate of completion.

NEW SECTION

WAC 284-17-228 What is required for a self-study course? The completion date for a self-study course must be reasonable in relation to the purchase date to allow for adequate time for course completion. For example, if a course is approved for twenty-four hours of continuing education credit, there must be at least three days difference between the course purchase and the completion dates. This information will be verified on the continuing education certificate issued for the course completion. It is assumed that no more than eight course hours can be completed in a single twenty-four hour period.

AMENDATORY SECTION (Amending Order R 89-10, filed 9/15/89, effective 10/16/89)

~~WAC 284-17-230 ((Eligible courses—Advance approval required.)) May I take any approved continuing education course? (((1) Courses eligible for approval to satisfy the continuing education requirement are those courses demonstrating a direct and specific application to insurance.~~

~~(a) General education courses and sales motivation courses shall not be eligible for approval.~~

~~(b) Courses shall present accurately all statutory and regulatory requirements then applicable or published by the code reviser at the time the course is offered.~~

~~(2) All courses must be approved prior to the beginning of study in order to be applied toward the satisfaction of the continuing education requirement.~~

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~~(3) Approval of the course is valid for the provider that originally submitted the course to the commissioner, and is not transferable to any other entity.~~

~~(4) The commissioner shall assign an identifying certification number to each approved course. The certification number shall be listed on each certificate of completion issued by the provider.~~

~~(5) The provider shall issue a certificate of completion to each licensee who has satisfactorily completed the course, within fifteen days after completion or within fifteen days of the date the course was approved by the commissioner, whichever event is later.)~~ Yes, the only required subject is three hours of ethics per renewal period.

NEW SECTION

WAC 284-17-232 When must I meet the continuing education requirement? If you are a resident individual licensee with the lines of authority of life, disability, property, casualty or vehicle, you must complete the continuing education requirement as a prerequisite to renewing your license(s). Courses must be completed within the twenty-four months prior to the month of the renewal or reinstatement.

NEW SECTION

WAC 284-17-234 What happens if I am late renewing my license? If your renewal is late, you cannot act under the license until your renewal is processed. Late fees are as follows:

Days late	Surcharge
1 - 30	50% of fee
31 - 60	100% of fee

After sixty days from your expiration date, your license and all associated appointments and affiliations are terminated.

If your request and fee for license renewal is not received by the expiration date, your authority conferred by the license ends on the expiration date.

NEW SECTION

WAC 284-17-236 What happens if my renewal is received prior to expiration but is incomplete due to the submission of an invalid course(s), an incorrect fee or noncompletion of the renewal notice? If your request and fee for license renewal is not received by the expiration date, your authority conferred by the license ends on the expiration date. If your request and fee for license renewal is received by the expiration date, you may continue to act under your license until the issuance of the renewed license or until the expiration of fifteen calendar days after you were notified that your request for renewal has been refused.

NEW SECTION

WAC 284-17-238 What happens if I do not meet the continuing education requirement? If the continuing edu-

cation requirement is not met, your license expires and is no longer valid. All appointments and affiliations will be canceled.

AMENDATORY SECTION (Amending Order R 80-3, filed 3/20/80)

WAC 284-17-240 ((Courses specifically approved.) Can I reinstate my license? ((1) The following courses are approved as they exist on the date this regulation is adopted, for the credit hours stated:

(a) Any part of the life underwriter training council life course curriculum (50 hours credit) or health course curriculum (25 hours credit);

(b) Any part of the American College "CLU" diploma curriculum (30 hours credit), and its advanced study programs; Chartered Life Underwriter Institutes conducted by the American Society of CLU;

(c) Any part of the Insurance Institute of America's program of insurance (20 hours credit);

(d) Any part of the American Institute for Property and Liability Underwriter's Chartered Property Casualty Underwriter (CPCU) professional designation program (30 hours credit);

(e) Any part of the certified insurance counselor program (25 hours credit);

(f) Insurance related courses taught by a college or university that is accredited by the Northwest Association of Schools and Colleges, for which credit is granted.

(2) Changes in the above identified courses shall be presumed to be approved by the commissioner unless the sponsoring organization is advised of disapproval.

(3) Programs for which credit hours are not shown shall receive such credit hours as are approved by the commissioner.) (1) Yes, you may reinstate your license without retesting if no more than two years has passed since your license expired or was canceled. To reinstate you must submit the following:

(a) An application (INS-14) or your last renewal notice;

(b) Continuing education certificates for twenty-four hours of continuing education;

(c) Either an appointment or affiliation (INS-18); and

(d) The appropriate fee.

(2) After two years, you will have to take prelicensing education, and a license exam and submit a new application complete with a fingerprint card and the requisite fees.

NEW SECTION

WAC 284-17-242 How long do I have to keep the course completion certificates? You must keep the original certificates for at least three years.

NEW SECTION

WAC 284-17-244 How do I request individual approval for my attendance of an insurance related course that is not already approved? You may attend and request credit for completion of an insurance related course organized and conducted by an entity that is not already approved as a provider. The OIC will make an informed

PROPOSED

determination as to the educational value of the course. You must submit the following:

- (1) Proof of attendance by signature of the instructor(s) or person in charge verifying licensee's attendance;
- (2) Sufficient supporting materials regarding course content; and
- (3) Credit hours sought.

NEW SECTION

WAC 284-17-246 Can I get continuing education credit for attending an insurance related college course? Yes, continuing education credits are granted for college level courses on approved subjects by submitting a transcript showing completion of the course. Hours are determined as follows:

- (1) Twelve hours will be assigned for each college quarter credit hour.
- (2) Sixteen hours will be assigned for each college semester credit hour.

NEW SECTION

WAC 284-17-248 How long are my certificates of completion valid? Certificates of completion are valid for twenty-four months from the course completion date.

AMENDATORY SECTION (Amending Order R 94-14, filed 6/28/94, effective 7/29/94)

WAC 284-17-250 (~~Courses conducted by self-certifying organizations.~~) Can I repeat a continuing education course? ~~((1) Insurance companies, insurance trade associations and statewide associations of agents or brokers that have an existing formal, and demonstrable, training program may become self-certifying organizations. Upon request to and approval by the commissioner, such self-certifying organizations are authorized to develop course content and conduct approved courses on the subjects that are the organization's focus, without the requirement for prior individual course review and approval by the commissioner.~~

~~(2) Local chapters of each self-certifying statewide association of agents or brokers may submit proposed courses to the statewide organization and, upon a determination by the statewide organization that the local chapter's course meets the standards of the organization and complies with this continuing education regulation, such local chapter's course shall be considered to be a course of the statewide association of agents or brokers and shall be presumed to be approved by the commissioner.~~

~~(3) Requests for training program review, and authority to develop course content and to conduct courses without prior individual course approval, must include the following information:~~

- ~~(a) The name of the organization.~~
- ~~(b) A description of the existing training program of the organization including:~~
 - ~~(i) The titles and descriptions of courses taught during the previous year.~~
 - ~~(ii) The number of licensees taught, by course, during the previous year.~~

~~(iii) The name of the person in charge of the training program and a description of her or his experience, including years of full-time training experience and years with past and present organizations.~~

~~(iv) Budget of the training program for the current year.~~

~~(e) A description of the manner in which courses will be developed to comply with the continuing education regulation and reviewed prior to course conduct.~~

~~(d) A statement by the responsible employee or officer of the organization agreeing to comply with regulations in developing courses and attributing credit hours to those courses.~~

~~(e) An agreement to provide a certificate of completion, showing credit hours earned, to each successful student.~~

~~(f) An agreement to maintain records of licensees' course completions for three years.~~

~~(g) Any catalogue, brochure, or other similar publication applying to the continuing education requirement.~~

~~(4) The grant of authority to an organization to develop course content and conduct courses without prior individual course approval shall be for a period of time not to exceed two years. Approvals may be renewed by the commissioner, upon the request of any self-certifying organization that has complied with statutes and regulations governing insurance education. The actual conduct and performance of the training program shall be subject to review by the commissioner.~~

~~(5) Organizations that have been authorized to develop course content and conduct courses without prior individual course approval shall file, within ten calendar days of the date any course is first presented, a course outline for each course with the commissioner. The course outline shall include:~~

~~(a) A description of the subject matter to be taught.~~

~~(b) The method of teaching or presentation.~~

~~(c) The number of classroom contact hours.~~

~~(d) An explanation of the criteria to be applied in determining whether the course is satisfactorily completed.~~

~~(e) The number of continuing education credit hours assigned to each course.~~

~~(f) Other relevant information.~~

~~(6) The self-certifying organization shall apply to the commissioner for a certification number for the course; such number shall appear on each certificate of completion issued to each licensee who successfully completes the course.~~

~~(7) Assignment of continuing education credit hours to courses, by self-certifying organizations, shall be subject to review and revision by the commissioner as necessary to ensure consistency in the number of credit hours assigned to comparable courses.)~~ Yes, you can repeat a course with the same course number after three years from the previous completion date.

NEW SECTION

WAC 284-17-252 If I have excess hours (hours that exceed the minimum required for license renewal), can I carry them over to my next license renewal? No, excess hours cannot be carried over to the next license renewal.

PROPOSED

NEW SECTION

WAC 284-17-254 How can I be granted a waiver of the continuing education requirements? If you believe good cause exists, you may request a waiver of the continuing education requirement. Requests must be in writing at time of renewal of your license and specify in detail the reason why you believe a waiver is merited.

(1) Retirement waiver. If your request for a waiver is based upon your retirement, your request must be accompanied by a statement attesting that:

- (a) You are least sixty-five years of age;
- (b) You are retired from selling insurance products; and
- (c) You no longer represent any insurer either directly or through an affiliation with a business entity.

(2) Medical waiver. If your request for a waiver is based upon a medical condition, your request must be accompanied by a physician's statement of your illness or injury.

(3) Military waiver. If your request for a waiver is based upon activation to military service, your request must be accompanied by a copy of the "Letter of Mobilization" and your representative's (the individual given power-of-attorney by the licensee) name and address so that your license renewal notice can be sent to your representative. Your representative must sign the renewal. The renewal and fees must be returned to the OIC. The OIC may waive the continuing education requirement for renewal of your license for the duration of active military service.

A waiver is only valid up to two years from the licensee's regular license renewal date.

NEW SECTION

WAC 284-17-256 If I instruct a class, how many approved credits will I receive? You will receive twice the amount of approved credits if you instruct the entire course.

LONG-TERM CARE (LTC) SPECIAL EDUCATION

NEW SECTION

WAC 284-17-258 What is the long-term care (LTC) special education requirement? Resident and nonresident agents engaged in the transaction of LTC insurance or long-term care partnership (LTCP) insurance are required to take an approved six-hour course on LTC or LTCP before soliciting, selling, or otherwise transacting these types of insurance business as to such products with consumers. The four-hour refresher LTC special education course must be taken every two-year renewal period subsequent to the initial six-hour course. The OIC prescribes the content of the course. Each course must be approved by the OIC in advance.

This requirement does not apply to licensees receiving override commissions on LTC transactions if the licensee has had no contact with the consumer.

AMENDATORY SECTION (Amending Order R 94-14, filed 6/28/94, effective 7/29/94)

WAC 284-17-260 ((Courses individually approved.)) Who is required to complete the LTC special education

requirement? ((Organizations or individuals not included in WAC 284-17-240 or 284-17-250 wanting to offer approved continuing education courses may submit their request(s) for individual course approval to the commissioner.

(1) Such requests for course approval must be submitted on forms prescribed by the commissioner.

(2) The request for course approval shall include:

(a) A copy of the course material that is requested to be approved.

(b) An explanation of the method of teaching or presentation.

(c) The number of classroom contract hours.

(d) An explanation of the criteria to be applied in determining whether the course is satisfactorily completed.

(e) The number of continuing education credit hours for which approval is requested; and an estimate of the number of times the proposed course is to be offered.

(f) An agreement to provide a certificate of completion showing credits earned, to each successful licensee; and to retain, for a minimum period of three years, records of all certificates issued.

(g) An agreement by the responsible official to comply with regulations in conducting courses.

(3) A specific determination of course approval and assignment of credit hours will be made by the commissioner in accordance with the terms of WAC 284-17-230. No course for which individual course approval is required may be represented as being approved prior to actual approval. Approval of an individual course is valid for a maximum period of twenty-four months from the original approval date.)) Both resident and nonresident agents who transact LTC business must complete the six-hour LTC special education course and must complete the four-hour refresher course per renewal period.

NEW SECTION

WAC 284-17-262 Who must certify completion of the LTC special education and when is the certification due?

Each insurer that has approved LTC policies must certify yearly that all agents have completed the LTC special education prior to selling the LTC product. This certification is to be delivered to the OIC yearly on or before March 31st.

NEW SECTION

WAC 284-17-264 May I use the LTC special education course for continuing education? If you are a resident agent and you take an LTC special education course that has also been approved for continuing education, you may use the hours toward your required twenty-four hours.

PROVIDER

AMENDATORY SECTION (Amending Order R 89-10, filed 9/15/89, effective 10/16/89)

WAC 284-17-270 ((Credit for courses.)) How do I become a provider? ((1) No course shall be established for less than one continuing education credit. Courses conducted in conjunction with other nonqualifying activities or subject

~~matter must have a separate continuing education course component in order to qualify the courses for approval.~~

~~(2) The provider of a course must maintain a positive attendance record, consisting of a sign in—sign out register, in order to qualify the course for continuing education credit. The provider must retain such registers, or any other evidence of satisfactory completion, for a period of three years from the date of completion.~~

~~(3) The instructor of an approved course shall receive twice the number of credit hours for teaching a course as is earned by a licensee completing the course. Such instructor may not, however, claim continuing education credit for completing or teaching a course for which he or she has previously claimed credit.)~~ To become a continuing education provider, you must meet the standard as required in RCW 48.17.563(1) and complete the provider application (form CEPROVIDER), available on the OIC website or upon request from the OIC.

NEW SECTION

WAC 284-17-272 What are the responsibilities of an approved provider? An approved provider is responsible for:

- (1) Providing the OIC with the name of a contact person who is the responsible person for the provider;
- (2) Hiring and supervising instructors who are trustworthy, competent, and knowledgeable;
- (3) Providing adequate supervision over instructors;
- (4) Notifying, in a format as required by OIC, the OIC with a course schedule at least ten calendar days prior to the course date;
- (5) Identifying a monitor, an individual who is responsible for verification of class attendance and course content completion;
- (6) Maintaining a roster, consisting of a sign-in/sign-out register for lecture courses;
- (7) Maintaining a purchase and completion roster for self-study courses;
- (8) Filing the roster in a format as required by OIC, within ten days;
- (9) Issuing course completion certificates within fifteen days of completion of course;
- (10) Maintaining records for a period of three years from completion date of the course.

NEW SECTION

WAC 284-17-274 Is there a fee to become an approved provider or for course approval? No fee is required to become a provider or for the approval of a course.

NEW SECTION

WAC 284-17-276 Will I be issued a provider number? Yes. You will be given a provider number that must be included on all certificates of completion.

NEW SECTION

WAC 284-17-278 How do I get a course approved?

You must submit a request for approval to the OIC prior to offering the course. This request must include the following:

- (1) Lecture (classroom);
 - (a) Completed course approval request form;
 - (b) Content outline which includes topics and time;
 - (c) Biography or resume of instructor;
 - (d) Date(s) that course is to be offered.
- (2) Self-study;
 - (a) Completed course approval request form;
 - (b) Study material;
 - (c) Sample exams.

AMENDATORY SECTION (Amending Order R 89-10, filed 9/15/89, effective 10/16/89)

WAC 284-17-280 ((Approved courses or self-certifying organizations—Loss of approval)) What courses are eligible for approval? (1) ((The approval of a course, or of a self-certifying organization, may be suspended or revoked if the commissioner determines that:

- (a) The content of an individually approved course was significantly changed without notice to and approval from the commissioner.
- (b) A certificate of completion was issued to any individual who did not complete the course.
- (c) A certificate of completion was not issued to any individual who satisfactorily completed the course.
- (d) The actual instruction of the course is determined by the commissioner to be inadequate.
- (e) In the commissioner's discretion, the course or courses offered by a self-certifying organization fail to meet the objectives and requirements of the statutes and regulations requiring continuing education for insurance agents and brokers.
- (f) The provider failed to comply with the commissioner's request for submissions of updated descriptions of any course offerings; or records, course materials, or audit information were not provided within fifteen days of the commissioner's request.
- (g) The provider, or any of its employees or contractors involved in insurance education, has violated insurance laws including, but not limited to the regulations contained in this chapter.

(2) If the commissioner finds under this chapter, that disciplinary action against any provider is appropriate, the commissioner may exercise the discretion to suspend or revoke all approvals of that provider's concurrent offerings, and refuse to approve submissions of previously approved courses.

(3) Reinstatement of a suspended or revoked approval shall be at the discretion of the commissioner after receipt of satisfactory proof that the conditions responsible for the suspension have been corrected.) Courses eligible for approval to satisfy the continuing education requirement are:

- (a) Courses demonstrating a direct and specific application to insurance; and
- (b) Courses presenting information relevant to insurance related statutory and regulatory requirements.

(2) General education, sales, motivation, management, leadership, automation, and prelicense training courses are not eligible for approval, unless the provider can demonstrate that a substantial portion of the course relates to the business of insurance and is not solely focused on an individual insurer's product.

NEW SECTION

WAC 284-17-282 Will I be issued a course number? Yes, you will be issued a course number at the time of approval of the course. This number must be included on all certificates of completion for that course.

NEW SECTION

WAC 284-17-284 What courses are specifically approved? (Designation courses.) (1) The following courses are approved for the maximum number of hours required per renewal period:

(a) Any part of the American College Life Underwriting Training Council (LUTC) designation program.

(b) Any part of the American College Chartered Life Underwriter (CLU) designation program and advanced study programs.

(c) Any part of the Insurance Institute of America's program of insurance.

(d) Any part of the American Institute for Chartered Property Casualty Underwriter (CPCU) designation program.

(e) Any part of the Certified Insurance Counselor (CIC) program.

(f) Any part of the Health Insurance Association of America (HIAA) designation program.

(g) Any part of the Certified Employee Benefit Specialist (CEBS) designation program.

(h) Any part of the Life Office Management Association (FLMI) designation program.

Changes in the above identified courses are presumed to be approved by the OIC unless the sponsoring organization is advised of disapproval.

(2) The OIC may approve additional designation courses of similar substance.

NEW SECTION

WAC 284-17-286 How are credit hours assigned to a course? The number of credit hours assigned to a course will normally be based upon the number of classroom hours or their equivalent for self-study correspondence courses. However, the number of credit hours assigned may be less than the total amount of time spent by the licensee in the course, based upon an evaluation of the course content. No course will be approved for less than one hour of continuing education credit.

NEW SECTION

WAC 284-17-288 What attendance records must the provider maintain? The provider of a course must maintain an attendance record. This would consist of a sign-in/sign-

out register for lecture courses and purchase and completion records for self-study courses.

AMENDATORY SECTION (Amending Order R 94-14, filed 6/28/94, effective 7/29/94)

WAC 284-17-290 ((Waiver of continuing education requirement.)) How long must the provider maintain the attendance or purchase and completion records? ((+) Any licensee who believes that good cause exists, may request a waiver of the continuing education requirement. Requests shall be in writing, received prior to the expiration of the licensee's existing license and specify in substantive detail the reason or reasons why the licensee believes a waiver of the continuing education requirement for the current license renewal is merited.

(2) Any request for a waiver which is based upon the licensee's retirement shall be accompanied by a statement attesting that the licensee:

(a) Is at least sixty-five years of age;

(b) Is retired from active selling of insurance products; and

(c) No longer represents any insurer.

(3) If the conditions upon which a waiver was granted change, the licensee shall notify the commissioner in writing within fifteen days, and may be required to satisfy the continuing education credit hours which would have been prerequisite to license renewal had the waiver not been granted. Violation of the conditions of this waiver may result in assessment of a fine, revocation of license, or both.

(4) Any request for a waiver which is based upon medical considerations shall be accompanied by a physician's statement of the applicant's illness or injury.

(5) No waiver shall be valid for a period in excess of two years from the applicant's regular license renewal date.)) **The provider must retain such registers, or any other evidence of satisfactory completion, for a period of three years from the date of course completion. The records may be retained in an electronic format.**

NEW SECTION

WAC 284-17-292 What must be included on a certificate of completion? The certificate of completion must be in the form specified by OIC and include the following:

(1) Name of student;

(2) Course title and number;

(3) Date of purchase of course, if applicable;

(4) Date of completion;

(5) Number of credit hours;

(6) Provider name and number;

(7) Signature of instructor or monitor and date; and

(8) Certification of completion by student.

NEW SECTION

WAC 284-17-294 Do I have to renew my approval as a provider? No. Your approval as a provider does not need to be renewed as long as you have received approval for a course within the last four years.

NEW SECTION

WAC 284-17-296 Do I have to renew an approval of a course? Yes, a course must be renewed every two years. A renewal notice will be sent by the OIC and must be completed and returned with a copy of the current course material for a correspondence course or outline for a lecture course. If substantial changes have been made in the course curriculum, it should be submitted as a new course.

NEW SECTION

WAC 284-17-298 Must I submit an electronic attendance roster? Yes, the provider will be required to submit the attendance roster in a format as determined by OIC.

NEW SECTION

WAC 284-17-301 Does the commissioner have the authority to levy a fine against a CE provider or revoke or suspend a CE provider's approval? After hearing or upon stipulation by the CE provider, and in addition to or in lieu of the suspension, revocation, or refusal to renew any such CE provider approval, the commissioner may levy a fine upon the CE provider.

(1) For each offense the fine shall be an amount not more than one thousand dollars.

(2) The order levying such fine shall specify that the fine must be fully paid not less than fifteen nor more than thirty days from the date of the order.

(3) Upon failure to pay any such fine when due, the commissioner shall revoke the approval of the CE provider, if not already revoked.

The fine may be recovered in a civil action brought on behalf of the commissioner by the attorney general. Any fine so collected will be paid by the commissioner to the state treasurer for the account of the general fund.

NEW SECTION

WAC 284-17-302 What actions by a provider could result in a fine? The following actions may result in a fine:

(1) Advertising or offering a course without prior approval;

(2) Not following the approved course outline;

(3) Issuing fraudulent completion certificates; and

(4) Recruitment within an advertisement or during the hours of a course presentation.

(5) The provider has failed to comply with or has violated any statute or regulation pertaining to insurance continuing education providers.

NEW SECTION

WAC 284-17-304 Can the approval of a provider be suspended or revoked? (1) Yes, the approval may be suspended or revoked if:

(a) The provider or its employees involved in insurance education have violated any of the provisions of Title 48 RCW or Title 284 WAC; or

(b) The OIC finds under these titles that disciplinary action against any provider is appropriate; the OIC may exercise the discretion to suspend or revoke the provider approval and all of its courses.

(2) Reinstatement of a suspended or revoked approval shall be at the discretion of the OIC after receipt of satisfactory proof that the conditions responsible for the suspension have been corrected.

NEW SECTION

WAC 284-17-306 Can an approval of a course be suspended or revoked? (1) Yes, the approval of a course may be suspended or revoked if the OIC determines that:

(a) The content of an approved course was significantly changed without notice to and approval from, the OIC;

(b) A certificate of completion was issued to any individual who did not complete the course;

(c) A certificate of completion was not issued to any individual who satisfactorily completed the course;

(d) The actual instruction of the course is determined by the commissioner to be inadequate; or

(e) The provider failed to comply with the OIC's request for submissions of updated descriptions of any course offerings; or records, course materials, or audit information were not provided within fifteen days of the OIC's request.

(2) Reinstatement of a suspended or revoked approval is at the discretion of the OIC. The OIC must receive satisfactory proof that the conditions responsible for the suspension have been corrected.

NEW SECTION

WAC 284-17-308 May I advertise a course prior to approval? No, a course should not be advertised prior to approval.

AMENDATORY SECTION (Amending Order R 89-10, filed 9/15/89, effective 10/16/89)

WAC 284-17-310 (~~When continuing education requirement must be met.~~) What must a course advertisement include? ((1) Each licensee, as defined in WAC 284-17-210(3), shall present evidence of completing the continuing education requirement, prior to license renewal or reinstatement.

~~(2) Such evidence shall include specific information on the approved course or courses the licensee completed to satisfy the continuing education requirement.~~

~~(3) Each credit applied to satisfy the continuing education requirement must have been earned, by completing the relevant course, before the licensee applies for renewal or reinstatement.)~~ A course advertisement must include:

(1) The provider name;

(2) The course title;

(3) A brief description of the course;

(4) The number of credit hours applied for or approved;

(5) The location;

(6) The date and time; and

(7) The cost of the course.

NEW SECTION

WAC 284-17-312 Does Washington participate in the NAIC Uniform Continuing Education Reciprocity Agreement? (1) Yes, Washington has entered into an agreement with states participating in the NAIC Uniform Continuing Education Reciprocity Agreement. With just a few state specific exceptions, a course approved by a participating state will be accepted by other participating states by submitting NAIC Uniform Continuing Education Reciprocity Course Filing Form and any required attachments.

(2) Participating states have agreed they will not review another state's CE credit hours. Instructor qualifications will also not be reviewed. A standard course filing form will be used for reciprocity filings.

(3) The agreement does not change any of a provider's current duties under Washington law. A provider must still be independently qualified as an approved provider in a participating state.

INSTRUCTOR

AMENDATORY SECTION (Amending Order R 94-14, filed 6/28/94, effective 7/29/94)

~~**WAC 284-17-320 ((License renewal requested—Continuing education requirement not satisfied.)) What are the qualifications of an instructor? ((In the event that a licensee requests license renewal and fails to present evidence of completion of the continuing education requirement, the licensee shall be notified in writing of the deficiency and provided with fifteen calendar days from the renewal date or the date of notification, whichever is later, to show compliance. If the information necessary to renew the license is not received within the fifteen day time period, the license shall lapse and become invalid. Application for renewal after that date, must be made according to the procedures of RCW 48.17.150 and 48.17.500.)) An instructor must be trustworthy, competent and knowledgeable in the subject area being taught.**~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-17-235	Exception to the advanced approval requirement.
WAC 284-17-275	Courses not approved.

WSR 05-03-114
PROPOSED RULES
GAMBLING COMMISSION
 [Filed January 19, 2005, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-19-031.

Title of Rule and Other Identifying Information: WAC 230-20-335 Members-only raffles—Procedures—Restrictions.

Hearing Location(s): Red Lion Hotel - Olympia, 2300 Evergreen Park Drive, Olympia, WA 98502, (360) 943-4000, on February 11, 2005, at 9:30 a.m.; and at the DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, on March 11, 2005, at 9:30 a.m.

Date of Intended Adoption: March 11, 2005.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by March 1, 2005.

Assistance for Persons with Disabilities: Contact Shirley Corbett by March 1, 2005, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Charitable and nonprofit organizations may conduct raffles as a way to raise funds for their stated purpose. Tickets may be sold for up to \$25 each (RCW 9.46.0277). Agency rules require specific ticket and record-keeping requirements to ensure funds collected from the sale of raffle tickets are properly accounted for. Anytime an organization wants to offer raffle tickets at a discount, it must first get a raffle license.

Operating requirements for members-only raffles are outlined in WAC 230-20-335. In 1995 the commission passed rules to reduce requirements for members-only raffles. This rule offers organizations simplified procedures when all phases of the raffle are completed during a meeting of its members. A members-only raffle may include guests, if the total number of guests attending the meeting does not exceed 25% of the total attendance. As part of the conditions for the reduced requirements, the maximum sale price of a ticket was reduced to \$2, if any tickets were sold at a discount. For example, licensees may sell tickets for \$2 each, or fifteen tickets for \$20.

Reasons Supporting Proposal: We received a request to increase the price of a single members-only raffle ticket from \$2 to \$10, when tickets are sold at a discount. Because the risk is not substantial and oversight sufficient, staff does not oppose increasing the price of a single members-only raffle tickets from \$2 to \$10, when any tickets are sold at a discount. For example, one ticket for \$10 or three tickets for \$25.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0277.

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

Name of Proponent: Washington State Gambling Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

January 19, 2005

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-23-054, filed 11/20/01, effective 1/1/02)

WAC 230-20-335 Members-only raffles—Procedures—Restrictions. Organizations may conduct members-only raffles utilizing simplified procedures. For purposes of this section, "members-only raffle" means a raffle conducted by selling chances only to members of the organization and a limited number of guests, and determining the winners from among those members and guests that have purchased chances. The following procedures and restrictions supplement or modify WAC 230-08-070 and 230-20-325 and apply only to members-only raffles:

Licensed versus unlicensed.

(1) An organization may conduct an unlimited number of unlicensed members-only raffles if the combined gross revenue from the raffles does not exceed five thousand dollars during a calendar year. If the organization plans to exceed the five thousand dollar gross receipts limit, it must obtain a raffle license.

Raffle to begin and end during membership meeting.

(2) In order to conduct raffles utilizing these simplified procedures, all phases of the raffle must be completed during a meeting of the members, and the meeting must be completed on the same day and at the same location without interruption;

Limit on number of guests.

(3) If guests are allowed to participate, the total number of guests, as a percentage of the total attendance of the meeting, shall not exceed twenty-five percent. Records shall be maintained that will allow commission staff to determine compliance with this requirement;

Rules of play.

(4) All disclosures required to be imprinted on a raffle ticket or chance may be provided to participants by posting a sign at each ticket sales point;

Tickets.

(5) Chances to enter a raffle may be included as a part of a package that includes dues, entertainment, or other fundraising activities if the value of each component of the package is disclosed to the purchaser and the value of each individual raffle chance does not exceed twenty-five dollars: Provided, That initial applications for membership and any fees paid for such shall not include chances to enter raffles or to participate in any gambling activities;

Modified pricing schemes for tickets.

(6) The director may authorize an organization to deviate from the "same price" requirements of WAC 230-20-325(1) when the following requirements are met:

License required.

(a) The organization must have a current raffle license.

Request for approval.

(b) A request for approval of a modified pricing scheme must be received at the Lacey headquarters office at least thirty days prior to beginning the first raffle for which such approval is requested.

Subsequent pricing schemes.

(c) After an organization has received approval for a modified pricing scheme, the organization may utilize the identical approved pricing scheme in subsequent raffles, unless approval is rescinded or commission rules change. The following modified pricing schemes may be approved by the director:

Different prices for tickets - one cent to ten dollars.

(d) Chances to enter a raffle may be sold for different values, ranging from one cent to a maximum of ten dollars, if the following conditions are met:

(i) The scheme for assigning the cost of the ticket must be disclosed to the player before selling them a chance to participate. This disclosure shall include the total number of tickets in the population and the number of tickets at each price level;

(ii) Participants must be allowed to randomly select their ticket from the population of remaining tickets. Participants pay the amount imprinted upon the ticket they select;

(iii) The scheme provides an adequate audit trail that will allow commission staff and taxing authorities to determine gross gambling receipts;

(iv) The total gross gambling receipts available from raffles utilizing such schemes are limited to five thousand five dollars for each drawing;

(v) No more than two such drawings are conducted during a meeting of the members.

Discount based on number of tickets purchased.

(e) Chances may be sold for a discounted price that is based on the number of tickets a player purchases if:

(i) Participants are allowed to purchase a single ticket;

(ii) Only one discount scheme is allowed for each raffle.

The amount of the discount must be set prior to beginning sales for the raffle;

(iii) The cost of a single ticket, without a discount, does not exceed ~~((two))~~ ten dollars;

(iv) The total cost of a discount package does not exceed twenty-five dollars;

(v) The cost of a single ticket shall be imprinted on each ticket (i.e., one dollar a piece or twelve for ten dollars; or two dollars a piece or fifteen for twenty dollars); and

(vi) The licensee shall establish an audit system that includes controls and procedures that will allow commission

agents and taxing authorities the ability to determine gross gambling receipts from the sale of tickets utilizing discounts. Such system shall be submitted to the director or the director's designee as a part of the approval request;

Other pricing schemes.

(f) Multiple tickets to enter one or more drawings may be sold as a package as long as the total price of the package does not exceed twenty-five dollars; and

(g) Alternative pricing schemes may be used if specifically authorized by the director. Approval will be issued on an individual basis and will require a detailed written request;

Alternative drawing formats.

(7) The director may authorize an organization to determine the winners utilizing an alternative drawing format when the following requirements are met:

License required.

(a) The organization must have a current raffle license.

Request for approval.

(b) A request for approval of an alternative drawing format for a members-only raffle must be received at the Lacey headquarters office at least thirty days prior to beginning the first raffle for which such approval is requested. Requests for approval of alternative drawing formats shall be signed by the organization's raffle manager.

Subsequent alternative drawing formats.

(c) After an organization has received approval for an alternative drawing format, the organization may utilize the identical alternative drawing format in subsequent raffles, unless approval is rescinded or commission rules change.

Incentives for selling tickets.

(8) The limitations on noncash incentive awards for an individual raffle, set forth in WAC 230-20-325(11), are modified to allow awards that do not exceed five percent of the combined gross gambling receipts for all raffles conducted during a membership meeting if a record of the name, address, and telephone number is maintained for all persons receiving awards valued in excess of fifty dollars;

Prizes.

(9) Prizes must be owned by the organization conducting the raffle prior to drawing the winning tickets. Raffle prizes must meet the following requirements:

(a) Firearms shall not be awarded as prizes: Provided, That a raffle licensee may award firearms as prizes under the provisions set forth in WAC 230-12-040;

(b) Unopened containers of liquor may be awarded as a prize when the proper permit is obtained from the liquor control board;

(c) Prize limits must meet the requirements set forth in WAC 230-20-015; and

(d) Prizes shall be controlled as set forth in WAC 230-20-300.

Records.

(10) Raffle records, as required by WAC 230-08-070, are modified as follows:

(a) The threshold value for maintaining a record of the name, address, and telephone number of each winner of a prize is increased to include only prizes valued in excess of fifty dollars;

(b) Ticket disbursement records are not required; and

(c) Minimum record retention period is reduced to a period that is not less than one year following the date of each individual raffle drawing.

WSR 05-03-115

PROPOSED RULES

GAMBLING COMMISSION

[Filed January 19, 2005, 11:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-17-123.

Title of Rule and Other Identifying Information: WAC 230-20-115 Gift certificates—Restrictions.

Hearing Location(s): Red Lion Hotel - Olympia, 2300 Evergreen Park Drive, Olympia, WA 98502, (360) 943-4000, on February 11, 2005, at 9:30 a.m.; and at the DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, on March 11, 2005, at 9:30 a.m.

Date of Intended Adoption: March 11, 2005.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by March 1, 2005.

Assistance for Persons with Disabilities: Contact Shirley Corbett by March 1, 2005, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2004 legislative session, EHB 3036 was adopted. This new law, codified as chapter 19.240 RCW, prohibits expiration dates on gift certificates.

Currently, charitable and nonprofit licensees award gift certificates as prizes, and sell gift certificates, with expiration dates. WAC 230-20-115 requires licensees to imprint expiration dates on certificates with dates no later than three months from the date issued for awarded certificates, and one year for sold certificates. The rule also requires that certificates not redeemed by the expiration date to be properly accounted for as a donation.

Licensees requested clarification on whether the new law prohibiting expiration dates applies to them, and if so, what, if any, changes they need to make.

Reasons Supporting Proposal: The proposed rule change eliminates the requirement of expiration dates on gift certificates; however, the change does not explicitly prohibit expiration dates because the Gambling Commission does not enforce the provisions of chapter 19.240 RCW, and because there are exceptions to the prohibition that may apply to licensees. For example, licensees may use expiration dates on

gift certificates awarded as part of an awards or loyalty program or in other instances where no money or other thing of value is given in exchange for the gift certificate. Licensees will need to check with the text of the new law to determine whether they meet the criteria for exceptions.

Statutory Authority for Adoption: RCW 9.46.070.

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

Name of Proponent: Washington State Gambling Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

January 19, 2005

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 371, filed 5/18/99, effective 7/1/99)

~~WAC 230-20-115 Gift certificates((—Requirements)). ((Gift certificates may be sold or issued as prizes during bingo games and such shall not be deemed sales of bingo cards for purposes of this title if licensees comply with the following restrictions:~~

~~(1) If sold, gift certificates shall be paid for in full at the time they are issued;~~

~~(2) Gross receipts from the sale of certificates shall be deposited separately into the gambling account no later than five banking days after receipt. The certificate numbers relating to the funds deposited shall be a part of the deposit record;~~

~~(3) For gift certificates awarded as prizes, the value of the certificate is recorded as a bingo prize on the daily bingo records for the sessions in which the certificate was issued. The certificate will be supported by a bingo prize receipt;~~

~~(4) Gift certificates shall be purchased from a commercial printer or licensed distributor and shall be prenumbered, consecutively issued, and have a predetermined value with the following information imprinted:~~

~~(a) The name of the organization issuing the certificate;~~

~~(b) The date issued and an expiration date no later than three months from the date issued for awarded certificates; and one year for sold certificates;~~

~~(c) The dollar value of the certificate; and~~

~~(d) Any conditions or contingencies related to redemption of the certificate;~~

~~(5) Gift certificates may only be awarded as prizes under the following conditions:~~

~~(a) No prize shall include more than fifty dollars U.S. currency in gift certificates; and~~

~~(b) Redemption of gift certificates shall not be limited to a specific gambling activity. Provided, That certificates may be specific for bingo;~~

~~(6) Certificates shall only be redeemed for bingo cards, food, drink, merchandise, punch boards or pull tabs upon the licensed premises from which it was issued;~~

~~(7) Certificates redeemed shall be applied against bingo activity and daily bingo records shall be modified in the cash reconciliation section of the approved record format to document the number and dollar value of certificates redeemed;~~

~~(8) A reconciliation of gift certificate inventory to certificates issued shall be performed on a monthly basis and will include the following control features:~~

~~(a) Purchase invoices will be retained for gift certificates and they will include the organization name, date of purchase, and beginning and ending certificate numbers;~~

~~(b) Redeemed certificates will be maintained with the corresponding daily sales records;~~

~~(c) Sold certificates not redeemed the expiration date shall be properly accounted for as a donation;~~

~~(d) Certificates issued as prizes and not redeemed by the expiration date shall be accounted for by decreasing prizes paid expense by the value of the expired certificate and eliminating the corresponding liability. This adjusting entry shall be clearly documented in the licensee's monthly records; and~~

~~(e) A certificate log will be maintained and will include the following:~~

~~(i) Certificate number;~~

~~(ii) Certificate value;~~

~~(iii) Date of issue;~~

~~(iv) Expiration date;~~

~~(v) Date of redemption; and~~

~~(vi) If awarded as a prize, the session and date the prize is awarded.)~~ Bingo operators may award gift certificates as bingo prizes or sell certificates to their customers under the following conditions:

(1) Standards for gift certificates. Gift certificates must be purchased from a commercial printer or licensed distributor and have the following information printed on them:

(a) A predetermined certificate number;

(b) A predetermined dollar value;

(c) The name of the organization issuing the certificate; and

(d) Any conditions or contingencies related to the redemption of the certificate.

(2) Awarding gift certificates as bingo prizes. When gift certificates are awarded as bingo prizes:

(a) The certificates must be issued consecutively;

(b) The value of the certificates cannot exceed fifty dollars per bingo prize;

(c) The certificates cannot be issued exclusively for punch boards or pull-tabs;

(d) The value of each gift certificate must be recorded as a bingo prize in the daily bingo records, under the session awarded; and

(e) The bingo prize receipt for the certificate must be kept with the daily bingo records.

(3) Selling gift certificates to customers. When gift certificates are purchased by customers:

(a) The certificates must be issued consecutively;

(b) The certificates must be paid for in full at the time of purchase; and

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(c) All funds collected by the bingo operator must be deposited separately into the gambling account within five banking days. Each gift certificate number must be included with the deposit record.

(4) Redeemed gift certificates:

(a) Redeemed certificates must be kept with the corresponding bingo daily sales records;

(b) Gift certificates redeemed for bingo cards will not be considered sales of bingo cards; and

(c) The dollar value and number of certificates redeemed must be recorded in the cash reconciliation section of the daily bingo records.

(5) A monthly reconciliation of gift certificate inventory to certificates issued is required and must include the following controls:

(a) A gift certificate inventory log, which includes the following:

(i) Certificate number;

(ii) Dollar value of each certificate;

(iii) Date the certificate was sold or awarded as a bingo prize; and

(iv) Date the certificate was redeemed;

(b) Purchase invoices, which must include the:

(i) Name of the organization;

(ii) Date the gift certificates were purchased; and

(iii) Beginning and ending numbers on the gift certificates.

**WSR 05-03-116
PROPOSED RULES
DEPARTMENT OF
SERVICES FOR THE BLIND**

[Filed January 19, 2005, 11:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-24-094 on December 1, 2004.

Title of Rule and Other Identifying Information: Vocational rehabilitation and services for blind persons, chapter 67-25 WAC.

Hearing Location(s): Department of Services for the Blind, 3411 South Alaska Street, Seattle, WA 98118, 1-800-552-7103, on March 4, 2005, at 4:30 - 6:30 p.m.

Date of Intended Adoption: April 4, 2005.

Submit Written Comments to: Marla Oughton, Department of Services for the Blind, 3411 South Alaska Street, Seattle, WA 98118, e-mail maroughton@dsb.wa.gov, fax (206) 721-4103, by March 4, 2005.

Assistance for Persons with Disabilities: Contact Marla Oughton by February 21, 2005, TTY (206) 721-4056 or (800) 552-7103.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to provide vocational rehabilitation services to blind citizens of Washington state with the goal of competitive employment outcomes.

The changes to rule are necessary to:

- Comply with revisions to the federal Rehabilitation Act of 1973 as it currently exists or is hereafter amended.
- Comply with rule changes to chapter 74.18 RCW.

The proposal changes existing rule by:

- Changing definition of "blind person" to match RCW.
- Repealing and revising WAC series pertaining to extended evaluation due to changes in statute and establishment of a new rule "trial work experience."
- Repealing of one WAC pertaining to an administrative review to match RCW and revising WAC pertaining to fair hearing to include mediation as an option.
- Other cosmetic and grammatical changes throughout.

Statutory Authority for Adoption: Chapter 74.18 RCW.
Statute Being Implemented: Chapter 67-25 WAC.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The agency is recommending adoption of the draft text below.

Name of Proponent: Bill Palmer, Executive Director, Department of Services for the Blind, public.

Name of Agency Personnel Responsible for Drafting: Debbie Cook, Seattle, (206) 310-3007; Implementation: Lou Oma Durand, Seattle, (206) 721-6435; and Enforcement: Bill Palmer, Olympia, (360) 586-6981.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No economic impact.

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

January 19, 2005
Ellen Drumheller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-23-078, filed 11/17/98, effective 12/18/98)

WAC 67-25-005 Definitions. (1) "Act" or "the law," except when context indicates otherwise, means the Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.), as amended.

(2) "Applicant" means an individual who has submitted to the department an application or letter requesting vocational rehabilitation services in accordance with WAC 67-25-010.

(3) "Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative commu-

nication devices, graphic presentations, and simple language materials.

(4) "Assessment" means one or more of the following as appropriate in each case:

(a) ((A preliminary)) An assessment to determine eligibility of an individual with a disability for vocational rehabilitation services in accordance with WAC 67-25-020;

(b) A comprehensive ((vocational)) assessment ((of the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and needs, including the need for supported employment services, in the most integrated setting possible, consistent with the individual's informed choice. The assessment will be used to determine, with the individual, the employment objective to be achieved, and a detailed plan of services needed to attain an employment outcome;

(c) An extended evaluation, for a total period not exceeding eighteen months, if there is a question about the applicant's ability to benefit in terms of an employment outcome from vocational rehabilitation services due to severity of the disability.

(4)), in accordance with WAC 67-25-255, to determine with the individual the employment outcome to be achieved, and a detailed plan of services needed to obtain the employment outcome;

(c) Assignment for order of priority, in accordance with WAC 67-25-460, if the department is unable to serve all eligible individuals;

(d) Trial work experience and extended evaluation, in accordance with WAC 67-25-065 and 67-25-070, if there is a question about the applicant's ability to benefit in terms of an employment outcome from vocational rehabilitation services due to the significance of his or her disability.

(5) "Blind person" means a person who:

(a) Has no vision or whose vision with corrective lenses is so limited that the individual requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by individuals with normal vision;

(b) Has an eye condition of a progressive nature which may lead to blindness; or

(c) Is blind for purposes of the business enterprise program in accordance with RCW 74.18.200.

(6) "Client assistance program (CAP)" means a program, authorized under ((Section 112 of)) the act, which assists individuals with disabilities to receive vocational rehabilitation services by providing information and advocacy.

((5) "Community rehabilitation program" means a program that provides directly or facilitates the provision of one or more vocational rehabilitation services which enable individuals with disabilities to maximize opportunities for employment, including career advancement. Services include:

(a) Medical, psychiatric, psychological, social, and vocational services provided under one management;

(b) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(c) Recreational therapy;

(d) Physical and occupational therapy;

(e) Speech, language and hearing therapy;

(f) Psychiatric, psychological and social services, including positive behavior management;

~~(g) Assessment for determining eligibility and vocational rehabilitation needs;~~

~~(h) Rehabilitation technology;~~

~~(i) Job development, placement, and retention services;~~

~~(j) Evaluation or control of specific disabilities;~~

~~(k) Assessment and training in adaptive skills of blindness;~~

~~(l) Extended employment;~~

~~(m) Psychosocial rehabilitation services;~~

~~(n) Supported employment services and extended services;~~

~~(o) Services to family members when necessary for the vocational rehabilitation of the participant;~~

~~(p) Personal assistance services; or~~

~~(q) Services similar to those described in (a) through (p) of this subsection.~~

~~(6) "Competitive employment" means work that:~~

~~(a) In the competitive labor market is performed on a full-time or part-time basis in an integrated setting; and~~

~~(b) For which an individual is compensated at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled.~~

~~(7) "Department of services for the blind" means the legal authority in its entirety:~~

~~(a) "Advisory council" means the members appointed by the governor as the vocational rehabilitation advisory council.~~

~~(b) "Department" means the agency which carries out the operations of the Washington department of services for the blind.~~

~~((8)) (7) "Competitive employment" means work:~~

~~(a) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and~~

~~(b) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.~~

~~(8) "Customer" means any individual with a disability:~~

~~(a) Who has been found eligible for vocational rehabilitation services from the department; and~~

~~(b) For whom services have not been denied or terminated by the department.~~

~~(9) "Department" means the Washington department of services for the blind.~~

~~(10) "Director," except when the context indicates otherwise, means the director of the department of services for the blind.~~

~~((9) "Eligible" or "eligibility certification," when used in relation to an individual's qualification for vocational rehabilitation services, means a certification that:~~

~~(a) The individual is legally blind or has a visual impairment which alone or combined with other disabilities results in a substantial impediment to employment; and~~

~~(b) Vocational rehabilitation services are required for the individual to prepare for, enter, engage in, or retain gainful employment.~~

~~(10) "Employment outcome" means entering or retaining:~~

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~~(a) Full-time or, if appropriate, part-time competitive employment (including supported employment) in the integrated labor market;~~

~~(b) Self-employment;~~

~~(c) Business enterprises;~~

~~(d) Homemaking;~~

~~(e) Farm or family work (including work for which payment is in kind rather than in cash);~~

~~(f) Extended employment; or~~

~~(g) Other employment consistent with the participant's abilities, capabilities, interests, and informed choice, as supported by an assessment for determining vocational rehabilitation needs in accordance with WAC 67-25-255 and 67-25-257.)~~

(11) "Eligible individual" means an applicant for vocational rehabilitation services who meets eligibility requirements in accordance with WAC 67-25-030.

(12) "Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, supported employment (WAC 67-25-436), or any other type of employment in an integrated setting, including self-employment, telecommuting, business enterprises, or business ownership, that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. This definition also includes employment as a homemaker and employment as an unpaid family worker in accordance with procedures to be established by the department for determining the applicability of these outcomes for eligible individuals.

(13) "Employment service provider" means a program that provides directly or facilitates the provision of one or more vocational rehabilitation services, which enable individuals with disabilities to maximize opportunities for employment, including career advancement. Services include:

(a) Medical, psychiatric, psychological, social, and vocational services provided under one management;

(b) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(c) Recreational therapy;

(d) Physical and occupational therapy;

(e) Speech, language and hearing therapy;

(f) Psychiatric, psychological and social services, including positive behavior management;

(g) Assessment for determining eligibility and vocational rehabilitation needs;

(h) Rehabilitation technology;

(i) Job development, placement, and retention services;

(j) Evaluation or control of specific disabilities;

(k) Assessment and training in adaptive skills of blindness;

(l) Extended employment;

(m) Psychosocial rehabilitation services;

(n) Supported employment services and extended services;

(o) Services to family members when necessary for the vocational rehabilitation of the customer;

(p) Personal assistance services; or

(q) Services similar to those described in (a) through (p) of this subsection.

(14) "Extended employment" means work in a nonintegrated or sheltered setting for a public or private agency or organization that provides compensation in accordance with the Fair Labor Standards Act. The department will only support extended employment as an intermediate step toward competitive employment.

(15) "Individual with a disability" for purposes of this chapter means an individual who:

(a) Has a physical or mental impairment which results in a substantial impediment to employment; and

(b) Can benefit in terms of an employment outcome from vocational rehabilitation services.

~~((12) "Individual with a severe disability" means an individual:~~

~~(a) Who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self care, self direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;~~

~~(b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and~~

~~(c) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs.~~

(13) "Individual's representative" means a parent, guardian, family member, advocate, or other representative authorized by the participant.

~~(14))~~ (16) "Individual's representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

(17) "Informed choice" means the process by which an individual receiving vocational rehabilitation services from the department makes decisions about rehabilitation goals and the services and service providers necessary to reach those goals. Informed choice places primary responsibility for action and decision making with the individual, with support of a vocational rehabilitation counselor. Individuals have a right to make informed choices relating to:

(a) Assessment services in accordance with WAC 67-25-020, 67-25-255, and 67-25-257;

(b) Options for developing the individualized plan for employment in accordance with WAC 67-25-260;

(c) Vocational rehabilitation services and service providers in accordance with WAC 67-25-350; and

(d) Employment outcome and work setting.

(18) "Integrated setting" means a setting typically found in the community in which an individual with a disability, including those with the most ((severe)) significant disabilities in accordance with WAC 67-25-060, interact((s)) with nondisabled individuals, other than service providers, to the same extent that nondisabled individuals in comparable settings interact with other persons.

((15)) "Legal blindness" means a physical impairment defined as:

(a) Central visual acuity of 20/200 or less in the better eye with correcting lenses; or

(b) A field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than 20°.

(16) "Medical consultant" means a physician, licensed pursuant to chapters 18.57 and 18.71 RCW, employed by the department to provide consultation to vocational rehabilitation counselors and rehabilitation teachers concerning the medical aspects of rehabilitation, usually reviewing and discussing medical problems of individual participants.

(17) "Ophthalmic consultant" means a physician, licensed pursuant to chapters 18.57 and 18.71 RCW specializing in diseases of the eye, employed by the department to provide consultation to vocational rehabilitation counselors and rehabilitation teachers regarding procedures and prognosis relating to eye conditions.

(18) "Participant" means any individual with a disability:

(a) Who has applied for vocational rehabilitation services from the department; and

(b) For whom services have not been denied or terminated by the department.

(19) "Physical or mental impairment" means an injury, disease, or other disorder that materially reduces, or if not treated will probably result in materially reducing, mental or physical functioning. The term "physical impairment" includes legal blindness and/or visual impairment.

(20) "Rehabilitation teacher" (RT) means an employee of the department who has responsibility to:

(a) Provide or supervise the provision of all vocational rehabilitation services to participants with a vocational objective of homemaker; and

(b) Provide adaptive skills of blindness assessment and training to all vocational rehabilitation participants as needed.

(21) "Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

((22)) (19) "Residence" or "residency" means, for purposes of this chapter, voluntarily living in the state for other than temporary reasons at the time of application.

((23)) "Special modes of communication" means specialized media systems for individuals with disabilities including:

(a) Interpreters, open and closed captioned videos, and use of specialized services such as telecommunication

devices and relay services for individuals who are deaf or hearing impaired;

(b) Materials in Braille, large print, or audio recordings for individuals who are blind; and

(c) Special materials for individuals who are deaf-blind.

((24)) (20) "Statewide workforce investment system" means a system described in section 111 (d)(2) of the Workforce Investment Act of 1998.

(21) "Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication and other related factors) ((which impedes an individual's occupational performance, by hindering or by preventing him or her from obtaining, retaining, or preparing for)) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with ((his or her capacities and abilities)) the individual's abilities and capabilities.

((25)) "Visual impairment" for purposes of this chapter, means a physical condition defined as follows:

(a) Visual acuity in the best eye between 20/200 and 20/70 with correction; or

(b) Angle of vision subtends between 20° and 30°; or

(c) Severe functional visual problem; or

(d) A progressive condition which ultimately will lead to a visual impairment or to legal blindness.

((26)) (22) "Vocational rehabilitation counselor" ((VRC)) means ((an)) a qualified employee of the department who has direct responsibility for providing or supervising the provision of all ((vocational)) rehabilitation services to ((a participant)) customers.

((27)) (23) "Vocational rehabilitation services" means any goods or services necessary for a ((participant)) customer to achieve an employment outcome((-See)) provided in accordance with WAC 67-25-350 ((for description and limitations-)).

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-010 Application for services. (1) Any individual who is ((legally)) blind ((or who has a visual impairment)), as defined in WAC 67-25-005, may apply for vocational rehabilitation services, including any individual who has previously applied for, has previously received, or has previously been denied such services.

(2) Any individual who is ((legally)) blind ((or who has a visual impairment)) seeking to obtain vocational rehabilitation services from the department shall submit a written letter or application for services to the department, or shall request vocational rehabilitation services on an intake form at a WorkSource center operated under the statewide workforce investment system.

(3) The written letter or application for services shall be signed and dated by the individual requesting services or, if appropriate, by the individual's representative, and shall include:

(a) The applicant's name and address;

(b) The applicant's disability; and

(c) The applicant's Social Security number.

(4) The department shall not provide vocational rehabilitation services to any individual who has failed to submit a signed and dated letter or application containing the above information.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-015 Initial interview. (1) An applicant for vocational rehabilitation services shall be interviewed personally by a vocational rehabilitation counselor (~~or other appropriate staff member as soon as possible~~) within ten working days upon receipt of an application by the department.

(2) The interviewer shall:

(a) Explain to the applicant the nature and operation of the vocational rehabilitation program as it relates to the applicant;

(b) Specifically inform the applicant of the right to appeal any eligibility decision made by the department on his or her behalf through ~~(Administrative appeal in accordance with WAC 67-25-560;)~~ mediation and fair hearing in accordance with WAC 67-25-570 ~~(and judicial review);~~

(c) Inform the applicant of his or her right of confidentiality of information possessed by the department and conditions for its release in accordance with WAC 67-25-550;

(d) Provide to the applicant a description of client assistance program services; and

(e) Obtain information from the applicant necessary to determine his or her eligibility for vocational rehabilitation services in accordance with WAC 67-25-020 and 67-25-030.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-020 ((Preliminary)) Assessment for eligibility determination. (1) ~~(A preliminary)~~ An assessment shall be conducted for each applicant to determine whether:

(a) The individual is ~~(legally)~~ blind (or has a visual impairment) as defined in WAC 67-25-005, which alone or combined with other disabilities results in a substantial impediment to employment; and

(b) Vocational rehabilitation services are required for the ~~(individual)~~ applicant to prepare for, enter, engage in, or retain an employment outcome consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(2) If the department is operating under an order of priority, in accordance with WAC 67-25-460, the assessment must also include information to be used for determination of priority for service.

(3) The ~~(preliminary)~~ assessment shall, to the maximum extent possible, be based on a review of existing data in accordance with confidentiality requirements in WAC 67-25-550. The assessment shall, where appropriate, include information provided by the (individual) applicant or the (individual's) applicant's family, education records, information used by the Social Security Administration, (and) determinations made by other agencies, and observations of the vocational rehabilitation counselor and other appropriate staff members.

~~((3))~~ (4) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, the assessment may include provision of vocational rehabilitation services necessary to determine whether the ~~(individual)~~ applicant is eligible. Services provided for this purpose may include trial work experience or extended evaluation in accordance with WAC 67-25-065 and 67-25-070. The department will provide assistance to the applicant, if necessary, to assure that the applicant is prepared to make an informed choice in the selection of services needed to make an eligibility decision.

~~((4))~~ (5) The ~~(preliminary)~~ assessment must include an appraisal of the current visual condition and prognosis of the applicant based on ophthalmological or optometric findings.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-025 Eligibility for services. (1) The department shall determine whether an individual is eligible for vocational rehabilitation services within sixty days after receipt of an application for services, unless:

(a) ~~The department notifies the individual that,~~ exceptional and unforeseen circumstances beyond the control of the department preclude completion of the determination within sixty days, ~~(and the individual agrees that an extension of time is warranted; or~~

~~(b) An extended evaluation as described in WAC 67-25-070 is required to determine eligibility)~~ in which case, the department will notify the applicant.

(2) The ~~(department shall utilize results of the preliminary assessment and)~~ applicant must agree to an extension of eligibility determination or, must agree to participate in trial work experience or extended evaluation ((if required) to determine) in accordance with WAC 67-25-065 and 67-25-070. If the applicant does not agree to an extension of the eligibility determination or does not agree to participate in trial work experience or extended evaluation, the applicant will be determined ineligible for vocational rehabilitation services and the case service record will be closed in accordance with WAC 67-25-055.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-030 Eligibility for services—Criteria. (1) Eligibility shall be based only upon ~~(evidence)~~ determination by a vocational rehabilitation counselor that:

(a) The individual is ~~(legally)~~ blind (or has a visual impairment), as defined in WAC 67-25-005(, which);

~~(b) The blindness alone or combined with other disabilities constitutes or results in a substantial impediment to employment; and~~

~~((b))~~ (c) Vocational rehabilitation services are required for the individual to prepare for, enter, engage in, or retain an employment outcome consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(2) Any applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act and meets the criteria in subsection (1)(a) of this section is presumed eligible for vocational rehabilitation services and is considered to be an individual with a significant disability as defined in WAC 67-25-060.

(3) If an individual is blind, and the individual's disability results in a substantial impediment to employment, it shall be presumed that ~~((an))~~ the individual ~~((with a disability))~~ can benefit in terms of an employment outcome from vocational rehabilitation services, unless, the department can demonstrate by clear and convincing evidence, in accordance with WAC 67-25-065, that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the ~~((severity))~~ significance of his or her disability.

~~((3))~~ (4) Eligibility requirements are applied without regard to the race, color, sex, religion, national origin, creed, marital status, or age of the applicant.

~~((4))~~ (5) No individual or group of individuals shall be found ineligible solely on the basis of the type of disability.

~~((5))~~ (6) No individual shall be found ineligible based on requirements for duration of residence.

~~((6))~~ (7) No individual shall be found ineligible solely on the basis of lack of U.S. citizenship. However, before the department will pay for vocational rehabilitation services, including assessment services, the applicant must provide copies of documents requested by the department that verify his or her immigration and naturalization status, and verify his or her identity. If the applicant is not a United States citizen, his or her legal work status must also be verified. The department will provide services, including assessment services, only to applicants who meet at least one of the following conditions: United States citizenship; permanent residency status in the United States; or when a valid work permit has been issued.

~~((7))~~ (8) Eligibility requirements are applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

~~((8))~~ (9) An individual who is blind or who has a visual ~~((problem))~~ disability which does not result in an impediment to employment, but who may have other disabilities which might result in impediments to employment, may be referred to other service providers or may be provided services through a cooperative plan with other service providers, such as, division of vocational rehabilitation, division of developmental disabilities, and WorkSource centers established under the statewide workforce investment system.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-050 Certification for decision of eligibility ~~((or ineligibility))~~. ~~((1))~~ There shall be a certification of eligibility if the ~~((individual))~~ applicant meets the requirements specified in WAC 67-25-030. The certification shall be dated and signed by ~~((the))~~ a vocational rehabilitation counselor ~~((or other appropriate staff member.~~

~~((2) If the individual is determined ineligible for vocational rehabilitation services, there shall be a certification of ineligibility which shall be dated and signed by the vocational rehabilitation counselor or other appropriate staff member)).~~

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-055 Eligibility determination—Notice to applicant. (1) The applicant shall be notified in writing, using ~~((special))~~ appropriate modes of communication ~~((or))~~, and in the individual's native language if necessary, of the action taken on eligibility or ineligibility.

(2) The ~~((individual))~~ applicant shall be advised of the right to appeal any eligibility decision made by the department ~~((on his or her behalf))~~ concerning the applicant including: The procedure ~~((for administrative review in accordance with WAC 67-25-560;))~~ to request mediation and fair hearing in accordance with WAC 67-25-570; and ~~((judicial review.))~~ a description of client assistance program services ~~((shall also be provided)).~~

(3) If ~~((the))~~ an applicant is determined ineligible for vocational rehabilitation services, the notice shall clearly specify how he or she failed to meet the eligibility criteria set forth in WAC 67-25-030.

(4) If the applicant is determined eligible for vocational rehabilitation services, the notice shall clearly specify the date of eligibility certification.

(5) If the vocational rehabilitation counselor determines that an applicant is not eligible for vocational rehabilitation services, the rehabilitation counselor will provide the individual with information and referral to other agencies or organizations that may provide services to meet the individual's employment related needs.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-056 Ineligibility determination—Review. (1) After twelve months, and annually thereafter, if requested by the individual or by the individual's representative, the department shall ~~((initiate))~~ complete a review of an ineligibility determination ~~((within twelve months))~~ that is based on a finding that the individual is incapable of achieving an employment outcome, unless:

- (a) The individual has refused the review;
- (b) The individual is no longer present in the state; or
- (c) His or her whereabouts are unknown.

(2) ~~((Ineligibility determinations not requiring a review shall include a clear statement as to why the case does not require a review.~~

~~((3) If services have been provided under an individualized written rehabilitation program, in accordance with WAC 67-25-260, a determination of ineligibility based on evidence that the individual is incapable of achieving an employment outcome, in accordance with WAC 67-25-280, shall be reviewed annually if requested by the individual, or if appropriate, the individual's representative.~~

(4)) The individual, or if appropriate, the individual's representative, shall be given an opportunity to participate in any review and reconsideration of eligibility.

AMENDATORY SECTION (Amending Order 83-08, filed 12/15/83)

WAC 67-25-060 ~~Criteria for ((the severely handicapped)) significant disability and most significant disability.~~ ~~((A severely handicapped individual is a handicapped individual.))~~ (1) An individual with a significant disability is an individual:

(a) Who has a severe physical or mental disability which seriously limits his((f)) or her functional capacities (mobility, communication, self-care, self-direction, work tolerance or work skills) in terms of ~~((employability))~~ achieving an employment outcome; ~~((and~~

~~((2))~~ (b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

~~((3))~~ (c) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia and end-stage renal disease, or other disability or combination of disabilities determined on the basis of an ~~((evaluation))~~ assessment of rehabilitation ~~((potential))~~ needs to cause comparable substantial functional limitation.

(2) An individual with a most significant disability is an individual:

(a) Who has three or more functional limitations (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) related to employment; and

(b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time.

NEW SECTION

WAC 67-25-065 **Trial work experience.** (1) Trial work experience is a process of providing assessment and related vocational rehabilitation services to an applicant with significant disabilities, for the limited purpose of collecting information necessary to make an eligibility determination, if there is concern that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the significance of his or her disability.

(2) Trial work experience will be provided for a customer in an individualized plan for employment, if necessary, to assess his or her capability to continue benefiting, in terms of an employment outcome, from vocational rehabilitation services due to the significance of his or her disability.

(3) Trial work experience allows the individual to explore his or her abilities, capabilities, and capacities to perform in a realistic work situation, while addressing identified barriers to employment through the provision of appropriate

vocational rehabilitation services, including supported employment, on-the-job training, rehabilitation technology and personal assistance services in order to accommodate the rehabilitation needs of the individual during the trial work experience.

(4) A written plan, including periodic assessments, must be developed to determine the individual's abilities, capabilities, and capacities, to perform in work situations through use of trial work experiences. The individualized plan for employment, developed in accordance with WAC 67-25-260, must be inactivated while the individual is involved in the trial work experience.

(5) Trial work experience may take place more than once and may extend as long as necessary to determine that:

(a) There is sufficient evidence that the individual can benefit from vocational rehabilitation services and achieve an employment outcome, and is eligible to receive or to continue to receive vocational rehabilitation services; or

(b) There is clear and convincing evidence (a high degree of certainty) based on functional and situational assessments, that the individual cannot benefit from vocational rehabilitation services and achieve an employment outcome, due to the significance of his or her disability, and is not eligible or no longer eligible for vocational rehabilitation services.

(6) If a trial work experience is provided, it must occur in a variety of work environments, include an appropriate range of tasks, must occur in the most integrated settings possible and be consistent with the individual's informed choice and rehabilitation needs.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-070 **Extended evaluation.** (1) If an applicant or customer with significant disabilities is unable to participate in a trial work experience or if options for trial work experience have been exhausted before the vocational rehabilitation counselor is able to make the determination of eligibility, an extended evaluation must be conducted. The purpose of the extended evaluation is ((the process of providing assessment and related vocational rehabilitation services to an applicant for the limited purpose of)) to obtain information necessary to make an eligibility ((determination, if there is concern that the individual is incapable)) decision or to determine if trial work experience can be utilized. Extended evaluation involves provision of one or more vocational rehabilitation services designed to assess whether the applicant or customer is capable of benefiting ((in terms of an employment outcome)) from or capable of continuing to benefit from vocational rehabilitation services ((due to the severity of his or her disability. Extended evaluation is provided only when an eligibility determination can not be made within the usual procedure)) in terms of an employment outcome.

(2) A written plan, including periodic assessments, must be developed to determine the individual's abilities, capabilities, and capacities, to perform in work situations through the use of extended evaluation. The individualized plan for employment, developed in accordance with WAC 67-25-260, must be inactivated while the individual is involved in

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extended evaluation. Only those services considered necessary for making the eligibility or continuing eligibility decision may be provided. Vocational rehabilitation services provided during extended evaluation must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the applicant or customer.

(3) Extended evaluation shall be terminated when the department has sufficient information to make the eligibility or continuing eligibility decision.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-077 Certification ~~((for))~~ of trial work experience or extended evaluation ~~((to determine an individual's ability to benefit in terms of an employment outcome from vocational rehabilitation services))~~. ~~((1))~~ Prior to, and as a basis for providing an) If an applicant or customer is offered an opportunity for trial work experience or extended evaluation ~~((to determine an individual's ability to benefit in terms of an employment outcome from vocational rehabilitation services))~~ in accordance with WAC 67-25-065 or 67-25-070, there shall be a certification ~~((that the individual meets))~~ of eligibility ~~((criteria))~~ for the services specified ~~((in WAC 67-25-075))~~. The certification shall be dated and signed by ~~((the))~~ a vocational rehabilitation counselor ~~((or other appropriate staff member.~~

~~(2) The participant shall receive written notification of the eligibility determination for extended evaluation using special modes of communication or the individual's native language if necessary.~~

~~(3) The participant shall be advised of the right to appeal any decision made by the department on his or her behalf, including: The procedure for administrative review). A copy will be given to the individual with information regarding appeal rights, in accordance with WAC ~~((67-25-560; fair hearing in accordance with WAC))~~ 67-25-570~~((;))~~, and ~~((judicial review. A description of))~~ information about the client assistance program ~~((services shall also be provided))~~ (CAP).~~

AMENDATORY SECTION (Amending WSR 98-23-078, filed 11/17/98, effective 12/18/98)

WAC 67-25-255 Comprehensive assessment. (1) To the extent possible, current data including: That provided by the customer and his or her family; information available from other programs and providers such as schools and the Social Security Administration; and information utilized for the determination of eligibility, must be used to determine the employment outcome and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment, in accordance with WAC 67-25-260. If additional data is necessary, there ~~((shall))~~ must be a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capacities, interests, informed choice, and the need~~((s of the participant))~~ for supported employment services of the customer conducted in the most integrated setting possible~~((, consistent with the informed choice of the individual)).~~

(2) The comprehensive assessment must be limited to information necessary to identify the rehabilitation needs and develop the ~~((rehabilitation program))~~ individualized plan for employment with the individual, and may, if necessary, include:

(a) A comprehensive analysis of pertinent medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors affecting the employment and rehabilitation needs of the individual;

(b) An analysis of the individual's personality, interests, interpersonal skills, intelligence and related functions, educational achievements, work experience, vocational aptitudes, personal ~~((and social))~~, cultural, environmental, and recreational adjustments, and employment opportunities;

(c) ~~((An appraisal of the individual's patterns of))~~ Work in a real job situation or use of other available data to evaluate or develop work behaviors and capacities necessary to achieve an employment outcome. This includes an appraisal of the customer's pattern of work behaviors and identification of services needed to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns suitable for successful job performance;

(d) Assessment of the need for the provision of rehabilitation technology ~~((services to an individual with a disability))~~ to develop the capacities of the individual to perform in a work environment, including in an integrated setting, to the maximum extent feasible~~((;))~~, consistent with the individual's informed choice.

~~(3) ((The comprehensive assessment shall, to the maximum extent possible and appropriate, be based on existing information provided by the individual and by the individual's family in accordance with confidentiality requirements.))~~ Information pertaining to conditions or circumstances, such as criminal record, INS identity and work status that restricts the type of employment the customer can legally perform must be disclosed to the department prior to development of the individualized plan for employment.

(4) If a customer desires an employment outcome in a field that customarily requires a background check as a condition of employment, the department must obtain a criminal history background check verifying that the customer is not excluded from employment in the field or specific job prior to development of the individualized plan for employment.

(5) If the department becomes aware of a condition or circumstance that may affect the customer's ability to achieve an employment outcome after the individualized plan for employment has been developed, the vocational rehabilitation counselor will conduct necessary assessment services, including trial work experience or extended evaluation, in accordance with WAC 67-25-065 and 67-25-070, to determine whether the customer is capable of achieving the employment outcome identified in the individualized plan for employment.

(6) If a customer declines to authorize the release of information or to participate in vocational rehabilitation services necessary to collect pertinent information for development of an appropriate individualized plan for employment,

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the vocational rehabilitation counselor will close the case service record.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-257 Assessment—Adaptive skills of blindness. (1) ~~((There shall be an))~~ As a part of the assessment to determine vocational rehabilitation service needs, there must be a determination of each individual's use of and ability to benefit from adaptive skills of blindness. Rehabilitation objectives and service needs identified with the ((individual)) customer during this assessment process shall be incorporated into the individualized ((written rehabilitation program)) plan for employment.

(2) Adaptive skills of blindness assessment include, as appropriate in each case:

- (a) Communications, including braille and keyboarding;
- (b) Personal management;
- (c) Orientation and mobility;
- (d) Home management;
- (e) Activities of daily living;
- (f) Personal adjustment to blindness, ~~and((/or))~~ if applicable, adjustment to other disabilities;
- (g) Ability to benefit from rehabilitation technology; and
- (h) Use of residual vision and ability to benefit from low vision devices and related training.

AMENDATORY SECTION (Amending WSR 98-23-078, filed 11/17/98, effective 12/18/98)

WAC 67-25-260 Individualized ~~((written rehabilitation program))~~ plan for employment. (1) ~~The individualized ((written rehabilitation program)) plan for employment is a written agreement that documents important decisions made between the customer and a vocational rehabilitation counselor concerning the customer's employment outcome including, responsibilities agreed upon by the department and the customer, and the vocational rehabilitation services to be provided.~~

(2) The customer must be actively involved in developing the individualized plan for employment including making meaningful and informed choices about the selection of the employment outcome, intermediate objectives, the vocational rehabilitation services provided, service providers, settings, and methods of procuring services.

(3) The employment outcome the customer chooses must be consistent with the information and results of the assessment of the individual's vocational rehabilitation needs.

(4) The department supports customers to achieve an employment outcome as defined in WAC 67-25-005. If a customer chooses another type of employment outcome, the department will, to the extent possible, refer the customer to other programs or organizations that may offer the type of employment that the customer desires.

(5) The individualized plan for employment must be agreed upon and signed by the customer, or as appropriate, the individual's representative, and a vocational rehabilitation counselor.

(6) The individualized plan for employment shall be designed to achieve the employment ((objective)) outcome of the ((participant)) customer consistent with the unique strengths, resources, priorities, concerns, abilities, ~~((and))~~ capabilities, and interests of the individual. To the extent possible, consistent with the informed choice of the individual, the ((program)) plan shall include placement in an integrated setting.

~~((2))~~ (7) The ((program)) plan shall include:

(a) The individual's long-term ((vocational goal)) employment outcome based on the assessment for determining vocational rehabilitation needs and the career interests of the individual;

(b) Specific and measurable intermediate rehabilitation objectives to achieve the ((vocational goal)) employment outcome, based on the assessment for determining vocational rehabilitation needs;

(c) Specific vocational rehabilitation services to be provided to achieve the intermediate rehabilitation objectives;

(d) Projected initiation dates and the anticipated duration of each service;

(e) Objective criteria, and an evaluation procedure and schedule to determine whether goals and objectives are being achieved;

(f) The views of the individual, in the words of the individual, or, as appropriate, in the words of the individual's representative, describing how he or she was informed about and involved in choosing among alternative goals, objectives, services, providers, and methods used to procure or provide services, including alternatives in integrated settings;

(g) How, to the maximum extent possible, information will be provided to the individual, or if appropriate, to the individual's representative, in his or her native language ~~((or))~~ if necessary, and using ~~((special))~~ appropriate modes of communication;

(h) Terms and conditions for provision of vocational rehabilitation services, including:

(i) Responsibilities ~~((of the individual in implementing the program))~~ the customer has agreed to, including steps the customer will take to achieve the employment outcome, and services the customer agrees to apply for and use that are available at no cost from another program;

(ii) The extent to which goods and services shall be provided in integrated settings, consistent with the informed choices of the individual;

(iii) The extent to which comparable services and benefits, in accordance with WAC 67-25-360, are available to the individual under any other program;

(iv) The entity or entities that will provide services and the process and setting to be used to provide or procure services;

~~((4))~~ (v) Assessment of the ~~((expected))~~ need for post-employment services ~~((and, if appropriate, extended services, including provision for reassessment of these needs)), in accordance with WAC 67-25-444, prior to closing the ((individual's successful rehabilitation)) case service record, of a customer who has achieved an employment outcome and, if appropriate, a statement of how post-employment services are to be arranged or provided using comparable services and benefits, in accordance with WAC 67-25-360;~~

~~((j))~~ (vi) Information regarding the right to appeal any decision made by the department on behalf of the individual ~~((by the department))~~ including the procedure for ~~((administrative review))~~ mediation, fair hearing, and judicial review, in accordance with WAC 67-25-570;

~~((k))~~ (vii) A description of client assistance program services; and

~~((h))~~ (viii) The basis on which the individual is determined to have achieved an employment outcome.

(8) An individualized plan for employment that includes a supported employment outcome, in accordance with WAC 67-25-436 must also document:

(a) The supported employment services to be provided by the department;

(b) Extended services or natural supports that are likely to be needed;

(c) The source of extended services or, to the extent that it is not possible to identify the source of extended services when the plan is developed, a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

(d) A goal for the number of hours per week the customer is expected to work and a plan to monitor the customer's progress toward meeting that expectation;

(e) A description of how the services on the individualized plan for employment are to be coordinated with other individualized plans established under other federal or state services;

(f) If job skills training is provided, the individualized plan for employment must reflect that the training is provided on-site; and

(g) Placement in an integrated setting for the maximum number of hours possible based on the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the customer.

(9) Transition students who are determined eligible for vocational rehabilitation services must have an individualized plan for employment prior to leaving school. An individualized plan for employment for a transition student who is receiving special education services should be coordinated, to the extent possible, with the individualized education plan of the individual in terms of identified goals, objectives, and services.

AMENDATORY SECTION (Amending WSR 98-23-078, filed 11/17/98, effective 12/18/98)

WAC 67-25-270 Individualized ~~((written rehabilitation program))~~ plan for employment—Participation of the ~~((individual))~~ customer. (1) A customer or, as appropriate, the individual's representative may develop all or part of the individualized ~~((written rehabilitation program (IWRP)))~~ shall be jointly developed, agreed upon, and signed by)) plan for employment:

(a) ~~((The participant, or as appropriate, the participant's representative; and))~~ Independently, without any assistance from the department or another entity;

(b) ~~((The))~~ With assistance from a vocational rehabilitation counselor ~~((or other appropriate staff members))~~ employed by the department;

(c) With assistance from a vocational rehabilitation counselor who is not employed by the department but who meets the minimum qualifications for a vocational rehabilitation counselor as established by the department; and

(d) Other resources such as a representative, family member, advocate, or other individual.

~~((Participants must take an active role in their own rehabilitation programs, including making meaningful and informed choices about the selection of vocational goals; intermediate objectives, the vocational rehabilitation services they receive, service providers, and methods of procuring services.))~~ The department shall provide, as appropriate to each customer, information to assist the individual or the individual's representative in developing the individualized plan for employment, including:

(a) Information describing the full range of components that must be included in an individualized plan for employment;

(b) Information on assistance available for completing required forms; and

(c) Additional information that the customer requests or the department determines to be necessary for development of the individualized plan for employment.

(3) The department will provide assistance to customers who choose to develop their individualized plan for employment with someone other than a department vocational rehabilitation counselor, and will identify individuals, to the extent possible, who may be of help in that process. However, the department will not pay fees or other expenses associated with obtaining assistance from such individuals.

(4) Substantive changes to the ~~((IWRP))~~ individualized plan for employment must ~~((also))~~ be jointly made and agreed upon by the ~~((participant))~~ customer and ~~((staff members))~~ the department vocational rehabilitation counselor.

~~((4))~~ (5) A copy of the individualized ~~((written rehabilitation program))~~ plan for employment and copies of any revisions and ~~((addendums))~~ amendments shall be provided ~~((in)),~~ using appropriate ~~((alternative format, in the individual's native language))~~ modes of communication, to the ~~((participant))~~ customer or, as appropriate, to the individual's representative.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-275 Individualized ~~((written rehabilitation program))~~ plan for employment—Annual review. (1) The individualized ~~((written rehabilitation program))~~ plan for employment shall be reviewed as necessary but at least annually. The ~~((participant))~~ customer, or if appropriate, the individual's representative, shall be given an opportunity to review the ~~((program))~~ plan and jointly redevelop and agree to its terms.

(2) ~~((The))~~ Services shall be modified as needed and incorporated into the ~~((program))~~ plan.

(3) If ~~((the vocational objective of the participant changes))~~ it is determined that the employment outcome of the customer will be changed, the new ~~((program))~~ plan shall not take effect until agreed upon and signed by the ~~((partici-~~

~~part)) customer, or if appropriate, the individual's representative, and the vocational rehabilitation counselor.~~

(4) If a ~~((participant's)) customer's~~ vision is restored so that he or she is not ~~((legally)) blind ((or has no visual impairment, and)), as defined in WAC 67-25-005, further services shall be limited to those identified in an assessment of vocational rehabilitation service needs in accordance with WAC 67-25-255. If ((he or she)) the customer has ((no)) other ((disability)) disabilities, which result((s)) in an impediment to employment, ((further services shall be limited to those already identified in)) the ~~((individualized written rehabilitation program)) individual will be referred to the appropriate organization for assistance.~~~~

(5) The individualized plan for employment review may be conducted with a qualified vocational rehabilitation counselor who is not employed by the department. However, in such cases, the department vocational rehabilitation counselor shall have final signature authority on the review and any changes to the plan.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-280 Individualized ~~((written rehabilitation program)) plan for employment—Termination due to ineligibility.~~ (1) The services under an individualized ~~((written rehabilitation program)) plan for employment shall be terminated if it is determined, based on clear and convincing evidence in accordance with WAC 67-25-065, that the individual is incapable of achieving ((a vocational goal)) an employment outcome and is therefore ~~((not)) no longer~~ eligible for vocational rehabilitation services.~~

(2) A decision to terminate the ~~((program)) plan shall only be made with participation of the ((individual)) customer, or as appropriate, the individual's representative.~~

(3) The views of the ~~((individual)) customer, or the individual's representative, concerning the decision shall be documented in the ((program)) plan.~~

(4) Rationale for the decision must be documented as part of the ~~((program)) plan including any assessment results from a trial work experience or extended evaluation in accordance with WAC 67-25-065 and 67-25-070.~~

(5) When ~~((an individual)) a customer is determined ineligible for vocational rehabilitation services, there shall be a ((certification,)) written notification dated and signed by the vocational rehabilitation counselor ~~((or other appropriate staff member,)) placed in the ((individual's file)) customer's case service record, and a copy shall be provided to the customer or to the individual's representative.~~~~

(6) The ~~((participant)) customer shall be notified of the opportunity for review and reconsideration of the decision ((within twelve months)) in accordance with WAC 67-25-056.~~

(7) The individual will be provided with a description of services and a referral to other programs available from the statewide workforce investment system, including information about services available at a local WorkSource center, that may address the individual's training or employment related needs, and will be referred to local extended employment providers if the ineligibility determination is based on a

finding that the individual is incapable of achieving an employment outcome.

(8) Upon termination, the customer, or as appropriate, the individual's representative, will be informed in writing, using appropriate modes of communication and the individual's native language if necessary, of the right to appeal any eligibility decision made by the department on his or her behalf through mediation and fair hearing in accordance with WAC 67-25-570. The customer shall also be provided information on services available from the client assistance program.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-284 Individualized ~~((written rehabilitation program)) plan for employment—Termination for reasons other than ineligibility.~~ (1) Vocational rehabilitation services provided under an individualized ~~((written rehabilitation program)) plan for employment shall be terminated prior to completion if a ~~((participant)) customer:~~~~

(a) Has died;

(b) Cannot be located by the department after reasonable efforts to do so;

(c) Has been institutionalized under circumstances which preclude provision of services for a substantial or indefinite period of time;

(d) Has moved to another jurisdiction and the department is unable to continue provision of services;

(e) Declines to accept or utilize vocational rehabilitation services after reasonable efforts have been made to encourage participation.

(2) A decision to terminate services for any reason described in subsection (1) of this section does not require a review and reconsideration ~~((within)) after~~ twelve months pursuant to WAC 67-25-056.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-325 Services available from other agencies: Vocational rehabilitation funds shall not be expended to purchase services for a ~~((participant)) customer when another agency has primary responsibility for providing the needed service.~~

AMENDATORY SECTION (Amending WSR 98-23-078, filed 11/17/98, effective 12/18/98)

WAC 67-25-350 Vocational rehabilitation—Services provided. Based on the vocational rehabilitation needs of each ~~((eligible participant shall be provided)) customer, the department will make the following vocational rehabilitation services((, identified during the preliminary and comprehensive vocational assessments,)) available to assist the customer in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice((, necessary for the individual to achieve an appropriate employment outcome. Services may include)):~~

~~(1) Assessment ((to determine the individual's skills, abilities, interests, priorities;)) for determining eligibility in accordance with WAC 67-25-020, and order of priority for services in accordance with WAC 67-25-460;~~

~~(2) Assessment for determining vocational rehabilitation needs((- and how these relate to selection of meaningful employment)) in accordance with WAC 67-25-255 and 67-25-257;~~

~~((2)) (3) Vocational rehabilitation counseling and guidance including information and support services to assist an individual in exercising informed choice in accordance with WAC 67-25-380;~~

~~((3)) (4) Referral and related services to help ((participants)) the individual secure needed services from other agencies, including other partners in the statewide workforce investment system and referral to the client assistance program;~~

~~((4)) (5) Physical and mental restoration services in accordance with WAC 67-25-384;~~

~~((5)) (6) Vocational and other training in accordance with WAC 67-25-388, 67-25-390, 67-25-394, 67-25-396, and 67-25-398, subject to limitations in WAC 67-25-360;~~

~~((6)) (7) Maintenance related to the provision of vocational rehabilitation services in accordance with WAC 67-25-400;~~

~~((7)) (8) Transportation ((in connection with)) related to the provision of vocational rehabilitation services in accordance with WAC 67-25-404;~~

~~((8)) (9) Services to family members in accordance with WAC 67-25-408;~~

~~((9)) (10) Interpreter and ((note-taking)) translation services ((for individuals who are deaf and tactile interpreting services for individuals who are deaf-blind)) in accordance with WAC 67-25-412;~~

~~((10)) (11) Reader((driver)) services in accordance with WAC 67-25-408;~~

~~((11)) (12) Assessment and training in adaptive skills of blindness in accordance with WAC 67-25-257 and 67-25-398;~~

~~((12) Recruitment and training services to develop new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other public service employment in accordance with WAC 67-25-440;))~~

(13) Job search and placement assistance, and job retention services in accordance with WAC 67-25-440;

(14) Supported employment services in accordance with WAC 67-25-436;

(15) Personal assistance services, including training in managing, supervising, and directing these services in accordance with WAC 67-25-418;

(16) Post-employment services in accordance with WAC 67-25-444;

(17) Occupational licenses, tools, equipment, initial stocks, and supplies in accordance with WAC 67-25-448;

(18) Rehabilitation technology and telecommunications services in accordance with WAC 67-25-448;

(19) Transition services for students in accordance with WAC 67-25-399;

(20) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources to the extent those resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome; and

(21) Other goods and services necessary for the ((participant)) customer to achieve an employment outcome in accordance with WAC 67-25-452.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-360 Vocational rehabilitation services—Comparable services and benefits. (1) Consideration of comparable services and benefits is required by Section 101 (a)(8) of the act. Therefore, this section prevails over all other sections describing conditions under which vocational rehabilitation services shall be provided.

(2) Comparable services and benefits include((s)) any financial or other resource for which a ((participant)) customer is legally qualified, or entitled, or meets the criteria for obtaining without undue contingencies. The resource must be an organized, ongoing form of service provision or financial assistance, whether public or private. It must be free or may require a deductible, co-insurance feature, token payment or personal claim.

(3) ((Participants)) Customers are required to apply for and accept comparable services and benefits which they are entitled to receive before vocational rehabilitation funds can be expended, except as provided in subsections (5) and (6) of this section.

(4) The vocational rehabilitation counselor((s and rehabilitation teachers have)) has an obligation to inform ((participants)) customers of known sources for comparable services and benefits and shall assist with application for these services when necessary.

(5) The following services are provided without consideration of comparable services and benefits:

(a) Assessment in accordance with WAC 67-25-020, 67-25-055 and 67-25-057;

(b) Counseling and guidance in accordance with WAC 67-25-380;

(c) Referral;

(d) ~~((Vocational and other)) Training services including ((personal and vocational adjustment)) work skills building and work readiness training, books, and other training materials((- except that no training in institutions of higher education (universities, colleges, community colleges, vocational schools, technical institutes, or hospital schools of nursing) shall be paid for with vocational rehabilitation funds unless maximum efforts have been made to secure grant assistance, in whole or in part, from other sources to pay for training)) in accordance with WAC 67-25-388, 67-25-394, 67-25-396, 67-25-398;~~

(e) Placement services in accordance with WAC 67-25-440;

(f) Rehabilitation technology services in accordance with WAC 67-25-448;

(g) Services listed in (a) through (f) of this subsection as post-employment services in accordance with WAC 67-25-444.

(6) Determination of comparable services and benefits shall not be required if:

(a) Utilization of such a service would delay provision of vocational rehabilitation services to an individual determined to be at extreme medical risk, based on medical evidence provided by ~~((an appropriate,))~~ a qualified medical professional, indicating a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously; or

(b) An immediate job placement would be lost due to a delay resulting from utilization of comparable services and benefits.

(7) The following services may be provided only after consideration of comparable services and benefits:

(a) Physical and mental restoration services in accordance with WAC 67-25-384;

(b) Maintenance in accordance with WAC 67-25-400;

(c) Transportation in accordance with WAC 67-25-404;

(d) Services to family members in accordance with WAC 67-25-408;

(e) Interpreter and ~~((note-taking services for individuals who are deaf and tactile interpreting services for individuals who are deaf blind))~~ translation services in accordance with WAC 67-25-412;

(f) Reader services in accordance with WAC 67-25-416;

(g) Training at institutions of higher education in accordance with WAC 67-25-388 and 67-25-390;

(h) Supported employment services in accordance with WAC 67-25-436;

(i) Personal assistance services in accordance with WAC 67-25-418;

(j) Post-employment services, in accordance with WAC 67-25-444, except as specified in subsection (5) of this section;

(k) Occupational licenses, tools, equipment, initial stocks and supplies in accordance with WAC 67-25-448;

(l) Transition services for students in accordance with WAC 67-25-299;

(m) Other goods and services not specified in this section.

(8) Consideration of comparable services and benefits shall be documented in the ~~((participant's))~~ customer's case services record ((of services-Documentation)) and shall include sources of assistance considered, whether the ~~((participant))~~ customer applied, acceptable reasons for failure to apply, outcome of application, and basis for the decision to expend vocational rehabilitation funds for services described in subsection (7) of this section.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-380 Vocational rehabilitation services—Counseling and guidance. (1) ~~((Counseling and guidance is a necessary component of vocational rehabilitation to help each participant develop work skills, a strong self-image, and~~

~~the adaptive skills of blindness needed to achieve an employment outcome.~~

~~((2)))~~ Counseling and guidance services, based on needs of the ~~((participant))~~ individual, shall be available throughout all phases of the rehabilitation process to assist the participant with:

(a) Adjustment to blindness and other disabilities; understanding the importance of developing and using adaptive skills of blindness; and, identifying strategies to overcome negative social attitudes regarding disability;

(b) Identifying his or her unique strengths, resources, priorities, concerns, abilities, and capabilities related to planning for and achieving an employment outcome;

(c) Identifying and overcoming potential barriers to achieving an employment outcome including ~~((impairment))~~ disability-related, personal, and social factors;

(d) Selecting ~~((a vocational goal))~~ an employment outcome consistent with his or her abilities, capabilities, and interests;

(e) Obtaining and utilizing resource information to make meaningful and informed choices regarding selection of vocational rehabilitation goals, objectives, services, and providers;

(f) Overcoming potential barriers and achieving an employment outcome through development of skills such as: Study and work habits; grooming; management of finances; preparation for job interviews and tests; self-advocacy; and effective interpersonal relationships.

~~((3)))~~ (2) Counseling and guidance services may also be provided to:

(a) Assist family members to effectively participate in the rehabilitation process;

(b) Assist prospective employers to develop positive attitudes regarding hiring and accommodating individuals who are blind ~~((or visually impaired)).~~

~~((4)))~~ (3) Counseling and guidance shall be provided without consideration of comparable services and benefits ~~((pursuant to))~~ in accordance with WAC 67-25-360.

AMENDATORY SECTION (Amending WSR 98-23-078, filed 11/17/98, effective 12/18/98)

WAC 67-25-384 Vocational rehabilitation services—Physical and mental restoration services. (1) Physical and mental restoration services shall be provided to a ~~((participant))~~ customer under an individualized ~~((written rehabilitation program))~~ plan for employment when the vocational rehabilitation counselor ~~((or rehabilitation teacher, in consultation with the medical or ophthalmic consultant as appropriate,))~~ determines that such services are likely, within a reasonable period of time, to substantially correct or modify a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment for the ~~((participant))~~ customer.

(2) All authorized physical and mental restoration services shall be provided by qualified ~~((physicians, dentists, or other health professionals licensed in the state)).~~

(3) When receiving physical and mental restoration services, the ~~((participant))~~ customer may choose the physician or other health professional and appropriate facilities ~~((from~~

~~those licensed in the state~~). Service providers and facilities ~~((may, but are not required to,))~~ should, to the maximum extent appropriate, be selected from those who will accept reimbursement in accordance with the Washington State Department of ~~((Social)) Labor and ~~((Health Services)) Industries Schedule of Maximum Allowances and Program Descriptions.~~~~

(4) Physical and mental restoration services may be provided to ~~((a participant))~~ an applicant or customer during ~~((extended evaluation))~~ trial work experience or extended evaluation, in accordance with WAC 67-25-065 and 67-25-070, if it is necessary to stabilize or halt progression of a chronic illness for purposes of determining eligibility or continued eligibility.

(5) Physical and mental restoration services include but are not limited to:

- (a) Surgical and therapeutic treatment;
- (b) Diagnosis and treatment for mental or emotional disorders;
- (c) Dental treatment;
- (d) Nursing services;
- (e) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;
- (f) Convalescent or nursing home care;
- (g) Drugs and supplies;
- (h) Prosthetic, ~~((orthoptic))~~ orthopedic or other assistive devices;

(i) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by qualified medical practitioners;

- (j) Podiatry;
- (k) Physical therapy;
- (l) Occupational therapy;
- ~~((m) Medical or medically related social work services;~~
- ~~((n) Speech or hearing therapy;~~
- ~~((o) Special services for the treatment of individuals with end-stage renal disease, including transplantation and dialysis, artificial kidneys, and supplies;~~
- ~~((p) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment).~~

(6) Physical and mental restoration services shall be provided only after consideration of comparable services and benefits except as specified in WAC 67-25-360.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-388 Vocational rehabilitation services—General training provisions. (1) The individualized ~~((written rehabilitation program))~~ plan for employment may include any organized form of instruction providing the knowledge and skills necessary for a ~~((participant))~~ customer to perform competitively in an occupation and achieve an employment outcome. Knowledge and skills may be acquired through training in an institution, on the job, by cor-

respondence, by tutors, or through a combination of these methods. Training may be given for any occupation, except as prohibited in subsection (2) of this section.

(2) Article IX of the Washington state Constitution forbids use of public funds to assist an individual in the pursuit of a career or degree in theology or related areas.

(3) Programs or schools used to provide training shall ~~((generally))~~ be limited to those which are accredited, licensed, or approved either by a legal authority, or are recognized as adequate by the professional or trade group with which they are associated.

(4) The department may provide books, tools and other training materials and shall periodically establish guidelines for determining the provision of these services.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-390 Vocational rehabilitation services—Training—Institutions of higher education. (1) Training at a university, college, community college, vocational school, technical institute, or hospital school of nursing may be provided if necessary to achieve the employment ~~((objective))~~ outcome agreed upon by the ~~((participant))~~ customer and vocational rehabilitation counselor except as prohibited in accordance with WAC 67-25-388.

(2) No training or training services in institutions of higher education shall be ~~((funded in accordance with WAC 67-25-360))~~ paid for with vocational rehabilitation funds unless the customer has applied for financial aid and other grant assistance from other sources to pay for the training in whole or in part. If the customer has applied for financial aid and is waiting for the results, and denial of training funds by the department would result in interruption or delay of the progress of the customer toward achieving his or her employment outcome, the vocational rehabilitation counselor may pay training costs on an interim basis until the results of the financial aid application is known.

(3) ~~((Participants))~~ A customer may attend private or out-of-state institutions of higher education in preparation for an employment outcome; however, financial assistance shall be limited to the tuition amount at the University of Washington or the actual cost, whichever is less. Exceptions may be made when required training is not available, or if other significant factors preclude the ~~((participant))~~ customer from attending an available training program at a public institution of higher education in the state.

(4) The department may provide financial assistance to a ~~((participant))~~ customer wishing to obtain a post-graduate degree when the training is necessary to achieve the individual's employment ~~((objective))~~ outcome. However, financial assistance shall not be provided to a ~~((participant))~~ customer pursuing a graduate program for the sole purpose of achieving upward mobility unless it can be determined that the customer is not currently employed in work that is consistent with his or her unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and the individual requires vocational rehabilitation services to prepare for, secure, retain, or regain employment of this nature.

(5) A ~~((participant))~~ customer receiving training at an institution of higher education must meet established scholastic standards required by the program ~~((of his or her choice))~~. If the ~~((participant's))~~ customer's grades fall below minimum standards, it shall be necessary, through assessment, counseling, and planning with the ~~((participant))~~ customer, to revise the individualized ~~((written rehabilitation program))~~ plan for employment including the possible selection of a new employment ~~((objective))~~ outcome.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-394 Vocational rehabilitation services—Training—On-the-job. (1) On-the-job training (OJT) is training service(s) an employer provides to a customer, after the individual is placed in a job, to assist the customer to learn the skills needed to perform the work. On-the-job training may be provided ((when necessary)) as a vocational rehabilitation service to achieve the ((participant's)) customer's employment ((objective)) outcome.

(2) OJT services shall be provided as a program of organized training resulting in employment of the customer, giving ~~((a participant))~~ the individual the opportunity to learn an occupation under actual conditions of commercial, industrial, or other on-the-job employment. The department will pay for the training costs, and the employer is responsible for costs related to employment.

(3) OJT services shall be provided to a ~~((participant))~~ customer only when the vocational rehabilitation counselor establishes that the following conditions have been ~~((or shall be))~~ met:

(a) The training program has been prepared in advance and outlined in detail;

(b) The ~~((participant's))~~ customer's training will follow a definite schedule of specified operations, instructions, and practices which will insure well-rounded preparation for the ~~((participant's))~~ customer's selected occupation;

(c) A mutual understanding has been reached between the trainee—~~((participant))~~ customer, the trainer—employment training provider, and the vocational rehabilitation counselor regarding the ~~((participant's))~~ customer's employment training plan including: Length of the training period; financial arrangements; and operations and skills to be learned;

(d) The employer agrees to closely supervise the ~~((participant's))~~ customer's work and shall submit regular reports on the ~~((participant's))~~ customer's progress and performance to the vocational rehabilitation counselor;

(e) The training program meets any requirements for licensing in the trade or occupation in which the ~~((participant))~~ customer is to be employed;

(f) The employment training program for the ~~((participant))~~ customer is acceptable to other employees of the training provider.

(4) A business or industrial establishment utilized by the department to provide OJT services shall:

(a) Have personnel qualified with appropriate knowledge, skills, and personality to provide instruction;

(b) Have sufficiently diversified operations and adequate, suitable materials and equipment to insure a trainee thorough preparations and training within the scope and limits of his or her occupational objective;

(c) Ensure that training ~~((VR participants))~~ vocational rehabilitation customers is only incidental to the business activity of the facility;

(d) Ensure that the training program shall be consistent with the informed choice of the customer, and designed to assist him or her to achieve an employment outcome in an integrated setting.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-396 Vocational rehabilitation services—Training—((Vocational adjustment)) Work skill building. (1) ~~((Vocational adjustment))~~ Work skill building and related employment training services may be provided to a ~~((participant))~~ customer through ~~((a community rehabilitation program))~~ an employment service provider. This option may be appropriate if a ~~((participant))~~ customer is not ready for, or does not wish to receive training in an integrated setting.

(2) ~~((Vocational adjustment))~~ Work skill building training may be provided to assist the ~~((participant))~~ customer with:

(a) Understanding the meaning, value, and demands of work;

(b) Developing appropriate attitudes, habits, and work behaviors; and~~((or))~~

(c) Developing functional capacities necessary to achieve an optimum employment outcome.

(3) Prior to provision of ~~((vocational adjustment training))~~ work skill building, there shall be an assessment of the individual's patterns of work behavior, and the services needed for him or her to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, social skills, and behavior patterns suitable for successful job performance.

(4) ~~((Vocational adjustment training))~~ Work skill building shall meet the following criteria:

(a) The training program shall be outlined in detail and agreed upon by the ~~((participant))~~ customer, or if appropriate, his or her representative, the vocational rehabilitation counselor, and the ~~((community rehabilitation program))~~ employment service provider, and shall include: Anticipated length of training; methods to be used; and objectives to be achieved.

(b) The training program shall, consistent with the informed choice of the ~~((participant))~~ customer, be designed to assist him or her to achieve an employment outcome in an integrated setting.

(c) The ~~((community rehabilitation program))~~ employment service provider agrees to ~~((assess))~~ closely supervise the ~~((participant's))~~ customer's training and submit regular reports on the customer's progress and ~~((shall submit reports))~~ performance to the vocational rehabilitation counselor.

(d) The ~~((community rehabilitation program))~~ employment service provider is certified by the department of social and health services division of vocational rehabilitation to provide ~~((vocational adjustment))~~ work skill building training.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-398 Vocational rehabilitation services—Training—Adaptive skills of blindness. (1) Adaptive skills of blindness are those skills necessary for individuals who are blind ~~((or visually impaired))~~ to function independently ~~((in as))~~, distinguished from the vocational skills necessary to perform a specific occupation. Adaptive skills include:

- (a) Communications, including Braille and keyboarding;
- (b) Personal management;
- (c) Orientation and mobility;
- (d) ~~((Personal))~~ Adjustment to blindness;
- (e) Home management;
- (f) Activities of daily living;
- (g) Use of rehabilitation technology; and
- (h) Use of residual vision and related devices.

(2) Training in adaptive skills of blindness shall be provided to a ~~((participant))~~ customer in accordance with standards established by the department for instruction of the specific adaptive skill.

(3) Training in adaptive skills of blindness may be provided to a ~~((participant))~~ customer under an individualized ~~((written rehabilitation program))~~ plan for employment in accordance with WAC ~~((67-25-080 and))~~ 67-25-260, or during the assessment to determine rehabilitation needs in accordance with WAC 67-25-257.

(4) The department ~~((shall))~~ may operate and maintain an orientation and training center as a structured setting to provide assessment and training in adaptive skills of blindness for ~~((participants))~~ customers.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-399 Vocational rehabilitation services—Transition services for students. (1) Transition services are a coordinated set of outcome-based activities ~~((which directly))~~ for blind students, age fourteen to twenty-one, designed to facilitate ~~((the smooth and efficient movement of a student who is blind or visually impaired from the K through 12 public or private education system to the vocational rehabilitation program. This includes any activity or program designed to introduce the student to a wide variety of available occupational choices, or to provide the student with work experience opportunities))~~ school to employment.

(2) ~~((Transition services))~~ Activities shall be ~~((provided, when appropriate, to any))~~ based on the individual student's ~~((who is blind or visually impaired, age fourteen or older, who is enrolled in a public or private school))~~ needs, taking into account the student's preferences and interests. Activities shall include instruction, community experience, functional assessment, employment development, instruction in daily living skills, and development of other post-school adult living objectives. Additional activities may include

post-secondary education, vocational training, integrated employment (including supported employment), adult services, and independent living.

(3) ~~((Transitioning students shall, to the extent necessary and appropriate, receive a thorough assessment of their abilities, interests and rehabilitation needs in the following areas:~~

- ~~((a) Adaptive skills of blindness;~~
- ~~((b) Social and interpersonal skills;~~
- ~~((c) Vocational exploration and work experience.))~~

Students, age sixteen to twenty-one, who choose to seek an employment outcome will be referred to the vocational rehabilitation program.

(4) ~~((A transition plan or the prevocational component of a student's individualized education plan (IEP), with specific goals and objectives based on the assessment, shall be developed for each student. Services shall be planned jointly by the student, the family, and department staff. Maximum efforts shall be made to coordinate all services with the local school district.~~

(5) Transition services may include, but are not limited to:

(a) ~~Counseling and guidance for participants and their parents/representatives;~~

(b) ~~Training in specific areas identified through the needs assessment after all other resources and approaches to remediation have been explored and found to be unobtainable;~~

(c) ~~Conferences and workshops for participants, parents/representatives, education personnel and vocational rehabilitation counselors;~~

(d) ~~Information and referral;~~

(e) ~~Advocacy for the rights of all students who are blind or visually impaired to assure equal and appropriate access to the same educational, recreational, cultural and social opportunities as their sighted peers.))~~ Case management activities for students who apply for vocational rehabilitation services will be coordinated between the child and family program of the department and the vocational rehabilitation program until the student leaves the K-12 school system.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-400 Vocational rehabilitation services—Maintenance. (1) Maintenance for living expenses may be provided only when these expenses are in excess of the normal subsistence expenses of a ~~((participant))~~ customer, and only when necessary for the individual to participate in services under an individualized ~~((written rehabilitation program))~~ plan for employment. Maintenance includes monetary support for food, shelter, clothing and other subsistence items.

(2) Maintenance shall be provided only after consideration of comparable services and benefits in accordance with WAC 67-25-360.

(3) Individuals with emergency needs for shelter, food, financial support, etc. will be referred to community sources who may provide these services.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-404 Vocational rehabilitation services—Transportation. (1) Transportation services for travel and related expenses may be authorized ~~((for travel and related expenses))~~ if necessary for ((a participant)) an applicant or a customer to receive any vocational rehabilitation service.

(2) Transportation may include:

(a) Fares or travel costs associated with using public or private ~~((conveyances))~~ vehicle;

(b) Food and ~~((or))~~ lodging while in travel status;

(c) Wages, travel, and related expenses for ~~((an))~~ a driver, attendant or aide if the services of that person are necessary for the ((participant)) customer to travel;

(d) Relocation and moving expenses, if necessary for the vocational rehabilitation of the individual.

(3) Transportation services shall be provided only after consideration of comparable services and benefits in accordance with WAC 67-25-360.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-408 Vocational rehabilitation services—Services to family members. (1) A family member is an individual:

(a) Who is a relative or guardian of a ~~((participant))~~ customer, or who lives in the same household as a ~~((participant))~~ customer;

(b) Who is integrally involved in the vocational ~~((adjustment or))~~ rehabilitation of the ~~((participant))~~ customer; and

(c) Whose receipt of vocational rehabilitation services would further the vocational ~~((adjustment or))~~ rehabilitation of the ~~((participant))~~ customer.

(2) Services provided to family members may include any vocational rehabilitation services available to ~~((participants))~~ customers in accordance with WAC ~~((67-25-085 and))~~ 67-25-350. However, the services must be directly related to the vocational rehabilitation of the ~~((participant))~~ customer. Family members of any age may be served.

(3) A vocational rehabilitation service provided to family members shall be terminated when it no longer substantially contributes to the vocational rehabilitation of the ~~((participant))~~ customer.

(4) Services to family members shall be provided only after consideration of comparable services and benefits in accordance with WAC 67-25-360.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-412 Vocational rehabilitation services—Interpreter ~~((services for individuals who are deaf))~~ and translations services. (1) Interpreter services ~~((shall be provided for a participant))~~ include sign language or oral interpretation services for individuals who ((is)) are deaf, or ((for the individual's representative if appropriate, during all phases of the rehabilitation process including during any administrative appeal, fair hearing, and judicial review)) hard

of hearing and tactile interpretation services for individuals who are deaf-blind.

~~((2))~~ (a) Interpreter services must be provided by qualified personnel.

(b) Interpreter services shall be authorized, to the maximum extent possible, in accordance with the department of social and health services schedule of maximum allowances and program descriptions.

~~((3))~~ Interpreter services shall be provided only after consideration of comparable services and benefits in accordance with WAC 67-25-360.

(2) Translation services are provided to non-English speaking individuals, and for the individual's representative if appropriate, during all phases of the rehabilitation process including mediation, fair hearing, and judicial review.

(a) Translation services include oral translation of English into the primary language of an individual.

(b) Upon request, the following written communication shall be translated into the primary language of an applicant or customer:

(i) Application for services;

(ii) Notification of eligibility or ineligibility;

(iii) Individualized plan for employment;

(iv) Notification of case closure;

(v) Notification of annual review, if appropriate; and

(vi) Any notice requiring a response or a signature from an individual to continue receiving services.

(c) The department shall translate the Washington Administrative Code (WAC) regarding VR services or service providers into the primary language of an applicant or customer upon his or her request.

(d) Translation services shall be authorized in accordance with procedures and fee schedules established by the department.

(3) Vocational rehabilitation expenditures for interpreter or translation services for applicants and customers will be authorized in accordance with WAC 67-25-360.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-416 Vocational rehabilitation services—Reader services. (1) Reader services may be provided to an applicant or customer when necessary to ~~((complete an intermediate objective under an individualized written rehabilitation program or, during assessment if necessary to))~~ the provision of other vocational rehabilitation services.

(2) Reader services consist of orally reading ~~((ink-))~~ print material to the blind ~~((participant))~~ customer which is not available ~~((in an))~~ through other appropriate ~~((, alternative format))~~ modes of communication.

(3) If reader services are necessary beyond the initial stages of employment, the department shall, if desired by the individual, assist him or her to negotiate with the employer for reader services as a reasonable accommodation.

(4) Reader services shall be purchased in accordance with the department's procedures ~~((for purchase of reader services))~~ and shall be provided only after consideration of comparable services and benefits in accordance with WAC 67-25-360.

~~((5) Participants shall be encouraged through counseling and guidance to use reader services efficiently and effectively.))~~

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-418 Vocational rehabilitation services—

Personal assistance services. (1) Personal assistance services ~~((may be))~~ include a range of services provided by at least one person to assist ((a participant)) an individual with ((on the job or related)) a disability to perform daily living activities ~~((that)), on or off the job,~~ the individual typically would perform if he or she did not have a disability, and will not be able to perform even after receiving adaptive skills training. This includes personal attendant services: Personal services that an attendant performs for an individual with a disability, including, but not limited to, bathing, feeding, dressing, providing mobility and transportation. These services shall, to the extent appropriate and desired by the ~~((participant))~~ customer, include training in managing, supervising, and directing personal assistance services.

(2) Personal assistance services may be provided, if necessary, for the ~~((participant))~~ customer to achieve an employment outcome, and shall be provided only while the ~~((participant))~~ customer is receiving other vocational rehabilitation services.

(3) ~~((Provision of))~~ The case service record must document how personal assistance services ((under an individualized written rehabilitation program is contingent on an assurance that ongoing services)) will be ((available for the individual at)) provided after the completion of ((the)) vocational rehabilitation ((program)) services or, to the extent that it is not possible to identify how personal assistance services will be provided when the individualized plan for employment is developed, there must be a description of the basis for concluding that there is a reasonable expectation that resources will become available.

(4) Personal assistance services are provided only after consideration of comparable services and benefits in accordance with WAC 67-25-360.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-432 Vocational rehabilitation services—

Rehabilitation technology and telecommunications. (1) Rehabilitation technology is the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address barriers confronted by ~~((participants))~~ customers in education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(2) The department ~~((maintains an assistive technology program to coordinate provision of))~~ will provide, as appropriate, rehabilitation technology services throughout all phases of the vocational rehabilitation process for ((participants)) customers. Services include:

(a) Assessment to determine rehabilitation technology needs;

(b) Job site and training site analysis including testing and research;

(c) Rehabilitation engineering services;

(d) Comprehensive training in the use of assistive technology devices;

(e) Procurement, installation and follow-up related to assistive technology devices.

(3) Any assistive technology device requiring an individualized prescription or fitting must be provided by a professional who meets any ~~((state))~~ licensing or certification requirements to fill the prescription or to perform the fitting. Aids and devices not requiring individual fittings must meet engineering and safety standards recognized by experts in the field.

(4) Telecommunications services include telecommunication devices and relay services for individuals who are deaf or hearing-impaired. Telecommunications shall be utilized as necessary for service delivery.

(5) Rehabilitation technology services shall be provided without consideration of comparable services and benefits pursuant to WAC 67-25-360.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-436 Vocational rehabilitation services—

Supported employment services and extended services.

(1) Supported employment is competitive employment in an integrated setting ~~((for a participant with a severe disability)),~~ consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, with ongoing support services for customers with the most significant disabilities who need((s)) intensive, ongoing support to perform in a work setting. ~~((Typically, competitive employment has not traditionally occurred for these individuals or, has been interrupted or intermittent due to a severe disability.))~~

(2) A customer may be employed in an extended employment setting in which he or she is working toward competitive employment as a planned step in the process of completing an employment outcome in supported employment. While the customer is working toward competitive employment, he or she may be certified to be paid subminimum wages, consistent with provisions of the Fair Labor Standards Act, based on his or her productivity.

(3) An individual shall be eligible to receive supported employment services if:

(a) The individual is eligible for vocational rehabilitation services in accordance with WAC 67-25-030;

(b) The individual needs intensive supported employment services from the department and ongoing services from other resources to perform competitive work due to the nature and ~~((severity))~~ significance of his or her disabilities; and

(c) Supported employment is an appropriate ~~((rehabilitation objective))~~ employment outcome for the individual based on a comprehensive assessment of his or her rehabilitation needs in accordance with WAC 67-25-255.

~~((3))~~ (4) A ~~((participant))~~ customer with ~~((a vocational objective))~~ an employment outcome of supported employ-

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ment may receive any vocational rehabilitation service described in WAC 67-25-350. ~~((Supported employment services typically include as appropriate:~~

(a) Individualized assessment in addition to the comprehensive assessment of rehabilitation needs;

(b) Intensive job skill training at the work site provided by skilled job trainers;

(c) Job development and placement;

(d) Interpersonal skills training;

(e) Regular observation or supervision of the individual;

(f) Follow-up services including regular contact with the employer, the individual, the individual's representative, and other appropriate professionals to reinforce and stabilize the job placement;

(g) Facilitation of natural supports at the worksite; and

(h) Other services similar to those in (a) through (g) of this subsection.

(4)) (5) Supported employment must occur in an integrated work setting for the maximum number of hours possible, based on the unique strengths, resources, interests, concerns, abilities, and capabilities of the ~~((participant))~~ customer with ~~((severe))~~ significant disabilities. An integrated setting, in the context of supported employment, is one where:

(a) Most coworkers are not disabled and the ~~((participant))~~ customer is not part of a work group of individuals with disabilities; or

(b) Most coworkers are not disabled, and if a job site as described in (a) of this subsection is not possible, the ~~((participant))~~ customer is part of a small work group of not more than eight individuals with disabilities; or

(c) If there are no coworkers, or the only coworkers are members of a small work group of not more than eight individuals all of whom have disabilities, the ~~((participant))~~ customer has regular contact with nondisabled individuals (other than personnel providing support services) in the immediate work setting.

~~((5) The participant must be paid wages consistent with the Fair Labor Standards Act. Subminimum wages may be paid in accordance with the act, depending on the severity of the individual's disability and the nature of training and support services available to the individual.))~~

(6) The department shall provide intensive training and support services during the first eighteen months of supported employment to facilitate the ~~((participant's))~~ customer's adjustment at the worksite and determine the need for extended services from other resources. Additional services beyond eighteen months may be authorized ~~((as an exception to policy))~~ with supervisory approval based on ~~((strong))~~ evidence that additional ongoing support is needed to stabilize the individual in employment. If such evidence is not available, the department must close the case. Support must include:

(a) ~~((Worksite visits and observation provided at least twice per month; and))~~ Ongoing assessment of the customer's employment situation, or under special circumstances or request of the customer, an assessment regarding the customer's employment situation that takes place away from the worksite to: Determine what is needed to maintain job stability; and coordinate services or provide specific intensive ser-

VICES that are needed at or away from the customer's worksite to assist the individual in maintaining job stability.

(b) ~~((If appropriate and desired by the participant, off-site monitoring which must include two face to face meetings with the participant and one contact with the employer each month.))~~ Intensive job skill training for the customer at the job site by skilled job trainers.

(c) Job development, job placement and job retention services.

(d) Social skills training.

(e) Regular observations or supervision.

(f) Follow-up services such as regular contacts with the customer's employer, the customer, or the customer's representative, and other appropriate individuals to help strengthen and stabilize the job placement.

(g) Facilitation of natural supports at the worksite.

(h) Other services similar to services described in (a) through (g) of this subsection.

(i) Any other vocational rehabilitation services.

(7) The ~~((participant))~~ customer shall transition to extended services after receiving supported employment services from the vocational rehabilitation program. Extended services are ongoing support services and other appropriate services needed to support and maintain the ~~((participant))~~ customer in supported employment. Long-term funding for extended services may be provided through cooperative agreements with public agencies, nonprofit agencies or organizations; employers; natural supports; and any resource other than federal vocational rehabilitation funds.

(8) An individualized ~~((written rehabilitation program for))~~ plan for employment with an employment outcome of supported employment must specify the expected extended services needed and, must identify the source, including natural supports, of extended services. If the source of extended services cannot be identified when the individualized ~~((written rehabilitation program))~~ plan for employment is developed, supported employment services shall be initiated ~~((if documentation supports a reasonable expectation that such sources will become available within six months))~~ while resources to provide extended services are sought.

(9) A ~~((participant))~~ customer with ~~((a vocational objective))~~ an employment outcome of supported employment may receive post-employment services in accordance with WAC 67-25-444 when the services to be provided are not the responsibility of the extended services provider.

(10) The department shall provide transitional employment services as supported employment services for a ~~((participant))~~ customer with a ~~((severe))~~ significant disability due to mental illness. Transitional employment is a series of temporary competitive job placements in integrated work settings with ongoing support services. In transitional employment, ongoing support services must include continuing sequential job placements until job permanency is achieved.

(11) Supported employment services are provided only after consideration of comparable services and benefits in accordance with WAC 67-25-360.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-440 Vocational rehabilitation services—

Placement. (1) Placement services shall be provided to a ~~((participant))~~ customer under an individualized ~~((written rehabilitation program))~~ plan for employment to assist the individual with obtaining and retaining appropriate employment consistent with his or her ~~((vocational objective))~~ employment outcome.

(2) The department and ~~((participant))~~ customer shall be mutually responsible to find and secure suitable employment for the individual. The individualized ~~((written rehabilitation program))~~ plan for employment shall describe the nature and scope of placement services to be provided by the department, and the participant's responsibility to actively and independently conduct job-seeking efforts.

(3) Placement services include the following range of activities:

(a) Job development and employer relations (which may or may not be on behalf of a specific ~~((participant))~~ customer);

(b) Job task analysis to determine how a person who is blind ~~((or visually impaired))~~ can be accommodated in a position;

(c) Job-seeking skills training to prepare a ~~((participant))~~ customer for employment;

(d) Communication and negotiation with a variety of employment resources and other community resources regarding employment of people who are blind ~~((or visually impaired))~~;

(e) Work skill building, counseling, and other follow-up and follow along services to stabilize the ~~((participant))~~ customer in employment until the ~~((placement goal))~~ employment outcome has been satisfactorily achieved.

(4) Placement services may be provided using the following methods:

(a) Vocational rehabilitation counselors ~~((shall deliver placement services to participants as a primary function and the principal focus of their professional responsibilities and activities))~~ employed by the department.

(b) An employee specializing in business relations may provide placement services through communication and negotiation with a variety of employers and community resources, regarding employment of people who are blind ~~((or visually impaired))~~.

(c) No-cost placement resources in the community such as ~~((the state department of employment security))~~ one-stop WorkSource centers, projects with industry, ~~((private industry council))~~ and other entities shall be utilized whenever possible.

(d) Placement services may be purchased when it is in the ~~((participant's))~~ customer's vocational interests, when the department's services are not otherwise available, or when placement is offered by ~~((a vendor))~~ an employment service provider as part of a service package.

(5) Placement services shall be terminated when the ~~((participant))~~ customer has been provided vocational rehabilitation services, in accordance with an individualized ~~((written rehabilitation program))~~ plan for employment, which have enabled the individual to obtain and retain

employment in an integrated setting consistent with his or her capacities and abilities for at least ~~((sixty))~~ ninety days.

~~((6))~~ ~~((If a participant is placed in extended employment (formerly extended sheltered employment) in a community rehabilitation program, his or her status shall be reviewed and reevaluated by the department at least annually. The department shall make maximum efforts to place these individuals in competitive employment, including supported employment, or in training for competitive employment consistent with the informed choice of the individual or the individual's representative if appropriate.))~~

~~((7))~~ Placement services shall be provided without consideration of comparable services and benefits in accordance with WAC 67-25-360.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-444 Vocational rehabilitation services—

Post-employment services. (1) Post-employment services may be provided to a ~~((participant))~~ customer, subsequent to achieving an employment outcome, if necessary for the ~~((participant))~~ customer to maintain, regain, or advance in employment consistent with the individual's abilities, capacities, and interests.

(2) Post-employment services are intended to provide short-term intervention related to the established ~~((rehabilitation objective))~~ employment outcome. Accordingly, post-employment services do not require a new determination of eligibility, and may be provided as long as the established individualized ~~((written rehabilitation program))~~ plan for employment and necessary documentation are available and pertinent.

(3) Post-employment services include all vocational rehabilitation services identified in WAC 67-25-350 and are subject to any conditions affecting provision of that vocational rehabilitation service.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-446 Vocational rehabilitation—Services to groups. (1) The department may provide the following vocational rehabilitation services to groups of individuals:

(a) Establishment, development, or improvement of a public or other nonprofit ~~((community rehabilitation program))~~ employment service provider providing services that promote integration and competitive employment.

(b) Development and implementation of services that enhance the use of ~~((special))~~ modes of communication ~~((and/or))~~ or telecommunications for individuals with disabilities.

(c) Technical assistance and support services, such as job site modification and other reasonable accommodations, for businesses not subject to Title I of the Americans with Disabilities Act of 1990 that are seeking to employ individuals with disabilities.

(d) Establishment of small business enterprises, operated by individuals with the most ~~((severe))~~ significant disabilities under supervision of the department, including, management

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services and supervision, and the acquisition of vending facilities, equipment, initial stocks, and supplies.

(e) Other services that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized ~~((written rehabilitation program))~~ plan for employment of any one individual.

(2) Services to groups are provided in accordance with department procedures for the provision of these services.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-448 Vocational rehabilitation services—Occupational licenses, tools, equipment, initial stocks and supplies. (1) Goods and services described in this section may be provided only under an individualized ~~((written rehabilitation program))~~ plan for employment when necessary for the ~~((participant))~~ customer to achieve an ~~((appropriate))~~ employment outcome. ~~((Initial stocks and supplies may be provided only when a participant enters a self-employment business.))~~ The department will pay for a customer to be bonded if the employment he or she is entering requires a bond and the customer supplies all necessary information to the bonding firm.

(2) Occupational licenses ~~((include any))~~ are licenses, permits, or certificates showing that the individual meets certain standards, has accomplished certain achievements, or has paid dues, fees, or has other written authority required by a state, city, or other government unit ~~((for))~~ that qualifies the individual to ~~((enter an occupation or))~~ engage in a business, specific trade, or other work.

(3) Occupational tools include those customarily required for a worker to perform efficiently on the job, and which ~~((are normally provided by))~~ workers in the same or similar trade or profession are normally provided. These may include specialized tools adapted to accommodate the individual's disability.

(4) Occupational equipment includes occupational fixtures normally found in places of business. These include machinery, and appliances that are usually stationary during utilization. However, self-powered vehicles may also be provided.

(5) Initial stocks include the initial inventory of merchandise or goods necessary for a participant to enter self-employment. It may also include the initial purchase of livestock as a base stock, and stocks of seed, fertilizer, fuel, etc., for farming or agricultural self-employment.

(6) Initial supplies include expendable items necessary for the ~~((participant))~~ customer to carry out day-to-day business operations, and which are consumed on the premises in the course of the ~~((participant's))~~ customer's self-employment business or in a business enterprise location.

(7) Purchase, accountability, legal title, insurance, maintenance, and other considerations regarding provision of goods and services described in this section are addressed in the department's procedures governing their provision.

(8) Goods and services described in this section shall be provided only after consideration of comparable services and benefits in accordance with WAC 67-25-360.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-452 Vocational rehabilitation services provided—Other goods and services. (1) Other goods and services not described in this chapter may be provided to a ~~((participant))~~ customer when necessary to determine the individual's eligibility for services and rehabilitation needs, or when necessary for the individual to achieve an appropriate employment outcome.

(2) Other goods and services, except those required for assessment of the individual, shall be provided only after consideration of comparable services and benefits in accordance with WAC 67-25-360.

AMENDATORY SECTION (Amending WSR 01-21-073, filed 10/18/01, effective 11/18/01)

WAC 67-25-460 ~~((What if the department of services for the blind (DSB) vocational rehabilitation (VR) program does not have sufficient resources to serve all eligible individuals?))~~ **Order of priority.** (1) The purpose of an order of priority is to establish an equitable and organized system which, when resources are not sufficient to meet the demand for services, gives the first priority to those eligible ~~((VR participants))~~ vocational rehabilitation customers who meet the definition of ~~((=))~~ most ~~((severely))~~ significantly disabled, ~~((=))~~ in accordance with WAC ~~((67-25-470(1)))~~ 67-25-460.

(2) ~~((In the event that sufficient funds or other resources are not available to serve all VR eligible individuals, DSB will use a prioritized order, as established in subsection (3) of this section, for selection of individuals to develop and carry out an individualized plan for employment (IPE) supported by expenditure of VR funds.~~

~~((3))~~ When the order of priority is in effect, eligible individuals will be assigned to one of two priority categories:

(a) First priority: New eligible ~~((participants))~~ customers who meet the definition of ~~((=))~~ most ~~((severely))~~ significantly disabled. ~~((=))~~

(b) Second priority: New eligible ~~((participants))~~ customers who do not meet the definition of ~~((=))~~ most ~~((severely))~~ significantly disabled. ~~((=))~~

(3) The director shall decide when to implement an order of priority, if necessary, and will determine which priority categories will be open or closed for the development of new individualized plans for employment. In the event sufficient funds or other resources become available to serve all eligible individuals, the order of priority will be revoked by the director.

(4) Eligible individuals can develop and carry out an ~~((IPE))~~ individualized plan for employment based on:

(a) The priority of the category to which they are assigned ~~((, and whether or not that category is open for development of new IPEs.))~~;

(b) ~~((And,))~~ Whether or not that category is open for development of new plans; and

(c) The order in which they applied for ~~((DSB))~~ vocational rehabilitation services as indicated by the date of application.

(5) ~~(Individuals who are receiving services under an IPE at the time an order of priority is implemented will continue to receive services as planned. They are not subject to the order of priority and are not a category within that order.~~

~~(6)) Customers will be placed in the highest priority category for which they are qualified. The date of application will be used whenever it is determined that a waiting list is required for a category.~~

~~(6) Customers will be notified in writing of their category status when they are notified of their eligibility, as well as of the conditions pertaining to that category:~~

~~(a) Whether the category is open or closed.~~

~~(b) Their position on any existing waiting list.~~

~~(7) The only services to individuals in a closed order of priority category will be information and referral services. These individuals will not receive counseling and guidance, assessment and training, placement, or other ((VR)) vocational rehabilitation services until their category is reopened and they come off the waiting list.~~

~~(8) Customers will be notified of the right to appeal the category decision, in accordance with WAC 67-25-570, and of their responsibility to notify the department if their situation changes in a way that may affect their priority category placement.~~

~~(9) Individuals who are receiving services under an individualized plan for employment at the time an order of priority is implemented will continue to receive services as planned. They are not subject to the order of priority and are not a category within that order.~~

~~(10) The order of priority will not affect the provision of services needed to determine eligibility for vocational rehabilitation services, WAC 67-25-010 through 67-25-030.~~

AMENDATORY SECTION (Amending WSR 98-23-078, filed 11/17/98, effective 12/18/98)

WAC 67-25-540 Individualized ~~(written rehabilitation program)~~ plan for employment—Successful rehabilitation. (1) An individual shall be considered successfully rehabilitated when he or she has maintained an employment outcome for at least ninety days that is:

(a) The result of services provided under an individualized ~~(written rehabilitation program)~~ plan for employment;

(b) Commensurate with the individual's unique strengths, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(c) ~~(As often as))~~ Whenever possible, employment achieved is competitive as defined by being in the competitive labor market, performed on a full-time or part-time basis in an integrated setting, and the individual is compensated at or above the minimum wage, and ((that)) the individual's wage and level of benefits are not less than that paid by the employer for the same or similar work performed by nondisabled individuals;

(d) In the most integrated setting possible, consistent with the individual's informed choice; and

(e) Considered to be a satisfactory employment outcome by both the ~~((participant))~~ customer and vocational rehabilitation counselor~~((, who also agree))~~ with agreement that the

~~((participant))~~ customer is performing ~~((satisfactory))~~ satisfactorily on the job.

(2) The individual shall be notified of the termination decision and appeal procedures in accordance with WAC ~~((67-25-288))~~ 67-25-545.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-545 Notification of termination. The department shall provide written notification~~((using special modes of communication if appropriate,))~~ to every individual who has applied for services, in the individual's primary language if necessary, and using appropriate modes of communication, when a determination is made to terminate services to the individual. The written notice shall specify in detail the reasons for the ~~((department's))~~ decision to terminate services and shall clearly inform the ~~((participant))~~ individual of ~~((his or her))~~ the right to ((an administrative review, a) mediation and fair hearing~~((, and judicial review of the decision))~~ in accordance with WAC 67-25-570. A description of client assistance program services shall also be provided.

AMENDATORY SECTION (Amending WSR 98-23-078, filed 11/17/98, effective 12/18/98)

WAC 67-25-550 Confidential information—Protection, use and release. (1) Confidential information refers to all documented and undocumented personal information, including lists of names and photographs, about any past or present ~~((participant))~~ applicant or customer in the vocational rehabilitation program, given or made available to the department, its representatives, or its agents in the course of the administration of the program.

(2) ~~((Participants))~~ customers, their representatives as appropriate, service providers, cooperating agencies, and interested persons shall be informed of the confidentiality of personal information and policies governing its use. This information shall be provided to the ~~((participant))~~ applicant or customer, and to the individual's representative in the individual's ~~((native))~~ primary language if necessary, ((in the)) using appropriate ~~((alternative format, or using special))~~ modes of communication ~~((if appropriate))~~, and shall include:

(a) Identification of the authority under which information is collected;

(b) Explanation of the principal purposes for which the department intends to use or release information;

(c) Explanation of whether providing requested information is mandatory or voluntary and the effects of not providing requested information;

(d) Identification of those situations where the department requires or does not require informed written consent of the individual before information may be released; and

(e) Identification of other agencies to which information is routinely released.

(3) All personal information must be used only for purposes directly connected with the administration of the vocational rehabilitation program. Personal information shall not be shared with an organization, agency or individual not hav-

ing official responsibility for administration of the program, except as provided for in subsection (6) of this section.

(4) Except as provided in (a) and (b) of this subsection, the department shall, upon receipt of a written request by a ~~((participant))~~ customer, release all information in that individual's record, to the individual or the individual's representative within fifteen working days.

(a) Medical, psychological, or other information that the department determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual's representative or to a qualified medical or psychological professional or to a person appointed by the court to act as that individual's representative.

(b) Personal information obtained from service providers and cooperating agencies under assurances that the information shall not be further divulged may be released only under conditions established by the other agency or organization except as provided in subsections (5) and (6) of this section.

(5) The ~~((participant))~~ customer may request that misleading or inaccurate information in ~~((the individual's))~~ his or her record of services be amended and ~~((to have the))~~ that such request for amendment be documented in the individual's ~~((file))~~ record.

(6) Personal information may be released to an organization, agency, or individual for purposes of audit, evaluation, or research directly connected with administration of the vocational rehabilitation program, such as the department's ~~((advisory))~~ rehabilitation council or for purposes that would significantly improve the quality of life for ~~((participants))~~ customers, and only if the organization, agency, or individual assures that:

(a) Information shall be used only for the purposes for which it is being provided;

(b) Information shall be released only to persons officially connected with the audit, evaluation, or research;

(c) Information shall not be released to the ~~((participant))~~ customer;

(d) Information shall be managed in a manner to safeguard confidentiality; and

(e) The final product shall not reveal any personal identifying information without the informed written consent of the ~~((participant))~~ customer or the individual's representative.

(7) The department may release personal information to other agencies and programs under the following conditions:

(a) Upon receiving the informed written consent of the ~~((participant))~~ customer, or, the individual's representative if appropriate, the department may release personal information to another agency or organization only to the extent that the information may be released to the ~~((participant))~~ customer, and only to the extent that the agency or organization demonstrates that the information requested is necessary for its program.

However, medical or psychological information that the department determines may be harmful to the individual may be released if the agency or organization assures the department that information shall be used only for the purpose for which it is being provided and shall not be released to the ~~((participant))~~ customer.

(b) The department shall release personal information if required by federal law or regulation.

(c) The department shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by federal or state laws or regulations, or in response to judicial order.

(d) The department may release personal information to protect the participant or others if the individual poses a threat to his or her safety or to the safety of others.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-570 ((Fair hearing.)) Resolving a disagreement about vocational rehabilitation services. (1) ~~((Any participant who feels aggrieved by or is otherwise dissatisfied with any decision or action by the department or its agents concerning the provision or denial of vocational rehabilitation services or is dissatisfied with the results of an administrative review, may request from the department, and shall thereupon be granted, a fair hearing. A participant who desires a fair hearing shall request the hearing within sixty days after the date of the decision or action by the department which is the basis for the request for fair hearing.~~

~~(2) A request for fair hearing shall be sent to the Director, Department of Services for the Blind, 521 East Legion Way, Olympia, WA 98504 4093, who shall forward it to the office of administrative hearings within five working days.~~

~~(3) The office of administrative hearings shall appoint an administrative law judge and shall schedule a fair hearing within forty five days after receiving the request.~~

~~(4) The individual, or the individual's representative shall be given an opportunity to:~~

~~(a) Present additional evidence, information, and witnesses to the administrative law judge;~~

~~(b) Be represented by counsel or other appropriate advocate;~~

~~(c) Examine all witnesses and other relevant sources of information and evidence.~~

~~(5) Within thirty days after completion of the hearing, the administrative law judge shall make an initial decision based on provisions of the approved state plan, the act, and federal and state vocational rehabilitation regulations and policies, and shall provide to the individual, or the individual's representative, and to the director of the department a full written report of the findings and grounds for the decision.~~

~~(6) The director shall notify the participant or the individual's representative in writing within twenty days after receiving the administrative law judge's decision that:~~

~~(a) The decision is accepted as the final determination; or~~

~~(b) The director has decided to review the initial decision of the administrative law judge.~~

~~(7) If the director fails to provide notice in accordance with subsection (6) of this section, the administrative law judge's decision becomes a final decision.~~

~~(8) The director shall not overturn or modify a decision, or part of a decision, of an administrative law judge that supports the position of the individual unless the director concludes, based on clear and convincing evidence that one or more of the following criteria apply:~~

~~(a) The initial decision appears arbitrary or capricious;~~

~~(b) The initial decision does not appear to be supported by substantial evidence;~~

~~(e) The administrative law judge has not given adequate consideration to: Federal statute and regulations; the department state plan; the department policies and procedures; options in service delivery authorized by federal statute; restrictions on service provision specified by federal statute; or, other state or federal policies.~~

~~(9) If the director decides to review the decision of the administrative law judge, the participant, or the individual's representative, shall be given opportunity to submit additional evidence and information relevant to the final decision.~~

~~(10) Within thirty days after providing notice of intent to review the administrative law judge's decision, the director shall make a final decision, and shall provide to the individual, or the individual's representative, a full written report of the findings and grounds for the decision.~~

~~(11) A participant who is dissatisfied with the final result of the fair hearing may file a petition for reconsideration with the office of administrative hearings in accordance with RCW 34.05.470, or the individual may file a petition for review in superior court.~~

~~(12) The department shall not suspend, reduce, or terminate any services being provided under an individualized written rehabilitation program pending a final determination of any administrative review or fair hearing, unless the individual, or the individual's representative so requests, or the department has evidence that the services were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.~~

~~(13) Communication with the participant or the individual's representative during any administrative review, fair hearing or judicial review shall be conducted in a language reasonably expected to be understood by the individual including use of special modes of communication as appropriate.) If at any time during the vocational rehabilitation process, the department makes a decision relating to the provision of vocational rehabilitation services that a customer does not agree with, the customer or the customer's representative has the right to use one or more of the following options to resolve the issue:~~

~~(a) Talk to the vocational rehabilitation counselor or to the counselor's supervisor to resolve the disagreement;~~

~~(b) Ask for help or information from the client assistance program;~~

~~(c) Request mediation; and/or~~

~~(d) Request a fair hearing.~~

~~(2) Efforts to reach agreement with the vocational rehabilitation counselor or supervisor will not be used to deny or delay mediation or a fair hearing.~~

~~(3) Mediation is voluntary and must be agreed to by both the customer and the department. Mediation is not used to deny or delay a fair hearing. A customer may request both mediation and a fair hearing at the same time. If agreement is:~~

~~(a) Reached during mediation, the fair hearing is canceled.~~

~~(b) Not reached during mediation, the fair hearing is held as scheduled.~~

(4) Mediation is conducted by a trained mediator who knows the laws and rules about vocational rehabilitation services and who does not work for the department. The mediator does not make case service decisions.

(5) During mediation, the mediator:

(a) Allows each party to present information or evidence;

(b) Helps each party listen to and understand the other party's position;

(c) Reviews and explains any laws that apply; and

(d) Facilitates an agreement, if possible, between the parties.

(6) If agreement is reached during mediation, the department will provide a written statement of the agreement to the customer. Agreements made through mediation are not legally binding.

(7) The customer may choose to be represented by a family member, advocate or other individual at the mediation meeting.

(8) The department schedules mediation sessions in a timely manner at a convenient location to all parties.

(9) The department pays for costs related to mediation, except costs related to a representative or attorney engaged by the customer.

(10) The department will pay for vocational rehabilitation services necessary for the customer to participate in mediation, such as transportation or child care.

(11) Information discussed during mediation is kept confidential and may not be used in a later hearing or civil proceeding, if one is held. Before beginning a mediation session, all parties must sign a statement of confidentiality.

(12) A fair hearing is a proceeding as outlined under the Administrative Procedure Act, chapter 34.05 RCW and Chapter 388-02 WAC. An administrative law judge who works for the office of administrative hearings holds a fair hearing.

(13) A customer who does not agree with a decision made by the Department about eligibility or vocational rehabilitation services may ask for a fair hearing within twenty days of that decision.

(14) To ask for a fair hearing, the customer must send a written request to the office of administrative hearings. The written request must include:

(a) The customer's name, address, and telephone number;

(b) A written statement about the decision and the reasons for disagreement; and

(c) Any other information that supports the customer's position.

(15) The office of administrative hearings must hold a formal hearing within sixty days of receipt of written request for a hearing, unless:

(a) The customer or the department ask for a delay; and

(b) There is a reasonable cause for the delay.

(16) After the customer submits a request for a fair hearing, the department will offer the customer a prehearing meeting. The prehearing is optional for the customer and can be conducted in person, by telephone, or by another method agreeable to both parties. The purpose of the prehearing meeting is to:

PROPOSED

(a) Clarify the decision with which the customer disagrees;

(b) Provide copies of laws, rules or other information to be presented in the fair hearing;

(c) Explain how the fair hearing is conducted; and

(d) Settle the disagreement, if possible.

(17) During the formal hearing, the customer and the department may present information, witnesses and/or documents to support their position.

(18) The customer may choose to be represented by an attorney, a relative, or someone else;

(19) The administrative law judge makes a decision after:

(a) Hearing all of the information presented;

(b) Reviewing any documents submitted; and

(c) Reviewing relevant federal and state laws and regulations.

(20) The office of administrative hearings sends a written report of the findings and decisions to the customer and to the department within thirty days of the formal hearing.

(21) The office of administrative hearings decision is final and the department must implement the decision.

(22) If a customer does not agree with the office of administrative hearings decision, the individual may pursue civil action through superior court to review that decision.

(23) The department will not suspend, reduce, or terminate services to a customer while waiting for a formal hearing decision, unless the department believes the customer:

(a) Provided false information to obtain vocational rehabilitation services; or

(b) Committed fraud or other criminal action to obtain vocational rehabilitation services.

AMENDATORY SECTION (Amending WSR 95-06-057, filed 2/28/95, effective 3/31/95)

WAC 67-25-590 ((Client)) Case service records. The department shall maintain for each ((participant)) applicant or eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(1) If an applicant has been determined ineligible:

(a) ((A written and dated statement of ineligibility signed by the appropriate staff member;

(b)) Documentation specifying reasons for the ineligibility determination; and

((c)) (b) Documentation of a review of the determination ((not later than)) in twelve months after the determination was made, except as provided in WAC 67-25-056.

(2) When an ((individual)) applicant is determined eligible:

(a) A written and dated statement of eligibility signed by the ((appropriate staff member)) vocational rehabilitation counselor; and

(b) Supporting rationale for the determination, including documentation from the assessment for determining eligibility, in accordance with WAC 67-25-020.

(3) If it is determined that ((an extended evaluation)) a trial work experience or an extended evaluation for an individual with a ((severe)) significant disability is necessary to

make an eligibility determination in accordance with WAC 67-25-065 and 67-25-070:

(a) A written and dated statement of this determination signed by the ((appropriate staff member)) vocational rehabilitation counselor;

(b) Supporting documentation, including the determination that the individual is an individual with a ((severe)) significant disability; and

(c) Documentation of periodic assessments in accordance with WAC ((67-25-100)) 67-25-065 and 67-25-070.

(4) The individualized ((written rehabilitation program)) plan for employment for the ((individual)) customer in accordance with WAC 67-25-260((, 67-25-270, and 67-25-275)).

(5) Documentation from the assessment for determining vocational rehabilitation needs in accordance with WAC 67-25-255 and 67-25-257 to support:

(a) The determination of the ((long-term vocational goal)) employment outcome and intermediate rehabilitation objectives for the individual; and

(b) The nature and scope of services needed to achieve the intermediate objectives and ((long-term goal)) employment outcome.

(6) Documentation of how the ((individual)) customer was provided information necessary to make informed choices in selecting the ((long-term vocational goal)) employment outcome, intermediate rehabilitation objectives, rehabilitation services, and providers of services identified in the individualized ((written rehabilitation program)) plan for employment.

(7) Documentation of how the ((individual)) customer was provided information regarding the level of integration of service provision and job placement options. ((If the individualized written rehabilitation program provides for services or a job placement in a nonintegrated setting, a justification for that nonintegrated setting.))

(8) If physical and mental restoration services ((are)) were provided, in accordance with WAC 67-25-384, documentation supporting the determination that the clinical status of the ((individual is)) customer was stable or slowly progressive.

(9) Documentation supporting any decision to provide services to family members in accordance with WAC 67-25-408.

(10) Documentation of the individual's participation in the cost of any vocational rehabilitation services.

(11) Documentation of the individual's eligibility for and use of any comparable services and benefits in accordance with WAC 67-25-360.

(12) Documentation that the individual has been advised of the confidentiality of all personal information, and that any information about the individual has been released with the individual's informed written consent, in accordance with WAC 67-25-550.

(13) Documentation of the reason for terminating services to ((an individual)) a customer, in accordance with WAC 67-25-545, and, if the ((individual)) customer was determined rehabilitated, the basis for that determination in accordance with WAC 67-25-540.

(14) Documentation of any plans to provide post-employment services after the employment outcome has been

achieved, the basis on which these plans were developed, and a description of services provided and outcomes achieved in accordance with WAC 67-25-444.

(15) Documentation concerning any action and decision resulting from a request for ~~((administrative review of))~~ a fair hearing in accordance with WAC ~~((67-25-560 or))~~ 67-25-570.

(16) If ~~((an individual))~~ a customer has been provided vocational rehabilitation services under an individualized ~~((written rehabilitation program))~~ plan for employment, but after the initiation of these services he or she has been determined no longer capable of achieving an employment outcome, documentation of any reviews of this determination in accordance with WAC 67-25-056.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 67-25-075	Extended evaluation—Eligibility criteria.
WAC 67-25-080	Extended evaluation—Individualized written rehabilitation program.
WAC 67-25-085	Extended evaluation—Services provided.
WAC 67-25-090	Extended evaluation—Services not provided.
WAC 67-25-095	Extended evaluation—Duration of services.
WAC 67-25-100	Extended evaluation—Assessment.
WAC 67-25-110	Extended evaluation—Termination.
WAC 67-25-288	Individualized written rehabilitation program—Termination—Notification of rights.
WAC 67-25-300	Purpose of vocational rehabilitation.
WAC 67-25-326	Services to special groups of individuals with disabilities.
WAC 67-25-395	Vocational rehabilitation services—Training—College and trade school.
WAC 67-25-470	How will DSB determine whether a person meets the definition of "most severely disabled"?
WAC 67-25-480	How will DSB implement an order of priority?
WAC 67-25-560	Administrative review.

WSR 05-03-117
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed January 19, 2005, 11:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-01-089.

Title of Rule and Other Identifying Information: Commercial fishing rules.

Hearing Location(s): Room 175A, Natural Resources Building, 1111 Washington Street, Olympia, on February 22, 2005, at 2:00 p.m.

Date of Intended Adoption: February 22, 2005.

Submit Written Comments to: Evan Jacoby, 600 Capitol Way, Olympia, WA 98501-1091, e-mail jacobesj@dfw.wa.gov, fax (360) 902-2155, by February 18, 105 [2005].

Assistance for Persons with Disabilities: Contact Deborah Kuttle by February 11, 2005, TTY (360) 902-2207 or (360) 902-2819.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending rules on commercial sardine harvest. Amending participation, seasons, reporting, observer coverage, sale, and by catch.

Reasons Supporting Proposal: Reduces burden on commercial sardine fishers.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: Department of Fish and Wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Phil Anderson, 1111 Washington Street, Olympia, (360) 902-2720; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: There are no additional reporting requirements in this proposal. Mandatory prefishing telephone call-in has been eliminated. The annual logbook reporting period has been extended. Persons who wish to be considered for replacement permits will need to make an application in a calendar year in order to be selected in the following calendar year. Pilchard are required to be primarily used for human consumption or fishing bait. Sale to facilities using the product for other purposes is curtailed. Current squid by-catch allowance is clarified to allow only market squid.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: None.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? Sales to businesses that use pilchard for purposes other than human consumption or fishing bait are restricted. Currently there are no such facilities. Accordingly, no loss of current business sales or revenue will occur. This could cause loss of revenue if the fishery were increased with the intent to render the product. The clarification of squid by-catch has no effect, as no significant sales of squid currently occur.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

- a. Cost per employee;
- b. Cost per hour of labor; or
- c. Cost per one hundred dollars of sales.

No cost of compliance over the costs in the current rules (logbook reporting).

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: There are no costs.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The proposals have been discussed with industry. The sardine fishers will all be notified of the proposals and will have opportunity to testify.

8. A List of Industries That Will Be Required to Comply with the Rule: Sardine fishers and processors.

A copy of the statement may be obtained by contacting Evan Jacoby, 600 Capitol Way, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail jacobesj@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposals do not affect hydraulics.

January 19, 2005

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 02-53, filed 3/29/02, effective 5/1/02)

WAC 220-20-010 General provisions—Lawful and unlawful acts—Salmon, other food fish and shellfish. (1) It shall be unlawful to take, fish for, possess or transport for any purpose food fish, shellfish or parts thereof, in or from any of the waters or land over which the state of Washington has jurisdiction, or from the waters of the Pacific Ocean, except at the times, places and in the manners and for the species, quantities, sizes or sexes provided for in the regulations of the department.

(2) It shall be unlawful for any person to have in possession or under control or custody any food fish or shellfish within the land or water boundaries of the state of Washington, except in those areas which are open to commercial fishing or wherein the possession, control or custody of salmon or other food fish or shellfish for commercial purposes is made lawful under a statute of the state of Washington or the rules and regulations of the commission or director, unless otherwise provided.

(3) It shall be lawful to fish for, possess, process and otherwise deal in food fish and fish offal or scrap for any purpose, provided; that it shall be unlawful to use any of the following listed species for purposes other than human consumption or fishing bait:

Pacific halibut	(<i>Hippoglossus stenolepis</i>)
Pacific herring (except as prescribed in WAC 220-49-020)	(<i>Clupea harengus pallasi</i>)
Salmon	
Chinook	(<i>Oncorhynchus tshawytscha</i>)
Coho	(<i>Oncorhynchus kisutch</i>)
Chum	(<i>Oncorhynchus keta</i>)
Pink	(<i>Oncorhynchus gorbuscha</i>)
Sockeye	(<i>Oncorhynchus nerka</i>)
Masu	(<i>Oncorhynchus masu</i>)
<u>Pilchard</u>	(<i>Sardinops sagax</i>)
<u>Except as provided for in WAC 220-88C-040</u>	

(4) It shall be unlawful for any person to fish for food fish or shellfish while in possession in the field of food fish or shellfish that are in violation of the harvest regulations for the area being fished. This regulation does not apply to vessels in transit.

(5) It shall be unlawful for the owner or operator of any commercial food fish or shellfish gear to leave such gear unattended in waters of the state or offshore waters unless said gear is marked.

(a) Shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy to which shall be affixed in a visible and legible manner the department approved and registered buoy brand issued to the license, provided that:

(i) Buoys affixed to unattended gear must be visible on the surface of the water except during strong tidal flow or extreme weather conditions.

(ii) When two or more shellfish pots are attached to a common ground line the number of pots so attached must be clearly labeled on the required buoy.

(b) It is unlawful to operate any gill net, attended or unattended, unless there is affixed, within five feet of each end of the net, a buoy, float, or some other form of marker, visible on the corkline of the net, on which shall be marked in a visible, legible and permanent manner the name and gill net license number of the fisher.

(c) It shall be unlawful at any time to leave a gill net unattended in the commercial salmon fishery.

(6) It shall be unlawful to place any commercial food fish or shellfish gear in any waters closed to commercial fishing, provided; that this provision shall not apply to reef nets or brush weirs or to gear being tested under supervision of the department, provided further that it shall be unlawful to take, fish for or possess food fish with any type of commercial fishing gear in the waters of Carr Inlet north of north latitude 47° 20' from August 15 through November 30 except as provided in chapter 220-47 WAC.

(7) It shall be unlawful for the owner or operator of any fishing gear to refuse to submit such gear to inspection in any

manner specified by authorized representatives of the department.

(8) It shall be unlawful for any person taking or possessing food fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington or the Pacific Ocean for any purpose to fail to submit such food fish or shellfish for inspection by authorized representatives of the department.

(9) It shall be unlawful for any person licensed by the department to fail to make or return any report required by the department relative to the taking, selling, possessing, transporting, processing, freezing and storing of food fish or shellfish whether taken within the jurisdiction of the state of Washington or beyond or on Indian reservations or usual and accustomed Indian fishing grounds.

(10) It shall be unlawful to take, fish for or possess or to injure, kill or molest fish in any fishway, fish ladder, fish screen, holding pond, rearing pond, or other fish protective device, or to interfere in any manner with the proper operation of such fish protective devices.

(11) It shall be unlawful to club, gaff, shoot, snag, snare, dip net, harass, spear, stone or otherwise molest, injure, kill or destroy any food fish or shellfish or parts thereof, or for any person to attempt to commit such acts, or to have any fish, shellfish or parts thereof so taken in possession, except as provided for in this subsection:

(a) It shall be lawful to use a dip net or club in the landing of food fish taken by personal-use angling unless otherwise provided and it shall be lawful to use a gaff in the landing of tuna, halibut and dogfish in all catch record card areas.

(b) It shall be lawful to use a dip net, gaff, or club in the landing of food fish or shellfish taken for commercial purposes, except that it is unlawful to use a fish pew, pitchfork, or any other instrument that will penetrate the body of the food fish or shellfish while sorting commercial catches during the act of discarding those fish that are not going to be retained.

(c) It shall be lawful to use a spear in underwater spear fishing as provided for in WAC 220-56-160.

(d) It shall be lawful to use a spear to take carp as provided for in WAC 220-56-280.

(e) It shall be lawful to snag herring, smelt, anchovies, pilchard, sand lance, and squid when using forage fish jigger gear or squid jigs.

(f) It shall be lawful to shoot halibut when landing them with a dip net or gaff.

(12) It shall be unlawful to take or possess for any purpose any food fish or shellfish smaller than the lawful minimum size limits. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish and it shall be unlawful to allow undersized salmon entangled in commercial nets to pass through a power block or onto a power reel or drum.

(13) It shall be unlawful to possess aboard any vessel engaged in commercial fishing or having commercially caught fish aboard, any food fish or shellfish in such condition that its species, length, weight or sex cannot be determined if a species, length, weight, or sex limit is prescribed for said species and it is unlawful to possess food fish or

shellfish mutilated in any manner such that the natural length or weight cannot be determined if a length or weight limit is prescribed for said species.

(14) It shall be unlawful in any area to use, operate or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department.

(15) It shall be unlawful for any permit holder to fail to comply with all provisions of any special permit or letter of approval issued to him under the authority of the director, or to perform any act not specifically authorized in said document or in the regulations of the commission or director.

(16) It shall be unlawful to use, place or cause to be placed in the waters or on the beaches or tidelands of the state any substance or chemical used for control of predators or pests affecting food fish or shellfish or other aquatic marine organisms, without first having obtained a special permit to do so from the director.

(17) It shall be unlawful to test commercial fishing gear except as follows:

(a) Bellingham Bay - inside and northerly of a line from Governor's Point to the south tip of Eliza Island to Point Frances in waters 10 fathoms and deeper.

(b) Boundary Bay - north of a line from Birch Point to Point Roberts and south of the international boundary in waters 10 fathoms and deeper during times not under IPSFC control.

(c) San Juan Channel - within a 1 mile radius of Point Caution during times not under IPSFC control.

(d) Port Angeles - inside and westerly of a line projected from the east tip of Ediz Hook through buoy C "1" to the mainland.

(e) Port Gardner - within a 2 mile radius of the entrance to Everett breakwater in waters 10 fathoms and deeper.

(f) Central Puget Sound - between lines from Meadow Point to Point Monroe and Skiff Point to West Point in waters 50 fathoms and deeper.

(g) East Pass - between lines from Point Robinson true east to the mainland and from Dash Point to Point Piner in waters 50 fathoms and deeper.

(h) Port Townsend - westerly of a line from the Coast Guard station in Port Townsend to Walan Point to Kala Point in waters 10 fathoms and deeper.

(i) All tows or sets are limited to 20 minutes exclusive of setting and retrieving time.

(j) All testing is to be accomplished between 8:00 a.m. and 4:00 p.m.

(k) Codends of trawl nets must be left open, all hooks of set line gear must be unbaited, and no lures or baited hooks shall be used with jig or troll gear.

(l) Any and all incidentally caught fish and shellfish must be returned to the waters immediately, and no fish or shellfish are to be retained aboard the vessel at any time during a gear test operation.

(m) It shall be unlawful for any person conducting such gear testing operations to fail to notify the fish and wildlife enforcement office in Olympia prior to testing.

(18) It is unlawful for any person or corporation either licensed by the department or bringing food fish or shellfish into the state to fail to comply with the directions of authorized department personnel related to the collection of sampling data or material from food fish or shellfish. It is also unlawful for any such person or corporation to fail to relinquish to the department, upon request, any part of a salmon or other food fish containing coded-wire tags, including but not limited to, the snouts of those salmon that are marked by having clipped adipose fins.

(19) It is unlawful for any person to possess live bottom fish taken under a commercial fishery license.

(20) It is unlawful for any person to use chemical irritants to harvest fish, shellfish or unclassified marine invertebrates except as authorized by permit issued by the department.

AMENDATORY SECTION (Amending Order 04-94, filed 4/29/04, effective 5/30/04)

WAC 220-88C-030 Eligibility to participate in the coastal pilchard fishery. (1) ~~((Beginning 2004, a coastal pilchard experimental fishery permit will be issued only to a natural person who:~~

~~(a) Held such a permit the previous year;~~

~~(b) Has purchased an emerging commercial fisheries license by April 1st; and~~

~~(c) As of April 1st has no outstanding observer fees owed to the department.~~

~~(2) Beginning 2005,))~~ A coastal pilchard experimental fishery permit will be issued only to a natural person who:

(a) Held such a permit the previous year;

(b) Can demonstrate by valid Washington fish receiving tickets that at least forty metric tons cumulative weight of pilchard taken from Pacific Ocean waters were landed under the person's emerging commercial fishery license during the previous two calendar years;

(c) Has purchased an emerging commercial fisheries license by April 1st; and

(d) As of December 1st of the previous licensing year has no outstanding observer fees owed to the department.

~~((3))~~ (2) Coastal pilchard experimental fishery permits may be revoked by the director, and future permits denied by the director, for failure to comply with conditions specified in the permits or violation of other commercial fishing rules, and shall be revoked if the emerging commercial fishery license is suspended. A coastal pilchard experimental fishery permit will not be renewed if the emerging commercial fishery license is revoked or future fishing privileges of the licensee are suspended.

~~((4))~~ (3) If less than twenty permits are issued to persons who meet the permit renewal requirements specified in subsection (1) of this section, the director may offer replacement permits, provided that:

(a) The total number of permits issued by the director, including replacement permits, shall not exceed twenty-five.

(b) Replacement permits for the current year shall be issued to persons who (can demonstrate by valid Washington fish receiving tickets that a minimum of forty metric tons (cumulative round weight) of pilchard were landed under the

person's emerging commercial fishery license in 2000, 2001, and 2002, and who)) have submitted a completed replacement permit application to the department by ((June 1, 2004)) during the previous calendar year, and who have been selected by random draw of replacement permit applicants.

~~(c) ((If more than twenty-five persons meet the criteria specified in (b) of this subsection,))~~ A vessel must be designated on the replacement ((permits will be issued to persons with the highest cumulative landings during the qualifying period, in descending order, until twenty-five permits are issued)) permit application, and only one replacement permit application per person will be allowed.

~~((5))~~ (4) Coastal pilchard experimental fishery permits are only valid for the year issued and expire on October 31st of the year issued with the expiration of the emerging commercial fishery license.

~~((6))~~ (5) Permit holders must designate a vessel to be used in the coastal pilchard emerging commercial fishery at least forty-eight hours before their first pilchard fishing trip of each season. Once designated, permit holders may not change vessel designation for the remainder of the season, except in an emergency and then only if allowed by the director. The same vessel may not be designated on more than one emerging commercial fishery license and accompanying coastal pilchard experimental fishery permit.

AMENDATORY SECTION (Amending Order 04-94, filed 4/29/04, effective 5/30/04)

WAC 220-88C-040 Coastal pilchard fishery—Season and lawful catch. (1) The coastal pilchard fishery season is open to purse seine fishing May ~~((15))~~ 1 through ~~((October 31))~~ November 30 only. Fishing under an experimental commercial fishery permit for pilchard is closed within three miles of shore.

(2) It is unlawful to retain any species taken incidental to pilchard in the coastal pilchard fishery except anchovy, mackerel, and market squid (*Logligo opalescens*). Any salmon encircled in the purse seine must be released prior to completion of the set, and no salmon may be landed on the fishing vessel.

(3) ~~((The))~~ It is unlawful to transfer ((ef)) pilchard catch from one fishing vessel to another ((is prohibited)).

(4) It is unlawful to fail to have legal purse seine gear ((must be)) aboard the vessel making ((the)) a pilchard landing.

(5) It is unlawful to fail to deliver pilchard landings ((must be delivered)) to a shoreside processing facility.

(6) It is unlawful to deliver more than ten percent of a pilchard landing to a facility that will process the pilchard for any purpose other than human consumption or fishing bait.

AMENDATORY SECTION (Amending Order 03-111, filed 6/4/03, effective 7/5/03)

WAC 220-88C-050 Coastal pilchard fishery—Observer and sampler coverage, logbook requirements.

(1) As a condition of the experimental commercial fishery permit, participants in the coastal pilchard fishery are required to have on-board observers for any pilchard fishing effort ~~((, and are required to have observer coverage for one~~

~~half of the vessel trips. Fishers may elect to use either department provided observers, or National Marine Fisheries certified observers, but must notify the department of their irrevocable decision on which type of observer to use at least 48 hours before their first pilchard fishing trip of the season. NMFS certified observers must have completed a department training session. Department provided observer coverage will be made available to fishers who agree to reimburse the department at a rate of \$100 per landing, whether or not the vessel trip was observed. Payment for department provided observer coverage is due by the tenth day of the following month for the previous month's landings, and failure to make timely payment will result in revocation of the experimental commercial fishery permit)) at the request of the department.~~

~~(2) ((In order to allow sufficient time for observer coverage and sampling efforts, fishers must notify the department's sardine hotline during normal business hours at least 48 hours before the first vessel trip and at least 24 hours before each subsequent trip. Fishers must provide name and contact phone number, time and location of departure, and estimated time and location of landing.)) Up to 500 sardine per vessel trip may be retained by WDFW samplers for biological information.~~

~~(3) All persons who obtain an experimental commercial fishery permit for the coastal pilchard fishery must complete a department-issued logbook, and the logbook is required to be returned to the department by ((November)) January 15th of the following year ((of issuance)). Failure to submit the logbook will cause the person to be ineligible for a permit in the following season.~~

PROPOSED



WSR 05-03-057
EXPEDITED RULES
DEPARTMENT OF HEALTH

[Filed January 11, 2005, 4:52 p.m.]

Title of Rule and Other Identifying Information: Water recreation facilities. Specifically, WAC 246-260-031 General design construction and equipment for all WRF pool facilities, 246-260-041 Swimming pool design, construction and equipment, 246-260-061 Special design and construction provisions for hotels and motels serving fewer than fifteen living units, 246-260-091 Specialty design features, 246-260-131 Operation of water recreation facilities, and 246-260-171 Compliance.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gary Fraser, Department of Health, P.O. Box 47825, Olympia, WA 98504-7825, AND RECEIVED BY March 22, 2005.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To correct cross-reference errors in WAC 246-260-031, 246-260-041, 246-260-061, 246-260-091, 246-260-131, and 246-260-171.

Reasons Supporting Proposal: During the recent rule revisions, several internal cross-references errors were made to various tables, figures and other subsections. These changes are necessary to correct them.

Statutory Authority for Adoption: RCW 70.90.120.

Statute Being Implemented: Chapter 70.90 RCW.

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

Name of Proponent: Department of Health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Gary Fraser, P.O. Box 47825, Olympia, (360) 236-3073.

January 10, 2005

Mary C. Selecky

Secretary

AMENDATORY SECTION (Amending WSR 04-18-096, filed 9/1/04, effective 10/31/04)

WAC 246-260-031 General design, construction, and equipment for all WRF pool facilities. (See additional design and construction requirements for swimming pools in WAC 246-260-041, for spa pools in WAC 246-260-051 and 246-260-061, for wading pools in WAC 246-260-071, for spray pools in WAC 246-260-081 and for specialty design conditions in WAC 246-260-091. See chapter 246-262 WAC for specific requirements for water park type features.)

(1) **Location:** Owners shall locate pools to minimize surface drainage and other potential sources of pollution from entering the pool.

(2) **Materials:** Owners shall use only structure and equipment materials that are nontoxic, durable, inert, and easily cleanable.

(3) **Walking surfaces:** Owners shall design and maintain walking surfaces:

(a) Sloping away from the pool or pools;

(b) Sloping a minimum of one-fourth inch per foot to drain;

(c) Having a nonslip finish;

(d) Not having an abrupt change in height of greater than one-half inch, a gap no greater than one-half inch in width, or a crumbling surface presenting a potential tripping hazard;

(e) Equipped with sufficient drains to prevent standing water; and

(f) Of easily cleanable, impervious finishes.

(4) **Barriers for new construction and remodeling:**

(a) Owners shall provide barriers to prevent unauthorized persons from gaining access to pools. Spray pool facilities without standing water are exempt from barrier requirements of this section.

(b) Barriers at limited use pools must be at least sixty inches high.

(c) Barriers at general use pools must be at least seventy-two inches high.

(d) Barriers, including windows, (see figures 031.1 and 031.2) may not:

(i) Allow passage of a four-inch diameter sphere; or

(ii) Have spaces between vertical members greater than a width of one and three-quarter inches if the distance between the tops of horizontal members are spaced less than forty-five inches apart.

(e) Solid barriers may not have indentations or protrusions, other than normal construction tolerances and masonry joints.

(f) Barriers must have self-closing, self-latching gates or doors that provide either:

(i) A mechanism that uses a continuously locked latch, coded lock or other equivalent access control system that always requires a key or code to enter pool area. If the latch is less than sixty inches from the ground, the barrier must have an eighteen-inch radius of solid material around the latch (see figure 031.2) to preclude a child on the outside of the barrier from reaching through the gate or barrier and opening the latch and entering the pool; or

(ii) A latch height of sixty inches or more from the ground.

(g) Restricted area service entrances are exempt from door or gate requirements provided that no public access is available.

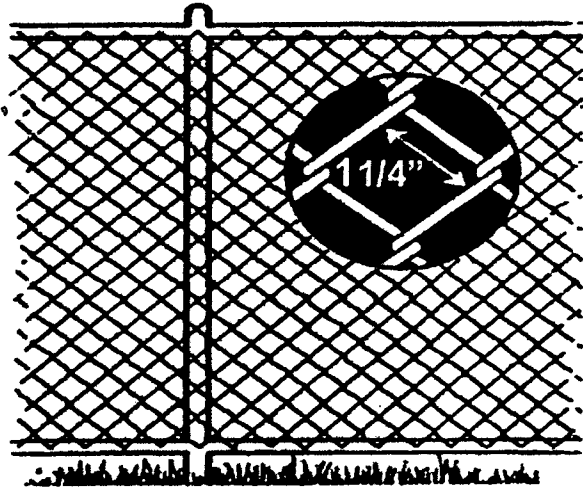
(h) Lifeguarded pools are not required to have a self-closing, self-latching gate during the period a pool is in use. Facility gates shall be closed and locked during nonuse periods.

(i) Barrier heights are measured on the side outside the pool enclosure area. Owners shall ensure that surrounding ground levels, structures, or landscaping do not reduce the effective height of the barrier.

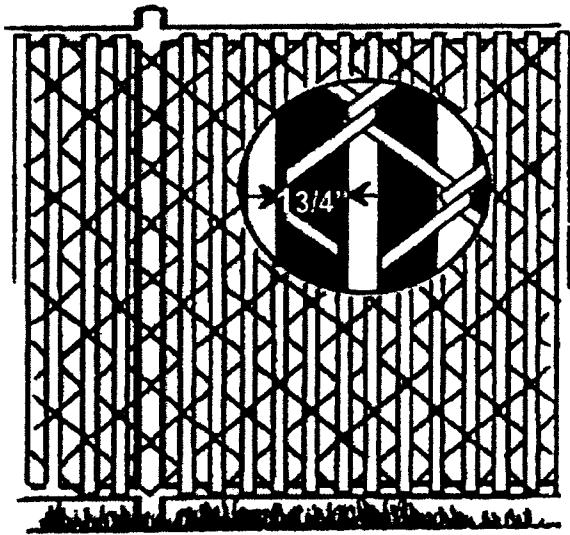
Figure 031.1
Barrier Construction Detail

(a). For a Chain Link Fence:

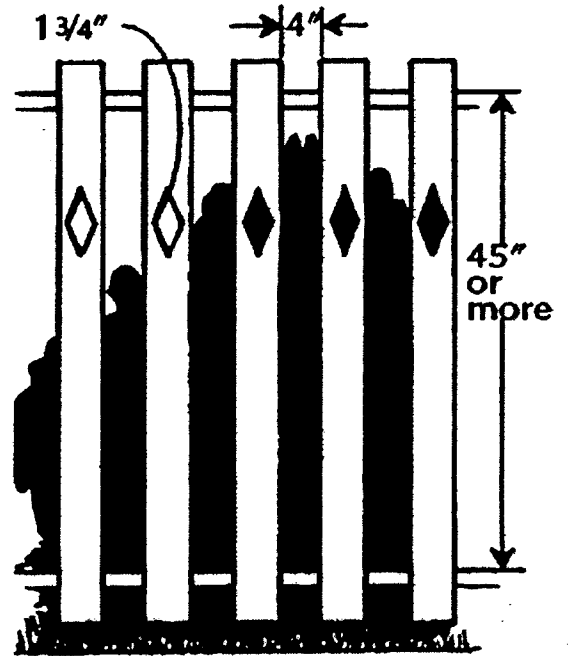
The mesh size shall not exceed 1 1/3 inches square.



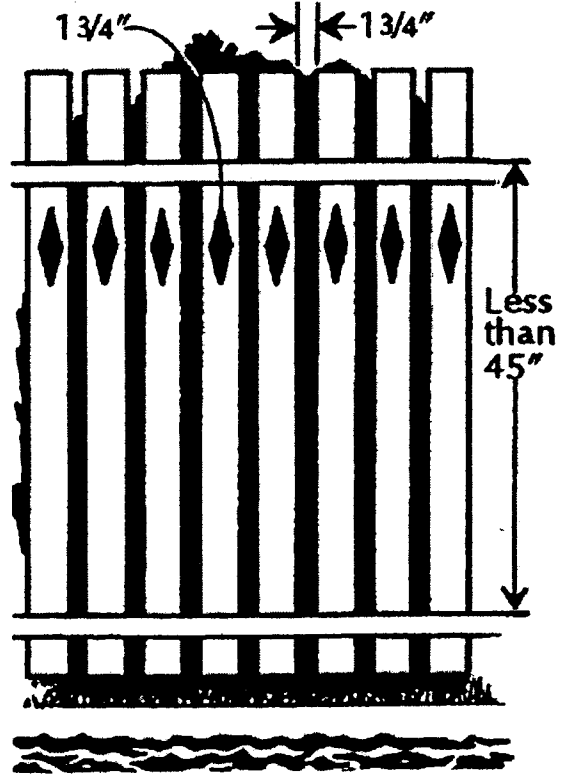
(b). When chain link exceeds 1 1/4 inches square, provide slats to reduce mesh openings to no more than 1 3/4 inches.



(c). Vertical Spacing: If tops of horizontal members are greater than 45 inches apart, vertical spacing shall not exceed 4 inches.

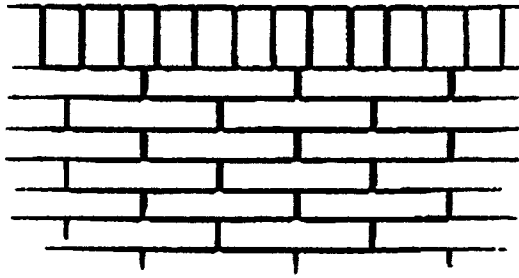


(d). Vertical Spacing: If tops of horizontal members are less than 45 inches apart, vertical spacing shall not exceed 1 3/4 inches.



EXPEDITED

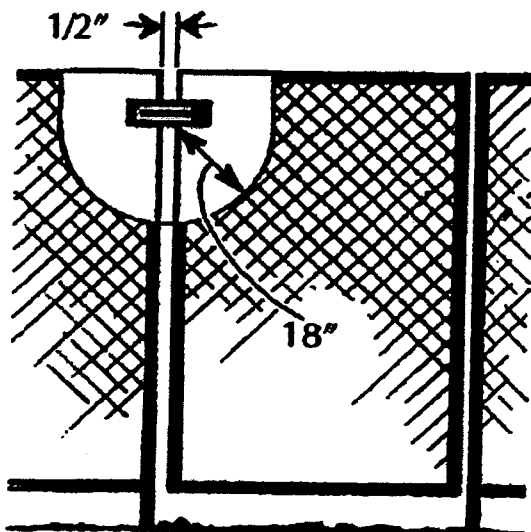
(e) **Solid Barrier:** No indentations or protrusions shall be present, other than normal ((~~construction~~)) construction tolerances and masonry joints.



(f) **Maximum Clearance** shall not exceed 4 inches above grade.



Figure 031.2 Gate and Latch Detail: When latch height is less than 60 inches from the ground, a continuously locked lock must be provided with an 18 inch radius of protection around the latch.



(5) **Barriers for existing facilities:** Before June 1, 2008, owners shall provide barriers for all pools conforming with subsection (4) of this section. Barrier modifications made prior to the compliance deadlines shall meet the requirements in subsection (4) of this section, at the time the modifications are made.

(6) **Pool surface:** Owners shall ensure pool surfaces are constructed and maintained to:

(a) Have white or light color finish;

(b) Not cause cutting, pinching, puncturing, entanglement, or abrasion hazard under casual contact; and

(c) Conform to ANSI/NSPI-1 2003 Standards for Public Swimming Pools or ANSI Standard NSPI-@-1999, American National Standard for Public Spas.

(7) **Inlets:** Owners shall provide pool inlets that are:

(a) Submerged;

(b) Located to produce uniform water and chemical circulation throughout the pool; and

(c) Located on the bottom of swimming and wading pools over twenty-five hundred square feet and spa pools greater than ten thousand gallons.

(8) **Outlets:**

(a) Owners shall provide pool outlets with:

(i) Overflow and main drain grating systems each designed to carry one hundred percent of the total recirculation filter flow;

(ii) Main drain piping systems designed to carry one hundred percent or more of total recirculation filter flow when a single pump is used or fifty percent or more of total recirculation filter flow when multiple pumps are used; and

(iii) Valving on main drain piping designed to provide required flow.

(b) Owners shall ensure that overflow outlets maintain a minimum of sixty percent of filter recirculation flow at all times.

(c) Overflow outlets must consist of an overflow channel on the perimeter of swimming pools twenty-five hundred square feet or more and spa pools ten thousand gallons or more, to promote uniform circulation and skimming action of the upper water layer with:

(i) A design preventing all matter entering the channel from returning to the pool;

(ii) Dimensions minimizing the hazard for bathers, such as catching arms or feet;

(iii) One one-hundredth of a foot slope per foot or more. However, adequate hydraulic justification from a designer to ensure the overflow system will meet (c)(v) of this subsection may be provided as an alternative;

(iv) Drains sufficiently spaced and sized to collect and remove overflow water to return line and filter, where applicable; and

(v) Size sufficient to carry one hundred percent of the recirculation flow plus the surge flow without flooding the overflow channel.

(d) Overflow outlets must consist of skimmers or overflow channels for pools less than twenty-five hundred square feet, or for spas under 10,000 gallons.

(i) Weirs provided in skimmers must have a normal operation flow rate of three to five gpm per inch of weir;

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(ii) Skimmer equipment must be recessed in the pool wall so no part protrudes beyond the plane of the wall into the pool;

(iii) Skimmers must be equipped with a device, such as an equalizer line, to prevent air lock in the recirculation suction line. If equalizer lines are used, they must be protected with grates listed by IAPMO or UL;

(iv) Skimmers must be equipped with a removable and cleanable screen designed to trap large solids;

(v) Skimmers shall operate continuously with a minimum displacement rate of fifteen gallons per bather in swimming pools, twenty gallons in spa pools, and seven gallons in wading pools.

(e) Main drains in all pools must:

(i) Be located at swimming and wading pool low points;

(ii) Consist of two or more main drains for any pumped water recirculating system designed;

(A) Piping must be manifolded to assure the water pumps from both main drains simultaneously so that no single drain could be the sole source of suction;

(B) Drains must be spaced at least three feet apart or as far as practical in small spa pools. If a pool uses more than two main drains with a pump, the design must distribute flow so that no single drain could be the primary source of suction;

(C) Piping must be designed so velocity in piping assuming one hundred percent of the pump recirculation flow does not exceed six fps up to the main drain outlet box.

(iii) Have grates on drains with maximum flow of one and one-half feet per second or net outlet area four times or greater than the discharge pipe;

(iv) Have openings that prevent a sphere greater than one-half inch in diameter passing;

(v) Have mechanically fastened grates designed to withstand the force of users;

(vi) Have the total open area of grates sized to prevent a suction or entrapment hazard dangerous to user; and

(vii) For spa pools, have a design listed by IAPMO or UL to aid in preventing hair entrapment, if the main drains are located on vertical walls of the spas.

(9) **Pumps:** Owners shall provide and maintain recirculation pumps with adequate capacity to provide design flows for the entire operating and backwash cycles of the filter.

(10) **Strainers:** Owners shall provide hair and lint strainers for pumps that precede filters.

(11) **Pool appurtenances:**

(a) Owners shall ensure pools have:

(i) Handholds when the pool deck is greater than twelve inches above the water surface;

(ii) Stairs leading into spa pools;

(iii) Step risers on the exterior of the spa pool shall conform with UBC requirements for risers with nonslip tread finishes, when spas are elevated off the pool floor; and

(iv) Stairs, ladders, or stepholes for access at the shallow end of swimming pools.

(b) Owners shall ensure that stairs, when provided, meet the following construction requirements:

(i) Nonslip tread finish;

(ii) Contrasting color stair tread edges;

(iii) Placement recessed into the side of pools specifically designed for lap or competitive swimming;

(iv) Handrail having leading edges less than eighteen inches beyond and less than eight inches inside (horizontally) the vertical plane of the bottom riser;

(v) Each riser tread shall have a minimum unobstructed, tread depth of ten inches and minimum surface area each of two hundred forty inches;

(vi) Uniform riser heights of seven and one-half inches or less on general use swim pools fifteen hundred square feet or more and spa pools greater than forty feet in perimeter, except the bottom riser may be less than the uniform height; and

(vii) Uniform riser heights of ten inches or less for all other pools, except the bottom riser may be plus or minus two inches of the uniform height.

(c) Ladders or stepholes at swimming pools shall be:

(i) Spaced at a minimum of one for every seventy-five feet of swimming pool perimeter deeper than four feet;

(ii) Provided at both sides of the deep end of swim pools over thirty feet in width; and

(iii) Equipped with handrails.

(12) **Valves:** Owners shall provide valves to allow isolation and maintenance of equipment.

(13) **Balancing tanks:** Owners shall provide balancing tanks for pools designed with overflow channels. Balancing tanks must be of adequate size to prevent air lock in the pump suction line and have sufficient capacity to prevent flooding of the overflow channel.

(14) **Equipment and chemical storage rooms:** Owners shall provide enclosed, locked, lighted, vented rooms for mechanical equipment, with floors sloped to a floor drain and minimum access area three feet wide around equipment. Owners shall provide a separate chemical storage area or room that conforms to manufacturer's requirements for each chemical used in the pool area.

(15) **Make-up water:** Owners shall ensure an adequate supply of make-up water with associated piping, for each pool:

(a) Sufficient to replace daily pool losses;

(b) From a supply conforming to chapter 246-290 WAC;

(c) Without cross connections; and

(d) If using a pool fill spout, the spout may not project greater than one inch into the space above the water surface and shall be shielded so as not to create a deck hazard.

(16) **Filters:**

(a) Owners shall equip pools with filtration equipment:

(i) Meeting the applicable standards of NSF (for commercial application) or equivalent;

(ii) With a rate of flow indicator and gauge(s) for monitoring backpressure on filter;

(iii) With a means of discharging filter backwash to waste with a sight glass in a manner not creating a cross connection or a public nuisance;

(iv) With a means to release air entering the filter tank for pressure filters.

(b) If cartridge filters are used, owners shall always possess an extra set of cartridges and may not use cartridge filters with bypass valves.

(17) **Disinfection equipment:**

(a) Owners shall provide disinfection equipment:

- (i) Providing a continuous and effective disinfectant residual;
 - (ii) Using a disinfectant with an easily monitored residual;
 - (iii) Having a design feed rate providing effective disinfection levels for peak demand conditions; and
 - (iv) Conforming to NSF standard((s)) 50 if disinfection chemical is other than gas chlorine.
- (b) If disinfection equipment has adjustable output rate chemical feed of liquid solutions, the equipment shall:
- (i) Feed under positive pressure in the recirculation system;
 - (ii) Provide a means for dosage adjustment; and
 - (iii) If the disinfection equipment is above pool water surface level, have provisions to prevent disinfectant solution siphoning when equipment is turned off.
- (c) Solid tablets or granules may not be placed in skimmer basket.
- (d) Rooms holding chlorine gas equipment must:
- (i) Be above ground level;
 - (ii) Be constructed so all openings or partitions with adjoining rooms are sealed;
 - (iii) Be located with consideration of prevailing winds to dissipate leaked chlorine away from the pool facility;
 - (iv) Have door(s) opening only outward to the outdoors; and
 - (v) Have a sign on the door exterior reading **DANGER CHLORINE** in large enough letters to be read twenty-five feet away.
- (e) Chlorine rooms must have mechanical exhausting ventilation that includes:
- (i) Air inlets located as far as possible from fan intakes to promote good air circulation patterns;
 - (ii) A minimum of one air change per minute in the chlorine room when fan is operating;
 - (iii) A remote switch outside the room or a door-activated switch to turn on fan before entering;
 - (iv) Suction for fan near the floor;
 - (v) Exhaust vents located to prevent chlorine contaminated air from being drawn into supply air; and
 - (vi) Screened chlorinator vents.
- (f) Gas chlorine systems must:
- (i) Be vacuum injection type, with vacuum-actuated cylinder regulators;
 - (ii) Provide integral backflow and antisiphon protection at the injector;
 - (iii) Have taring (net weight of cylinder gas) scales for determining chlorine weight; and
 - (iv) Have a means for automatic shutoff when water flow is interrupted.
- (g) A self-contained breathing apparatus designed for use in chlorine atmospheres caused by chlorine leaks must be available in an area accessible to the operator outside the chlorine room. The apparatus must be maintained in accordance with department of labor and industry standards. If procedures are established for immediate evacuation and the owner has a written agreement with emergency service fire districts or other approved organizations within the area for promptly responding to chlorine leaks, then breathing protection is not required at the pool facility.

- (h) Chlorine gas cylinders must:
 - (i) Be stored only in designated chlorine rooms;
 - (ii) Have an approved valve-stem cylinder wrench on the valve stem to shut the system down in an emergency event;
 - (iii) Be properly secured to prevent tipping;
 - (iv) Be tagged to indicate cylinders are empty or full; and
 - (v) Not exceed one hundred fifty pounds tare weight per cylinder.
- (i) Owners shall ensure that chemical disinfectants are not hand-fed into pools actively in use. *Exception*, chemical disinfectants may be hand-fed on an emergency basis if no users are in the pool and the pool is tested to meet water quality standards before reentry.
- (j) If ozone is provided as a supplemental disinfection process:
- (i) When ozone is produced by corona discharge method, the area where the ozone is produced shall meet the requirements of (e) of this subsection, unless field tests demonstrate no hazardous off-gassing of product;
 - (ii) When ozone is produced by ultraviolet light, it may be allowed in the mechanical room provided there are no levels of off-gassing exceeding 0.05 ppm;
 - (iii) Provide an ozone detector and alarm with corona discharge ozone generators;
 - (iv) Provide sufficient contact chambers to prevent excess levels of ozone from entering the pool water; and
 - (v) Testing equipment must be provided to monitor levels in the water and the atmosphere immediately above the water and the room where the ozone is produced.
- (k) If copper or copper/silver is provided as a supplemental disinfection process:
- (i) The output rate and method of controlling process levels into the pool facility must be provided;
 - (ii) The system shall not have a detrimental effect on maintaining proper turnover rates for the pool; and
 - (iii) Testing equipment provided to monitor levels of copper and silver in the pool water.
- (18) **Chemical feeding equipment for pH control:** Owners shall provide chemical feed equipment for pH control, with a means of automatic shutoff if water flow is interrupted, for:
- (a) Swimming pools fifty thousand gallons or greater;
 - (b) Spa pools ten thousand gallons or greater; and
 - (c) All pools treated with caustic soda or carbon dioxide.
- (19) **Ventilation:** Owners shall provide adequate ventilation (in conformance with ASHRAE standards for pools and decks) to maintain air quality and to prevent moisture buildup in indoor areas. Design considerations must include maintaining negative pressure in the pool and deck area; providing adequate total airflow for acceptable air distribution; and preventing short-circuiting of fresh air return to exhaust.
- (20) **Locker room and dressing rooms:**
- (a) Owners shall provide general use pool facilities with locker rooms and dressing rooms having:
 - (i) Separate facilities for each gender constructed to block line of sight into locker rooms;
 - (ii) Water impervious nonslip floors properly sloped to drains to prevent standing water;
 - (iii) Easily cleanable walls, lockers, and benches (if provided);

(iv) Junctions between walls and floors covered for ease of cleaning; and
 (v) Properly anchored lockers, (if provided), to prevent tipping.

(b) Owners shall provide limited use pool facilities with locker or dressing rooms meeting the requirements of (a) of this subsection if the pool facilities are located more than one-quarter mile from any served living units.

(c) Owners shall provide general use recirculating spray pool facilities with locker or dressing rooms meeting the requirements of (a) of this subsection if the pool facilities are located indoors.

(21) Restrooms, shower rooms, and plumbing fixtures:

(a) Owners shall provide general use pool facilities with restroom and shower room facilities having plumbing fixture types and numbers as described in Table ((031.1) 031.3 of this section (swim and wading pool bathing loads and spa bather capacity are additive for determining total bather load). The pool facility design shall provide users easy access to restroom and shower facilities with minimum nonuser cross traffic.

(b) Owners shall provide general use pool facilities with:

(i) Hose bibs with vacuum breakers around pool decks at a maximum spacing of one hundred fifty feet; accessible to each locker room; and within equipment room at facilities five hundred square feet or more;

(ii) A janitor's sink at indoor facilities with a pool of fifteen hundred square feet or more; and

(iii) An operable drinking fountain conforming to ASA requirements at facilities with a pool fifteen hundred square feet or more.

(c) Owners shall provide limited use pool facilities with:

(i) Restroom and shower room facilities having plumbing fixture types and numbers as described in Table 031.3 of this section, if bathing load exceeds eighty persons;

(ii) Restroom and shower room facilities having plumbing fixture types and numbers as described in Table 031.4 of this section, if bathing load is eighty persons or less;

(iii) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet;

(iv) A hose bib accessible to each locker room; and

(v) A hose bib within each equipment room at facilities with a pool of fifteen hundred square feet or more.

Table 031.3

**Restroom Minimum Requirements* for General Use Pools
 (Includes swimming, spa, and wading pools**)**

Amount of Fixtures Required for Occupancy Load by Sex		
TYPE OF FIXTURES	MALE	FEMALE
Toilets up to 120	1/60	1/40
From 121-360	1/80	1/60
Over 360 add	1/150	1/100
Urinal up to 120	1/60	N/A
From 121-360	1/80	N/A
From 360 add	1/150	N/A
Showers up to 120	1/40	1/40
From 121-360	1/60	1/60
Over 360 add	1/100	1/100
Sinks up to 200	1/100	1/100
From 201-400	1/200	1/200
Over 400 add	1/400	1/400
Diaper changing station	1	1

* If sufficient supporting documentation is provided, restroom fixture numbers may be adjusted between the genders based on proposed use of the facility. (E.g., if the designer has experience and justification based on similar type facilities indicating that providing one additional shower for the women and one less for men would provide a sufficient number of fixtures to meet demands, this may be allowed.)

** If a general use spa or wading pool is the only pool at the facility, then a minimum of only one toilet, shower, and sink is required for each gender.

Table 031.4

**Restroom Minimum Requirements for Limited Use Pools
 (Includes swimming, spa, and wading pools.)**

POOLS WITH:	TOILETS	SHOWERS	SINKS	DRESSING ROOMS	DIAPER CHANGING STATION
Living units*within 100 feet and less than three stories	-	-	-	-	-
Living units > 100 feet but < 500 feet and less than 3 stories	1	1**	1	-	1
Living units within 1/4 mile and/or with three or more stories	1	1	1	-	1
Living units greater than 1/4 mile	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)

* "Living units" means all the units the facility serves.

** A shower is required only if a spa is present.

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(d) Owners shall provide general use recirculating spray pool facilities with:

- (i) Separate restroom facilities for each sex containing at least one toilet and handwashing sink;
- (ii) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet; and
- (iii) Additional plumbing fixtures, if indoors, conforming to the requirements for general use pools described in Table ((031.1)) 031.3 of this section.

(e) Owners shall provide limited use recirculating spray pool facilities with:

- (i) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet; and
- (ii) A restroom facility containing at least one toilet and one handwashing sink, if living units served are farther than one hundred feet away from the main pool.

(f) Restroom facilities must be located convenient to, and no further than one hundred feet away from, the main pool. They must have flush toilets provided with toilet tissue in dispensers and handwashing sinks including:

- (i) Hot and cold or tempered water delivered through a mixing faucet with a maximum temperature of one hundred twenty degrees Fahrenheit;
- (ii) Single service soap in a nonglass dispenser;
- (iii) Single service towels or electric hand dryer; and
- (iv) A minimum running water cycle of at least ten seconds if the faucets have self-closing valves.

(g) Shower facilities must be located convenient to, and no more than one hundred feet away from, the main pool. The facilities must have:

- (i) A design allowing a full-body shower in the nude;
- (ii) A design providing an enclosure confining water to the shower area;
- (iii) Nonslip floor impervious to water with sufficient drains to prevent water from standing within the shower areas;
- (iv) Running water delivered at a temperature between ninety degrees and one hundred twenty degrees Fahrenheit;
- (v) Single service soap in a nonglass dispenser; and
- (vi) Wall surfaces impervious to water up to shower head height.

(h) If owners limit the number of bathers within their facility and post and enforce the maximum bather load, owners may base the number of required plumbing fixtures on the posted maximum bather load.

(i) Owners shall dispose of all wastewater in a manner approved by the local health officer.

(22) **Diaper changing stations:** Owners shall provide a diaper changing station, including a handwashing sink conforming to the requirements in subsection (21)(f) of this section, accessible to all bathers, if children in diapers are allowed in the pool facility and the facility is:

- (a) A general use pool facility; or
- (b) A limited use pool facility located more than one hundred feet away from living units served.

(23) **Lighting:** Owners shall design and maintain pool facility lighting to a minimum level as described in Table 031.5. Sufficient overhead and underwater lighting shall be maintained to clearly see the bottom of the pool at all times

pool is in use. Owners shall provide protective shielding for all lighting fixtures above walking surfaces and pool areas.

Table 031.5*

Minimum Lighting Level Required at Water Recreation Facilities.

Location	Minimum Lighting Level
Indoor pool surface	30 foot candles
Outdoor pool surface*	10 foot candles
Pool Decks	10 foot candles
Locker rooms and mechanical rooms	20 foot candles

* Outdoor pool facilities, which are used in daylight hours only (before dusk) are not required to meet this standard.

(24) **Flow-through pools:** Flow-through pools may qualify for exceptions to recirculation if:

- (a) Water supply is sufficient to provide the same turn-over period specified for recirculation pools;
- (b) The source water supply meets acceptable quality requirements and is subject to a disinfection method as described under WAC 246-260-111(3);
- (c) The introduction of fresh treated pool water is accomplished by the same type of inlet and outlet design required for recirculation pools; and
- (d) The pool water quality complies with WAC 246-260-111.

AMENDATORY SECTION (Amending WSR 04-18-096, filed 9/1/04, effective 10/31/04)

WAC 246-260-041 Swimming pool design, construction, and equipment. For more general design, and construction requirements that pertain to all pools, see WAC 246-260-031.

(1) **Location.** Owners shall ensure pump houses, planters, balconies, landscape features, trees, and structures are located fifteen feet or more horizontally away from any swimming pool, or provide barriers or other means to prevent diving or ready access to a pool from the structures. These structures do not include:

- (a) Building walkways above the second story;
- (b) Inaccessible roofs eight feet or more in height; or
- (c) Any barriers provided to prevent unauthorized pool access (e.g., fencing).

(2) **Walking deck surfaces.** Owners shall design and maintain walking deck surfaces as follows:

- (a) For pools less than fifteen hundred square feet, walking deck surfaces must be at least four feet wide around the entire perimeter of pools;
- (b) For pools less than fifteen hundred square feet, walking deck surfaces must be at least:
 - (i) Six feet wide at the shallow end of a variable-depth pool; and
 - (ii) Six feet wide on a minimum of twenty-five percent of the deck space of free form pools.
- (c) For pools fifteen hundred square feet or larger, walking deck surfaces must be at least six feet wide:
 - (i) Around the entire perimeter of outdoor pools;

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- (ii) On fifty percent of the perimeter of indoor pools; and
- (iii) The remaining fifty percent perimeter of the indoor pool must be a minimum of four feet wide.

(d) For pools fifteen hundred square feet or more, walking deck surfaces must be at least sixteen square feet per bather. To determine maximum bather load see subsection (10) of this section. If the owner provides maximum facility occupancy loading less than that of subsection (10) of this section, and the occupancy limit is posted and enforced, that loading may be used in lieu of the maximum bather load figure as described under subsection (10) of this section; and

(e) General use pools may not have sand and grass areas within the pool enclosure unless these areas are separated to prevent direct access from the pool area and the facility provides a means for cleansing bather's feet before reentering the pool and deck area.

(3) Pool general floor and wall dimensional design.

(a) Owners shall ensure pool dimensional designs for floors and walls provide for safety, circulation and quality of water;

(b) Pool floors must have uniform slopes with:

(i) A maximum slope of a one-foot drop in twelve feet of run at pool depths to five or less in pools fifteen hundred square feet or more; and

(ii) Floor slopes not intruding into the area designated as the diving envelope.

(c) Pool sidewalls may not curve or intrude into the pool beyond the vertical more than twelve inches at three and one-half feet and eighteen inches at a depth of five feet. The radius of curvature of wall-floor junctions may not exceed the maximum radius designated in Table ((041.2)) 041.1 of this section for depths over five feet. Vertical means walls not greater than eleven degrees from plumb:

Table 041.1

Maximum Radius Coving or Pool Intrusion Dimensions Between Pool Floor and Wall*

POOL DEPTH	3'	3'6"	5'	Greater than 5'
MINIMUM SIDE-WALL DEPTH (Springline)	2'2"	2'6"	3'6"	At 3'6"
MAXIMUM RADIUS OF CURVATURE	10"	12"	1'6"	**Maximum radius equals pool depth minus the vertical wall depth

*Note: For pool depths falling between the depths listed, values can be interpolated.
 For pool depths less than three feet and greater than five feet, values shall be extrapolated.
 Radius of coving shall not intrude into pool within diving envelope.

(d) Pool configuration must have a transitional radius from wall to floor where floor slopes join walls so that:

(i) The center of the radius not less than the minimum vertical depth specified under Table ((041.2)) 041.1 of this section below the water surface level;

(ii) The arc of the radius is tangent to the wall; and

(iii) The maximum radius of coving, or any intrusion into the pool wall/floor interface, is determined by subtracting the vertical wall depth from the total pool depth.

(4) **Ledges.** In new construction or alterations to existing construction, ledges are prohibited in swimming pool sidewalls, except as specified in WAC 246-260-091(3).

(5) **Specific design requirements for pools furnishing areas for diving.** Owners shall ensure areas designated for diving activities include a diving envelope meeting minimum requirements in:

(a) D-8.01, Table 1, APHA Public Pool Regulations, 1981, if the pool user would enter from the deck level twelve inches or less from water surface level.

(b) CNCA standard configuration in areas where user would enter from the deck level over twelve inches from water level, or has a platform or diving board provided at a height of less than one-half meter (twenty inches). This requirement is based on a standard described under CNCA publication *Swimming Pools: A Guide to Their Planning, Design, and Operation* 1987, Fourth Edition. Human Kinetics Publisher, Inc., Champaign, Illinois, Figure 8.1; or

(c) Dimensions for Diving Facilities, FINA facility rules, 2000-2001, if the pool user enters from the diving board or platform at a height of twenty inches (one-half meter) or greater from water surface level.

(6) Pool appurtenances.

(a) If a swimming pool contains diving boards and/or diving platforms, owners shall ensure that the boards and platforms:

(i) Are installed according to manufacturer's instructions;

(ii) Have slip-resistant tread surfaces;

(iii) Have steps and ladders leading to diving boards with handrails; and

(iv) Are protected with guardrails and one intermediate rail, both extending at least to the water edge when one meter or more above the water.

(b) Owners shall ensure starting blocks:

(i) Are firmly secured when in use; and

(ii) If water depth is less than nine feet, starting blocks must be removed or covered with protective equipment unless used by competitive swimmers trained in proper use of starting blocks.

(c) Owners shall ensure that water slides conform with requirements of chapter 246-262 WAC.

(7) **Turnover.** Owners of swimming pools shall design and maintain water treatment recirculation rates to completely turn over the entire pool water volume of pool in six hours or less.

(8) **Pool depth markings.** Owners shall provide water depth markings in feet:

(a) Located on the pool vertical wall at or above the water level so as to be easily readable from the water, in numbers at least two inches high. If overflow channels do not allow for placement of vertical wall markings above the water level, they are not required;

(b) Located on the horizontal surface of pool coping or deck of pools within eighteen inches of the water's edge, easily readable while standing on the deck facing the water, in numbers at least four inches high;

(c) Placed at the maximum and minimum water depths and at all points of slope change;

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- (d) Spaced at increments of water depth of two feet or less;
- (e) Spaced along sides of pools at horizontal intervals of twenty-five feet or less;
- (f) Arranged uniformly on both sides and ends of pool;
- (g) Placed on all major deviations in shape;
- (h) Applied in a contrasting color; and
- (i) Made of slip-resistant material on decks.

(9) Safety line or marking line.

(a) Owners shall provide either safety float lines or marking lines separating areas where the pool bottom breaks from a uniform slope in the shallow area leading to deeper water. Neither float lines or marking lines are required in pools with uniform floor slopes not exceeding one foot of slope for every twelve feet of horizontal floor length.

(b) Safety float lines, when used, must:

- (i) Be kept in place at all times, except when the pool is used for a specific purpose such as lap swimming or competitive use;
- (ii) Be placed one foot toward the shallow end away from the break point line;
- (iii) Be strung tightly allowing bathers to hold onto the line for support;
- (iv) Provide floats on the line at a minimum distance of every four feet; and
- (v) Have a receptacle for receiving the safety line either recessed into the wall or constructed so as not to constitute a safety hazard when the safety line is removed.

(c) Marking lines, when used, must:

- (i) Be placed on pool sides and bottoms at the break point line; and
 - (ii) Be of a contrasting color to the background color of the pool sidewalls and floor.
- (d) In pools with uniform slopes not exceeding one foot of drop in twelve feet of run from the shallow end to the deep end, a safety float line or marking line is not required.

(10) Bather load. Owners shall ensure maximum number of bathers in the pool facility at any one time do not exceed a number determined by the formula noted under Table 041.2.

Table 041.2

Swimming Pool Maximum Bathing Load*

Type of pool	Value A (**SF Shallow (5 ft. or less))	Value B (SF Deep (> 5 ft.))	Maximum bather load Value A + B
Indoor	SF/25	SF/30	
Outdoor	SF/15	SF/30	

* This formula will be used in determining certain features of pools as noted elsewhere in these rules and regulations.

** SF means square feet of surface area.

(11) Emergency equipment. Owners shall provide first aid and have emergency equipment readily available at swimming pool facilities during operating hours, including:

- (a) A telephone within the facility for general use pools;
- (b) A telephone accessible within one minute for limited use pool facilities;

- (c) A suitable area to accommodate persons requiring first-aid treatment;
- (d) A standard 16-unit first-aid kit (see Appendix C, Table); and

(e) A blanket reserved for emergency use.

(f) For facilities with lifeguards:

- (i) A rescue tube or rescue buoy at each pool lifeguard station; and
- (ii) A backboard with means to secure a victim to a board and immobilize head, neck, and back.

(g) For pool facilities without lifeguards:

- (i) A reaching pole at least twelve feet long with a double crook life hook;
- (ii) A reaching pole at least twelve feet long for every fifteen hundred square feet of pool surface area; and
- (iii) A throwing buoy, throw-rope bag, or other similar device with a rope the width of the pool or fifty feet long, whichever is less, for reaching and retrieving a victim.

(h) No later than June 1, 2008, owners of existing pools with single main drains shall install emergency equipment to shut off all pumps hooked to the recirculation lines for the pools. This emergency equipment must be placed within twenty feet of the pool and marked with an emergency shut-off sign. The shutoff switch must include an audible alarm which can be heard by those in the area, or have an alarm that goes to a point where staff is always present during the periods the pool is open.

(i) Pools providing dual main drains meeting the requirements of this section, or other acceptable methods of providing equivalent protection to the emergency shutoff switch, are exempt from this requirement.

(ii) The owner shall check the shutoff switch at least twice annually to determine it is properly operating.

(iii) The department will develop a guidance document to aid owners and designers in potential options to the emergency shutoff switch and audible alarm.

(12) Foot baths. Foot baths at water recreation facilities are prohibited. This does not preclude the construction and use of foot showers, if the area is well drained.

AMENDATORY SECTION (Amending WSR 04-18-096, filed 9/1/04, effective 10/31/04)

WAC 246-260-061 Special design and construction provisions for hotels and motels (transient accommodations) serving fewer than fifteen living units and for spas in individual hotel/motel rooms. (1) Owners are exempt from the requirements for design, construction, and equipment in WAC 246-260-031 and 246-260-051 for spa pools at limited use facilities serving less than fifteen living units, except for requirements listed in this section. Owners shall also ensure that chemicals are stored in a manner to minimize safety risks.

(2) The requirements in WAC 246-260-031 (1), (2), (3), (4), (5), (6), (8)(b), (d)(iii), (d)(v), (e), (9), (10), (15), (16), (17), and Table ((031-2)) 031.4 apply to prefabricated spa pools at limited use facilities serving less than fifteen living units.

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(3) The requirements in WAC 246-260-051 (2)(b), (d), (e), (4), (5)(b), (c), and (e) apply to prefabricated spa pools at limited use facilities serving less than fifteen living units.

(4) Spa pools that are drained, cleaned and refilled between patron use in individual hotel/motel rooms are exempt from these requirements. Spas that are not drained, cleaned and refilled between use shall at least:

(a) Conform with WAC 246-260-031(4) on barriers beyond the room itself, such that the guest room plus any associated lanai or deck may be considered an enclosure unit.

(b) Conform with WAC 246-260-031(17) on disinfection equipment and conform with water quality requirements of WAC 246-260-111 for disinfection and pH.

AMENDATORY SECTION (Amending WSR 04-18-096, filed 9/1/04, effective 10/31/04)

WAC 246-260-091 Specialty design features. (1) Owners providing special features shall ensure the features meet the requirements of this section.

(2) **Benches.** A single bench or seat that is recessed from the general wall of the swimming pool may be built into the shallow area of the pool, if it meets the following conditions. The bench: (See figure 091.1.)

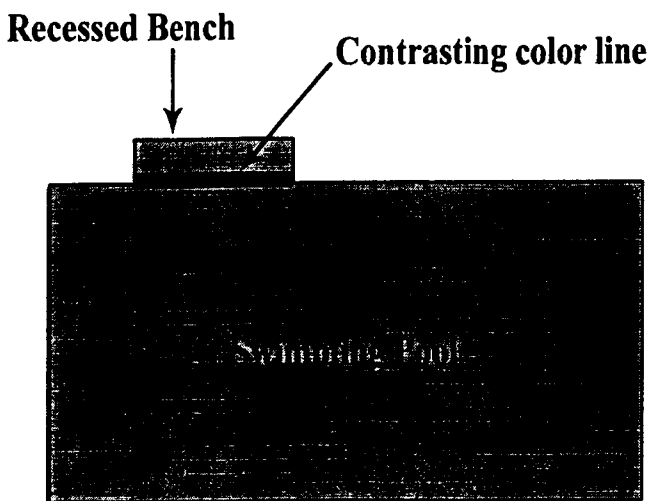
(a) May not be located in an area that is used for lap swimming;

(b) May not exceed twenty percent of the length of the side it is located on or five percent of the perimeter of a free form pool;

(c) Must have a minimum two-inch or wider durable continuous line of a contrasting color on the top and side of the bench edge, so as to be readily visible to persons standing on the deck and persons swimming in the water; and

(d) The area of the deck above the bench must be labeled in nonslip lettering at least four inches high: "NO DIVING."

figure 091.1



(b) The ledge is in a contrasting color from the rest of the pool for easy visibility.

(4) **Waterfalls.** A waterfall feature may be built at swim pool or spa pool facilities if the following conditions are met:

(a) If located in or adjacent to shallow swimming pool water levels, it must be set back from the edge of the pool a distance specified in Table 091.2; exceptions may be made for lifeguarded pools;

(b) If located at, or adjacent to, deep swimming pool water levels, it will be considered a diving platform and the adjacent pool area must conform to diving envelope design specified in WAC 246-260-041((3)) (5);

(c) Minimum walkway areas required in other sections of this chapter must be maintained around pools;

(d) Water in waterfalls that commingles with pool water must meet water quality and treatment requirements specified in other sections of this chapter and any additional disinfection required by the department or local health officer to address anticipated increased demands and aerosolization of disinfectant;

(e) Flows may not create turbulence that might create a safety hazard or reduce visibility in the pool; and

(f) Waterfalls that flow from pool sidewalls may not exceed five percent of the total pool perimeter.

(3) **Ledges.** In general use swimming pools, a single ledge may be built into the deep end of the pool, if:

(a) The ledge construction conforms with FINA facilities rules, 2001-2002, Swimming Pools, FR2.4.2;

Table 091.2

Set-Back Requirements for Special Water Features in Pools at Shallow Swimming Pool Water Levels*

Height of Feature Above Pool Water Level	Type of Special Feature		
	Waterfall	Rockery	Planting
12 inches or less	Feature may spill directly to pool from sidewall	Setback of 4 feet or more from pool edge; except at pools that are continuously lifeguarded. Five percent of deck perimeter may have feature provided up to pool edge.	Setback of 4 feet or more from pool edge.
Greater than 12 inches and less than 30 inches	Setback of 8 feet or more from pool edge.		
Greater than or equal to 30 inches	Setback of 15 feet or more from pool edge.		

* Guarded pool setbacks shall be established in a preconstruction design conference with the owner, designer and health department.

(5) **Rockeries.** A decorative rock feature may be built at a swim pool or spa pool facility, if the following conditions are met:

(a) If located adjacent to shallow swimming pool water, it must be set back from the edge of the pool a distance specified in Table 091.2; exceptions may be made for lifeguarded pools;

(b) If located at or adjacent to deep swimming pool water levels, it will be considered a diving platform and the adjacent pool area must conform to diving envelope design specified in WAC 246-260-041(((3))) (5);

(c) The design has a nonslip surface without sharp or cutting edges in any areas that provide a potential foothold, stepping or standing access; and

(d) It slopes to drain water away from the pool.

(6) **Play toy equipment.** Play toy equipment may be built at pool facilities provided the following conditions are met:

(a) Can only be used in lifeguarded pools;

(b) It must comply with the requirements of chapter 246-262 WAC;

(c) Its design conforms to ASTM standard F1292 including establishing fall zones;

(d) Surfaces must be easily cleanable;

(e) It must be operated in accordance with a written plan of operation developed by the owner, addressing placement of the toy, protection from falls, entrapment, entanglement of bathers from each other, and visibility of users to lifeguards; and

(7) **Special use pools.** At least thirty days prior to development of final plans and specifications, owners shall submit proposals at a preliminary design conference for pools designed for special use purposes (e.g., scuba training, kayaking, portable rental spas, sensory deprivation tanks, public promotions at sports fields, county fairs, and any special events using portable pools) to the department or local health officer for review and approval. The department or local health officer has flexibility in applying portions of this chapter or additional requirements necessary to assure health and safety for users of these special use pools.

(8) **Ballet rails.**

(a) Owners may install ballet-type rails on pools having uses limited to exercise and training;

(b) Owners may install ballet-type rail on general or limited use pools, if:

(i) The rail is inset into the wall to preclude any obstructions in the pool; and

(ii) The rail is removable and covers are provided and used to maintain a flush surface in general use pools.

AMENDATORY SECTION (Amending WSR 04-18-096, filed 9/1/04, effective 10/31/04)

WAC 246-260-131 Operation of water recreation facilities. (1) **Operation plan.** Owners shall ensure proper operation to protect the public health, safety, and water quality by establishing standard practices and developing a written operations manual addressing each of the following:

(a) Physical pool facility components and signage;

(b) Personnel;

(c) Users and spectators, including pool rules;

(d) Emergency response provisions;

(e) Diving during supervised swimming instruction into water depths recognized as adequate by the organization certifying the activity, such as ARC; and

(f) Environmental conditions.

(2) **Physical components.** Owners shall check each WRF's physical components routinely to ensure:

(a) Barrier protection, emergency equipment and structural facilities are properly maintained.

(b) Water does not pond on walking surfaces;

(c) Common articles provided for patrons, such as towels, bathing suits, bathing caps, etc., are sanitized before reuse;

(d) Sanitation items including toilet tissue, handwashing soap and single use towels or equivalent are maintained at facilities;

(e) Treatment of the water recreation pool facility occurs continuously at turnover rates required by this chapter twenty-four hours a day during periods of use;

(f) Swimming, spa, wading and spray pools shall be equipped with drain covers that are properly maintained, intact and secured to protect against entrapment.

(g) Extra filter cartridge provided for each cartridge filter.

(3) **Food service.** If food service is provided and allowed, the owner shall:

(a) Ensure food and beverage sale and consumption areas at general use pools are separated from pool and deck enclosure areas;

(b) Prohibit food and beverage in pool water at limited use pools and maintain a minimum four-foot clear area between pool edge and any tables and chairs provided for food service;

(c) Prohibit use of glass in pool facility and provide trash containers; and

(d) Prohibit the sale or consumption of alcohol at general use pools.

(4) **Spa and recirculating spray pool reservoir cleaning.** Owners shall routinely drain, clean and refill spa and recirculation spray pools at a minimum frequency specified by the following formula.

Spa or spray pool reservoir volume in gallons/3/average number of users per day = Number of days between draining, cleaning and refilling.

(5) **Signage for user rules.**

(a) Owners shall provide and maintain signage specifying user rules and safety information required by this section in a conspicuous place in the pool area with easily readable lettering at least three-eighths of an inch high. All swimming, spa and wading pool facilities must have signs stating pool rules:

(i) Prohibiting use by anyone running or participating in horseplay;

(ii) Prohibiting use by anyone under the influence of alcohol or drugs;

(iii) Prohibiting use by anyone with a communicable disease or anyone who has been ill with vomiting or diarrhea within the last two weeks;

(iv) Prohibiting anyone from bringing food or drink into the pool water;

(v) Requiring everyone to have a cleansing shower before entering the pool;

(vi) Requiring anyone in diapers to wear protective covering to prevent contamination;

(vii) Requiring diapers to be changed at designated diaper change areas;

(viii) Warning patrons that anyone refusing to obey the pool rules is subject to removal from the premises;

(ix) Directing patrons to the location of the nearest telephone and first-aid kit for emergency use;

(x) Advising patrons that anyone with seizure, heart, or circulatory problems should swim with a buddy; and

(xi) Where diving boards are used, provide signs for proper use.

(b) All swimming, spa, and wading pool facilities where lifeguards or attendants are not present shall have signs stating additional pool rules that:

(i) If a child twelve years of age or less is using the pool, a responsible adult eighteen years of age or older must accompany the child and be at the pool or pool deck at all times the child uses the facility; and

(ii) If an individual between thirteen years of age and seventeen years of age is using the pool, at least one other person must be at the pool facility.

(c) All spa pool facilities must have signs stating additional pool rules:

(i) Cautioning that children under the age of six should not use a spa pool;

(ii) Cautioning that persons suffering from heart disease, diabetes, or high blood pressure should consult a physician before using a spa pool;

(iii) Cautioning that women who are or might be pregnant seek physician's advice regarding using a spa pool;

(iv) Cautioning everyone to limit the stay in the spa pool to fifteen minutes at any one session; and

(v) Posting the maximum bather capacity of each spa pool.

(d) All spray pool facilities must have signs stating pool rules as specified in (a)(i), (ii), (iii), (iv), (v), (vi), and (viii) of this subsection.

(6) **Required personnel.**

(a) Owners shall ensure appropriate personnel specified in this subsection provide monitoring at pool facilities.

(b) General use swimming pool facilities shall have lifeguards present at all times pools are in use; except:

(i) If swim or dive teams are facility users, the owner may allow substitution of a qualified coach properly credentialed by the sponsoring organization furnishing the swim or dive coach; and

(ii) Owners may substitute persons with Master Scuba Diver Trainer or Master Scuba Diver Instructor certification through PADI or SCUBA instructor, assistant instructor or divemaster through NAUI or other department-approved training in lieu of lifeguards for SCUBA training.

(iii) PADI or NAUI certified scuba instructing staff shall maintain the following conditions:

(A) Limit number of persons training to ten persons per instructor.

(B) Ensure all persons being instructed are monitored at all times while in the pool to ensure thirty-second response time can be provided.

(iv) Private club swimming pool facilities must have lifeguards present at all times persons sixteen years of age and younger are using the pool facilities, except:

(A) Attendants or shallow water lifeguards may supervise persons thirteen through sixteen years of age when these users are restricted to a pool depth less than or equal to five feet; and

(B) Attendants or shallow water lifeguards may supervise all persons sixteen years of age and under if the entire pool depth is less than four and one-half feet.

(c) If a spa or wading pool is in same enclosure as a swimming pool, all pools are subject to the most stringent monitoring personnel requirements applicable for any pool in the enclosure unless barriers that conform to WAC 246-260-031(4) restrict access between pools.

(d) The use of spas or wading pools not requiring lifeguards or attendants is subject to the following conditions:

(i) If the pool is used by children twelve years of age or under, a responsible adult eighteen years of age or older must accompany the children and be at the pool or pool deck at all times the children use the facility;

(ii) If the pool is used by persons seventeen years of age or under, a minimum of two people must be at the pool facility at all times the pool is in use;

(iii) The owner shall post the requirements of this subsection to assure the responsible person is notified of conditions for use of the facility.

(e) Limited use pool facilities must have an equivalent or greater level of supervision as specified for private clubs in (b)(iv) of this subsection during any times when activities are provided that put the pools into the category of general use pools.

(f) At limited use pool facilities, if alcohol is sold within the pool facility, the owner must provide a lifeguard or attendant at the pool area.

(g) All pool facilities must have a water treatment operator.

(7) Personnel duties and equipment.

(a) Owners shall ensure personnel are present at each WRF who perform duties specified in this subsection.

(b) Lifeguards, shallow water lifeguards and swim coaches shall guard assigned pool users and provide a rescue response time of thirty seconds or less.

(c) Attendants, if provided at pools not requiring lifeguards, shall oversee pool use by the bathers and provide supervision and elementary rescues such as reaching assists to bathers in need. This does not mean the person is qualified or trained to make swimming rescues.

(d) Owners shall notify responsible persons on the conditions for facility use at pools not requiring lifeguards and for which no lifeguards or attendants are present. A responsible person means a person having responsibility for overseeing users seventeen years of age or under including, but not limited to, a person:

(i) Renting an apartment, hotel, motel, RV camp, etc.; or

(ii) Who is an owner or member of a condominium, homeowner's association, fraternity, equity ownership facility, mobile home park, sorority, or private club with a pool facility.

(e) Water treatment operators shall assure the water treatment components of each WRF are functioning to protect health, safety and water quality.

(f) Owners shall ensure that lifeguards, shallow water lifeguards, swim coaches, and attendants:

(i) Wear a distinguishing suit/uniform, or emblem; and

(ii) Carry a whistle or equivalent signaling device.

(8) Personnel training.

(a) Owners shall ensure that pool personnel required by subsection ~~((5))~~ (6) of this section have skills necessary for their duties, obtained by training and certification specified in Table 131.1 in Appendix B, or equivalent.

(b) Owners shall keep a copy at the WRF of each currently valid certification required for pool personnel.

(c) Owners shall ensure safety-monitoring personnel obtain continuing education needed to maintain lifeguarding skills and maintain valid certifications required by this subsection.

(d) If SCUBA or kayaking lessons are conducted at a pool, owners shall ensure that personnel monitoring these activities are trained to recognize special hazards associated with these activities.

(9) Emergency response plan.

(a) Owners shall prepare and implement emergency response plans specified in this subsection.

(b) In pool facilities where lifeguards, shallow water lifeguards, or swimming coaches are required by subsections ~~((5))~~ (6) and ~~((6))~~ (7) of this section:

(i) Sufficient qualified personnel must be present and appropriately located to provide a rescue response time of thirty seconds or less for all pool users;

(ii) The number and qualifications of personnel present must be based on factors dealing with pool depth, line of sight, bather load, potential emergency procedures, and personnel rotation;

(iii) Emergency response drills must be held two or more times each year to test whether thirty-second response time can be met; and

(iv) A record of each response drill must be kept at the WRF for three or more years.

(c) In pool facilities where lifeguards are not present, in accordance with subsection ~~((5))~~ (6)(c) and (e) of this section, owners shall adopt rules, provide enforcement of conditions for pool use and notify users when first using facility and at least annually thereafter that conditions for use include:

(i) If a child twelve years of age or less is using the pool, a responsible adult eighteen years of age or older shall accompany the child and be at the pool or pool deck at all times the child uses the facility; and

(ii) If anyone seventeen years of age or less is using the pool, a minimum of two people shall be at the pool facility.

(d) Emergency equipment specified in WAC 246-260-041, 246-260-051, and 246-260-071 must be readily available during WRF operating hours.

(e) In facilities where chlorine gas is used:

(i) WRF personnel shall conduct annual emergency drills; and

(ii) The plan shall identify the location of accessible chlorine cylinder repair kits.

(f) Operators shall ensure that lifeguards, shallow water lifeguards, and swim coaches receive ongoing training of emergency response skills.

(10) Environmental conditions. Owners shall monitor various environmental conditions affecting the facility or potentially affecting the health and safety of users. Owners shall close the WRF or take other appropriate action in response to adverse environmental factors, (e.g., electrical storms, fog, wind, and visibility problems) to ensure that the health and safety of users are protected.

(11) Closure. Owners shall close the facility when the facility presents an unhealthful, unsafe, or unsanitary condition. These conditions include lack of compliance with the water quality or an operation requirement in this section or in WAC 246-260-111.

AMENDATORY SECTION (Amending WSR 04-18-096, filed 9/1/04, effective 10/31/04)

WAC 246-260-171 Compliance. (1) Except as provided in subsections (2), (4), and (5) of this section, existing water recreation facilities with approved plans prior to October 31, 2004, that do not fully comply with the design, construction, and equipment requirements in WAC 246-260-

031, 246-260-041, 246-260-051, 246-260-061, 246-260-071, and 246-260-081 may be continued in use.

(2) Owners of all facilities shall comply with the operational requirements in WAC 246-260-101 through 246-260-151.

(3) Owners of facilities designed and constructed after the effective date of these regulations shall comply with all applicable sections of the design, construction and equipment requirements in WAC 246-260-021 through 246-260-091.

(4) Facilities constructed prior to the effective date of these regulations shall comply with the barrier protection requirements in WAC 246-260-031 (4) and (5) and the emergency equipment requirements established in WAC 246-260-041 (11)((g))(h); 246-260-071(7); and 246-260-081(4) by the compliance deadlines specified in the regulations. Barrier modifications or emergency shutoff switches made prior to the compliance deadlines shall meet the requirements in WAC 246-260-031 (4) and (5); and WAC 246-260-041 (11)((g))(h); 246-260-071(7); and 246-260-081(4) at the time the modifications are made.

(5) When owners are modifying the physical plant of their facilities, they are required to upgrade the area of the physical plant being modified to conform to current requirements. For example, when owners having pool facilities with single main drains are changing or modifying their main drains they shall modify the main drains in compliance with the current requirements. This includes, but is not limited to:

(a) Resurfacing of pools that involves alteration of the drains; or

(b) Changes to the main drain outlet sump or its recirculation piping.

WSR 05-03-060

EXPEDITED RULES

WASHINGTON STATE LOTTERY

[Filed January 12, 2005, 2:11 p.m.]

Title of Rule and Other Identifying Information: Repeal chapter 315-37 WAC, Lotto Plus.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Ceil Buddeke, Rules Coordinator, Washington's Lottery, 814 East 4th Avenue, Olympia, WA 98506, AND RECEIVED BY March 21, 2005.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The lottery is repealing chapter 315-37 WAC, Lotto Plus, because the draw game *Lotto Plus* is extinct. Therefore the rule no longer applies.

Reasons Supporting Proposal: The lottery game *Lotto Plus* is no longer in existence and will not be used at a future date. Therefore, the rule is ineffective.

Statutory Authority for Adoption: RCW 67.70.040.

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

Name of Proponent: Washington Lottery, governmental.

Name of Agency Personnel Responsible for Drafting: Ceil Buddeke, 814 East 4th Avenue, Olympia, WA 98506, (360) 664-4833.

January 12, 2005

Ceil Buddeke

Rules Coordinator

WSR 05-03-111

EXPEDITED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2005-01—Filed January 19, 2005, 10:21 a.m.]

Title of Rule and Other Identifying Information: Standards for education of licensees soliciting long-term care contracts.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kacy Scott, Office of Insurance Commissioner, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacys@oic.wa.gov, AND RECEIVED BY March 22, 2005.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to chapter 284-17 WAC will result in incorrect references in WAC 284-54-750. This proposal will correct those references. In the event that the amendments to chapter 284-17 WAC are not adopted, this proposal will be withdrawn.

Reasons Supporting Proposal: The commissioner is committed to the review of existing regulations to improve the clarity and efficiency of Title 284 WAC.

Statutory Authority for Adoption: RCW 48.02.060, 48.17.150, and 48.85.030.

Statute Being Implemented: RCW 48.85.040.

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

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Georgia Cooper, P.O. Box 40255,

Olympia, WA 98504-0255, (360) 725-7145; and Enforcement: Scott Jarvis, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7262.

January 19, 2005
Mike Kreidler
Insurance Commissioner

shall annually certify to the commissioner that each resident and nonresident licensee involved in the transaction of long-term care insurance has completed an approved ~~((six-hour))~~ LTC special education course ~~((on either long-term care or long-term care and long-term care partnership))~~ every two years in accordance with WAC ~~((284-17-220(2)(b)(i)))~~ 284-17-258. Applications may only be accepted if the licensee involved in the transaction meets all of the requirements of WAC ~~((284-17-220(2)(b)(i)))~~ 284-17-258.

(2) Beginning with the calendar year 1998, issuers shall file a copy of the following certification report with the commissioner on or before March 31 of each year:

Annual Filing of Compliance with the
Long-Term Care and Long-Term Care Partnership
Education Requirements of WAC ~~((284-17-220(2)(b)(i)))~~ 284-17-258

To be filed with the commissioner on or before March 31 of each year

For the period of January 1 to December 31 of _____ (Year)

Company Name _____

Address _____

Insurance Policies Offered:

Long-Term Care _____ Long-Term Care Partnership _____ Both _____

I hereby certify that all ~~((our affiliated licensees))~~ appointed agents involved in the transaction of each long-term care or long-term care partnership policy we issue in Washington have fulfilled the requirements of WAC ~~((284-17-220(2)(b)(i)))~~ 284-17-258. I certify that to the best of my knowledge, we did not accept or process any applications that involved the participation of a licensee who was not in compliance with WAC ~~((284-17-220(2)(b)(i)))~~ 284-17-258.

Signature of Officer:

Date:

Name and Title of Officer:

Prepared by:

Phone Number:

Phone Number:

Return Certification Form to:

*Education Manager
Office of the Insurance Commissioner
P.O. Box 40257
Olympia, WA 98504-0257
Fax 360-586-2019*

EXPEDITED



WSR 05-01-076

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed December 9, 2004, 4:44 p.m., effective January 9, 2005]

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

Purpose: To amend rules to comply with the provisions of chapter 4, Laws of 2003 2nd sp.s. (2ESB 6097). The substantive changes in the law made it necessary to modify the rules related to an individual's eligibility for unemployment benefits, job search requirements, the job search monitoring program, penalties, overpayments, and the calculation of maximum benefits. Additional rules are adopted to define new eligibility terms contained in the legislation.

Citation of Existing Rules Affected by this Order: Repealing WAC 192-12-011, 192-12-012, 192-12-020, 192-12-180, 192-12-184, 192-12-190, 192-12-300, 192-12-310, 192-12-320, 192-12-330, 192-12-340, 192-16-019, 192-16-023, 192-23-014, 192-23-015, 192-23-016 and 192-23-017; and amending WAC 192-04-040, 192-04-050, 192-16-009, 192-16-015, 192-16-016, 192-150-050, 192-150-055, 192-150-060, 192-150-065, 192-150-085, 192-150-090, 192-180-010, 192-180-015, 192-180-020, 192-180-025, 192-180-030, 192-240-035, and 192-240-040.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.12.042.

Adopted under notice filed as WSR 04-10-114 on May 5, 2004.

Changes Other than Editing from Proposed to Adopted Version: WAC 192-150-140 (3)(c), was rephrased to add language referring to the reasonably prudent person standard. A sentence was added to WAC 192-150-150, clarifying that an individual is not considered to have accepted changes in working conditions if he or she continues to work while pursuing established grievance or arbitration procedures. WAC 192-180-015(4), was modified to require claimants to retain job search logs for thirty, as opposed to sixty, days after receiving their final payment.

A final cost-benefit analysis is available by contacting Juanita Myers, P.O. Box 9046, Olympia, 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 41, Amended 18, Repealed 17.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 41, Amended 18, Repealed 17.

Date Adopted: December 3, 2004.

Dr. Sylvia P. Mundy
Commissioner

AMENDATORY SECTION (Amending WSR 89-20-064, filed 10/4/89, effective 10/9/89)

WAC 192-04-040 Interested parties. In all cases adjudicated under Title 50 RCW the employment security department is an interested party. Other interested parties are

(1) **Benefit appeals.**

(a) The claimant; ~~((and))~~

(b) Any employer entitled to notice under WAC 192-130-060~~((12-320))~~, ~~((or))~~ and ~~((defined as))~~

(c) An interested employer as defined in WAC 192-125, in cases involving the payment or recovery of benefits, including but not limited to the entitlement to, eligibility for or qualification for waiting period credit or benefits.

(2) **Tax appeals.** Employers whose contributions, experience rating, benefit charges, or rate of contribution are affected by:

(a) An assessment for contributions;

(b) A denial of a claim for refund of contributions, interest, penalties;

(c) A denial of a request for relief of benefit charges made to their account; or

(d) Their determined or redetermined rate of contribution.

AMENDATORY SECTION (Amending WSR 89-24-030, filed 11/30/89, effective 1/1/90)

WAC 192-04-050 Appeals—Petitions for hearing—Right to notice. Notice of appeal or petition for hearing rights shall be set forth on the face of, or as an attachment to, each of the following:

(1) Redetermination of an initial monetary determination.

(2) Determination of allowance or denial of waiting period credit or benefits.

(3) Redetermination of allowance or denial of waiting period credit or benefits.

(4) An overpayment assessment or a denial of a request for waiver of an overpayment.

(5) Order and notice of assessment of contributions, interest, or penalties.

(6) Denial of a claim for refund of contributions, interest, or penalties.

(7) Denial of a request for relief of benefit charges made to an employer's account.

(8) Denial of a redetermination or adjustment of an employer's determined or redetermined rate of contribution.

(9) Denial of approval or extension of standby status.

(10) Denial of a request for commissioner approved training or training benefits.

(11) Notice to separating employer of liability for all benefits paid on a claim as provided in RCW 50.29.021 (2)(c).

AMENDATORY SECTION (Amending WSR 82-17-052, filed 8/17/82)

WAC 192-16-009 (~~Interpretative regulations~~) Disqualification for leaving work voluntarily—Meaning of good cause for claims with an effective date prior to

PERMANENT

January 4, 2004—RCW 50.20.050(1) (~~and (3)~~). (1) **General rule.** Except as provided in WAC 192-~~((16-011))150-050~~ and 192-~~((16-013))150-055~~, in order for an individual to establish good cause within the meaning of RCW 50.20.050(1) for leaving work voluntarily it must be satisfactorily demonstrated:

(a) That he or she left work primarily because of a work connected factor(s); and

(b) That said work connected factor(s) was (were) of such a compelling nature as to cause a reasonably prudent person to leave his or her employment; and

(c) That he or she first exhausted all reasonable alternatives prior to termination: Provided, That the individual asserting "good cause" may establish in certain instances that pursuit of the otherwise reasonable alternatives would have been a futile act, thereby excusing the failure to exhaust such reasonable alternatives.

(2) **Exceptions.** Notwithstanding the provisions of subsection (1) above, neither the distance of the work from the individual's residence, if known at the time of hire nor any other work factor which was generally known and present at the time of hire will provide good cause for voluntarily leaving work unless the individual demonstrates to the satisfaction of the department:

(a) That the distance from the individual's residence at time of hire is substantially greater than the distance customarily traveled by workers in the individual's job classification and labor market; or,

(b) That the related work connected circumstances have so changed as to amount to a substantial involuntary deterioration of the work factor; or

(c) That other work related circumstances would work an unreasonable hardship on the individual if he or she were required to continue in the employment.

(3) **Definitions.** For purposes of subsection (2) above:

(a) "Distance customarily traveled" means a distance normally traveled by a significant portion of the work force in the individual's job classification in the labor market area;

(b) "Generally known" means commonly known without reference to specific cases or individuals; and

(c) "Individual's job classification" means the job classification in which the individual was working when the individual voluntarily left work; and

(d) A "labor market" is the geographic area in which those workers in the individual's job classification, living in the vicinity of his or her residence, customarily work; and

(e) "Substantial involuntary deterioration" means an actual and considerable worsening of the work factor outside the control of the individual; and

(f) "Unreasonable hardship" means a result, not due to the individual's voluntary action, that would cause a reasonable person to leave that employment.

AMENDATORY SECTION (Amending WSR 80-10-052, filed 8/6/80)

WAC 192-16-015 (~~(Interpretative regulations)~~) **Leaving work for marital or domestic reasons—RCW 50.20.050((4))1(d).** This regulation applies only to claims with an effective date prior to January 4, 2004. (1) General

rule. An individual whose marital status or domestic responsibilities are the primary cause of his or her voluntarily leaving employment shall be disqualified from benefits pursuant to the terms of RCW 50.20.050((4)) 1(d). This rule applies whether or not the individual took reasonable precautions to preserve his or her employment. Domestic responsibilities mean obligations or duties relating to the individual's immediate family, and include the illness, disability, or death of a member of the claimant's "immediate family" as defined in WAC 192-~~((16-013))150-055~~.

(2) Exception. Notwithstanding the provisions of subsection (1) above, an individual who leaves employment because of the illness, disability, or death of a member of his or her immediate family as defined in WAC 192-~~((16-013))150-055~~ and who establishes good cause under RCW 50.20.050 ((2)(b)) 1(b)(ii), will not be subject to disqualification under RCW 50.20.050((4)) 1(d): Provided, That if such individual fails to establish good cause under RCW 50.20.050 ((2)(b)) 1(b)(ii), disqualification will be imposed under RCW 50.20.050((4)) 1(d) rather than under RCW 50.20.050(1).

AMENDATORY SECTION (Amending WSR 82-17-052, filed 8/17/82)

WAC 192-16-016 (~~(Interpretative regulations)~~) **Satisfying disqualification under RCW 50.20.050((4))1(d) when separation is for reasons of marital status and marriage occurs after date of separation.** This regulation applies only to claims with an effective date prior to January 4, 2004.

In *Yamauchi v. Department of Employment Security*, 96 Wn.2d 773 (1982), the Washington state supreme court held that an individual who leaves work to be married and relocate to a place outside of reasonable commuting distance and who is not married at the time of the leaving does so for reasons of marital status and should be disqualified from benefits pursuant to RCW 50.20.050((4)) 1(d) if there is a causal nexus between the marital status and leaving work. However, the court also ruled that an individual who so leaves work shall not benefit from the lesser disqualification of RCW 50.20.050((4)) 1(d) prior to the date of the marriage and move.

(1) An individual who voluntarily leaves work to marry and relocate to a place outside of reasonable commuting distance has left work for reasons of marital status pursuant to RCW 50.20.050((4)) 1(d) if there is a causal nexus between the marriage and leaving work.

(2) Any individual who leaves work for reasons of marital status as described in subsection (1) above shall be granted no credit toward satisfying the disqualification of benefits under RCW 50.20.050((4)) 1(d) described as the alternate method of satisfying the disqualification in WAC ~~((192-16-017(2))) 192-150-090~~, for any week ending prior to marriage or relocation, whichever is the latter.

NEW SECTION

WAC 192-100-010 Reasonably prudent person defined. A reasonably prudent person is an individual who uses good judgment or common sense in handling practical

matters. The actions of a person exercising common sense in a similar situation are the guide in determining whether an individual's actions were reasonable.

NEW SECTION

WAC 192-100-020 Continued claim defined. (1) You are a continued claim recipient if you:

- (a) Are monetarily entitled to benefits; and
- (b) Are nonmonetarily eligible for benefits; and
- (c) Have received credit for your waiting week or payment of benefits for one or more weeks in your benefit year and in the current continued claim series.

(2) Continued claim status will end following any combination of four or more consecutive weeks for which you do not file a claim or during which you are not an unemployed individual as defined in RCW 50.04.310.

NEW SECTION

WAC 192-100-030 Week defined. The term "week" means a period of seven consecutive calendar days beginning on Sunday at 12:01 a.m. and ending at midnight the following Saturday.

NEW SECTION

WAC 192-100-035 Effective date of claim defined. As provided in RCW 50.04.030, an unemployment claim will be effective on the Sunday of the calendar week in which the application for benefits is filed. This Sunday date is referred to as the "effective date of claim" or "claim effective date."

NEW SECTION

WAC 192-110-200 Maximum benefits payable—RCW 50.20.120 (1)(b). When the three-month seasonally adjusted total unemployment rate reaches six and eight-tenths percent or less, the maximum benefits payable on a claim will be permanently reduced to 26 times an individual's weekly benefit amount or one-third of the individual's base year wages, whichever is less.

NEW SECTION

WAC 192-110-210 Claim cancellation. If you choose to cancel a claim in order to refile with a new effective date, any nonmonetary eligibility decision issued under the canceled claim will be null and void. A new decision will be issued which addresses your eligibility for benefits based on the effective date of your new claim.

NEW SECTION

WAC 192-120-050 Conditional payment of benefits. (1) If you are a continued claim recipient and your eligibility for benefits is questioned by the department, you will be conditionally paid benefits without delay for any week(s) for which you file a claim for benefits, until and unless you have been provided adequate notice and an opportunity to be heard.

(2) Conditional payments will not be made under the conditions described in WAC 192-140-200 and 192-140-210.

NEW SECTION

WAC 192-130-060 Notice to employer. (1) Whenever an individual files an initial application for unemployment benefits, a notice will be mailed to:

- (a) The claimant's last employer, and
- (b) Any prior employer from whom the claimant has a potentially disqualifying separation where there is insufficient subsequent employment to purge a separation disqualification. An individual will be presumed to have a potentially disqualifying separation when:

(i) For claims with an effective date prior to January 4, 2004, it has been less than seven weeks or the individual has not earned at least seven times his or her weekly benefit amount since the job separation; or

(ii) For claims with an effective date January 4, 2004, and later, it has been less than ten weeks or the individual has not earned at least ten times his or her weekly benefit amount since the job separation.

(2) Whenever an individual files an initial application for unemployment benefits and a benefit year is established, a notice will be mailed to all base year employers. This notice to base year employers will include information on wages reported and benefit charging related information and will request an employer response if the wage information is incorrect or if the employer wishes to request relief of benefit charging.

(3) Whenever an individual files an initial application for unemployment benefits, a notice will be mailed to any separating employer as provided in WAC 192-320-075. This notice will include information that the employer may be liable for all benefits paid on the claim as provided in RCW 50.29.021 (2)(c).

(4) Whenever an individual files an additional claim for benefits (reopens an existing claim after subsequent employment), a notice will be mailed to the last employer reported by the claimant and to any prior employer from who the claimant has a potentially disqualifying separation who has not previously been notified.

NEW SECTION

WAC 192-130-065 Mailing addresses for notice to employer. Notices to employers required by RCW 50.20.150 and WAC 192-130-060 will be mailed as follows:

(1) The notice to the last employer of the claimant will be mailed to the address provided by the claimant. However, an alternative mailing address may be used in the following circumstances:

(a) If the department has been notified that the employer is represented for unemployment insurance purposes by an employer representative or cost control firm, the notice to the last employer may be mailed directly to that firm; or

(b) If an employer has notified the department that unemployment claim notices should be mailed to a specified address, the notice to the last employer may be mailed directly to that address.

(2) The notice to any base year employer who has reported wages to the department will be mailed to the employer's mailing address of record provided by the employer for tax purposes.

(3) The notice to any other employer from whom the claimant has a potentially disqualifying separation (without sufficient subsequent employment to purge a separation disqualification) will be mailed to the address provided by the claimant.

NEW SECTION

WAC 192-130-070 Mailing of eligibility determinations—RCW 50.20.180. (1) An eligibility determination based on a job separation issue will be mailed to the following:

(a) The last employer, if the claimant was separated from employment for reasons other than lack of work;

(b) A previous employer from whom the claimant has a potentially disqualifying separation as provided in WAC 192-130-060 if the claimant was separated from employment for reasons other than lack of work;

(c) For claims with an effective date prior to January 4, 2004, to any employer since the beginning of the claimant's base year who provides information that the claimant was discharged for a felony or gross misdemeanor connected with the work;

(d) For claims with an effective date of January 4, 2004 or later, to any employer since the beginning of the claimant's base year who provides information that the claimant was discharged for gross misconduct connected with the work, or whose wage credits are deleted from the claimant's record as a result of the claimant's gross misconduct.

(2) An eligibility determination based on an issue other than a separation from employment will be mailed to an employer if the employer provides relevant information relating to eligibility for a specific week.

NEW SECTION

WAC 192-130-080 Procedure—Separation issues.

(1) No decision on a separation issue (RCW 50.20.050, 50.20.060, RCW 50.20.066) will be issued until both parties to the separation have had an opportunity to present information and rebuttal, if necessary and appropriate, on the matters at issue.

(2) If an employer does not respond within ten days to the notice required by WAC 192-130-060, the department may make a decision at that time based on available information.

(3) If the department receives information from the employer after the end of the ten day response period, but before the decision has been made, the information provided by the employer will be considered before making the decision if the information was mailed to the unemployment claims telecenter identified on the notice.

(4) If the department receives information from the employer after the end of the ten day period and within thirty days following the mailing of a decision, the department will consider that information for the purposes of a redetermination under RCW 50.20.160 or as an appeal of the decision.

(5) Any information received within thirty days of the mailing of the notice required by WAC 192-130-060 will be considered a request for relief of benefit charges under RCW 50.29.020 or RCW 50.29.021.

NEW SECTION

WAC 192-140-070 What happens if I do not establish that I am able to or available for work? (1) If you report that you were not able to work or not available for work in any week or do not report whether you were able to work or were available for work, and do not provide details regarding your ability to or availability for work as requested, the department will presume you are not able or not available for work and benefits will be denied under RCW 50.20.010 (1)(c).

This denial is for a definite period of time, which is the week or weeks in which information on your ability to work or availability for work is incomplete.

(2) If you provide information that indicates you are not able to work or not available for work because of a circumstance that is expected to continue beyond the immediate week or weeks claimed, and you do not provide information regarding your ability to or availability for work, benefits will be denied under RCW 50.20.010 (1)(c).

This denial is for an indefinite period of time. It will begin with the first week claimed in which the circumstance applies and continue until the circumstance no longer exists.

NEW SECTION

WAC 192-140-075 What happens if I do not demonstrate that I am actively looking for work? (1) If you report that you were not actively seeking work in any week or do not report whether you made an active search for work and subsequently fail to report complete job search details and other information when requested, the department will presume you are not actively seeking work and your benefits will be denied under RCW 50.20.010 (1)(c).

(2) For the purpose of this section, "complete job search details" includes those elements required under WAC 192-180-015.

(3) This denial is for a definite period of time, which is the week or weeks in which your job search information is incomplete.

NEW SECTION

WAC 192-140-080 What happens if I do not comply with a job search directive? (1) If you have been issued a job search directive as provided in WAC 192-180-010, do not report a job search that meets the requirements outlined in the directive, and you do not provide additional job search information as requested or you respond with information that does not meet these requirements, the department will presume you are not actively seeking work as directed and benefits will be denied under RCW 50.20.010 (1)(c).

(2) This denial is for a definite period of time, which is the week or weeks in which your job search information does not meet the specific requirements of the directive.

NEW SECTION

WAC 192-140-085 What happens if I do not respond to a request for information regarding late claim(s)? (1) If you file a claim late as defined in WAC 192-140-005 and do not respond to a request for an explanation of why the claim was filed late, the department will presume that the claim was filed late without good cause and benefits will be denied under RCW 50.20.010 (1)(b) and WAC 192-140-005.

(2) This denial is for a definite period of time, which is the week or weeks that were filed late.

NEW SECTION

WAC 192-140-090 What happens if I do not report for reemployment services as provided in RCW 50.20.010 (1)(e)? The commissioner may direct you in writing to report in person for reemployment services.

(1) **Exceptions.** You will not be required to participate in reemployment services if you:

- (a) Are a member in good standing of a full referral union;
- (b) Are attached to an employer as provided in WAC 192-180-005; or
- (c) Within the previous year have completed, or are currently scheduled for or participating in, similar services.

(2) **Minimum services.** The services will consist of one or more sessions which include, but are not limited to:

- (a) Local labor market information;
- (b) Available reemployment and training services;
- (c) Successful job search attitudes;
- (d) Self assessment of job skills and interests;
- (e) Job interview techniques;
- (f) The development of a resume or fact sheet; and
- (g) The development of a plan for reemployment.

(3) **Sanctions.** If you have received a directive, and fail to participate in reemployment services during a week, you will be disqualified from benefits for that week unless justifiable cause is demonstrated.

(4) **Justifiable cause.** Justifiable cause for failure to participate in reemployment services as directed will include factors specific to you which would cause a reasonably prudent person in similar circumstances to fail to participate. Justifiable cause includes, but is not limited to:

- (a) Your illness or disability or that of a member of your immediate family;
- (b) Your presence at a job interview scheduled with an employer; or
- (c) Severe weather conditions precluding safe travel.

Reasons for absence may be verified. In all such cases, your ability to or availability for work is in question.

NEW SECTION

WAC 192-140-100 What happens if I do not respond to a request for information regarding a discharge from work? (1) If you do not respond to a request for information regarding a discharge from work or have not provided sufficient information to identify or contact the employer, the department will presume you were discharged for misconduct connected with the work. For claims with an effective

date prior to January 4, 2004, benefits will be denied under RCW 50.20.060. For claims with an effective date of January 4, 2004, and later, benefits will be denied under RCW 50.20.066. If you have provided the department with sufficient information to contact the employer, benefits will not be denied unless the employer establishes by a preponderance of evidence that you were discharged for misconduct connected with your work.

(2) This denial is for an indefinite period of time and will continue until you meet the requalification provisions of RCW 50.20.060 or RCW 50.20.066, as applicable.

NEW SECTION

WAC 192-140-120 What happens if I do not provide information regarding attendance at school? (1) If you or another party notifies the department that you are in school and you do not respond to a request for information regarding school attendance, the department will presume that you are registered for academic instruction of 12 or more credit hours and have a limited attachment to the labor market, and are not available for work. Benefits will be denied under RCW 50.20.095 and RCW 50.20.010 (1)(c).

(2) This denial of benefits is indefinite in nature and will continue until you establish that you are eligible under RCW 50.20.095 and RCW 50.20.010 (1)(c).

NEW SECTION

WAC 192-140-200 What happens if I certify that I am not able to or available for work? (1) Benefits will be reduced under RCW 50.20.010 (1)(c) and RCW 50.20.130 without requiring additional information or interview if you file a weekly claim that:

- (a) States you were not available for work or were not able to work on one or two days of a week or weeks being claimed; and
- (b) The day or days to which this condition applies are normal working days in your regular occupation; and
- (c) The information supplied clearly supports this finding.

This denial is for a definite period of time and applies only to the day or days for which you specifically indicate you are ineligible for benefits.

(2) Benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview if you file a weekly claim that:

- (a) States you were not available for work or were not able to work for three or more days of a week or weeks being claimed; and
- (b) The days to which this condition applies are normal working days in your regular occupation; and
- (c) The information supplied clearly supports this finding.

This denial for a definite period of time and applies only to the week or weeks for which you specifically indicate you are ineligible for benefits.

(3) Benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview if you file a weekly claim that indicates you are not able to work or not available for work because of a circumstance that is

expected to continue beyond the immediate week or weeks claimed.

This denial is for an indefinite period of time. It will begin with the first week claimed in which the circumstance applies and continue until the circumstance no longer exists.

(4) If you file a weekly claim with information clearly stating that you do not intend to claim benefits for the week or weeks, benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview.

This denial is for a specific period of time, which is the week or weeks for which you specifically indicate you do not intend to claim benefits.

(5) Any denial of benefits under this section will be issued without delay.

NEW SECTION

WAC 192-140-210 What happens if I return to full-time work or report hours worked consistent with full-time work? If you report that you have returned to full-time work or report hours worked that are consistent with full-time work for that occupation, this information is sufficient to find that you are no longer an unemployed individual as defined in RCW 50.04.310. This denial is for a specific period of time, which is the week or weeks for which you report full-time work or hours consistent with full-time work.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-150-050 Leaving work to accept bona fide job offer—RCW 50.20.050 ~~((2)(a))~~ (1)(b)(i) and (2)(b)(i). If you leave work to accept a bona fide offer of employment, you will have good cause within the meaning of RCW 50.20.050~~((1))~~ if you satisfactorily demonstrate that:

(1) Prior to leaving work, you received a definite offer of employment; and

(2) You had a reasonable basis for believing that the person making the offer had the authority to do so; and

(3) A specific starting date and the terms and conditions of the employment were mutually agreed upon; and

(4) You continued in your previous employment for as long as was reasonably consistent with whatever arrangements were necessary to start working at the new job; and

(5) The new job is in employment covered by Title 50 RCW or the comparable laws of another state or the federal government.

AMENDATORY SECTION (Amending WSR 02-14-035, filed 6/25/02, effective 7/26/02)

WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii). (1) **General rule.** To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

(a) You left work primarily because of such illness, disability, or death; and

(b) The illness, disability, or death ~~((necessitated your leaving))~~ made it necessary for you to leave work; and

(c) You first exhausted all reasonable alternatives prior to leaving work, including:

(i) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060; and

(ii) Asking ~~((that you))~~ to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(2) For claims with an effective date of January 4, 2004, or later, you are not eligible for unemployment benefits unless, in addition to the requirements of subsections (1)(a)-(c) above, you terminate your employment and are not entitled to be reinstated in the same or similar position.

~~((2))~~ **3) Exception.** You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by subsection (1)(c) if you can show that doing so would have been a futile act.

~~((3))~~ **4) Definitions.** For purposes of this chapter:

(a) "Disability" means a sensory, mental, or physical condition that:

(i) Is medically recognizable or diagnosable;

(ii) Exists as a record or history; and

(iii) Substantially limits the proper performance of your job;

(b) "Immediate family" means your spouse, children (including unborn children), step-children, foster children, or parents of either spouse, whether living with you or not, and other relatives who temporarily or permanently reside in your household;

(c) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work.

AMENDATORY SECTION (Amending WSR 02-08-072, filed 4/2/02, effective 5/3/02)

WAC 192-150-060 Leaving work because of disability—Notice to employer—RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii). (1) If you leave work because of a disability you must notify your employer about your disabling condition before the date you leave work or begin a leave of absence. Notice to the employer shall include any known restrictions on the type or hours of work you may perform.

(2) Any restrictions on the type or hours of work you may perform must be supported by a physician's statement or by the terms of a collective bargaining agreement or individual hiring contract.

(3) Nothing in unemployment insurance law requires your employer to offer you alternative suitable work when you have a disability, or modify your duties so that you can perform your current job. However, any offer from your employer of other suitable work must be made prior to the date you leave work or begin a leave of absence. You are not required to request alternative work from your employer to be found available for work.

(4) If your employer offers you alternative work or otherwise offers to accommodate your disability, you must dem-

onstrate good cause to refuse the offer. This may include, but is not limited to, information from your physician that the accommodation offered by your employer was inadequate to reasonably accommodate your medical condition, or information demonstrating that the alternative work offered you by your employer was not suitable.

(5) If you refuse an offer of work from any employer after your job separation or after beginning a leave of absence, the department will determine whether you refused an offer of suitable work as provided in RCW 50.20.080.

(6) If you are on a leave of absence due to your disability, you must promptly request reemployment from your employer when you are again able to return to work.

(7) This section also applies to individuals on a leave of absence because of a pregnancy-related disability.

(8) For claims with an effective date of January 4, 2004, or later, in addition to the requirements of this section you are not eligible for unemployment benefits unless you terminate your employment and are not entitled to be reinstated to the same or similar position.

AMENDATORY SECTION (Amending WSR 01-11-85 [01-11-085], filed 5/16/01, effective 6/16/01)

WAC 192-150-065 What constitutes an employer-initiated mandatory transfer under RCW 50.20.050 ~~((2)(e))~~ (1)(b)(iii)? (1) This section applies only to claims with an effective date prior to January 4, 2004.

(2) If your spouse's employer requires your spouse to relocate to another labor market area to retain a current job or to accept another job with that employer, the relocation will be considered an employer-initiated mandatory transfer. Examples of employer-initiated mandatory transfers include, but are not limited to:

(a) A plant closure where employees must move to another labor market area to continue employment with that employer;

(b) A change in job responsibilities, such as a promotion, with that same employer where the employer requires a move to another labor market area; or

(c) A restructuring of business operations by the employer requiring employees to move to another labor market area if they want to continue in their customary occupation.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-150-085 How to qualify after benefits have been denied. (1) Benefits may be denied under RCW 50.20.050 ~~((1))~~ for voluntarily leaving work, RCW 50.20.060 for being discharged for misconduct, and RCW 50.20.080 for refusing an offer of suitable work or job referral. The denial of benefits will continue indefinitely until you show that:

~~((1))~~ a) At least seven calendar weeks have elapsed following the week the act occurred that resulted in the denial of benefits; and

~~((2))~~ b) You have obtained bona fide work and earned wages of at least seven times your suspended weekly benefit

amount. The wages earned must be in employment that is covered by Title 50 RCW or the comparable laws of another state or the federal government.

(2) For claims with an effective date of January 4, 2004, or later, benefits may be denied under RCW 50.20.066 for being discharged for misconduct or gross misconduct. The denial of benefits will continue indefinitely until you show that:

(a) At least ten calendar weeks have elapsed following the week the act occurred that resulted in the denial of benefits; and

(b) You have obtained bona fide work and earned wages of at least ten times your suspended weekly benefit amount. The wages earned must be in employment that is covered by Title 50 RCW or the comparable laws of another state or the federal government.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-150-090 How to qualify for benefits after leaving work for marital or domestic reasons. This section applies only to claims with an effective date prior to January 4, 2004. RCW 50.20.050 ~~(1)(4))~~ (d) says that benefits will be denied if you quit your job for family reasons. In such cases, the law provides an alternative means for qualifying for benefits other than through work and earnings. Under this alternative method, you must report in person to your Work-Source Office or local employment center in ten different weeks and establish that you are able to work, available for work, and actively seeking work each week.

If you are an interstate claimant or living in a remote area, you can qualify for benefits under this alternative method by calling the unemployment information and weekly claims line in each of ten different weeks and certifying that you are able to work, available for work, and actively seeking work each week. For purposes of this section, you are living in a remote area if a round trip of more than two hours by reasonably available public or private transportation is required to reach the nearest local employment center and return.

NEW SECTION

WAC 192-150-110 Mandatory military transfers—RCW 50.20.050 (2)(b)(iii). (1) Any military transfer will be considered mandatory if your spouse receives orders from the military to relocate to a new duty station, regardless of whether the transfer is temporary or permanent.

(2) You may establish good cause to quit work if you relocate for your spouse's employment that was due to a mandatory military transfer if:

(a) Your spouse's new duty station is outside your existing labor market and in Washington or another state (including the District of Columbia, Puerto Rico, and the U.S. Virgin Islands) that allows benefits to individuals who quit work to accompany their military spouse; and

(b) You continued in your previous employment for as long as was reasonable prior to the move.

(3) For purposes of this section, the term "military" includes the following: U.S. Navy, U.S. Army, U.S. Air

Force, U.S. Marine Corps, U.S. Coast Guard, activated reserve members of any of these service branches, activated members of the National Guard, commissioned officers of the National Oceanographic and Atmospheric Administration, and commissioned officers of the regular or reserve corps of the U.S. Public Health Service.

(4) The department will maintain a list of states that allow unemployment benefits to an individual who quits to accompany a military spouse. This list will be updated at least annually.

(5) Good cause for quitting work is not established under this section if:

(a) You quit work to return to your home of record or to another location rather than accompanying your spouse to a new duty location; or

(b) Your spouse leaves military service and you elect to relocate to your home of record or elsewhere.

NEW SECTION

WAC 192-150-115 Reduction in compensation of 25% or more—RCW 50.20.050 (2)(b)(v). (1) "Compensation" means remuneration as defined in RCW 50.04.320.

(2) "Usual" includes amounts actually paid to you by your employer or, if payment has not yet been made, the compensation agreed upon by you and your employer as part of your hiring agreement.

(3) To constitute good cause for quitting work under this section, employer action must have caused the reduction in your usual compensation.

(4) All reductions in compensation occurring since the beginning of your base period to the date of separation will be included in the determination as to whether your compensation was reduced by 25% or more.

(5) The percentage of reduction will be based on your most recent pay grade, salary, or other benefits you received or have accepted on a permanent basis. It does not include any temporary raises or other compensation for performing temporary duties.

NEW SECTION

WAC 192-150-120 Reduction in hours of 25% or more—RCW 50.20.050 (2)(b)(vi). (1) Your "usual hours" will be determined based on:

(a) The hours of work agreed on by you and your employer as part of your individual hiring agreement;

(b) For seasonal jobs, the number of hours you customarily work during the season; or

(c) For piecework, the number of hours you customarily work to complete a fixed volume of work.

(2) To constitute good cause for quitting under this section, employer action must have caused the reduction in your usual hours.

(3) All reductions in hours occurring since the beginning of your base period through the date of separation will be included in the determination as to whether your hours were reduced by 25% or more.

(4) In determining the percentage of reduction, the department will not consider any temporary overtime or additional hours performed on a temporary basis.

NEW SECTION

WAC 192-150-125 Change in worksite—RCW 50.20.050 (2)(b)(vii). (1) The location of your employment must have changed due to employer action. The change must have:

(a) Substantially increased the distance you travel to the new worksite or increased the difficulty or inconvenience of travel; and

(b) Resulted in a commute distance or time that is greater than is customary for workers in your job classification and labor market area.

(2) For purposes of this section:

(a) "Job classification" means your occupation at the time you quit work;

(b) "Labor market area" means the geographic area in which workers in your location and occupation customarily work. In determining whether a labor union's jurisdictional area is consistent with an individual member's labor market, the department will determine where the majority of union members in that member's location and occupation customarily work.

(3) Good cause for quitting work cannot be established under this section if the worksite location and distance to work was known at the time of hire.

NEW SECTION

WAC 192-150-130 Worksite safety—RCW 50.22.050 (2)(b)(viii). (1) At the time of hire, you can reasonably expect that your worksite complies with applicable federal and state health and safety regulations. If, after beginning work or accepting the job offer, you become aware of a safety issue that was not previously disclosed by your employer, the department will consider the safety of the worksite to have deteriorated.

(2) To establish good cause for quitting work under this section, you must notify your employer of the safety issue and give your employer a reasonable period of time to correct the situation. For purposes of this section:

(a) "Employer" means your supervisor, manager, or other individual who could reasonably be expected to have authority to correct the safety condition at issue;

(b) "Reasonable period of time" means the amount of time a reasonably prudent person would have remained at the worksite or continued working in the presence of the condition at issue. In addition:

(i) For health or safety issues that present imminent danger of serious bodily injury or death to any person, your employer must take immediate steps to correct the situation;

(ii) If your employer has been issued a citation by a regulatory agency charged with monitoring health or safety conditions, the employer must correct the condition within the time period specified in the citation.

(c) "Serious bodily injury" means bodily injury which creates a probability of death, or which causes serious permanent disfigurement, or which causes a significant loss or impairment of the function of any bodily part or organ whether permanent or temporary.

NEW SECTION

WAC 192-150-135 Illegal activities at the worksite—RCW 50.20.050 (2)(b)(ix). (1) Illegal activities include violations of both civil and criminal law.

(2) To establish good cause for quitting work under this section, you must notify your employer of the illegal activity and give your employer a reasonable period of time to correct the situation. You are not required to notify your employer before quitting when your employer is conducting the illegal activity and notifying your employer could jeopardize your safety or is contrary to other federal and state laws (for example, whistleblower protection laws).

(3) "Employer" means your supervisor, manager, or other individual who could reasonably be expected to have authority to correct the illegal activity at issue;

(4) A "reasonable period of time" is the period a reasonably prudent person would be expected to continue working in the presence of the activity at issue.

NEW SECTION

WAC 192-150-140 Change in usual work that violates religious or sincere moral beliefs—RCW 50.20.050 (2)(b)(x). (1) For purposes of this section, "usual work" means job duties or conditions:

(a) Originally agreed upon by you and your employer in your hiring agreement; or

(b) Customary for workers in your job classification; or

(c) You consistently performed during your base period;

or

(d) Mutually agreed to by you and your employer prior to the employer action changing your job duties.

(2) The following criteria will be used to determine whether you had good cause for quitting work under this section:

(a) The change in your usual work must be the result of action taken by your employer;

(b) The work must require you to violate your religious beliefs or sincere moral convictions; mere disapproval of the employer's method of conducting business is not good cause for leaving work under this section;

(c) You must notify your employer that the work violates your religion or sincere moral beliefs, unless doing so would be futile;

(d) The work or activity must directly, rather than indirectly, affect your religious or moral beliefs; and

(e) The objectionable condition must exist in fact, rather than be a matter of speculation.

(3) You will not have good cause for quitting work under this section if:

(a) You are inconsistent or insincere in your objections;

(b) The objection is raised as a sham or a means of avoiding work; or

(c) You knew of the objectionable aspects of the work at the time of hire, or you continued working under the objectionable conditions longer than a reasonably prudent person holding similar beliefs would have continued.

NEW SECTION

WAC 192-150-150 When is a separation considered a refusal of new work? (1) Section 3304 (a)(5) of the Federal Unemployment Tax Act and RCW 50.20.110 prohibit the denial of benefits to individuals who refuse to accept new work when the wages, hours, or other conditions of work are substantially less favorable to the individual than those prevailing for similar work in the locality.

(2) For purposes of this chapter, "new work" includes an offer by your present employer of:

(a) Different duties than those you agreed to perform in your current employment contract or agreement; or

(b) Different terms or conditions of employment from those in the existing contract or agreement.

(3) When your employer changes your pay, hours, or conditions of work in a manner that does not constitute good cause under RCW 50.20.050(2), the department will determine whether the change constitutes an offer of new work. If it does, the department will also determine if the new work is substantially less favorable than similar work in your labor market area.

(a) If the department determines the change constitutes an offer of new work, and the new work is substantially less favorable, the separation will be treated as a layoff due to lack of work and the issue of the refusal of new work adjudicated under RCW 50.20.080.

(i) The refusal of new work will be adjudicated even if you have not claimed benefits for the week in which the refusal occurred; and

(ii) The employer offering the new work is an interested party to the work refusal decision.

(b) If the department determines the change does not constitute an offer of new work, or the new work is not substantially less favorable, the separation from work will be adjudicated as a voluntary quit under RCW 50.20.050(2).

(4) If the reduction in your pay or hours is ten percent or less, the department will presume that it is not substantially less favorable and adjudicate the separation under RCW 50.20.050(2). You can overcome this presumption by providing additional information to the department to support a finding that the job was not suitable as provided in RCW 50.20.110.

(5) If you continue working for your employer after being notified of the change(s) in working conditions, the department will consider that you have agreed to the new terms and conditions of employment and have accepted the offer of new work. If you subsequently quit work because of these changes, the department will consider that you have voluntarily left work for personal reasons. This provision does not apply when you give notice of your intent to quit work upon being notified of the change(s) in working conditions and simply continue to work during an agreed upon notice period. In addition, you may continue working during an employer-provided grievance or arbitration period in response to the change in working conditions without the department considering that you have accepted the new work.

(6) For purposes of this section, the following definitions apply:

(a) "Conditions of work" includes fringe benefits such as life and health insurance; paid sick, vacation, and annual

leave; provisions for leaves of absence and holiday leave; pensions, annuities and retirement provisions; and severance pay. It also includes job security and reemployment rights; training and promotion policies; wage guarantees; unionization; grievance procedures; work rules, including health and safety rules; medical and welfare programs; physical conditions such as heat, light and ventilation; shifts of employment; and permanency of work.

(b) "Prevailing" means the most typical or customary in a particular occupation for a given area. Whether a wage rate is prevailing for your labor market area will be determined based on information provided by the department's labor market and economic analysis branch.

(c) "Similar work" means similarity of the operations performed, the skill, ability and knowledge required, and the responsibilities involved.

(d) "Substantially less favorable" means the work is materially reduced below the standard under which the majority of individuals in your occupation and labor market area customarily work, or the work would have a significantly unfavorable impact on you.

NEW SECTION

WAC 192-150-200 General provisions—Misconduct and gross misconduct—RCW 50.04.294 and RCW 50.20.066. (1) The action or behavior that resulted in your discharge or suspension from employment must be connected with your work to constitute misconduct or gross misconduct.

(2) The action or behavior must result in harm or create the potential for harm to your employer's interests. This harm may be tangible, such as damage to equipment or property, or intangible, such as damage to your employer's reputation or a negative impact on staff morale.

(3) RCW 50.04.294, subsections (1)(c) and (3)(b), will be distinguished as follows:

(a) Subsection (1)(c) "Carelessness or negligence that causes or would likely cause serious bodily harm to your employer or fellow employee" means that your action results in serious bodily injury or a reasonably prudent person would know it is likely to result in serious bodily injury.

(b) Subsection (3)(b) "Inadvertence or ordinary negligence in isolated instances" means that your action is an accident or mistake and is not likely to result in serious bodily injury.

NEW SECTION

WAC 192-150-205 Definitions—Misconduct and gross misconduct—RCW 50.04.294 and RCW 50.20.066. For purposes of this chapter, the following definitions will apply:

(1) "Willful" means intentional behavior done deliberately or knowingly, where you are aware that you are violating or disregarding the rights of your employer or a co-worker.

(2) "Wanton" means malicious behavior showing extreme indifference to a risk, injury, or harm to another that is known or should have been known to you. It includes a failure to act when there is a duty to do so, knowing that injury could result.

(3) "Carelessness" and "negligence" mean failure to exercise the care that a reasonably prudent person usually exercises.

(4) "Serious bodily harm" means bodily injury which creates a probability of death, or which causes significant permanent disfigurement, or which causes a significant loss or impairment of the function of any bodily part or organ.

(5) "Criminal act" means any act classified as a felony, gross misdemeanor, or misdemeanor under state or federal law.

(6) "Flagrant" means conspicuously bad or offensive behavior showing contemptuous disregard for the law, morality, or the rights of others. This blatant behavior must be so obviously inconsistent with what is right or proper that it can neither escape notice nor be condoned.

NEW SECTION

WAC 192-150-210 Willful or wanton disregard—RCW 50.04.294 (1)(a) and (2). (1) "Repeated inexcusable tardiness" means repeated instances of tardiness that are unjustified or that would not cause a reasonably prudent person in the same circumstances to be tardy. Your employer must have warned you at least twice, either verbally or in writing, about your tardiness, and violation of such warnings must have been the immediate cause of your discharge.

(2) "Dishonesty related to employment" means the intent to deceive the employer on a material fact. It includes, but is not limited to, making a false statement on an employment application and falsifying the employer's records.

(3) "Repeated and inexcusable absences" means repeated absences that are unjustified or that would not cause a reasonably prudent person in the same circumstances to be absent. Previous warnings from your employer are not required, but your repeated absences must have been the immediate cause of your discharge.

(4) A company rule is reasonable if it is related to your job duties, is a normal business requirement or practice for your occupation or industry, or is required by law or regulation.

(5) The department will find that you knew or should have known about a company rule if you were provided an employee orientation on company rules, you were provided a copy or summary of the rule in writing, or the rule is posted in an area that is normally frequented by you and your co-workers, and the rule is conveyed or posted in a language that can be understood by you.

(6) You are considered to be acting within your "scope of employment" if you are:

- (a) Representing your employer in an official capacity;
- (b) On your employer's property whether on duty or not;
- (c) Operating equipment under your employer's ownership or control;
- (d) Delivering products or goods on behalf of your employer; or
- (e) Acting in any other capacity at the direction of your employer.

PERMANENT

NEW SECTION

WAC 192-150-215 Discharges for felony or gross misdemeanor or for gross misconduct—Responsibility for providing information. In any job separation where there is a potential disqualification under RCW 50.20.065 or RCW 50.20.066, the employer is responsible for notifying the department in a timely manner of any resolution of issues.

If an employer notifies the department of a potential disqualification under RCW 50.20.065 or RCW 50.20.066 within ten days of receiving the notice required by WAC 192-130-060, the department will review the claimant's eligibility for benefits.

NEW SECTION

WAC 192-150-220 Discharges for gross misconduct or for felony or gross misdemeanor. (1) **Effective dates.** The provisions of RCW 50.20.065 will apply to claims with an effective date prior to January 4, 2004. The provisions of RCW 50.20.066 will apply to claims with an effective date of January 4, 2004, and thereafter.

(2) Definitions.

(a) "Criminal act" means every action defined as a crime by the applicable state or federal statutes, including felonies and gross misdemeanors.

(b) "Felony" means every crime that is defined as such by the applicable state or federal statutes.

(c) "Gross misdemeanor" means every crime which is defined as such by the applicable state or federal statutes.

(d) A "competent authority" is:

(i) A court (including magistrate or court commissioner), prosecuting attorney, or law enforcement agency; or

(ii) An administrative law judge; or

(iii) A regulatory agency or professional association charged by law with maintaining professional standards or codes of conduct; or

(iv) Any other person or body, other than your employer, with authority to administer disciplinary action against you.

(e) An admission to your employer or to an employee of the department that you have committed a criminal act is not considered an admission to a competent authority for the purposes of RCW 50.20.065 and RCW 50.20.066.

(3) Canceling wage credits.

(a) For claims with an effective date prior to January 4, 2004: If you have been discharged because of a felony or gross misdemeanor connected with your work of which you have been convicted or have admitted committing, all your hourly wage credits based on that employment since the beginning of your base period will be canceled.

(b) For claims with an effective date of January 4, 2004, and later: If you have been discharged for gross misconduct connected with your work:

(i) All your hourly wage credits based on that employment since the beginning of your base period will be canceled;

(ii) If your wage credits with this employer are fewer than 680 hours, the balance of wage credits up to 680 hours will be canceled proportionately among your base period employers according to each employer's share of your base

period wages. Wages from each employer will be removed from the most recent quarter in which wages were reported.

(c) Wage credits may only be canceled based upon an admission of a criminal act if:

(i) You admit to each and every element of a criminal act which caused you to be discharged; and

(ii) The admission is made to a competent authority.

AMENDATORY SECTION (Amending WSR 99-13-002, filed 6/3/99, effective 7/4/99)

WAC 192-180-010 Job search requirements—Directives—RCW 50.20.010 (1)(c) ((3)) and 50.20.240. (1) **Do I have to look for work?** You must be actively seeking work unless you are:

(a) Attached to an employer; ((or))

(b) Participating in a training program approved by the commissioner; or

(c) Unemployed due to strike or lockout as provided in RCW 50.20.090(2).

(2) **When should I start my job search?** You must look for work every week that you file a claim for benefits, unless you are exempt under subsection (1).

(3) **What are my weekly job search requirements?**

(a) At a minimum, you must:

(i) Make job search contacts with at least three employers each week; or

(ii) If your claim is effective prior to January 4, 2004, participate in an approved ((documented)) in-person job search activity at the WorkSource Office or local employment center; or

(iii) If your claim is effective January 4, 2004 or later, participate in three approved in-person job search activities at the WorkSource Office or local employment center, or any combination of employer contacts or in-person job search activities for a total of three.

(b) Based on your individual circumstances, such as your occupation, experience, or labor market area, the department may issue you a directive requiring more than three employer contacts or job search activities ((a)) each week.

(c) ~~((This subsection does not apply.))~~ If you are a member of a full referral union((:)) you must be in good standing with your union, eligible for dispatch, and comply with your union's dispatch or referral requirements. Your benefits may be denied for any weeks in which you fail to meet these requirements and you may be directed to seek work outside of your union.

(4) **What is a "job search contact"?** ~~((Usually a))~~ A job search contact is a contact with an employer ((in-person or by telephone)) to inquire about or apply for a job. You may use ~~((other))~~ job search methods that are customary for your occupation and labor market area, including in-person, telephone, internet, or telefax contacts. The work applied for must be suitable (see RCW 50.20.100) unless you choose to look for work in a lower skill area. A contact does not count if it is made with an employer whom you know is not hiring, or if the department determines the contact is designed in whole or in part to avoid meeting the job search requirements.

(5) **What is an "in-person job search activity"?** This is an activity provided through the WorkSource Office or local employment center that will assist you in your reemployment efforts. It includes, but is not limited to, (~~resume development,~~) job search workshops, training classes, (~~and computer tutorials~~) or other facilitated services provided by WorkSource staff and approved by the local WorkSource administrator. For claimants residing in Washington State, an in-person job search activity must be documented in the department's Services, Knowledge and Information Exchange System (SKIES) to qualify. For interstate claimants, the activity must be documented in the one-stop system in the state in which you reside.

(6) **What is a directive?** A directive is a written notice from the department telling you that specific methods of job search are required in order to meet the job search requirements. A written directive need not have been issued to deny benefits for failure to meet the job search requirements in subsection (3).

(7) **When is a directive issued?** The department can issue a directive to clarify or to increase the job search requirements you must meet. Examples include, but are not limited to, cases in which you need to:

- (a) Increase the number of employer contacts each week;
- (b) Change your method of seeking work (such as from resumes to in-person contacts);
- (c) Expand the geographic area in which your job search is conducted; or
- (d) Seek work in a secondary occupation.

(8) **When is the directive effective?** The directive is effective when it is given in writing by the department. It stays in effect until a new written directive is given, or it is rescinded in writing.

AMENDATORY SECTION (Amending WSR 99-13-002, filed 6/3/99, effective 7/4/99)

WAC 192-180-015 Tracking job search activities—RCW 50.20.240. (1) **Do I need to keep track of my job search activities?** You must keep a record or log of your job search contacts and the (~~services~~) in-person job search activities you receive through the WorkSource Office or local employment center unless you are:

- (a) A member of a full referral union; (~~or~~)
- (b) Allowed benefits because you left work to protect yourself or a member of your immediate family from domestic violence or stalking as provided in RCW 50.20.050 (1)(b)(iv) or (2)(b)(iv); or
- (c) Exempt from job search requirements under WAC 192-180-010(1).

(2) **What information do I need to keep in the log?** Your job search log must contain at least the following information:

- (a) For job search contacts, record the date contact was made; the employer's name, address and telephone number; the type of contact (in-person, telephone, etc.); the name of the person you contacted; the type of work you applied for; and the results of your contact;
- (b) For in-person job search activities at the local reemployment center, record the date contact was made; a descrip-

tion of the services you received or the activities in which you participated; and the results of your contact.

(3) **Is there a specific form I must use?** The department will supply you with a form (EMS 10313) to use in tracking your job search activities. You may use your own form or tracking method as long as all information required by this subsection is recorded.

(4) **How long should I keep my log?** Keep your log for at least sixty days after the end of your benefit year or thirty days after receiving your final payment on any extension of benefits, whichever is later.

AMENDATORY SECTION (Amending WSR 99-13-002, filed 6/3/99, effective 7/4/99)

WAC 192-180-020 Monitoring job search activities—RCW 50.20.240. (1) **Will my job search activities be monitored?** Every week that you file a claim for benefits, you must certify that you meet the job search requirements. The department may review your job search activities at any time. If you have been paid benefits for five or more weeks in any benefit year, you must provide the department with a copy of your job search log upon request. You must bring a copy of your job search log to any (~~eligibility~~) job search review interview (see WAC 192-180-025) for which you have been scheduled.

(2) **Will the department verify the information on my job search log?** Employer contacts and other job search activities on your log will be verified whenever the department has a question about the information reported. In addition, when you are scheduled for a (~~eligibility~~) job search review interview, your log will be verified with the listed employers on a random basis.

AMENDATORY SECTION (Amending WSR 99-13-002, filed 6/3/99, effective 7/4/99)

WAC 192-180-025 (~~Eligibility~~) Job search review interviews. (1) **What is a (~~eligibility~~) job search review (JSR) interview (~~ERI~~)?** The (~~ERI~~) JSR is an interview between you and a representative of the WorkSource Office or local employment center. Its purpose is to review your job search documentation, identify any barriers to your reemployment, develop a plan for resolving barriers that may be identified, and provide advice on how to improve your job search efforts. For interstate claimants, this interview may be conducted by telephone or by the local employment center in a contracted state.

(2) **Will my job search activities be reviewed?** Yes, you must bring your job search log to the interview. The interviewer will review your log with you and discuss areas in which your job search can be improved. The employer contacts and job search activities included in your log will be verified at random. The interviewer may further verify any reported contacts at his or her discretion.

(3) **How many weeks will be reviewed?** (a) The interviewer will review at least one week of your job search documentation. If the job search documentation is unsatisfactory, or you fail to appear for the JSR interview without being excused, you will be scheduled for a second interview in which all weeks claimed will be reviewed.

(b) If you are excused from attending the initial JSR interview, you will be rescheduled for a review of one week of your job search documentation.

(c) You may be excused from attending the initial JSR interview as scheduled **only** for the following reasons:

(i) Jury duty;

(ii) National Guard duty;

(iii) Natural disaster or acts of nature; or

(iv) Verifiable employment or a job interview.

(d) For purposes of this section, "all weeks" means the latest of the following:

(i) Weeks claimed since January 4, 2004;

(ii) Weeks claimed since you filed your application for benefits; or

(iii) Weeks claimed since your last JSR interview, if applicable.

(4) **Do I need to bring anything else to the JSR interview? You must be prepared to present proof of your identity during the JSR interview. This includes:**

(a) State or government issued photo identification; or

(b) Two of the following government-issued documents:

(i) Voter's registration card;

(ii) U.S. Military identification card or draft record;

(iii) Military dependent's identification card;

(iv) U.S. Coast Guard Merchant Mariner Card;

(v) Native American tribal document;

(vi) U.S. social security card;

(vii) Certification of Birth Abroad issued by the U.S. Department of State;

(viii) Original or certified copy of a birth certificate;

(ix) U.S. Citizen ID Card;

(x) ID Card for use of Resident Citizen in the United States; or

(xi) Unexpired employment authorization document issued by the United States Citizenship and Immigration Services (formerly the Immigration and Naturalization Service).

AMENDATORY SECTION (Amending WSR 99-13-002, filed 6/3/99, effective 7/4/99)

WAC 192-180-030 Penalties. (1) Is there a penalty if I don't look for work or fail to report for the JSR interview as directed? Benefits will be denied if you fail to:

(a) Meet the minimum job search requirements;

(b) Provide information about your job search activities and, once you have been paid five weeks of benefits, provide a copy of your job search log upon request;

(c) Comply with any job search directive issued by the department; or

(d) Report to a scheduled ((eligibility)) job search review interview.

(2) **How long will my benefits be denied?** Benefits will be denied for the specific week or week(s) in which you fail to act as described in subsection (1).

(3) **What is the penalty if I don't attend a JSR that has been scheduled to review all weeks claimed? If you fail to appear for a review of your job search logs for all weeks claimed, fail to produce your job search logs for those weeks, or your logs fail to establish that you have met the minimum job search requirements, such failure will be treated as non-**

disclosure under RCW 50.20.160(3) and your benefits may be denied for any weeks at issue.

NEW SECTION

WAC 192-180-040 Directive to attend job search workshop or training course—RCW 50.20.044. (1) The department may direct you, in writing, to attend a job search workshop or training course when it finds that your chances of finding employment will be improved by enrollment in such activity.

(2) You will not be directed to attend a job search workshop or training course if:

(a) You have an offer of bona fide work that begins within two weeks; or

(b) The workshop or training location is outside your labor market or would require you to travel further than the nearest WorkSource office or local employment center; or

(c) You are a member in good standing of a full referral union, unless you are also being required to begin an independent search for work or have been identified as a dislocated worker as defined in RCW 50.04.075.

(3) If you receive a directive and fail without good cause to attend a substantial portion of the workshop or training course during a week, you will be ineligible for benefits for the entire week. Good cause includes your illness or disability or that of a member of your immediate family, or your presence at a job interview scheduled with an employer. Reasons for absence may be verified and may result in a denial of benefits under RCW 50.20.010.

(4) Participation in a job search workshop when directed meets the definition of an "in-person job search activity" as defined in WAC 192-180-010.

(5) When attending a job search workshop or training course as directed, you will not be ineligible for benefits for failure to be available for work or to actively seek work under the provisions of:

(a) RCW 50.20.010 (1)(c);

(b) RCW 50.20.240; or

(c) RCW 50.22.020(1).

NEW SECTION

WAC 192-200-005 Disqualification of students—RCW 50.20.095. (1) **General rule.** If you are registered in a course of study that provides scholastic instruction of 12 or more credit hours per week, you are disqualified from receiving benefits or credit for your waiting week.

(2) **Period of disqualification.** The disqualification starts with the week the instruction begins or the week you left employment to return to school, whichever is earlier. The disqualification ends at midnight on Saturday of the week prior to the first full week in which you are no longer registered for 12 or more hours of instruction. You will be required to certify to the department that you are not currently registered for 12 or more credit hours and will not be registered for 12 or more credit hours for at least 60 days. If you begin classes within 60 days, all benefits paid since the date of your certification will be considered an overpayment. This overpayment is subject to recovery under RCW 50.20.190. If

you are registered for classes that begin more than 60 days in the future, you will not be disqualified under this subsection.

(3) **Disqualification not applicable.** The disqualification does not apply if you:

(a) Are in approved training as provided by RCW 50.20.043; or

(b) When you apply, you demonstrate by a preponderance of the evidence that your student status does not significantly interfere with your actual availability for work.

(4) **Definitions.** As used in this section:

(a) "School" includes primary schools, secondary schools, and institutions of higher education as defined in RCW 50.44.037;

(b) "Scholastic instruction" includes all teaching or opportunity for learning subjects other than those of a strictly vocational nature. Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-200-005.

(c) "Twelve or more hours per week" means 12 or more credit hours per week or its equivalent;

(d) "Preponderance of evidence" means evidence sufficient to persuade a reasonable person considering all the evidence that the proposal is more probably true than not true.

(5) **Students.** Students who claim benefits are subject to all of the provisions of Title 50 RCW including:

(a) RCW 50.20.050 dealing with those who leave work voluntarily without good cause;

(b) RCW 50.20.010 (1)(c) requiring claimants to be able and available for and actively seeking work; and

(c) RCW 50.20.240 requiring claimants to provide evidence of their job search activities as requested by the department.

NEW SECTION

WAC 192-200-010 Training defined—RCW 50.20.043. (1) The term "training" means a course of education with the primary purpose of training in skills that will allow you to obtain employment.

(2) The term "training" does not include beginning a course of education primarily intended to meet the requirements of a baccalaureate or higher degree.

NEW SECTION

WAC 192-200-030 Unemployment benefits while in training. (1) To be eligible for unemployment benefits while in training, the following criteria must be met:

(a) The training must be full-time as defined by the training facility; and

(b) You must be making satisfactory progress in training as defined in WAC 192-270-065.

(2) You must notify the department if you discontinue or suspend training, change your course of study, or reduce enrollment to less than full-time.

(3) If your enrollment drops below full-time or you are not making satisfactory progress, you may be required to show that you are meeting the availability for work and job search requirements of RCW 50.20.010 (1)(c) and RCW 50.20.240, and the provisions of RCW 50.20.080 regarding failure to apply for, or refusal to accept suitable work.

CHAPTER 192-220 WAC OVERPAYMENT NOTICE AND ASSESSMENT

NEW SECTION

WAC 192-220-010 Overpayments—Notification to individual. (1) If a potential overpayment exists, the department will provide you with an overpayment advice of rights, in writing, explaining the following:

(a) The reasons you may have been overpaid;

(b) The amount of the possible overpayment as of the date the notice is mailed;

(c) The fact that the department will collect overpayments as provided in WAC 192-230-100;

(d) The fact that final overpayments are legally enforceable debts which must be repaid whether or not you are claiming unemployment benefits;

(e) The fact that these debts can be the basis for warrants which can result in liens, notices to withhold and deliver personal properties, garnishment of salaries, and possible sale of real and personal properties;

(f) An explanation that if you are not at fault, you may request a waiver of the overpayment. Waiver means the overpayment does not have to be repaid; and

(g) A statement that you have 10 days to submit information about the possible overpayment and whether you are at fault. Failure to do so means the department will make a decision based on available information about the overpayment and your eligibility for waiver.

NEW SECTION

WAC 192-220-020 Overpayments—Fault provisions. (1) When an overpayment occurs, the department will make a finding of fault or nonfault based on information provided by you and your employer and from information contained in the department's records. After reviewing all such information, you will be considered to be at fault when the overpayment is:

(a) The result of fraud, misrepresentation, or willful non-disclosure;

(b) The result of a discharge for a felony or gross misdemeanor under RCW 50.20.065;

(c) The result of a discharge for gross misconduct under RCW 50.04.294; or

(d) Based on the presence of all of the following three elements:

(i) You were paid benefits in an amount greater than you were entitled to receive and you accepted and retained those benefits; and

(ii) The payment of these benefits was based on incorrect information or a failure to furnish information which you should have provided as outlined in the information for claimants booklet, claimant directives and other reasonable written communications issued by the department; or information which you caused another person to fail to disclose; and

(iii) You had notice that the information should have been reported.

(2) You may be considered at fault, even though you provided the department with all relevant information before the benefit eligibility decision was issued, if the overpayment is the result of payment that you should reasonably have known was improper. The following are some, but not all, examples where you should reasonably have known that a payment was improper and as a result are at fault. These are intended as examples only and do not mean that the department would rule in this manner in every such situation.

(a) You correctly reported earnings but the department paid benefits at the full amount or incorrectly deducted the earnings.

(b) You reported that you were unavailable for one or more customary work days, but the department paid at the full amount and the payment was not a conditional payment.

(c) You received a retroactive pension payment that you had applied for and were reasonably sure would be awarded.

(d) You did not inform the department that you were eligible for benefits on an unexpired claim against another state.

(e) A lower level decision was reversed by the office of administrative hearings, the commissioner or a court because of new information that you did not disclose to the department.

(f) Other circumstances in which department fact finding indicates that you knew the payment was improper.

(3) In deciding whether or not you are at fault, the department will also consider education, mental abilities, emotional state, your experience with claiming unemployment benefits, and other elements of your personal situation which affect your knowledge and ability to comply with reporting all relevant information. This includes information contained in the information for claimants booklet, claimant directives and other reasonable written communications issued by the department.

(4) You will be considered to be without fault when you provided the department with all relevant information before the benefit eligibility decision is issued and the overpayment is the result of payment that you would not reasonably have known was improper. The following are some, but not all, examples of instances in which you may not reasonably have known that a payment was improper and as a result are not at fault. These are intended as examples only and do not mean that the department would rule in this manner in every such situation.

(a) The department erroneously removed a payment stop, resulting in improper payment.

(b) You received a retroactive pension which was backdated by the pension source, not at your request.

(c) A combined wage or federal claim was filed against Washington that should have been filed against another state.

(d) Extended benefits were paid by the department when you would have been eligible for a new claim against Washington or another state.

(e) A lower level decision, in which you had provided all information, was reversed by the office of administrative hearings, the commissioner or a court.

(f) Other circumstances in which department fact finding indicates you did not know the payment was improper.

NEW SECTION

WAC 192-220-030 Overpayments—Equity and good conscience provisions. (1) The department will not consider or grant waiver of an overpayment and will not consider or accept an offer in compromise of an overpayment that is:

(a) Based on an overpayment decision written by a state other than Washington;

(b) The result of a conditional payment as provided in WAC 192-23-900; or

(c) For claims with an effective date of January 4, 2004, and later, the result of being discharged for misconduct or gross misconduct as provided in RCW 50.20.066(5).

(2) Except as provided in subsection (1), the department will grant waiver of an overpayment when it is found that you were without fault in the overpayment and when it is determined that to require repayment would be against equity and good conscience. It will be against equity and good conscience to deny waiver when repayment of the overpayment would deprive you of income required for necessary living expenses unless there are unusual circumstances which would argue against waiver.

(3) You will be required to provide financial information to the department to determine if the overpayment will be waived. Your failure to provide such information within 10 days from the request date will result in the department making a decision, based on available information, regarding your eligibility for waiver. The department may verify any financial information you provide. Any amount waived based on information that is later found to be fraudulent or misrepresented will be restored to the overpayment balance.

(4) The financial information requested includes:

(a) Your income and, to the extent available to you, other financially contributing members of the household for the previous month, the current month and the month following the date the financial information is requested.

(b) Your current and readily available liquid assets. Liquid assets may include, but are not limited to, checking and savings account balances, stocks, bonds and cash on hand.

(c) Your expenses for the previous month, the current month and the month following the date the financial information is requested.

(5) If your average monthly expenses equal or exceed your average monthly income and there are no substantial liquid assets available, waiver of the overpayment will be considered. The presence of unusual circumstances may justify waiver on other than a financial basis when not to waive would be unconscionable.

(6) When you have been denied waiver or waiver was not considered, you may enter into a payment agreement with the department.

(7) Except as provided in subsection (1), when you have been denied waiver or have been unable to reach a payment agreement with the department you may make an offer in compromise as provided in RCW 50.24.020. The basis for allowing or denying an offer in compromise will be the same criteria used by the department for allowing or denying waiver of an overpayment. Any overpayment amount compromised based on information that is later found to be fraudulent or misrepresented will be restored to the overpayment balance.

**CHAPTER 192-230 WAC
RECOVERY OF OVERPAYMENTS**

NEW SECTION

WAC 192-230-100 Recovery of benefit overpayment—By repayment or offset against past or future benefits. (1) If you do not repay an overpayment in full or make the minimum monthly payments provided for in WAC 192-28-130, the overpayment will be deducted from benefits payable for any week(s) you claim.

(2) For overpayments assessed under RCW 50.20.010 because you asked to have your unemployment insurance claim cancelled, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. The department will ensure you are informed of the advantages and/or disadvantages of cancelling an existing claim to file a new claim.

(3) If you are currently claiming benefits, the overpayment will not be offset from future weeks payable unless you have missed two or more payments as provided in WAC 192-28-130. If you have missed two or more payments, the overpayment will be offset as described in (a) and (b) below:

(a) If the overpayment was caused by a denial for fraud, misrepresentation, or willful nondisclosure as provided in RCW 50.20.070, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim.

(4) If the overpayment has been assessed by another state, the amount deducted will be as follows:

(a) For overpayments caused by a denial for fraud, misrepresentation, or willful nondisclosure, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim.

(5) If you have been denied waiver, or if waiver was not considered, you will be notified in writing of your right to enter into a payment agreement with the department or to make an offer in compromise. An offer in compromise will not be approved if the overpayment was caused by a denial under RCW 50.20.065 or RCW 50.20.070 unless there are unusual circumstances which would justify a compromise. An offer in compromise will not be approved if the overpayment was caused by a denial under RCW 50.20.066.

AMENDATORY SECTION (Amending WSR 03-06-038, filed 2/26/03, effective 3/29/03)

WAC 192-240-035 How to qualify for regular shareable or extended benefits after leaving work for marital or domestic reasons—RCW 50.22.020(7). This section applies only to claims with an effective date prior to January

4, 2004. If you were denied benefits because you left work for family reasons as provided in RCW 50.20.050(~~(4)~~) ~~(1)(d)~~, you could qualify for regular benefits either through work and earnings or by reporting in person to your local employment center for each of ten weeks. However, you are not eligible for regular shareable or extended benefits unless, after leaving work, you obtained work and earned wages of seven times your weekly benefit amount. The wages earned must be in employment that is covered by Title 50 RCW or the comparable laws of another state or the federal government.

AMENDATORY SECTION (Amending WSR 03-06-038, filed 2/26/03, effective 3/29/03)

WAC 192-240-040 Penalties. (1) If you claim regular shareable or extended benefits during a week in which you failed to accept any offer of work, or failed to accept a referral or apply for any work as directed by the department:

(a) Benefits will be denied under RCW 50.20.080 if the work was suitable as defined by RCW 50.20.100 and 50.20-110, and you did not have good cause for failing to apply for or accept work;

(b) If benefits are denied as provided in subsection (1)(a), you will also be denied benefits as provided in RCW 50.22.020;

(c) Benefits will be denied under only RCW 50.22.020 if the work was suitable as provided in that statute and WAC 192-240-020, but did not meet the provisions of RCW 50.20.100 and 50.20.080.

(2) If you claim regular shareable or extended benefits during a week in which you failed to meet the job search requirements of WAC 192-240-030, benefits will be denied under RCW 50.22.020, except as provided in subsection (4).

(3) A denial of benefits under RCW 50.22.020 starts the week in which the failure occurs, and continues indefinitely until you show that:

(a) You have worked in at least four weeks; and

(b) You have earned at least four times your weekly benefit amount. The employment does not need to be covered by Title 50 RCW.

(4) If you fail to meet the job search requirements of WAC 192-240-030 because you are hospitalized for treatment of an emergency or life-threatening condition, benefits will be denied under RCW 50.20.010(~~(3)~~) ~~(1)(c)~~. The denial period is only for the week or weeks in which the hospitalization occurred.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-12-011	Continued claim definitions.
WAC 192-12-012	Conditional payment of continued claim recipients when eligibility is questioned.
WAC 192-12-020	Week defined.
WAC 192-12-180	Training defined.

WAC 192-12-184	Training—Unemployment benefits while pursuing training.	WAC 192-28-105	Recovery of benefit overpayment—Notification to individual.
WAC 192-12-190	Directive to attend job search workshop or training or retraining course according to RCW 50.20.044.	WAC 192-28-110	Recovery of benefit overpayment—Fault provisions.
WAC 192-12-300	Mailing addresses for notice to employer.	WAC 192-28-115	Recovery of benefit overpayment—Equity and good conscience provisions.
WAC 192-12-310	Notice to employer.	WAC 192-28-120	Recovery of benefit overpayment—By repayment or offset against past or future benefits.
WAC 192-12-320	Mailing of determination notices under RCW 50.20.180.		
WAC 192-12-330	Predetermination procedure—Separation issue.		
WAC 192-12-340	Discharges for misconduct for felony or gross misdemeanor—Responsibility for providing information.		
WAC 192-16-019	Interpretative regulations—Effective date of RCW 50.20.065—Discharges for felony or gross misdemeanor.		
WAC 192-16-023	Interpretative regulations—Disqualification of students—RCW 50.20.095.		
WAC 192-23-014	Failure to establish ability to or availability for work.		
WAC 192-23-015	Failure to establish active search for work.		
WAC 192-23-016	Failure to meet work search requirements.		
WAC 192-23-017	Failure to respond to a request for information regarding late filing of claims.		
WAC 192-23-019	Directive to report for reemployment services.		
WAC 192-23-061	Failure to respond to a request for information regarding a discharge from work.		
WAC 192-23-096	Failure to provide information regarding attendance at school.		
WAC 192-23-800	Certification of ineligibility.		
WAC 192-23-810	Certification of return to full-time work or report of hours worked consistent with full-time work.		

WSR 05-01-166
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 21, 2004, 9:33 a.m., effective April 2, 2005]

Effective Date of Rule: April 2, 2005.

Purpose: The Department of Labor and Industries (L&I) is continuing a long-term effort to provide one book for all the safety and health requirements for agriculture. This one-book requirement results from a 1995 legislative requirement that directed the department to publish all agriculture safety rules in one volume and a 2001 agreement between L&I and agricultural industry stakeholders to add applicable occupational health requirements to one book. The occupational health requirements in chapter 296-62 WAC are the focus of the current effort. Several rules from chapter 296-62 WAC were recently rewritten for clarity as part of the agency's plain language initiative. This rule making adopts these rewritten rules into the agriculture safety standard chapter 296-307 WAC.

AMENDED SECTIONS:

WAC 296-307-018 What are the employer's responsibilities?

- Subsection (8), updated a reference.
- Subsection (9), updated a reference.

WAC 296-307-039 First aid rule summary.

- Updated a reference in the note relating to where to find the bloodborne pathogen standard.

WAC 296-307-03920 Make sure appropriate first-aid supplies are readily available.

- Deleted language from the first-aid kit table.

WAC 296-307-061 What requirements apply to working around bins, bunkers, hoppers, tanks, pits, and trenches?

- Added a reference to confined space.
- Did not replace the words "safety belt with a lifeline attached" with "full body harness."

WAC 296-307-07013 What rules apply to vehicles used to transport employees?

- Subsection (12), updated a reference.

WAC 296-307-11015 Violations of this part—Worker protection standards—40 CFR, § 170.9.

- Subsection (4), updated a reference.

WAC 296-307-13045 Personal protective equipment—Standards for pesticide handlers—40 CFR, § 170.240.

- Subsection (3)(i), updated references.

WAC 296-307-16340 Electricity and lighting.

- Subsection (2)(b), corrected a reference.

WAC 296-307-445 Scope.

- Title of this part is U-3.

WAC 296-307-45010 Provide proper ventilation for the vapor area.

- Updated a reference.

WAC 296-307-45035 Prepare dip tanks before cleaning.

- Updated a reference.

WAC 296-307-45045 Protect employees during welding, burning, or other work using open flames.

- Updated a reference.

WAC 296-307-50025 What requirements apply to welding beryllium?

- Updated a reference.

WAC 296-307-50029 What requirements apply to welding mercury?

- Updated a reference.

WAC 296-307-550 Employer chemical hazard communication—Introduction.

- Title of this part is Y-1.
- Updated a reference.

WAC 296-307-55015 Obtain and maintain material safety data sheets (MSDSs) for each hazardous chemical used.

- Updated a reference.

WAC 296-307-55030 Inform and train your employees about hazardous chemicals in your workplace.

- Updated a reference.

WAC 296-307-55035 Follow these rules for laboratories using hazardous chemicals.

- Updated a reference.

WAC 296-307-55060 Definitions.

- Clarified the following definitions: Chemical, chemical name, combustible liquid, commercial account, common name, compressed gas, container, designated representative, distributor, flammable, flashpoint, hazardous chemical, hazard warning, health hazard, identity, importer, material safety data sheets, mixture, organic peroxide, permissible exposure limits (PELs), physical hazard, produce, pyrophoric, responsible party, unstable (reactive), use, and water-reactive.

WAC 296-307-560 Scope.

- Title of this part is Y-2.
- Replaced the words "chapter" with "part."

WAC 296-307-56025 Develop or obtain material safety data sheets (MSDSs).

- Updated a reference.

WAC 296-307-56050 Definitions.

- Updated a reference.

WAC 296-307-570 Lighting rule.

- Title of this part is Y-3.

WAC 296-307-590 Environmental tobacco smoke in the office.

- Title of this part is Y-4.

NEW SECTIONS:**WAC 296-307-594 Scope.** This part applies to all use of respirators at work.

- Requirements relating to respirators have been moved from chapter 296-62 WAC, Part E to this part.

WAC 296-307-596 Respirator program administrator.

- Requirements relating to respirators have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-59605 Designate a program administrator.

- Requirements relating to respirators have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-598 Voluntary respirator use requirements.

- Requirements relating to voluntary respirator use have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-59805 Make sure voluntary use of respirators is safe.

- Requirements relating to voluntary respirator use have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-59810 Keep voluntary use program records.

- Requirements relating to voluntary respirator use have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-600 Written respirator program and recordkeeping.

- Requirements relating to the written respirator program and recordkeeping have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-60005 Develop and maintain a written program.

- Requirements relating to the written respirator program have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-60010 Keep respirator program record.

- Requirements relating to the written respirator program records have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-602 Respirator selection.

- Requirements relating to respirator selection have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-60205 Select and provide appropriate respirators.

- Requirements relating to respirator selection have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-604 Medical evaluations.

- Requirements relating to medical evaluations have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-60405 Provide medical evaluations.

- Requirements relating to medical evaluations have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-606 Fit testing.

- Requirements relating to fit testing have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-60605 Conduct fit testing.

- Requirements relating to fit testing have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-608 Training.

- Requirements relating to training have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-60805 Provide effective training.

- Requirements relating to training have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-610 Maintenance.

- Requirements relating to maintenance have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-61005 Maintain respirators in a clean and reliable condition.

- Requirements relating to maintenance have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-61010 Store respirators properly.

- Requirements relating to storage have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-61015 Inspect and repair respirators.

- Requirements relating to inspecting and repairing have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-612 Safe use and removal of respirators.

- Requirements relating to safe use and removal have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-61205 Prevent sealing problems with tight-fitting respirators.

- Requirements relating to sealing problems have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-61210 Make sure employees leave the use area before removing respirators.

- Requirements relating to leaving the use area have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-614 Standby requirements for immediately dangerous to life or health (IDLH) conditions.

- Requirements relating to IDLH and standby conditions have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-61405 Provide standby assistance in immediately dangerous to life or health (IDLH) conditions.

- Requirements relating to IDLH and standby conditions have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-616 Air quality for self-contained breathing apparatus (SCBA) and air-line respirators.

- Requirements relating to air quality for SCBA and air-line respirators have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-61605 Make sure breathing air and oxygen meet established specifications.

- Requirements relating to breathing air and oxygen have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-61610 Prevent conditions that could create a hazardous breathing air supply.

- Requirements relating to hazardous breathing air supply have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-61615 Make sure compressors do not create a hazardous breathing air supply.

- Requirements relating to hazardous breathing air supply have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-618 Labeling of air-purifying respirators filters, cartridges, and canisters.

- Requirements relating to labeling have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-61805 Keep labels readable on respirator filters, cartridges, and canisters during use.

- Requirements relating to labeling have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-620 Required procedures for respiratory protection program.

- Requirements relating to required procedures have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-62005 Use this medical questionnaire for medical evaluation.

- Requirements relating to the medical questionnaire have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-62010 Follow these fit-testing procedures for tight-fitting respirators.

- Requirements relating to the fit-testing procedures have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-62015 Follow procedures established for cleaning and disinfecting respirators.

- Requirements relating to cleaning and disinfecting have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-62020 Follow procedures established for seal checking respirators.

- Requirements relating to seal checking have been moved from chapter 296-62 WAC, Part E to this section.

WAC 296-307-622 Definitions.

- Definitions applicable to this part are located in this section.

WAC 296-307-624 Scope.

- Requirements relating to respiratory hazards have been moved from chapter 296-62 WAC, Part H to this section.

WAC 296-307-626 Evaluate and control employee exposures.

- Requirements relating to evaluating and controlling employee exposures have been moved from chapter 296-62 WAC, Part H to this section.

WAC 296-307-62605 Identify and evaluate respiratory hazards.

- Requirements relating to respiratory hazards have been moved from chapter 296-62 WAC, Part H to this section.

WAC 296-307-62610 Control employee exposures.

- Requirements relating to respiratory hazards have been moved from chapter 296-62 WAC, Part H to this section.

WAC 296-307-62615 Use respirators.

- Requirements relating to respiratory hazards have been moved from chapter 296-62 WAC, Part H to this section.

WAC 296-307-62620 Notify employees.

- Requirements relating to respiratory hazards have been moved from chapter 296-62 WAC, Part H to this section.

WAC 296-307-62625 Permissible exposure limits of air contaminants.

- Requirements relating to respiratory hazards have been moved from chapter 296-62 WAC, Part H to this section.

WAC 296-307-628 Definitions.

- Definitions applicable to this part are located in this section.

WAC 296-307-630 Scope.

- Requirements relating to hearing loss prevention (noise) have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-632 Summary.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63205 Conduct employee noise exposure monitoring.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63210 Control employee noise exposures that equal or exceed 90 dBA TWA_s

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63215 Make sure employees use hearing protection when their noise exposure equals or exceeds 85 dBA TWA_s.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63220 Make sure exposed employees receive training about noise and hearing protection.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63225 Make sure warning signs are posted for areas where noise levels equal or exceed 115 dBA.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63230 Arrange for oversight of audiometric testing.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63235 Identify and correct deficiencies in your hearing loss prevention program.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63240 Document your hearing loss prevention activities.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-634 Summary.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63405 Make sure that noise-measuring equipment meets recognized standards.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63410 Measure employee noise exposure.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63415 Use these equations when estimating full-day noise exposure from sound level measurements.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-636 Summary.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63605 Provide audiometric testing at no cost to employees.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63610 Establish a baseline audiogram for each exposed employee.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63615 Conduct annual audiograms.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63620 Review audiograms that indicate a standard threshold shift.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63625 Keep the baseline audiogram without revision, unless annual audiograms indicate a persistent threshold shift or a significant improvement in hearing.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63630 Make sure a record is kept of audiometric tests.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-63635 Make sure audiometric testing equipment meets these requirements.

- Requirements relating to hearing loss prevention have been moved from chapter 296-62 WAC, Part K to this section.

WAC 296-307-638 Summary.

- Requirements relating to hearing protection audits have been moved to this section. These options are new but not required.

WAC 296-307-63805 Conduct hearing protection audits at least quarterly.

- Requirements relating to hearing protection audits have been moved to this section. These options are new but not required.

WAC 296-307-63810 Make sure staff conducting audits are properly trained.

- Requirements relating to hearing protection audits have been moved to this section. These options are new but not required.

WAC 296-307-63815 Assess the hearing protection used by each employee during audits.

- Requirements relating to hearing protection audits have been moved to this section. These options are new but not required.

WAC 296-307-63820 Document your hearing protection audits.

- Requirements relating to hearing protection audits have been moved to this section. These options are new but not required.

WAC 296-307-63825 Make sure third-party hearing loss prevention programs meet the following requirements.

- Requirements relating to hearing protection audits have been moved to this section. This options is new but not required.

WAC 296-307-640 Noise definitions.

- Definitions applicable to this part are located in this section.

WAC 296-307-642 Scope.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-644 Summary. Identifying and controlling permit-required confined spaces.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-64402 Identify permit-required confined spaces.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-64404 Inform employees and control entry to permit-required confined spaces.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-64406 Follow these requirements when you contract with another employer to enter your confined space.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-646 Summary.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-64602 Develop a written permit-required confined space program.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-64604 Meet these additional requirements if your employees enter another employer's confined space.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-648 Summary.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-64802 Provide employee training.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-64804 Certify employee proficiency.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-650 Summary.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65002 Implement procedures for entry permits.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65004 Use an entry permit that contains all required information.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65006 Keep and review your entry permits.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65008 Prevent unauthorized entry.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65010 Provide, maintain, and use proper equipment.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65012 Evaluate and control hazards for safe entry.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65014 Make sure you have adequate rescue and emergency services available.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65016 Use nonentry rescue systems or methods whenever possible.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65018 Make sure entry supervisors perform their responsibilities and duties.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65020 Provide an attendant outside the permit-required confined spaces.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65022 Make sure entrants know the hazardous conditions and their duties.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65024 Implement procedures for ending entry.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-652 Alternate entry procedures.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65202 Make sure the following conditions are met if using alternate entry procedures.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65204 Follow these alternate entry procedures for permit-required confined spaces.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-654 Nonpermit confined spaces requirements. Summary.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65402 Follow these requirements when classifying a confined space as a nonpermit confined space.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-65404 Reevaluate nonpermit confined spaces if hazards develop.

- Requirements relating to confined spaces have been moved from chapter 296-62 WAC, Part M to this section.

WAC 296-307-656 Definitions.

- Definitions applicable to this part are located in this section.

WAC 296-307-704 Scope.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70410 Planning.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70415 Training.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70420 Medical surveillance.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70425 Keep records.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70430 Incident requirements.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70435 Implement and maintain an incident command system (ICS).

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70440 Prepare skilled support personnel.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70445 Make sure the incident commander oversees activities during the response.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70450 Use the buddy system in danger areas.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70455 Provide rescue and medical assistance.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70460 Personal protective equipment.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70465 Control hazards created by personal protective equipment.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70470 Use personal protective equipment (PPE) properly.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70475 Postemergency response.

- Requirements relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

WAC 296-307-70480 Definitions.

- Definitions relating to emergency response have been moved from Part U-4 of this chapter to this part because of numbering errors.

REPEALED SECTIONS:

The following sections were repealed from chapter 296-62 WAC, Part E and moved to chapter 296-307 WAC, Part Y-5: WAC 296-62-071 Respiratory protection, 296-62-07101 To whom does chapter 296-62 WAC, Part E apply?, 296-62-07102 When are you allowed to rely on respirators to protect employees from breathing contaminated air?, 296-62-07103 What are your responsibilities as an employer?, 296-62-07105 Definitions, 296-62-07107 When is a respiratory protection program required?, 296-62-07109 When must you update your written respiratory protection program?, 296-62-07111 What must be included in your

written respiratory protection program?, 296-62-07113 What are the requirements for a program administrator?, 296-62-07115 Who pays for the respirators, training, medical evaluations, and fit testing?, 296-62-07117 What must you do when employees choose to wear respirators when respirators are not required?, 296-62-07130 What must be considered when selecting any respirator?, 296-62-07131 What else must you consider when selecting a respirator for use in atmospheres that are not IDLH?, 296-62-07132 What else must you consider when selecting a respirator for use in IDLH atmospheres?, 296-62-07133 What else must you consider when selecting a respirator for emergency and rescue use?, 296-62-07150 What are the general requirements for medical evaluations?, 296-62-07151 Who must perform medical evaluations?, 296-62-07152 What information must you provide to the PLHCP in addition to the questionnaire?, 296-62-07153 How must the medical evaluations and the questionnaire be administered?, 296-62-07154 Who must review the questionnaire and determine what, if any, follow-up evaluations are needed?, 296-62-07155 What must be included in the PLHCP's written recommendations?, 296-62-07156 When are future medical evaluations required?, 296-62-07160 When is fit testing required?, 296-62-07161 What is required when an employee finds the respirator's fit unacceptable?, 296-62-07162 How must fit testing be done?, 296-62-07170 How must you prevent problems with the seal on tight-fitting facepieces?, 296-62-07171 How do you monitor continuing effectiveness of your employees' respirators?, 296-62-07172 What are the standby procedures when respirators are used in IDLH situations?, 296-62-07175 How must respirators be cleaned and disinfected?, 296-62-07176 How must respirators be stored?, 296-62-07177 When must respirators be inspected?, 296-62-07178 How must respirators be inspected and maintained?, 296-62-07179 How must respirators be repaired and adjusted?, 296-62-07182 What are the breathing gas requirements for atmosphere-supplying respirators?, 296-62-07184 How must filters, cartridges and canisters be labeled?, 296-62-07186 What are the general training requirements?, 296-62-07188 How do you know if you adequately trained your employees?, 296-62-07190 When must your employees be trained?, 296-62-07192 How must you evaluate the effectiveness of your respiratory protection program?, 296-62-07194 What are the record-keeping requirements?, 296-62-07201 Appendix A-1: General fit testing requirements for respiratory protection—Mandatory, 296-62-07202 What are the general requirements for fit testing?, 296-62-07203 What are the fit test exercise requirements?, 296-62-07205 Appendix A-2: Qualitative fit testing (QLFT) protocols for respiratory protection—Mandatory, 296-62-07206 What are the general qualitative fit testing (QLFT) protocols?, 296-62-07208 Isoamyl acetate protocol (a QLFT), 296-62-07209 What are the odor threshold screening procedures for isoamyl acetate (QLFT)?, 296-62-07210 What are the isoamyl acetate fit testing procedures (QLFT)?, 296-62-07212 Saccharin solution aerosol protocol (QLFT), 296-62-07213 What are the taste threshold screening procedures for saccharin (QLFT)?, 296-62-07214 What is the saccharin solution aerosol fit testing procedure (QLFT)?, 296-62-07217 Bitrex™ solution (denatonium benzoate) solution aerosol qualitative fit testing (QLFT) protocol, 296-62-07218

What is the taste threshold screening procedure for Bitrex™ (QLFT)?, 296-62-07219 What is the Bitrex™ solution aerosol fit testing procedure (QLFT)?, 296-62-07222 Irritant smoke (stannic chloride) protocol (QLFT), 296-62-07223 What are the general requirements and precautions for irritant smoke fit testing (QLFT)?, 296-62-07224 What is the sensitivity screening check protocol for irritant smoke (QLFT)?, 296-62-07225 What is the irritant smoke fit testing procedure (QLFT)?, 296-62-07230 Appendix A-3: Quantitative fit testing (QNFT) protocols for respiratory protection—Mandatory, 296-62-07231 What are the general requirements for quantitative fit testing (QNFT)?, 296-62-07233 Generated aerosol quantitative fit testing protocol (QNFT), 296-62-07234 What equipment is required for generated aerosol fit testing (QNFT)?, 296-62-07235 What are the procedures for generated aerosol quantitative fit testing (QNFT)?, 296-62-07236 How are fit factors calculated (QNFT)?, 296-62-07238 Ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol, 296-62-07239 General information about ambient aerosol condensation nuclei counter (CNC) protocol (QNFT), 296-62-07240 What are the general requirements for ambient aerosol condensation nuclei counter (CNC) protocol (QNFT)?, 296-62-07242 What are the Portacount fit testing procedures?, 296-62-07243 How is the Portacount test instrument used?, 296-62-07245 Controlled negative pressure (CNP) quantitative fit testing protocol (QNFT), 296-62-07246 How does controlled negative pressure (CNP) fit testing work (QNFT)?, 296-62-07247 What are the controlled negative pressure (CNP) fit testing requirements and procedures (QNFT)?, 296-62-07248 What test exercises are required for controlled negative pressure (CNP) fit testing (QNFT)?, 296-62-07251 Appendix B-1: User seal check procedures—Mandatory, 296-62-07253 Appendix B-2: Respirator cleaning procedures—Mandatory, 296-62-07255 Appendix C: WISHA respirator medical evaluation questionnaire—Mandatory, 296-62-07257 Appendix D: Health care provider respirator recommendation form—Nonmandatory, 296-62-07260 Appendix E: Additional information regarding respirator selection—Nonmandatory, 296-62-07261 How do you classify respiratory hazards?, 296-62-07263 What are oxygen deficient respiratory hazards?, 296-62-07265 What needs to be considered when combinations of contaminants occur in the workplace?, 296-62-07267 What are two major types of respirators?, 296-62-07269 What are air-purifying respirators (APRs)?, 296-62-07271 What are the general limitations for air-purifying respirators (APRs)?, 296-62-07273 What are particulate-removing respirators?, 296-62-07275 What are vapor- and gas-removing respirators?, 296-62-07277 What are combination particulate- and vapor- and gas-removing respirators?, 296-62-07279 What types of filters, canisters and cartridges are available for air-purifying respirators (APRs)?, 296-62-07281 How do atmosphere-supplying respirators work?, 296-62-07283 What are the capabilities and limitations of atmosphere-supplying respirators?, 296-62-07285 What is a supplied-air respirator?, 296-62-07287 What are the general capabilities and limitations of supplied-air respirators?, 296-62-07289 What are combination supplied-air and air-purifying respirators?, 296-62-07291 What are combination supplied-air respirators with auxiliary self-contained air supply?,

296-62-07293 What is a self-contained breathing apparatus respirator (SCBA)?, and 296-62-07295 What are the limitations for self-contained breathing apparatus respirators (SCBA)?

The following sections were repealed from chapter 296-62 WAC, Part H and moved to chapter 296-307 WAC, Part Y-6: WAC 296-62-075 Air contaminants, 296-62-07501 Airborne contaminants, 296-62-07503 Ceiling vs. time-weighted average limits, 296-62-07505 "Skin" notation, 296-62-07507 Mixtures, 296-62-07509 Nuisance dusts, 296-62-07510 Total particulate, 296-62-07511 Simple asphyxiants, 296-62-07513 Physical factors, and 296-62-07515 Control of chemical agents.

The following sections were repealed from chapter 296-62 WAC, Part J: WAC 296-62-08001 Bloodborne pathogens and 296-62-08050 Appendix A—Hepatitis B vaccine declination—Mandatory.

The following sections were repealed from chapter 296-62 WAC, Part K and moved to chapter 296-307 WAC, Part Y-7: WAC 296-62-09015 Hearing conservation, 296-62-09017 Definitions, 296-62-09019 Monitoring, 296-62-09021 Method of noise measurement, 296-62-09023 Calibration of monitoring equipment, 296-62-09024 Employee notification, 296-62-09025 Observation of monitoring, 296-62-09026 Noise control, 296-62-09027 Audiometric testing program, 296-62-09029 Audiometric test requirements, 296-62-09031 Hearing protectors, 296-62-09033 Hearing protector attenuation, 296-62-09035 Training program, 296-62-09037 Access to information and training materials, 296-62-09039 Warning signs, 296-62-09041, Recordkeeping, 296-62-09043 Appendices, 296-62-09045 Effective dates, 296-62-09047 Appendix A—Audiometric measuring instruments, 296-62-09049 Appendix B—Audiometric test rooms, 296-62-09051 Appendix C—Acoustic calibration of audiometers, 296-62-09053 Appendix D—Methods for estimating the adequacy of hearing protector attenuation, and 296-62-09055 Appendix E—Noise exposure computation.

The following sections were repealed from chapter 296-62 WAC, Part M and moved to chapter 296-307 WAC, Part Y-8: WAC 296-62-141 Permit-required confined spaces, 296-62-14100 Scope and application, 296-62-14105 Definitions, 296-62-14110 General requirements, 296-62-14115 Permit-required confined space program (permit space program), 296-62-14120 Permit system, 296-62-14125 Required entry permit information, 296-62-14130 Training, 296-62-14135 Duties of authorized entrants, 296-62-14140 Duties of attendants, 296-62-14145 Duties of entry supervisors, 296-62-14150 Rescue and emergency services, 296-62-14155 Employee participation, 296-62-14170 Appendices to WAC 296-62-141—Permit-required confined spaces, 296-62-14171 Appendix A—Permit-required confined space decision flow chart, 296-62-14172 Appendix B—Procedures for atmospheric testing, 296-62-14173 Appendix C—Examples of permit-required confined space programs, 296-62-14174 Appendix D—Sample permits, 296-62-14175 Appendix E—Sewer system entry, and 296-62-14176 Appendix F—Rescue team or rescue service evaluation criteria.

The following sections were repealed from chapter 296-62 WAC, Part P: WAC 296-62-300 Hazardous waste operations and treatment, storage, and disposal facilities, 296-62-30001 Scope and application, 296-62-30003 Definitions, 296-62-3010 Overview of a written safety and health program, 296-62-30105 Elements of a safety and health program, 296-62-30110 Safety considerations during the initial site excavation, 296-62-30115 Notifying contractors and subcontractors of procedures and hazards, 296-62-30120 Availability of the safety and health program, 296-62-30125 Organizational structure of the site safety and health program, 296-62-30130 Comprehensive workplan of the site program, 296-62-30135 Overview of a site-specific safety and health plan, 296-62-30140 Preentry briefing of the site-specific safety and health plan, 296-62-30145 Effectiveness of site safety and health plan, 296-62-3020 Site characterization and analysis, 296-62-30205 Preliminary evaluation, 296-62-30210 Hazard identification, 296-62-30215 Required information, 296-62-30220 Personal protective equipment, 296-62-30225 Monitoring, 296-62-30230 Risk identification, 296-62-30235 Employee notification, 296-62-3030 Site control, 296-62-30305 Site control program, 296-62-30310 Elements of the site control program, 296-62-30315 Site work zones, 296-62-3040 General training requirements and the employees covered, 296-62-30405 Elements covered in training, 296-62-30410 Initial training, 296-62-30415 Management and supervisor training, 296-62-30420 Law enforcement at illicit drug labs, 296-62-30425 Training course content for 40 and 80 hour hazardous waste cleanup courses, 296-62-30430 Training content for 24-hour hazardous waste cleanup course, 296-62-30435 16-hour supplemental training for hazardous waste sites, 296-62-30440 Additional 8 hours of training for supervisors and managers, 296-62-30445 Qualifications for trainers, 296-62-30450 Training certification, 296-62-30455 Training requirements for emergency response, 296-62-30460 Refresher training, 296-62-30465 Equivalent training, 296-62-3050 Medical surveillance, 296-62-30505 Employees covered, 296-62-30510 Frequency of medical examinations and consultations, 296-62-30515 Content of medical examinations and consultations, 296-62-30520 Examination by a physician and costs, 296-62-30525 Information provided to the physician, 296-62-30530 Physician's written opinion, 296-62-30535 Recordkeeping of medical surveillance activities, 296-62-3060 Engineering controls, work practices, and personal protective equipment for employee protection, 296-62-30605 Personal protective equipment (PPE) program, 296-62-30610 Totally encapsulating chemical protective suits, 296-62-30615 Personal protective equipment (PPE) program, 296-62-3070 Monitoring concentrations of hazardous substances, 296-62-30705 Monitoring during initial entry, 296-62-30710 Periodic monitoring, 296-62-30715 Monitoring of high-risk employees, 296-62-3080 Informational programs, 296-62-3090 General requirements for handling drums and containers, 296-62-30905 Opening drums and containers, 296-62-30910 Material handling equipment, 296-62-30915 Radioactive wastes, 296-62-30920 Shock-sensitive wastes, 296-62-30925 Laboratory waste packs, 296-62-30930 Sampling of drum and container contents, 296-62-30935 Shipping and transport of drums, 296-62-30940 Tanks and vaults procedures, 296-62-

3100 Decontamination procedures, 296-62-31005 Location of decontamination areas, 296-62-31010 Decontamination of equipment and solvents, 296-62-31015 Decontamination of personal protective clothing and equipment, 296-62-31020 Showers and change rooms used for decontamination, 296-62-3110 Emergency response plan for employees at uncontrolled hazardous waste sites, 296-62-31105 Elements of an emergency response plan at uncontrolled hazardous waste sites, 296-62-31110 Procedures for handling emergency incidents at uncontrolled hazardous waste sites, 296-62-3120 Illumination, 296-62-3130 Sanitation at temporary workplaces, 296-62-31305 Potable water, 296-62-31310 Nonpotable water, 296-62-31315 Toilet facilities, 296-62-31320 Food handling, 296-62-31325 Temporary sleeping quarters, 296-62-31330 Washing facilities, 296-62-31335 Showers and change rooms, 296-62-3138 New technology programs, 296-62-3140 Certain operations conducted under the Resource Conservation and Recovery Act of 1976 (RCRA), 296-62-31405 Safety and health program under RCRA, 296-62-31410 Hazard communication program requirements under RCRA, 296-62-31415 Medical surveillance program requirements under RCRA, 296-62-31420 Decontamination program requirements under RCRA, 296-62-31425 New technology program requirements under RCRA, 296-62-31430 Material handling program requirements under RCRA, 296-62-31435 Training program for new employees under RCRA, 296-62-31440 Training program for current employees, 296-62-31445 RCRA requirements for trainers, 296-62-31450 Emergency response program requirements under RCRA, 296-62-31455 Emergency response plan under RCRA, 296-62-31460 Elements of an emergency plan under RCRA, 296-62-31465 Training requirements for emergency response under RCRA, 296-62-31470 Procedures for handling emergency incidents under RCRA, 296-62-3152 Appendices to Part P—Hazardous waste operations and TSD facilities, 296-62-3160 Appendix A—Personal protective equipment test methods, 296-62-3170 Appendix B—General description and discussion of the levels of protection and protective gear, 296-62-3180 Appendix C—Compliance guidelines, 296-62-3190 Appendix D—References, and 296-62-3195 Appendix E—Training curriculum guidelines.

The following sections were repealed from chapter 296-307 WAC, Part U-4 and moved to chapter 296-307 WAC, Part Y-10: WAC 296-307-452 Scope, 296-307-45210 Planning, 296-307-45220 Training, 296-307-45230 Medical surveillance, 296-307-45240 Keep records, 296-307-45400 Incident requirements, 296-307-45410 Implement and maintain an incident command system (ICS), 296-307-45420 Prepare skilled support personnel, 296-307-45430 Make sure the incident commander oversees activities during the response, 296-307-45440 Use the buddy system in danger areas, 296-307-45450 Provide rescue and medical assistance, 296-307-45600 Personal protective equipment, 296-307-45610 Control hazards created by personal protective equipment (PPE), 296-307-45620 Use personal protective equipment (PPE) properly, 296-307-45800 Postemergency response, and 296-307-46000 Definitions.

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307-03920 Make sure appropriate first-aid supplies are readily available, 296-307-061 What requirements apply to working around bins, bunkers, hoppers, tanks, pits, and trenches?, 296-307-07013 What rules apply to vehicles used to transport employees?, 296-307-11015 Violations of this part—Worker protection standards—40 CFR, § 170.9, 296-307-13045 Personal protective equipment—Standards for pesticide handlers—40 CFR, § 170.240, 296-307-16340 Electricity and lighting, 296-307-445 Scope, 296-307-45010 Provide proper ventilation for the vapor area, 296-307-45035 Prepare dip tanks before cleaning, 296-307-45045 Protect employees during welding, burning, or other work using open flames, 296-307-50025 What requirements apply to welding beryllium?, 296-307-50029 What requirements apply to welding mercury?, 296-307-550 Employer chemical hazard communication—Introduction, 296-307-55015 Obtain and maintain material safety data sheets (MSDSs) for each hazardous chemical used, 296-307-55030 Inform and train your employees about hazardous chemicals in your workplace, 296-307-55035 Follow these rules for laboratories using hazardous chemicals, 296-307-55060 Definitions, 296-307-560 Scope, 296-307-56025 Develop or obtain material safety data sheets (MSDSs), 296-307-56050 Definitions, 296-307-570 Lighting rule and 296-307-590 Environmental tobacco smoke in the office; and repealing WAC 296-62-071 Respiratory protection, 296-62-07101 To whom does chapter 296-62 WAC, Part E apply?, 296-62-07102 When are you allowed to rely on respirators to protect employees from breathing contaminated air?, 296-62-07103 What are your responsibilities as an employer?, 296-62-07105 Definitions, 296-62-07107 When is a respiratory protection program required?, 296-62-07109 When must you update your written respiratory protection program?, 296-62-07111 What must be included in your written respiratory protection program?, 296-62-07113 What are the requirements for a program administrator?, 296-62-07115 Who pays for the respirators, training, medical evaluations, and fit testing?, 296-62-07117 What must you do when employees choose to wear respirators when respirators are not required?, 296-62-07130 What must be considered when selecting any respirator?, 296-62-07131 What else must you consider when selecting a respirator for use in atmospheres that are not IDLH?, 296-62-07132 What else must you consider when selecting a respirator for use in IDLH atmospheres?, 296-62-07133 What else must you consider when selecting a respirator for emergency and rescue use?, 296-62-07150 What are the general requirements for medical evaluations?, 296-62-07151 Who must perform medical evaluations?, 296-62-07152 What information must you provide to the PLHCP in addition to the questionnaire?, 296-62-07153 How must the medical evaluations and the questionnaire be administered?, 296-62-07154 Who must review the questionnaire and determine what, if any, follow-up evaluations are needed?, 296-62-07155 What must be included in the PLHCP's written recommendations?, 296-62-07156 When are future medical evaluations required?, 296-62-07160 When is fit testing required?, 296-62-07161 What is required when an employee finds the respirator's fit unacceptable?, 296-62-07162 How must fit testing be done?, 296-62-07170 How must you prevent problems with the seal on tight-fitting facepieces?, 296-62-07171 How do you mon-

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Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

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Changes Other than Editing from Proposed to Adopted Version: As a result of written and oral comments received, the following sections are being withdrawn: WAC 296-307-686 Scope, 296-307-688 Planning. Summary, 296-307-68805 Determine if you have employees with occupational exposure, 296-307-68810 Develop and implement a written exposure control plan, 296-307-690 Training. Summary, 296-307-69005 Provide training to your employees, 296-307-69010 Provide additional training, 296-307-69015 Maintain training records, 296-307-692 Hepatitis B virus (HBV) vaccinations. Summary, 296-307-69205 Make hepatitis B vaccination available to employees, 296-307-69210 Obtain a copy of the healthcare professional's written opinion for hepatitis B vaccination and provide it to the employee, 296-307-694 Control employee exposure. Summary, 296-307-69405 Minimize splashing, spraying, splattering, and generation of droplets, 296-307-69410 Make sure items are appropriately labeled, 296-307-69415 Make sure employees clean their hands, 296-307-69420 Prohibit food, drink, and other personal activities in the work area, 296-307-69425 Examine and label contaminated equipment, 296-307-69430 Make sure your worksite is maintained in a clean and sanitary condition, 296-307-69435 Handle regulated waste properly and safely, 296-307-69440 Handle contaminated laundry properly and safely, 296-307-696 Personal protective equipment (PPE). Summary, 296-307-69605 Provide and make sure personal protective equipment is used when there is occupational exposure, 296-307-69610 Make sure gloves are worn, 296-307-69615 Make sure appropriate masks, eye protection, and face shields are worn, 296-307-69620 Wear appropriate protective clothing, 296-307-69625 Make resuscitator devices available, 296-307-69630 Maintain personal protective equipment, 296-307-698 Post-exposure requirements. Summary, 296-307-69805 Make a confidential medical evaluation and follow-up available to employees who experience an exposure incident, 296-307-69810 Test the blood of the source person, 296-307-69815 Provide the results of the source person's blood test to the exposed employee, 296-307-69820 Collect and test the blood of the exposed employee, 296-307-69825 Provide information to the healthcare professional evaluating the employee, 296-307-69830 Obtain and provide a copy of the healthcare professional's written opinion on post-exposure evaluation to the employee, 296-307-700, Records. Summary, 296-307-

70005 Establish and maintain medical records, and 296-307-702 Definitions.

As a result of written and oral comments received, the following sections are being changed as indicated below:

WAC 296-307-039 First-aid rule, Summary

- Corrected the reference in the note. It now reads, "Employers who require their employees to provide first aid must comply with the bloodborne pathogen rule, chapter 296-823 WAC."

WAC 296-307-061 What requirements apply to working around bins, bunkers, hoppers, tanks, pits, and trenches?

- The proposal indicated the words "safety belt with a lifeline attached" would be replaced with the words "full body harness." This change was not adopted.

WAC 296-307-55060 Definitions.

- The period was removed after the word "employer."

WAC 296-307-70420 Medical surveillance. Provide medical surveillance to employees.

- Corrected a reference in the note that follows table 7. It now reads, "A medical evaluation for respirator use is required by chapter 296-307 WAC, Part Y-5, Respiratory protection, for those employees who have not been cleared for respirator use during medical surveillance activities."

WAC 296-307-70455 Provide rescue and medical assistance.

- Corrected a reference in the last note. It now reads, "Employers who designate and train their employees to provide first aid are covered by chapter 296-823 WAC, Bloodborne pathogens."

WAC 296-307-70475 Postemergency response.

- Corrected an error in the table. It now reads, "Chapter 296-843 WAC, Hazardous waste operations."
- Corrected an error in the table. It now reads, "Chapter 296-307 WAC, Part Y-5, Respiratory protection."

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 122, Amended 24, Repealed 271.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 122, Amended 24, Repealed 271.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 122, Amended 24, Repealed 271.

Date Adopted: December 21, 2004.

Paul Trause
Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 296-62-071 Respiratory protection.
- WAC 296-62-07101 To whom does chapter 296-62 WAC, Part E apply?
- WAC 296-62-07102 When are you allowed to rely on respirators to protect employees from breathing contaminated air?
- WAC 296-62-07103 What are your responsibilities as an employer?
- WAC 296-62-07105 Definitions.
- WAC 296-62-07107 When is a respiratory protection program required?
- WAC 296-62-07109 When must you update your written respiratory protection program?
- WAC 296-62-07111 What must be included in your written respiratory protection program?
- WAC 296-62-07113 What are the requirements for a program administrator?
- WAC 296-62-07115 Who pays for the respirators, training, medical evaluations, and fit testing?
- WAC 296-62-07117 What must you do when employees choose to wear respirators when respirators are not required?
- WAC 296-62-07130 What must be considered when selecting any respirator?
- WAC 296-62-07131 What else must you consider when selecting a respirator for use in atmospheres that are not IDLH?
- WAC 296-62-07132 What else must you consider when selecting a respirator for use in IDLH atmospheres?
- WAC 296-62-07133 What else must you consider when selecting a respirator for emergency and rescue use?
- WAC 296-62-07150 What are the general requirements for medical evaluations?
- WAC 296-62-07151 Who must perform medical evaluations?

PERMANENT

WAC 296-62-07152	What information must you provide to the PLHCP in addition to the questionnaire?	WAC 296-62-07190	When must your employees be trained?
WAC 296-62-07153	How must the medical evaluations and the questionnaire be administered?	WAC 296-62-07192	How must you evaluate the effectiveness of your respiratory protection program?
WAC 296-62-07154	Who must review the questionnaire and determine what, if any, follow-up evaluations are needed?	WAC 296-62-07194	What are the recordkeeping requirements?
WAC 296-62-07155	What must be included in the PLHCP's written recommendation?	WAC 296-62-07201	Appendix A-1: General fit testing requirements for respiratory protection—Mandatory.
WAC 296-62-07156	When are future medical evaluations required?	WAC 296-62-07202	What are the general requirements for fit testing?
WAC 296-62-07160	When is fit testing required?	WAC 296-62-07203	What are the fit test exercise requirements?
WAC 296-62-07161	What is required when an employee finds the respirator's fit unacceptable?	WAC 296-62-07205	Appendix A-2: Qualitative fit testing (QLFT) protocols for respiratory protection—Mandatory.
WAC 296-62-07162	How must fit testing be done?	WAC 296-62-07206	What are the general qualitative fit testing (QLFT) protocols?
WAC 296-62-07170	How must you prevent problems with the seal on tight-fitting facepieces?	WAC 296-62-07208	Isoamyl acetate protocol (a QLFT).
WAC 296-62-07171	How do you monitor continuing effectiveness of your employees' respirators?	WAC 296-62-07209	What are the odor threshold screening procedures for isoamyl acetate (QLFT)?
WAC 296-62-07172	What are the standby procedures when respirators are used in IDLH situations?	WAC 296-62-07210	What are the isoamyl acetate fit testing procedures (QLFT)?
WAC 296-62-07175	How must respirators be cleaned and disinfected?	WAC 296-62-07212	Saccharin solution aerosol protocol (QLFT).
WAC 296-62-07176	How must respirators be stored?	WAC 296-62-07213	What are the taste threshold screening procedures for saccharin (QLFT)?
WAC 296-62-07177	When must respirators be inspected?	WAC 296-62-07214	What is the saccharin solution aerosol fit testing procedure (QLFT)?
WAC 296-62-07178	How must respirators be inspected and maintained?	WAC 296-62-07217	Bitrex™ (denatonium benzoate) solution aerosol qualitative fit testing (QLFT) protocol.
WAC 296-62-07179	How must respirators be repaired and adjusted?	WAC 296-62-07218	What is the taste threshold screening procedure for Bitrex™ (QLFT)?
WAC 296-62-07182	What are the breathing gas requirements for atmosphere-supplying respirators?	WAC 296-62-07219	What is the Bitrex™ solution aerosol fit testing procedure (QLFT)?
WAC 296-62-07184	How must filters, cartridges and canisters be labeled?	WAC 296-62-07222	Irritant smoke (stannic chloride) protocol (QLFT).
WAC 296-62-07186	What are the general training requirements?		
WAC 296-62-07188	How do you know if you adequately trained your employees?		

WAC 296-62-07223	What are the general requirements and precautions for irritant smoke fit testing (QLFT)?	WAC 296-62-07248	What test exercises are required for controlled negative pressure (CNP) fit testing (QNFT)?
WAC 296-62-07224	What is the sensitivity screening check protocol for irritant smoke (QLFT)?	WAC 296-62-07251	Appendix B-1: User seal check procedures—Mandatory.
WAC 296-62-07225	What is the irritant smoke fit testing procedure (QLFT)?	WAC 296-62-07253	Appendix B-2: Respirator cleaning procedures—Mandatory.
WAC 296-62-07230	Appendix A-3: Quantitative fit testing (QNFT) protocols for respiratory protection—Mandatory.	WAC 296-62-07255	Appendix C: WISHA respirator medical evaluation questionnaire—Mandatory.
WAC 296-62-07231	What are the general requirements for quantitative fit testing (QNFT)?	WAC 296-62-07257	Appendix D: Health care provider respirator recommendation form—Nonmandatory.
WAC 296-62-07233	Generated aerosol quantitative fit testing protocol (QNFT).	WAC 296-62-07260	Appendix E: Additional information regarding respirator selection—Nonmandatory.
WAC 296-62-07234	What equipment is required for generated aerosol fit testing (QNFT)?	WAC 296-62-07261	How do you classify respiratory hazards?
WAC 296-62-07235	What are the procedures for generated aerosol quantitative fit testing (QNFT)?	WAC 296-62-07263	What are oxygen deficient respiratory hazards?
WAC 296-62-07236	How are fit factors calculated (QNFT)?	WAC 296-62-07265	What needs to be considered when combinations of contaminants occur in the workplace?
WAC 296-62-07238	Ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol.	WAC 296-62-07267	What are the two major types of respirators?
WAC 296-62-07239	General information about ambient aerosol condensation nuclei counter (CNC) protocol (QNFT).	WAC 296-62-07269	What are air-purifying respirators (APRs)?
WAC 296-62-07240	What are the general requirements for ambient aerosol condensation nuclei counter (CNC) protocol (QNFT)?	WAC 296-62-07271	What are the general limitations for air-purifying respirators (APRs)?
WAC 296-62-07242	What are the Portacount fit testing procedures?	WAC 296-62-07273	What are particulate-removing respirators?
WAC 296-62-07243	How is the Portacount test instrument used?	WAC 296-62-07275	What are vapor- and gas-removing respirators?
WAC 296-62-07245	Controlled negative pressure (CNP) quantitative fit testing protocol (QNFT).	WAC 296-62-07277	What are combination particulate-and vapor- and gas-removing respirators?
WAC 296-62-07246	How does controlled negative pressure (CNP) fit testing work (QNFT)?	WAC 296-62-07279	What types of filters, canisters and cartridges are available for air-purifying respirators (APRs)?
WAC 296-62-07247	What are the controlled negative pressure (CNP) fit test-	WAC 296-62-07281	How do atmosphere-supplying respirators work?

WAC 296-62-07283	What are the capabilities and limitations of atmosphere-supplying respirators?
WAC 296-62-07285	What is a supplied-air respirator?
WAC 296-62-07287	What are the general capabilities and limitations of supplied-air respirators?
WAC 296-62-07289	What are combination supplied-air and air-purifying respirators?
WAC 296-62-07291	What are combination supplied-air respirators with auxiliary self-contained air supply?
WAC 296-62-07293	What is a self-contained breathing apparatus respirator (SCBA)?
WAC 296-62-07295	What are the limitations for self-contained breathing apparatus respirators (SCBA)?

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-62-075	Air contaminants.
WAC 296-62-07501	Airborne contaminants.
WAC 296-62-07503	Ceiling vs. time-weighted average limits.
WAC 296-62-07505	"Skin" notation.
WAC 296-62-07507	Mixtures.
WAC 296-62-07509	Nuisance dusts.
WAC 296-62-07510	Total particulate.
WAC 296-62-07511	Simple asphyxiants.
WAC 296-62-07513	Physical factors.
WAC 296-62-07515	Control of chemical agents.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-62-08001	Bloodborne pathogens.
WAC 296-62-08050	Appendix A—Hepatitis B vaccine declination—Mandatory.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-62-09015	Hearing conservation.
WAC 296-62-09017	Definitions.
WAC 296-62-09019	Monitoring.
WAC 296-62-09021	Method of noise measurement.
WAC 296-62-09023	Calibration of monitoring equipment.
WAC 296-62-09024	Employee notification.
WAC 296-62-09025	Observation of monitoring.
WAC 296-62-09026	Noise control.
WAC 296-62-09027	Audiometric testing program.
WAC 296-62-09029	Audiometric test requirements.
WAC 296-62-09031	Hearing protectors.
WAC 296-62-09033	Hearing protector attenuation.
WAC 296-62-09035	Training program.
WAC 296-62-09037	Access to information and training materials.
WAC 296-62-09039	Warning signs.
WAC 296-62-09041	Recordkeeping.
WAC 296-62-09043	Appendices.
WAC 296-62-09045	Effective dates.
WAC 296-62-09047	Appendix A—Audiometric measuring instruments.
WAC 296-62-09049	Appendix B—Audiometric test rooms.
WAC 296-62-09051	Appendix C—Acoustic calibration of audiometers.
WAC 296-62-09053	Appendix D—Methods for estimating the adequacy of hearing protector attenuation.
WAC 296-62-09055	Appendix E—Noise exposure computation.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-62-141	Permit-required confined spaces.
WAC 296-62-14100	Scope and application.

PERMANENT

WAC 296-62-14105	Definitions.	WAC 296-62-30110	Safety considerations during the initial site excavation.
WAC 296-62-14110	General requirements.		
WAC 296-62-14115	Permit-required confined space program (permit space program).	WAC 296-62-30115	Notifying contractors and subcontractors of procedures and hazards.
WAC 296-62-14120	Permit system.	WAC 296-62-30120	Availability of the safety and health program.
WAC 296-62-14125	Required entry permit information.	WAC 296-62-30125	Organizational structure of the site safety and health program.
WAC 296-62-14130	Training.		
WAC 296-62-14135	Duties of authorized entrants.	WAC 296-62-30130	Comprehensive workplan of the site program.
WAC 296-62-14140	Duties of attendants.	WAC 296-62-30135	Overview of a site-specific safety and health plan.
WAC 296-62-14145	Duties of entry supervisors.		
WAC 296-62-14150	Rescue and emergency services.	WAC 296-62-30140	Preentry briefing of the site-specific safety and health plan.
WAC 296-62-14155	Employee participation.		
WAC 296-62-14170	Appendices to WAC 296-62-141—Permit-required confined spaces.	WAC 296-62-30145	Effectiveness of site safety and health plan.
WAC 296-62-14171	Appendix A—Permit-required confined space decision flow chart.	WAC 296-62-3020	Site characterization and analysis.
WAC 296-62-14172	Appendix B—Procedures for atmospheric testing.	WAC 296-62-30205	Preliminary evaluation.
WAC 296-62-14173	Appendix C—Examples of permit-required confined space programs.	WAC 296-62-30210	Hazard identification.
WAC 296-62-14174	Appendix D—Sample permits.	WAC 296-62-30215	Required information.
WAC 296-62-14175	Appendix E—Sewer system entry.	WAC 296-62-30220	Personal protective equipment.
WAC 296-62-14176	Appendix F—Rescue team or rescue service evaluation criteria.	WAC 296-62-30225	Monitoring.
		WAC 296-62-30230	Risk identification.
		WAC 296-62-30235	Employee notification.
		WAC 296-62-3030	Site control.
		WAC 296-62-30305	Site control program.
		WAC 296-62-30310	Elements of the site control program.
		WAC 296-62-30315	Site work zones.
		WAC 296-62-3040	General training requirements and the employees covered.
		WAC 296-62-30405	Elements covered in training.
		WAC 296-62-30410	Initial training.
		WAC 296-62-30415	Management and supervisor training.
		WAC 296-62-30420	Law enforcement at illicit drug labs.
		WAC 296-62-30425	Training course content for 40 and 80 hour hazardous waste cleanup courses.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-62-300	Hazardous waste operations and treatment, storage, and disposal facilities.		
WAC 296-62-30001	Scope and application.		
WAC 296-62-30003	Definitions.		
WAC 296-62-3010	Overview of a written safety and health program.		
WAC 296-62-30105	Elements of a safety and health program.		

PERMANENT

WAC 296-62-30430	Training content for 24-hour hazardous waste cleanup course.	WAC 296-62-3090	General requirements for handling drums and containers.
WAC 296-62-30435	16-hour supplemental training for hazardous waste sites.	WAC 296-62-30905	Opening drums and containers.
WAC 296-62-30440	Additional 8 hours of training for supervisors and managers.	WAC 296-62-30910	Material handling equipment.
WAC 296-62-30445	Qualifications for trainers.	WAC 296-62-30915	Radioactive wastes.
WAC 296-62-30450	Training certification.	WAC 296-62-30920	Shock-sensitive wastes.
WAC 296-62-30455	Training requirements for emergency response.	WAC 296-62-30925	Laboratory waste packs.
WAC 296-62-30460	Refresher training.	WAC 296-62-30930	Sampling of drum and container contents.
WAC 296-62-30465	Equivalent training.	WAC 296-62-30935	Shipping and transport of drums.
WAC 296-62-3050	Medical surveillance.	WAC 296-62-30940	Tanks and vaults procedures.
WAC 296-62-30505	Employees covered.	WAC 296-62-3100	Decontamination procedures.
WAC 296-62-30510	Frequency of medical examinations and consultations.	WAC 296-62-31005	Location of decontamination areas.
WAC 296-62-30515	Content of medical examinations and consultations.	WAC 296-62-31010	Decontamination of equipment and solvents.
WAC 296-62-30520	Examination by a physician and costs.	WAC 296-62-31015	Decontamination of personal protective clothing and equipment.
WAC 296-62-30525	Information provided to the physician.	WAC 296-62-31020	Showers and change rooms used for decontamination.
WAC 296-62-30530	Physician's written opinion.	WAC 296-62-3110	Emergency response plan for employees at uncontrolled hazardous waste sites.
WAC 296-62-30535	Recordkeeping of medical surveillance activities.	WAC 296-62-31105	Elements of an emergency response plan at uncontrolled hazardous waste sites.
WAC 296-62-3060	Engineering controls, work practices, and personal protective equipment for employee protection.	WAC 296-62-31110	Procedures for handling emergency incidents at uncontrolled hazardous waste sites.
WAC 296-62-30605	Personal protective equipment selection.	WAC 296-62-3120	Illumination.
WAC 296-62-30610	Totally encapsulating chemical protective suits.	WAC 296-62-3130	Sanitation at temporary workplaces.
WAC 296-62-30615	Personal protective equipment (PPE) program.	WAC 296-62-31305	Potable water.
WAC 296-62-3070	Monitoring concentrations of hazardous substances.	WAC 296-62-31310	Nonpotable water.
WAC 296-62-30705	Monitoring during initial entry.	WAC 296-62-31315	Toilet facilities.
WAC 296-62-30710	Periodic monitoring.	WAC 296-62-31320	Food handling.
WAC 296-62-30715	Monitoring of high-risk employees.	WAC 296-62-31325	Temporary sleeping quarters.
WAC 296-62-3080	Informational programs.	WAC 296-62-31330	Washing facilities.
		WAC 296-62-31335	Showers and change rooms.
		WAC 296-62-3138	New technology programs.

WAC 296-62-3140	Certain operations conducted under the Resource Conservation and Recovery Act of 1976 (RCRA).
WAC 296-62-31405	Safety and health program under RCRA.
WAC 296-62-31410	Hazard communication program requirements under RCRA.
WAC 296-62-31415	Medical surveillance program requirements under RCRA.
WAC 296-62-31420	Decontamination program requirements under RCRA.
WAC 296-62-31425	New technology programs requirements under RCRA.
WAC 296-62-31430	Material handling program requirements under RCRA.
WAC 296-62-31435	Training program for new employees under RCRA.
WAC 296-62-31440	Training program for current employees.
WAC 296-62-31445	RCRA requirements for trainers.
WAC 296-62-31450	Emergency response program requirements under RCRA.
WAC 296-62-31455	Emergency response plan under RCRA.
WAC 296-62-31460	Elements of an emergency response plan under RCRA.
WAC 296-62-31465	Training requirements for emergency response under RCRA.
WAC 296-62-31470	Procedures for handling emergency incidents under RCRA.
WAC 296-62-3152	Appendices to Part P—Hazardous waste operations and TSD facilities.
WAC 296-62-3160	Appendix A—Personal protective equipment test methods.
WAC 296-62-3170	Appendix B—General description and discussion of the levels of protection and protective gear.
WAC 296-62-3180	Appendix C—Compliance guidelines.
WAC 296-62-3190	Appendix D—References.

WAC 296-62-3195

Appendix E—Training curriculum guidelines.

AMENDATORY SECTION (Amending WSR 03-10-068, filed 5/6/03, effective 8/1/03)

WAC 296-307-018 What are the employer's responsibilities?

You must:

- (1) Provide a safe and healthful working environment.
- (2) Ensure that employees do not use defective or unsafe tools and equipment, including tools and equipment that may be furnished by the employee.
- (3) Implement a written accident prevention program as required by these standards.
- (4) Implement a hazard communication program as required by WAC 296-307-550.

(5) Establish a system for reporting and recording accidents on the OSHA 200 log. (See chapter 296-27 WAC.)

(6) Provide safety education and training programs.

(7) Implement the requirements of WAC 296-62-074 through 296-62-07451 to ensure the safety of employees who are exposed to cadmium in the workplace.

(8) Implement the requirements of WAC ((296-62-145)) 296-307-642 through ((296-62-14529)) 296-307-656 to ensure the safety of employees who are exposed to confined spaces in the workplace.

(9) Control chemical agents.

You must:

- Control chemical agents in a manner that they will not present a hazard to your workers; or
- Protect workers from the hazard of contact with, or exposure to, chemical agents.

Reference: Pesticides are chemical agents and are covered by chapter 296-307 WAC Part I, Pesticides (worker protection standard). Pesticides may also be covered by ((chapter 296-62 WAC Part E, Respiratory protection)) WAC 296-307-594, Respirators.

(10) Protect employees from biological agents.

You must:

- Protect employees from exposure to hazardous concentrations of biological agents that may result from processing, handling or using materials or waste.

Note: Examples of biological agents include:

- Animals or animal waste
- Body fluids
- Biological agents in a medical research lab
- Mold or mildew.

AMENDATORY SECTION (Amending WSR 04-07-160, filed 3/23/04, effective 5/1/04)

WAC 296-307-039 First-aid rule summary. Your responsibility: Make sure first-aid trained personnel are available to provide quick and effective first aid.

You must:

Make sure that first-aid trained personnel are available to provide quick and effective first aid.

WAC 296-307-03905.

Make sure appropriate first-aid supplies are readily available.

WAC 296-307-03920.

- Note:**
- Employers who require their employees to provide first aid must comply with the bloodborne pathogen rule, [chapter 296-823 WAC](#) ((296-62-080)).
 - Additional requirements relating to first aid are also located in the following sections:
 - WAC 296-307-07013(12), What rules apply to vehicles used to transport employees?
 - WAC 296-307-16175, First-aid requirements for operators of temporary worker housing.
 - WAC 296-307-16380, First-aid requirements for operators of cherry harvest camps.

Definitions:

First aid: The extent of treatment you would expect from a person trained in basic first aid, using supplies from a first-aid kit.

Emergency medical service: Medical treatment and care given at the scene of any medical emergency or while transporting any victim to a medical facility.

You can get copies of these rules by calling 1-800-4BE SAFE (1-800-423-7233), or by going to <http://www.lni.wa.gov>.

AMENDATORY SECTION (Amending WSR 01-17-033, filed 8/8/01, effective 9/1/01)

WAC 296-307-03920 Make sure appropriate first-aid supplies are readily available. You must:

- Make sure first-aid supplies are readily available. (See first-aid kit table.)
- Make sure first-aid supplies at your workplace are appropriate to:
 - Your occupational setting.
 - The response time of your emergency medical services.

First-Aid Kit Table

Number of employees normally assigned to worksite	Minimum first-aid supplies required at worksite
1 - 15 Employees	1 First-aid kit
16 - 30 Employees	2 First-aid kits
31 - 50 Employees	3 First-aid kits
((Over 50 Employees (within 1/2 mile radius of supplies))	First-aid station (see WAC 296-307-03925))

- Note:**
- First-aid kits from your local retailer or safety supplier should be adequate for most nonindustrial employers.
 - The following is a list of suggested items for your first-aid kit:
 - 1 absorbent compress, 4 x 8 inches
 - 16 adhesive bandages, 1 x 3 inches
 - 1 adhesive tape, 5 yards long
 - 10 antiseptic single-use packages, 0.5 g application
 - 6 burn treatment single-use packages, 0.5 g application
 - 1 eye covering (for two eyes)
 - 1 eye wash, 1 fluid ounce
 - 4 sterile pads, 3 x 3 inches
 - 2 pair of medical exam gloves
 - 1 triangular bandage, 39 x 39 x 55 inches
 - Optional first-aid kit contents
 - Bandage compresses, 2 x 2 inches, 3 x 3 inches and 5 x 5 inches
 - Self-activating cold packs, 4 x 5 inches
 - Roller bandages, 6 yards long
 - Mouth-to-mouth barrier for CPR
 - Kits should be checked at least weekly to ensure adequate number of needed items are available.
 - Kits may be carried in any motor vehicle that is used near the crew.

You must:

- Make sure that first-aid supplies are:
 - Easily accessible to all your employees.
 - Stored in containers that protect them from damage, deterioration, or contamination. Containers must be clearly marked, not locked, and may be sealed.
 - Able to be moved to the location of an injured or acutely ill worker.

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-061 What requirements apply to working around bins, bunkers, hoppers, tanks, pits, and trenches? (1) Employees must be prohibited from entering any bin, bunker, hopper, or similar area when loose materials (such as chips, sand, grain, gravel, sawdust, etc.) may collapse, unless the employee wears a safety belt with a lifeline attached and is attended by a helper.

Note: Silage pits are exempt from this section.

Reference: For requirements relating to confined spaces, see WAC 296-307-642 through 296-307-656.

(2) When employees are required to work in a trench or a pit 4 feet deep or more, the trench or the pit must be shored or sloped according to the following table:

SOIL OR ROCK TYPE MAXIMUM ALLOWABLE	SLOPES (H:V) (1) FOR EXCAVATIONS LESS THAN 20 FEET DEEP (2)
STABLE ROCK	VERTICAL (90°)
TYPE A	3/4:1 (53°)
TYPE B	1:1 (45°)
TYPE C	1 1/2:1 (34°)

- Numbers in parentheses next to maximum allowable slopes are angles in degrees from the horizontal. Angles have been rounded off.
- Sloping or benching for excavations greater than 20 feet deep must be designed by a registered professional engineer.

(3) Each soil and rock deposit must be classified by a competent person as Stable Rock, Type A, B, or C according to the definitions in WAC 296-155-66401. "Competent person" means someone who is able to identify working conditions that are hazardous to employees, and has authority to take prompt action to eliminate the hazards.

(4) Classification of the deposits must be based on the results of at least one visual and at least one manual analysis. The analyses must be conducted by a competent person using tests in recognized methods of soil classification and testing such as those adopted by the American Society for Testing Materials, or the U.S. Department of Agriculture textural classification system.

AMENDATORY SECTION (Amending WSR 01-17-033, filed 8/8/01, effective 9/1/01)

WAC 296-307-07013 What rules apply to vehicles used to transport employees? You must ensure that motor vehicles used regularly to transport employees meet the following requirements:

PERMANENT

(1) The vehicles are well equipped, covered against the weather, and maintained in good mechanical condition at all times.

(2) A sufficient number of properly secured seats are provided in each vehicle to accommodate the number of employees transported. When emergency conditions make it necessary to transport more employees than the seating capacity can accommodate, all employees must ride within the vehicle. No employee may ride on fenders or running boards of the vehicle.

(3) No employees may ride in or on any vehicle with their legs hanging over the end or sides. All trucks without tail gates should have safety bars.

(4) The vehicles have storage strong enough to retain sharp tools that could present a hazard to employees being transported.

(5) All dump-trucks used to transport employees have an adequate safety chain or locking device to ensure that the body of the truck is not raised while employees are riding in it.

(6) Explosives or highly inflammable materials are not carried in or on the vehicle while it is used to transport employees.

(7) Exhaust systems are installed and maintained in proper condition, and are designed to eliminate the employee exposure to exhaust gases and fumes.

(8) Within the cab, crew trucks must carry only the number of passengers for which they are designed. In any seating arrangement, the driver must be able to maintain full freedom of motion. The driver's normal vision must be free from obstruction by passengers or the seating arrangement.

(9) All enclosed crew trucks have an emergency exit in addition to the regular entrance.

(10) Trucks used for hauling gravel may be used as crew trucks if they meet the following requirements:

- (a) Steps in proper places;
- (b) Wooden floors;
- (c) Securely fastened seats;
- (d) Truck is properly covered; and
- (e) Compliance with all other general regulations covering crew trucks.

(11) Half-ton vehicles must haul no more than six persons including driver. Three-quarter-ton vehicles must haul no more than eight persons including driver.

(12) The vehicle is equipped with the first-aid supplies required by WAC ((296-307-042)) 296-307-03920, two blankets, and a fire extinguisher.

Note: Additional requirements relating to first aid are located in WAC 296-307-039.

(13) Heating units with open fires are not used in vehicles transporting crews.

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-11015 Violations of this part—Worker protection standards—40 CFR, § 170.9. (1) RCW 15.58.150 (2)(c) provides that it is unlawful for any person ". . . to use or cause to be used any pesticide contrary to label directions . . ." When 40 CFR, Part 170 is referenced on a

label, users must comply with all of its requirements except those that are inconsistent with product specific instructions on the labeling. For purposes of this chapter, the term "use" is interpreted to include:

(a) Preapplication activities, including, but not limited to:

- (i) Arranging for the application of the pesticide;
- (ii) Mixing and loading the pesticide; and
- (iii) Making necessary preparations for the application of

the pesticide, including responsibilities related to worker notification, training of handlers, decontamination, use and care of personal protective equipment, emergency information, and heat stress management.

(b) Application of the pesticide.

(c) Post-application activities necessary to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during the restricted-entry interval plus thirty days. These activities include, but are not limited to, responsibilities related to worker training, notification, and decontamination.

(d) Other pesticide-related activities, including, but not limited to, providing emergency assistance, transporting or storing pesticides that have been opened, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

(2) A person who has a duty under this chapter, as referenced on the pesticide product label, and who fails to perform that duty, violates RCW 15.58.330 and 17.21.315, and is subject to civil penalties under RCW 15.58.335, 15.58.260 and 17.21.315.

(3) FIFRA section 14 (b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for that person violates any provision of FIFRA. The term "acting for" includes both employment and contractual relationships.

(4) The requirements of this chapter, including the decontamination requirements, shall not, for the purposes of section 653 (b)(1) of Title 29 of the U.S. Code, be deemed to be the exercise of statutory authority to prescribe or enforce standards or regulations affecting the general sanitary hazards addressed by ((the WISHA)) Field Sanitation ((Standard)), WAC ((296-24-120)) 296-307-095, or other agricultural, nonpesticide hazards.

AMENDATORY SECTION (Amending WSR 98-24-096, filed 12/1/98, effective 3/1/99)

WAC 296-307-13045 Personal protective equipment—Standards for pesticide handlers—40 CFR, § 170.240. (1) Requirement. Any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment specified on the labeling for use of the product.

(2) Definition.

(a) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection

devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(b) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.

(3) Provision. When personal protective equipment is specified by the labeling of any pesticide for any handling activity, the handler employer shall provide the appropriate personal protective equipment in clean and operating condition to the handler.

(a) When "chemical-resistant" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.

(b) When "waterproof" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(c) When a "chemical-resistant suit" is specified by the product labeling, it shall be a loose-fitting, one-piece or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(d) When "coveralls" are specified by the product labeling, they shall be a loose-fitting, one-piece or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over another layer of clothing.

(e) Gloves shall be of the type specified by the product labeling. Gloves or glove linings made of leather, cotton, or other absorbent material shall not be worn for handling activities unless such materials are listed on the product labeling as acceptable for such use.

(f) When "chemical-resistant footwear" is specified by the product labeling, one of the following types of footwear must be worn:

- (i) Chemical-resistant shoes.
- (ii) Chemical-resistant boots.
- (iii) Chemical-resistant shoe coverings worn over shoes or boots.

(g) When "protective eyewear" is specified by the product labeling, one of the following types of eyewear must be worn:

- (i) Goggles.
- (ii) Face shield.
- (iii) Safety glasses with front, brow, and temple protection.
- (iv) Full-face respirator.

(h) When a "chemical-resistant apron" is specified by the product labeling, an apron that covers the front of the body from mid-chest to the knees shall be worn.

(i) When a respirator is specified by the product labeling, it shall be appropriate for the pesticide product used and for the activity to be performed. The handler employer shall assure that the respirator fits correctly by using the procedures consistent with chapter ((296-62)) 296-307 WAC, Part ((E)) Y-5. If the label does not specify the type of respirator

to be used, it shall meet the requirements of chapter ((296-62)) 296-307 WAC, Part ((E)) Y-5. The respiratory protection requirements of ((the general occupational health standards,)) chapter ((296-62)) 296-307 WAC, Part ((E)) Y-5, shall apply.

(j) When "chemical-resistant headgear" is specified by the product labeling, it shall be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(4) Exceptions to personal protective equipment specified on product labeling.

(a) Body protection.

(i) A chemical-resistant suit may be substituted for "coveralls," and any requirement for an additional layer of clothing beneath is waived.

(ii) A chemical-resistant suit may be substituted for "coveralls" and a chemical-resistant apron.

(b) Boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.

(c) Gloves. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during handling activities with roses or other plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they shall be worn only with chemical-resistant liners and they shall not be worn for any other use.

(d) Closed systems. If handling tasks are performed using properly functioning systems that enclose the pesticide to prevent it from contacting handlers or other persons, and if such systems are used and are maintained in accordance with that manufacturer's written operating instructions, exceptions to labeling-specified personal protective equipment for the handling activity are permitted as provided in (d)(i) and (ii) of this subsection.

(i) Persons using a closed system to mix or load pesticides with a signal word of DANGER or WARNING may substitute a long-sleeved shirt, long pants, shoes, socks, chemical-resistant apron, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.

(ii) Persons using a closed system to mix or load pesticides other than those in (d)(i) of this subsection or to perform other handling tasks may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment.

(iii) Persons using a closed system that operates under pressure shall wear protective eyewear.

(iv) Persons using a closed system shall have all labeling-specified personal protective equipment immediately available for use in an emergency.

(e) Enclosed cabs. If handling tasks are performed from inside a cab that has a nonporous barrier which totally surrounds the occupants of the cab and prevents contact with pesticides outside of the cab, exceptions to personal protective equipment specified on the product labeling for that handling activity are permitted as provided in (e)(i) through (iv) of this subsection.

(i) Persons occupying an enclosed cab may substitute a long-sleeved shirt, long pants, shoes, and socks for the label-

ing-specified personal protective equipment. If a respiratory protection device is specified on the pesticide product labeling for the handling activity, it must be worn.

(ii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer and by the Washington state department of labor and industries to provide respiratory protection equivalent to or greater than a dust/mist filtering respirator may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device other than a dust/mist-filtering respirator is specified on the pesticide product labeling, it must be worn.

(iii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer and by the Washington state department of labor and industries to provide respiratory protection equivalent to or greater than the vapor-removing or gas-removing respirator specified on pesticide product labeling may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If an air-supplying respirator or a self-contained breathing apparatus (SCBA) is specified on the pesticide product labeling, it must be worn.

(iv) Persons occupying an enclosed cab shall have all labeling-specified personal protective equipment immediately available and stored in a chemical-resistant container, such as a plastic bag. They shall wear such personal protective equipment if it is necessary to exit the cab and contact pesticide-treated surfaces in the treated area. Once personal protective equipment is worn in the treated area, it must be removed before reentering the cab.

(f) Aerial applications.

(i) Use of gloves. Chemical-resistant gloves shall be worn when entering or leaving an aircraft contaminated by pesticide residues. In the cockpit, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.

(ii) Open cockpit. Persons occupying an open cockpit shall use the personal protective equipment specified in the product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A visor may be substituted for protective eyewear.

(iii) Enclosed cockpit. Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.

(g) Crop advisors. Crop advisors entering treated areas while a restricted-entry interval is in effect may wear the personal protective equipment specified on the pesticide labeling for early entry activities instead of the personal protective equipment specified on the pesticide labeling for handling activities, provided:

(i) Application has been completed for at least four hours.

(ii) Any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by WAC 296-307-12015 (3)(c) or in the labeling have been met.

(5) Use of personal protective equipment.

(a) The handler employer shall assure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(b) The handler employer shall assure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(6) Cleaning and maintenance.

(a) The handler employer shall assure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

(b) If any personal protective equipment cannot be cleaned properly, the handler employer shall dispose of the personal protective equipment in accordance with any applicable federal, state, and local regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with an undiluted pesticide that has the signal word DANGER or WARNING on the label shall be not be reused.

(c) The handler employer shall assure that contaminated personal protective equipment is kept separately and washed separately from any other clothing or laundry.

(d) The handler employer shall assure that all clean personal protective equipment shall be either dried thoroughly before being stored or shall be put in a well ventilated place to dry.

(e) The handler employer shall assure that all personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(f) The handler employer shall assure that when dust/mist filtering respirators are used, the filters shall be replaced:

(i) When breathing resistance becomes excessive.

(ii) When the filter element has physical damage or tears.

(iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(g) The handler employer shall assure that when gas-removing or vapor-removing respirators are used, the gas-removing or vapor-removing canisters or cartridges shall be replaced:

(i) At the first indication of odor, taste, or irritation.

(ii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iii) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(h) The handler employer shall inform any person who cleans or launders personal protective equipment:

(i) That such equipment may be contaminated with pesticides.

(ii) Of the potentially harmful effects of exposure to pesticides.

(iii) Of the correct way(s) to clean personal protective equipment and to protect themselves when handling such equipment.

(i) The handler employer shall assure that handlers have a clean place(s) away from pesticide storage and pesticide use areas where they may:

(i) Store personal clothing not in use.

(ii) Put on personal protective equipment at the start of any exposure period.

(iii) Remove personal protective equipment at the end of any exposure period.

(j) The handler employer shall not allow or direct any handler to wear home or to take home personal protective equipment contaminated with pesticides.

(7) Heat-related illness. When the use of personal protective equipment is specified by the labeling of any pesticide for the handling activity, the handler employer shall assure that no handler is allowed or directed to perform the handling activity unless appropriate measures are taken, if necessary, to prevent heat-related illness.

AMENDATORY SECTION (Amending WSR 00-06-081, filed 3/1/00, effective 3/1/00)

WAC 296-307-16340 Electricity and lighting. (1) General electricity requirements.

(a) The operator must supply electricity to all dwelling units, kitchen facilities, bathroom facilities, common areas, and laundry facilities.

(b) All electrical wiring, fixtures and electrical equipment must comply with department of labor and industries regulations, chapter 19.28 RCW and local ordinances, and maintained in a safe condition.

(2) Electricity requirements in tents.

(a) Each individual tent must have at least one separate floor-type or wall-type convenience outlet. If the operator provides a refrigerator in the tent, a dedicated outlet must be provided for it.

(b) All electrical wiring and equipment installed in tents must meet the requirements of WAC ((~~296-46-100~~) 296-45-045).

(c) All electrical appliances to be connected to the electrical supply must meet the requirements for the load calculations as required by chapter 19.28 RCW.

(d) Electrical wiring exiting the tent to connect to the GFI outside outlet must be placed in approved flexible conduit not to exceed six feet in length.

(e) All wiring located inside the tent must be placed in conduit for protection and connected to a surface to secure the wiring to prevent movement. Wiring must be located to prevent tripping or safety hazards.

(f) Receptacles and lighting fixtures must be UL Listed and approved by the department for use in the tent.

(3) General lighting requirements.

(a) The operator must provide adequate lighting sufficient to carry on normal daily activities in all common use areas.

(b) Laundry and toilet rooms and rooms where people congregate must have at least one ceiling-type or wall-type

fixture. Where portable toilets are used, lighting requirements can be met by area illumination.

(c) The operator must provide adequate lighting for safe passage for camp occupants to handwashing sinks and toilets.

(d) The operator must provide adequate lighting for shower rooms during hours of operation.

Note: Lighting requirements may be met by natural or artificial means.

(4) Lighting requirements in tents.

(a) Tents must have adequate lighting sufficient to carry on all normal daily activities. For example: Three 100-watt bulbs located at the top ridge of the frame and are UL Listed or equivalent.

(b) Each tent must have at least one ceiling-type light fixture.

(c) Food preparation areas, if located in the tent, must have at least one lighting fixture located to provide task lighting over the food preparation area.

(d) Alternate lighting appliances must provide adequate lighting. In addition, if using two or more propane, butane, or white gas lighting appliances, a carbon monoxide monitor must be provided and located not more than thirty inches from the floor.

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-50025 What requirements apply to welding beryllium? Welding or cutting indoors, outdoors, or in confined spaces involving beryllium-containing base or filler metals must be done using local exhaust ventilation and airline respirators unless atmospheric tests under the most adverse conditions have established that employee exposure is within the acceptable concentrations defined by ((~~chapter 296-62~~) WAC 296-307-62625). In all cases, employees in the immediate vicinity of the welding or cutting operations must be protected as necessary by local exhaust ventilation or airline respirators.

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-50029 What requirements apply to welding mercury? Welding or cutting indoors or in a confined space involving metals coated with mercury-bearing materials, including paint, must be done using local exhaust ventilation or airline respirators unless atmospheric tests under the most adverse conditions have established that employee exposure is within the acceptable concentrations defined by ((~~chapter 296-62~~) WAC 296-307-62625). Outdoors, such operations must be done using respiratory protective equipment approved by the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) for such purposes.

Part U-3

Other Hazardous Materials

Dipping and Coating Operations (Dip Tanks)

~~((Part U-3~~

~~Other Hazardous Materials))~~

AMENDATORY SECTION (Amending WSR 03-10-068, filed 5/6/03, effective 8/1/03)

WAC 296-307-45010 Provide proper ventilation for the vapor area.

You must:

- Make sure mechanical ventilation meets the requirements of one or more of the following standards:
 - NFPA 34-1995, Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids
 - ACGIH's "Industrial Ventilation: A Manual of Recommended Practice" (22nd ed., 1995)
 - ANSI Z9.1-1971, Practices for Ventilation and Operation of Open-Surface Tanks and ANSI Z9.2-1979, Fundamentals Governing the Design and Operation of Local Exhaust Systems.

Note: Some, or all, of the consensus standards (such as ANSI and NFPA) may have been revised. If you comply with a later version of a consensus standard, you will be considered to have complied with any previous version of the same consensus standard.

You must:

- Limit the vapor area to the smallest practical space by using mechanical ventilation
 - Keep airborne concentration of any substance below twenty-five percent of its lower flammable limit (LFL)
 - Make sure mechanical ventilation draws the flow of air into a hood or exhaust duct
 - Have a separate exhaust system for each dip tank if the combination of substances being removed could cause a:
 - Fire
 - Explosion
- OR**
- Potentially hazardous chemical reaction.

Reference: You need to keep employee exposure within safe levels when the liquid in a dip tank creates an exposure hazard. See ~~((Air contaminants, WAC 296-62-075 through 296-62-07515))~~ Respiratory hazards, chapter 296-307 WAC, Part Y-6.

Note: You may use a tank cover or material that floats on the surface of the liquid to replace or assist ventilation. The method or combination of methods you choose has to maintain the airborne concentration of the hazardous material and the employee's exposure within safe limits.

AMENDATORY SECTION (Amending WSR 03-10-068, filed 5/6/03, effective 8/1/03)

WAC 296-307-45035 Prepare dip tanks before cleaning. You must:

- (1) Drain the contents of the tank and open any cleanout doors.
- (2) Ventilate the tank to clear any accumulated hazardous vapors.

Reference: There may be requirements that apply before an employee enters a dip tank. See ~~((Permit required))~~ Confined spaces, WAC ~~((296-62-144))~~ 296-307-642 and safety procedures, WAC 296-307-320.

AMENDATORY SECTION (Amending WSR 03-10-068, filed 5/6/03, effective 8/1/03)

WAC 296-307-45045 Protect employees during welding, burning, or other work using open flames.

You must:

• Make sure the dip tank and the area around it are thoroughly cleaned of solvents and vapors before performing work involving:

- Welding
 - Burning
- OR**
- Open flames.

Reference: There are additional requirements for this type of work. See Welding, cutting and brazing, WAC 296-307-475, and ~~((Respiratory protection))~~ Respirators, chapter ~~((296-62-WAC, Part E))~~ 296-307 WAC, Part Y-5.

~~((Part U-4~~

~~Emergency Response))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-307-452	Scope.
WAC 296-307-45210	Planning.
WAC 296-307-45220	Training.
WAC 296-307-45230	Medical surveillance.
WAC 296-307-45240	Keep records.
WAC 296-307-45400	Incident requirements.
WAC 296-307-45410	Implement and maintain an incident command system (ICS).
WAC 296-307-45420	Prepare skilled support personnel.
WAC 296-307-45430	Make sure the incident commander oversees activities during the response.
WAC 296-307-45440	Use the buddy system in danger areas.
WAC 296-307-45450	Provide rescue and medical assistance.
WAC 296-307-45600	Personal protective equipment.
WAC 296-307-45610	Control hazards created by personal protective equipment (PPE).

PERMANENT

- WAC 296-307-45620 Use personal protective equipment (PPE) properly.
- WAC 296-307-45800 Postemergency response.
- WAC 296-307-46000 Definitions.

house, the exposure should be the same as the consumer's. ("In the same way" means using the household cleaner in the same manner and frequency.) A janitor using a household cleaner, such as bleach, throughout the day, is not considered to be consumer use.

– Manufactured items that remain intact are exempt for this rule.

The following are examples:

Item	Covered by this rule	Not covered by this rule
Brick	sawed or cut in half	used whole or intact
Pipe	cut by a torch	bent with a tube bender
Nylon rope	burning the ends	tying a knot

– Manufactured items that are fluids or in the form of particles are not exempt for this rule.

Your responsibility:

To inform and train your employees about the hazards of chemicals they may be exposed to during normal working conditions, or in foreseeable emergencies by:

- Making a list of the hazardous chemicals present in your workplace
- Preparing a written Chemical Hazard Communication Program for your workplace
- Informing your employees about this rule and your program
- Providing training to your employees about working in the presence of hazardous chemicals
- Getting and keeping the material safety data sheets (MSDSs) for the hazardous chemicals
- Making sure that labels on containers of hazardous chemicals are in place and easy to read

You must:

Develop, implement, maintain, and make available a written Chemical Hazard Communication Program
WAC 296-307-55005

Identify and list all the hazardous chemicals present in your workplace
WAC 296-307-55010

Obtain and maintain material safety data sheets (MSDSs) for each hazardous chemical used
WAC 296-307-55015

Make sure that material safety data sheets (MSDSs) are readily accessible to your employees
WAC 296-307-55020

Label containers holding hazardous chemicals
WAC 296-307-55025

Inform and train your employees about hazardous chemicals in your workplace
WAC 296-307-55030

Follow these rules for laboratories using hazardous chemicals
WAC 296-307-55035

Follow these rules for handling chemicals in factory sealed containers
WAC 296-307-55040

The department must:

Translate certain chemical hazard communication documents upon request
WAC 296-307-55045

Attempt to obtain a material safety data sheet (MSDS) upon request

Part Y-1

Employer Chemical Hazard Communication

AMENDATORY SECTION (Amending WSR 01-17-033, filed 8/8/01, effective 9/1/01)

WAC 296-307-550 Employer chemical hazard communication—Introduction. Important:

Thousands of chemicals can be found in today's workplaces. These chemicals may have the capacity to cause health problems, from minor skin irritations to serious injuries or diseases like cancer.

The employer chemical hazard communication rule was developed to make sure employers and employees are informed about chemical hazards in the workplace.

This rule applies to:

- Employers engaged in businesses where chemicals are used, distributed, or produced for use or distribution.
- Contractors or subcontractors that work for employers engaged in businesses where chemicals are used, distributed, or produced for use or distribution.

Note:

- If you produce, import, distribute and/or repackage chemicals, or choose not to rely on labels or material safety data sheets provided by the manufacturer or importer, you must comply with ~~((Chemical hazard communication for manufacturers, importers and distributors, WAC 296-62-054))~~ Material safety data sheets and label preparation, WAC 296-307-560 through 296-307-56050.
- You may withhold trade secret information under certain circumstances, see Trade secrets, WAC 296-62-053, to find out what information may be withheld as a trade secret and what information must be released.

EXEMPTIONS:

- For the purposes of this employer hazard communication rule, if you are engaged in agricultural production of crops or livestock, "employee" does not mean:
 - Immediate family members of the officers of any corporation, partnership, sole proprietorship or other business entity or officers of any closely held corporation.
- Certain products, chemicals, or items are exempt from this rule. Below is a summarized list of these exemptions. See WAC 296-307-55055 at the end of this rule to get complete information about these exemptions:
 - Any hazardous waste or substance
 - Tobacco or tobacco products
 - Wood or wood products that are not chemically treated and will not be processed, for example, by sawing and sanding
 - Food or alcoholic beverages
 - Some drugs, such as retail or prescription medications
 - Retail cosmetics
 - Ionizing and nonionizing radiation
 - Biological hazards
 - Any consumer product or hazardous substance when workplace exposure is the same as that of a consumer
 - ♦ Retail products used in offices in the same manner and frequency used by consumers can be termed "consumer products." Consumer products include things such as: Correction fluid, glass cleaner, and dishwashing liquid.

Example: If you use a household cleaner in your workplace in the same way that a consumer would use it when cleaning their

PERMANENT

WAC 296-307-55050

Exemption: Items or chemicals exempt from the rule, and exemptions from labeling

WAC 296-307-55055

Definitions

WAC 296-307-55060

AMENDATORY SECTION (Amending WSR 01-17-033, filed 8/8/01, effective 9/1/01)

WAC 296-307-55015 Obtain and maintain material safety data sheets (MSDSs) for each hazardous chemical used.

You must:

• Obtain a MSDS for each hazardous chemical used as soon as possible if the MSDS is not provided with the shipment of a hazardous chemical from the chemical manufacturer or importer.

Note:

- To obtain a MSDS, you may try calling the manufacturer or checking their website.
- If you have a commercial account with a retailer or wholesaler, you have the right to request and receive a MSDS about hazardous chemicals you purchase.
- If a chemical is purchased from a retailer with no commercial accounts, you have the right to request and receive the manufacturer's name and address so that you can contact them and request a MSDS for the chemical.
- Whoever prepares the MSDS is required to mark all blocks on the form, even if there is no relevant information for that section.
- If you have problems getting a MSDS within 30 calendar days after making a written request to the chemical manufacturer, importer, or distributor, you can get help from WISHA. You may contact your local regional office for assistance or make a written request for assistance to the:
Department of Labor and Industries
Right-to-Know Program
P.O. Box 44610
Olympia, Washington 98504-4610
- Include in your request:
 - A copy of the purchaser's written request to the chemical manufacturer, importer, or distributor
 - The name of the product suspected of containing a hazardous chemical
 - The identification number of the product, if available
 - A copy of the product label, if available
 - The name and address of the chemical manufacturer, importer, or distributor from whom the product was obtained

You must:

• Maintain a MSDS for each hazardous chemical:
- Keep copies of the required MSDSs for each hazardous chemical present in your workplace. These may be kept in any form, including as a part of operating procedures.
- Each MSDS must be in English. You may also keep copies in other languages.

Note:

- If you choose not to rely on MSDSs or labels provided by the manufacturer or importer, you must comply with the chemical hazard communication standard for manufacturers, importers, and distributors, WAC ((296-62-054)) 296-307-560 through 296-307-56050.
- It may be more appropriate to address the hazards of a process rather than individual hazardous chemicals. MSDSs can be designed to cover groups of hazardous chemicals in a work area.

AMENDATORY SECTION (Amending WSR 03-10-068, filed 5/6/03, effective 8/1/03)

WAC 296-307-55030 Inform and train your employees about hazardous chemicals in your workplace.

Note: The employer chemical hazard communication information and training requirements also apply to pesticides. Employers who have employees who are exposed to pesticides must be in compliance with this rule and the worker protection standards, WAC 296-307-12040.

You must:

• Provide employees with effective information on hazardous chemicals in their work area at the time of their initial job assignment. Whenever a new physical or health hazard related to chemical exposure is introduced into their employees' work areas, information must be provided.

- Inform employees of:

- ◆ The requirements of this rule.
- ◆ Any operations in their work area where hazardous chemicals are present.

◆ The location and availability of your written Chemical Hazard Communication Program, including the list(s) of hazardous chemicals and material safety data sheets (MSDSs) required by this rule.

• Provide employees with effective training about hazardous chemicals in their work area at the time of their initial job assignment. Whenever a new physical or health hazard related to chemical exposure is introduced, the employees must be trained.

• Make sure that employee training includes:

- Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area. Examples of these methods and observations may include:

- ◆ Monitoring conducted by you
- ◆ Continuous monitoring devices
- ◆ Visual appearance or odor of hazardous chemicals when being released

- Physical and health hazards of the chemicals in the work area, including the likely physical symptoms or effects of overexposure

- Steps employees can take to protect themselves from the chemical hazards in your workplace, including specific procedures implemented by you to protect employees from exposure to hazardous chemicals. Specific procedures may include:

- Appropriate work practices
- Engineering controls
- Emergency procedures
- Personal protective equipment to be used

- Details of the Chemical Hazard Communication Program developed by you, including an explanation of the labeling system and the MSDS, and how employees can obtain and use the appropriate hazard information.

• Tailor information and training to the types of hazards to which employees will be exposed. The information and training may be designed to cover categories of hazards, such as flammability or cancer-causing potential, or it may address specific chemicals. Chemical-specific information must always be available through labels and MSDSs.

- Make reasonable efforts to post notices in your employees' native languages (as provided by the department) if those employees have trouble communicating in English.

Note:

- Interactive computer-based training or training videos can be used provided they are effective.
- Your MSDSs may not have WISHA permissible exposure limits (PELs) listed. In some cases, WISHA PELs are stricter than the OSHA PELs and other exposure limits listed on the MSDSs you receive. If this is the case, you must refer to the WISHA PEL table, WAC ~~((296-62-075))~~ 296-307-62625, for the appropriate exposure limits to be covered during training.

AMENDATORY SECTION (Amending WSR 01-17-033, filed 8/8/01, effective 9/1/01)

WAC 296-307-55035 Follow these rules for laboratories using hazardous chemicals.

Note: Laboratories are required to have a written Chemical Hygiene Plan under WAC 296-62-400, if applicable. They are not required to have a written Chemical Hazard Communication Program.

You may combine your Accident Prevention Program and Chemical Hazard Communication Program to assist you in developing a Chemical Hygiene Plan for your laboratory.

You must:

(1) Make sure that labels on incoming containers of hazardous chemicals are in place and readable.

(2) Maintain material safety data sheets (MSDSs) received with incoming shipments of hazardous chemicals and make them available to laboratory employees when they are in their work areas.

(3) Provide laboratory employees with information and training as described in: "Inform and train your employees about hazardous chemicals in your workplace," WAC 296-307-55030, except for the part about the location and availability of the written Chemical Hazard Communication Program.

Note: Laboratory employers that ship hazardous chemicals are considered to be either chemical manufacturers or distributors. When laboratory employers ship hazardous chemicals they must comply with the rule, ~~(("Hazard communication standards for chemical manufacturers, importers and distributors," WAC 296-62-054))~~ Material safety data sheets and label preparation, WAC 296-307-560 through 296-307-56050.

AMENDATORY SECTION (Amending WSR 01-17-033, filed 8/8/01, effective 9/1/01)

WAC 296-307-55060 Definitions.

Chemical

~~((Any element, chemical compound, or mixture of elements and/or compounds.))~~ • An element or mixture of elements

OR

• A compound or mixture of compounds

OR

• A mixture of elements and compounds

Included are manufactured items (such as bricks, welding rods, and sheet metal) that are not exempt as an article.

Chemical manufacturer

An employer with a workplace where one or more chemicals are produced for use or distribution.

Chemical name

• The scientific designation of a chemical ~~((in accordance with one of the following))~~ developed by the:

~~((The nomenclature system developed by the))~~ = International Union of Pure and Applied Chemistry (IUPAC)

OR

~~((The))~~ = Chemical abstracts service (CAS) rules of nomenclature

OR

~~((s))~~ = A name ~~((which will))~~ that clearly ~~((identify))~~ identifies the chemical for the purpose of conducting a hazard evaluation.

Combustible liquid

~~((A combustible liquid has))~~ Liquids with a flashpoint of at least 100°F (37.8°C) and below 200°F (93.3°C). A mixture(s) with at least 99% of ((their)) its components having flashpoints of 200°F (93.3°C), or higher ((are)), is not considered a combustible liquid(s).

Commercial account

An arrangement ~~((in which a retail distributor sells hazardous chemical(s) to an employer, generally in large quantities over time, and/or at costs that are below the regular retail price.))~~ where a retailer is selling hazardous chemicals to an employer

• Generally in large quantities over time

OR

• At costs below regular retail price.

Common name

Any designation or identification used to identify a chemical other than the chemical name, such as a:

• Code name or number

~~((Code number))~~ OR

• Trade or brand name

~~((Brand name))~~ OR

• Generic name ((used to identify a chemical other than by its chemical name)).

Compressed gas

A contained gas or mixture of gases ~~((that, when in a container, has))~~ with an absolute pressure ~~((exceeding))~~ greater than:

• 40 psi at 70°F (21.1°C)

OR

• 104 psi at 130°F (54.4°C) regardless of the pressure at 70°F (21.1°C)

OR

~~((Compressed gas can also mean))~~ A liquid with a vapor pressure ((that exceeds)) greater than 40 psi at 100°F (37.8°C) as determined by ASTM D323-72.

Container

~~((Any container, except for))~~ A vessel, other than a pipe(s) or piping system(s), that ((contains)) holds a hazardous chemical. ((It can be any of the following)) Examples include:

• Bags

• Barrels

• Bottles

• Boxes

- Cans
- Cylinders
- Drums
- Rail cars
- Reaction vessels
- Storage tanks.

Designated representative

• ((Any)) An individual or organization ((to which an employee gives)) with written authorization from an employee.

OR

• A recognized or certified collective bargaining agent ((without regard to written employee authorization)) (not necessarily authorized by an employee).

OR

• ((The)) A legal representative of a deceased or legally incapacitated employee.

Director

The director means the director of the department of labor and industries or their designee.

Distributor

A business, other than a chemical manufacturer or importer, that supplies hazardous chemicals to other distributors or to employers. See WAC ((296-62-054)) 296-307-560 through 296-307-56050 for requirements dealing with manufacturers, distributors and importers - hazard communication.

Employee

The term employee and other terms of like meaning, unless the context of the provision containing such term indicates otherwise, means an employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the employment of or who is working under an independent contract the essence of which is personal labor for an employer under this standard whether by way of manual labor or otherwise.

Employer

An employer is any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: Provided, That any persons, partnership, or business entity not having employees, and who is covered by the Industrial Insurance Act must be considered both an employer and an employee.

Explosive

A chemical that causes a sudden, almost instant release of pressure, gas, and heat when exposed to a sudden shock, pressure, or high temperature.

Exposure or exposed

An employee has been, or may have possibly been, subjected to a hazardous chemical, toxic substance or harmful physical agent while working. An employee could have been exposed to hazardous chemicals, toxic substances, or harmful physical agents in any of the following ways:

- Inhalation

- Ingestion
- Skin contact
- Absorption
- Related means.

The terms exposure and exposed only cover workplace exposure involving a toxic substance or harmful physical agent in the workplace different from typical nonoccupational situations in the way it is:

- Used
- Handled
- Stored
- Generated

OR

- Present.

Flammable

A chemical ((covered by)) in one of the following categories:

~~((Aerosol flammable means an aerosol that, when tested by the method described in 16 CFR 1500.45 yields either a flame projection more than 18 inches at full valve opening or a flashback (a flame extending back to the valve) at any degree of valve opening;~~

~~• Gas, flammable means:~~

~~– A gas that, at temperature and pressure of the surrounding area, forms a flammable mixture with air at a concentration of 13% by volume or less; or~~

~~– A gas that, at temperature and pressure of the surrounding area, forms a range of flammable mixtures with air wider than 12% by volume, regardless of the lower limit;~~

~~• Liquid, flammable means any liquid having a flash point below 100°F (37.8°C), except any mixture having components with flashpoints of 100°F (37.8°C) or higher, the total of which make up 99% or more of the total volume of the mixture.~~

~~• Solid, flammable means a solid, other than a blasting agent or explosive as defined in WAC 296-52-417 or 29 CFR 1910.109(a), that is likely to cause fire through friction, moisture absorption, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily. Solid, inflammable also means that when the substance is ignited, it burns so powerfully and persistently that it creates a serious hazard. A chemical must be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.) • Aerosols that, when tested using a method described in 16 CFR 1500.45, yield either a:~~

~~– Flame projection of more than eighteen inches at full valve opening~~

~~OR~~

~~– A flashback (a flame extending back to the valve) at any degree of valve opening~~

~~• Gases that, at the temperature and pressure of the surrounding area, form a:~~

~~– Flammable mixture with air at a concentration of thirteen percent, by volume, or less~~

~~OR~~

~~– Range of flammable mixtures with air wider than twelve percent, by volume, regardless of the lower limit~~

• Liquids with a flashpoint below 100°F (37.8°C). A mixture with at least ninety-nine percent of its components having flashpoints of 100°F (37.8°C), or higher, is not considered a flammable liquid

• Solids, other than blasting agents or explosives, as defined in WAC 296-52-417 or 29 CFR 1910.109(a), that:

– Is likely to cause fire through friction, moisture, absorption, spontaneous chemical change or retained heat from manufacturing or processing

OR

– That can be readily ignited (and when ignited burns so vigorously and persistently that it creates a serious hazard)

OR

– When tested by the method described in 16 CFR 1500.44, ignite and burn with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

Flashpoint

• The minimum temperature at which a liquid gives off ((a vapor in sufficient concentration to ignite)) an ignitable concentration of vapor, when tested by any of the following measurement methods:

– Tagliabue closed tester ((:—(See American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79))))). Use this for liquids with a viscosity ((øf)) less than 45 Saybolt Universal Seconds (SUS) at 100°F (37.8°C), that do not contain suspended solids and do not ((have a tendency)) tend to form a surface film under test((;øf)). See American National Standard Method of Test for Flashpoint by Tag Closed Tester, Z11.24.1979 (ASTM D 56-79)

– Pensky-Martens closed tester ((:—(See American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79)))) for liquids with a viscosity equal to, or greater than, 45 SUS at 100°F (37.8°C), or for liquids that contain suspended solids, or ((that)) have a tendency to form a surface film under test((;øf)). See American National Standard Method of Test for Flashpoint by Pensky-Martens Closed Tester, Z11.7.1979 (ASTM D 93-79)

– Setaflash closed tester: ((ø))See American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278-78).((ø))

((Note:)) Organic peroxides, which undergo auto accelerating thermal decomposition, are excluded from any of the flashpoint measurement methods specified above.

Foreseeable emergency

Any potential event that could result in an uncontrolled release of a hazardous chemical into the workplace. Examples of foreseeable emergencies include equipment failure, rupture of containers, or failure of control equipment.

Hazardous chemical

((Any)) A chemical ((that)), which is a physical or health hazard.

Hazard warning

((Can be a combination of)) Words, pictures, or symbols (alone or in combination), ((or combination appearing)) that appear on ((a)) labels (or other ((appropriate)) forms of warning ((which shows the)) such as placards or tags) that communicate specific physical and health hazard(s), (including

target organ effects), ((øthe)) associated with chemical(s) in ((the)) a container(((s))).

((Note: See definition for physical hazard and health hazard to determine which hazards must be covered.))

Health hazard

((Any)) A chemical ((with the potential to cause acute or chronic)) that may cause health effects in short or long-term exposed employees ((The potential must be)) based on statistically significant ((based on)) evidence from ((at least one)) a single study conducted ((under)) by using established scientific principles. Health hazards include, but are not limited to, any of the following:

- ((Chemicals which are)) Carcinogens
- Toxic or highly toxic ((agents)) substances
- Reproductive toxins
- Irritants
- Corrosives
- Sensitizers
- Hepatotoxins (liver toxins)
- Nephrotoxins (kidney toxins)
- Neurotoxins (nervous system toxins)
- ((Agents which)) Substances that act on the hematopoietic system (blood or blood forming system)
- ((Agents which)) Substances that can damage the lungs, skin, eyes, or mucous membranes.

((See WAC 296-62-054 for more definitions and explanations about the scope of health hazards covered by this part.

See WAC 296-62-054 for the criteria used for determining whether or not a chemical is considered hazardous for purposes of this rule.))

Identity

((Any)) A chemical or common name listed on the material safety data sheet (MSDS) ((for the specific chemical. Each identity used must allow cross-references among the:

- Required list of hazardous chemicals
- Chemical label
- MSDSs)) and label.

Importer

The first business within the customs territory of the USA that:

- Receives hazardous chemicals produced in other countries

AND

- Supplies them to manufacturers, distributors or employers within the USA.

((See WAC 296-62-054 for requirements dealing with manufacturers, importers and distributors—hazard communication.))

Material safety data sheet (MSDS)

Written ((ø)), printed ((material)) or electronic information (on paper, microfiche, or on-screen) that ((tells you about the chemical(s), what it can do to and how to protect yourself, others, or the environment.

For requirements for developing MSDSs see WAC 296-62-054—manufacturers, importers, and distributors—hazard communication)) informs manufacturers, distributors or employers about the chemical, its hazards and protective measures as required by this rule.

Mixture

~~((Any))~~ A combination of 2 or more chemicals ~~((if that combination did not result from a chemical reaction))~~ that retain their chemical identity after being combined.

Organic peroxide

~~((This is))~~ An organic compound containing the bivalent-O-O-structure. It may be considered a structural derivative of hydrogen peroxide if one or both of the hydrogen atoms has been replaced by an organic radical.

Oxidizer

A chemical, other than a blasting agent or explosive as defined in WAC 296-52-417 or CFR 1910.109(a), that starts or promotes combustion in other materials, causing fire either of itself or through the release of oxygen or other gases.

Permissible exposure limits (PELs)

~~((PELs are airborne concentrations of substances measured by their concentration in the air no matter what amount is breathed by the employee. The permissible exposure limits (PELs) must include the following four categories:~~

~~• Permissible exposure limits—Time weighted average (PEL-TWA) is the time weighted average airborne exposure to any 8-hour work shift of a 40-hour work week and must not be exceeded.~~

~~• Permissible exposure limits—Short term exposure limit (PEL-STEL) is the employee's 15-minute time weighted average exposure which must not be exceeded at any time during a work day unless another time limit is specified in a parenthetical notation below the limit. If another time period is specified, the time weighted average exposure over that time period must not be exceeded at any time during the working day.~~

~~• Permissible exposure limits—Ceiling (PEL-C) is the employee's exposure which must not be exceeded during any part of the work day. If instantaneous monitoring is not feasible, then the ceiling must be assessed as a 15-minute time-weighted average exposure which must not be exceeded at any time over a working day.~~

~~• Skin notation is the potential contribution to the overall employee exposure by the cutaneous route including mucous membranes and eye, either by airborne, or more particularly, by direct contact with the substance. These substances are identified as having a skin notation in the OSHA and WISHA PEL tables (29 CFR Part 1910-Subpart Z and WAC 296-62-075, respectively.) See WAC 296-307-628 for the definition of this term.~~

Physical hazard

A chemical that has scientifically valid evidence to show it is one of the following:

- A combustible liquid
- A compressed gas
- Explosive
- Flammable
- An organic peroxide
- An oxidizer
- Pyrophoric
- Unstable (reactive)
- Water reactive.

Produce

~~((Any))~~ To do one or more of the following:

- Manufacture

- Process
- Formulate
- Blend
- Extract
- Generate
- Emit
- Repackage.

Purchaser

An employer who buys one or more hazardous chemicals to use in their workplace.

Pyrophoric

~~((A))~~ Chemicals ~~((is pyrophoric if it will))~~ that ignite spontaneously in the air ~~((when the))~~ at a temperature ~~((is))~~ of 130°F (54.4°C) or below.

Responsible party

Someone who can provide ~~((appropriate))~~ more information about the hazardous chemical and appropriate emergency procedures.

Specific chemical identity

This term applies to chemical substances. It can mean the:

- Chemical name
- Chemical abstracts service (CAS) registry number
- Any other information that reveals the precise chemical designation of the substance.

Trade secret

Any confidential:

- Formula
- Pattern
- Process
- Device
- Information
- Collection of information.

The trade secret is used in an employer's business and gives an opportunity to gain an advantage over competitors who do not know or use it.

See WAC 296-62-053 for requirements dealing with trade secrets.

Unstable (reactive)

~~((An unstable or reactive))~~ A chemical ~~((is one that))~~ in its pure state, or as produced or transported, that will vigorously polymerize, decompose, condense, or ~~((will))~~ become self-reactive under conditions of shocks, pressure or temperature.

Use

~~((Means to))~~ To do one or more of the following:

- Package
- Handle
- React
- Emit
- Extract
- Generate as a by-product
- Transfer.

Water-reactive

A ~~((water-reactive))~~ chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

Work area

A room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

Workplace

The term workplace means an establishment, job site, or project, at one geographical location containing one or more work areas.

Part Y-2

Material Safety Data Sheets and Label Preparation

AMENDATORY SECTION (Amending WSR 03-10-068, filed 5/6/03, effective 8/1/03)

WAC 296-307-560 Scope. This chapter sets minimum requirements for content and distribution of material safety data sheets (MSDSs) and labels for hazardous chemicals.

• This chapter applies when you do **one or more** of the following:

- Import, produce, or repackage chemicals, including manufactured items (such as bricks, welding rods, and sheet metal) that are not exempt as articles
- Sell or distribute hazardous chemicals to manufacturers, distributors or employers
- Choose not to rely on material safety data sheets (MSDSs) provided by the importer, manufacturer or distributor.

Note:

- You are not required to evaluate chemicals or create MSDSs for chemicals you did not produce or import. If you decide to evaluate chemicals or create MSDSs, then the requirements of this chapter will apply to you.
- Use Table 2 to determine which sections in this chapter apply to your workplace.

Exemptions: • All of the following are always exempt from this chapter:

- Ionizing and nonionizing radiation
- Biological hazards
- Tobacco and tobacco products

• The chemicals and items listed in Table 1 are exempt from this chapter under the conditions specified.

Table 1 Conditional Exemptions From This Chapter	
This chapter does NOT apply to	When
<ul style="list-style-type: none"> • Alcoholic beverages <p>OR</p> <ul style="list-style-type: none"> • Foods 	<ul style="list-style-type: none"> • Sold, used, or prepared in a retail establishment (such as a grocery store, restaurant, bar, or tavern)
<ul style="list-style-type: none"> • An article (manufactured item) 	<ul style="list-style-type: none"> • It is not a fluid or particle <p>AND</p> <ul style="list-style-type: none"> • It is formed to a specific shape or design during manufacture for a particular end use function¹ <p>AND</p>

Table 1 Conditional Exemptions From This Chapter	
This chapter does NOT apply to	When
	<ul style="list-style-type: none"> • It releases only trace amounts of a hazardous chemical during normal use AND does not pose a physical or health risk to employees
<ul style="list-style-type: none"> • Consumer products <ul style="list-style-type: none"> - Produced or distributed for sale meeting the definition of "consumer products" in the Consumer Product Safety Act (see U.S. Code, Title 15, Chapter 47, section 2052²) <p>OR</p> <ul style="list-style-type: none"> • Hazardous household products <ul style="list-style-type: none"> - Meeting the definition of "hazardous substances" in the Federal Hazardous Substance Act (see U.S. Code, Title 15, Chapter 30, section 1261²) 	<ul style="list-style-type: none"> • Both criteria apply: <ul style="list-style-type: none"> - They are used in the workplace for the same purpose as intended by the manufacturer or importer - The duration and frequency of an employee's exposure is no more than the range of exposures that consumers might reasonably experience
<ul style="list-style-type: none"> • Cosmetics 	<ul style="list-style-type: none"> • Packaged and sold in retail establishments
<ul style="list-style-type: none"> • Drugs <ul style="list-style-type: none"> - Meeting the definition for "drugs" in the Federal Food, Drug, and Cosmetic Act (see U.S. Code, Title 21, Chapter 9, Subchapter II, section 321²) 	<ul style="list-style-type: none"> • In solid, final form (for example, tablets, or pills) for direct administration to the patient <p>OR</p> <ul style="list-style-type: none"> • Packaged and sold in retail establishments (for example, over-the-counter drugs) <p>OR</p> <ul style="list-style-type: none"> • Intended for employee consumption while in the workplace (for example, first-aid supplies)

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Table 1 Conditional Exemptions From This Chapter	
This chapter does NOT apply to	When
<ul style="list-style-type: none"> Hazardous solid wastes <ul style="list-style-type: none"> Meeting the definition of "hazardous wastes" in the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (see U.S. Code, Title 42, Chapter 82, Subchapter I, section 6903²) 	<ul style="list-style-type: none"> Subject to the United States Environmental Protection Agency (EPA) regulations³
<ul style="list-style-type: none"> Hazardous substances <ul style="list-style-type: none"> Released into the environment, meeting the definition of "hazardous substances" in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (see U.S. Code, Title 42, Chapter 103, Subchapter I, section 9601²) 	<ul style="list-style-type: none"> They are the focus of remedial or removal action being conducted under CERCLA in accordance with EPA regulations (Title 40 of the Code of Federal Regulations (CFR)³)
<ul style="list-style-type: none"> Hazardous wastes <ul style="list-style-type: none"> Meeting the definition of "dangerous wastes" in the Hazardous Waste Management Act (see chapter 70.105 RCW⁴) 	<ul style="list-style-type: none"> Subject to department of ecology regulations, chapter 173-303 WAC⁵, that address the accumulation, handling and management of hazardous waste, and describe all of the following: <ul style="list-style-type: none"> Safety Labeling Personnel training And other related requirements
<ul style="list-style-type: none"> Solid wood OR Wood products (for example, lumber, and paper) 	<ul style="list-style-type: none"> All of the following apply: <ul style="list-style-type: none"> The material is not treated with hazardous chemicals The only hazard is potential flammability or combustibility The product is not expected to be processed (for example, by sanding or sawing)

¹End use is dependent in whole, or in part, upon maintaining the item's original shape or design. If the item will be significantly altered from its original form, it can no longer be considered a manufactured item.

²This federal act is included in the United States Code. See <http://www.access.gpo.gov/uscode/usmain.html>.

³EPA regulations are included in the Code of Federal Regulations (CFR). See <http://www.epa.gov>.

⁴This state act is included in the Revised Code of Washington (RCW). The RCW compiles all permanent laws of the state. See <http://www.leg.wa.gov/wsladm/default.htm>.

⁵See <http://www.ecy.wa.gov>.

Use Table 2 to find out which sections of this ((chapter)) part apply to you. For example, if you import AND sell hazardous chemicals ALL sections apply. WAC 296-307-56050 applies to all employers covered by the scope of this ((chapter)) part.

Table 2 Section Application				
If you	Then the sections marked with an "X" apply			
	56010 - 56015	56025	56030 - 56035	56045
• Import or produce chemicals	X	X		
• Sell or distribute hazardous chemicals to <ul style="list-style-type: none"> Manufacturers OR Distributors OR Employers (includes retail or wholesale transactions) 			X	X
• Choose to NOT rely on MSDSs provided by the importer, manufacturer or distributor	X	X		

AMENDATORY SECTION (Amending WSR 03-10-068, filed 5/6/03, effective 8/1/03)

WAC 296-307-56025 Develop or obtain material safety data sheets (MSDSs).

You must:

- Develop or obtain a complete and accurate material safety data sheet (MSDS) for each hazardous chemical or mixture according to ALL of the following:

- ALL information in Table 8 must be completed. If there is no relevant information for a required item, this must be noted. Blank spaces are not permitted.

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- Note:**
- No specific format is required for MSDSs; however, an example format (OSHA form 174) can be found online at: <http://www.osha.gov>
 - One MSDS can be developed for a group of complex mixtures (for example, jet fuels or crude oil) IF the health and physical hazards of the mixtures are similar (the amounts of chemicals in the mixture may vary).

– Content of MSDSs must accurately represent the available scientific evidence.

Note: You may report results of scientifically valid studies that tend to refute findings of hazards.

– MSDSs must be in English.

Note: You may develop copies of MSDSs in other languages.

You must:

• Revise an MSDS when you become aware of new and significant information regarding the hazards of a chemical, or how to protect against the hazards

– Within three months after you first become aware of the information

OR

– Before the chemical is reintroduced into the workplace if the chemical is no longer being used, produced or imported.

Table 8 Information Required on MSDSs
• The chemical's identity as it appears on the label
• The date the MSDS was prepared or updated
• A contact for additional information about the hazardous chemical and appropriate emergency procedures Include all of the following: <ul style="list-style-type: none"> – Name – Address – Telephone number of the responsible party preparing or distributing the MSDS
• The chemical's hazardous ingredients ¹ as determined by your hazard evaluation <ul style="list-style-type: none"> – For a single substance chemical, include the chemical and common name(s) of the substance – For mixtures tested as a whole <ul style="list-style-type: none"> ■ Include the common name(s) of the mixture AND ■ List the chemical and common name(s) of ingredients that contribute to the known hazards – For mixtures NOT tested as a whole, list the chemical and common name(s) of hazardous ingredients <ul style="list-style-type: none"> ■ That make up 1% or more of the mixture, by weight or volume, including carcinogens (if 0.1% concentration or more, by weight or volume) – If ingredients are less than the above concentrations but may present a health risk to employees (for example, allergic reaction or exposure could exceed the permissible exposure limits, or PEL) they must be listed here
• Exposure limits for airborne concentrations. Include ALL of the following, when they exist:

Table 8 Information Required on MSDSs
– WISHA or OSHA PELs ² <ul style="list-style-type: none"> ■ The 8-hour time weighted average (TWA) ■ The short-term exposure limit (STEL), if available ■ Ceiling values, if available – Threshold limit values (TLVs) including 8-hour TWAs, STELs, and ceiling values – Other exposure limits used or recommended by the employer preparing the MSDS
• Physical and chemical characteristics <ul style="list-style-type: none"> – For example, boiling point, vapor pressure, and odor
• Fire, explosion data, and related information <ul style="list-style-type: none"> – For example, flashpoint, flammable and explosion limits, extinguishing media, and unusual fire or explosion hazards
• Physical hazards of the chemical including reactivity information <ul style="list-style-type: none"> – For example, incompatibilities, decomposition products, by-products, and conditions to avoid
• Health hazard information including ALL of the following: <ul style="list-style-type: none"> – Primary routes of exposure • For example, inhalation, ingestion, and skin absorption or other contact³ <ul style="list-style-type: none"> – Health effects (or hazards) associated with: <ul style="list-style-type: none"> ■ Short-term exposure⁴ AND ■ Long-term exposure⁴ – Whether the chemical is listed or described as a carcinogen or potential carcinogen in the latest editions of each of the following: <ul style="list-style-type: none"> ■ The National Toxicology Program (NTP) Annual Report on Carcinogens OR ■ The International Agency for Research on Cancer (IARC) Monographs as a potential carcinogen OR ■ WISHA or OSHA rules – Signs and symptoms of exposure⁵ – Medical conditions generally recognized as being aggravated by exposure
• Emergency and first-aid procedures
• Generally applicable precautions for safe handling and use known to the employer preparing the MSDS <ul style="list-style-type: none"> – For example, appropriate procedures for clean-up of spills and leaks, waste disposal method, precautions during handling and storing

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Table 8
Information Required on MSDSs

• Generally applicable and appropriate control measures known to the employer preparing the MSDS, including ALL of the following:

- Engineering controls (for example, general or local exhaust ventilation)
- Work practices
- Personal protective equipment (PPE)
- Personal hygiene practices
- Protective measures during repair and maintenance of contaminated equipment

¹The identities of some chemicals may be protected as trade secret information (see chapter 296-62 WAC, Part B-1, Trade secrets).

²WISHA PEL categories are defined, and values are provided, in chapter ((296-62 WAC, Part H)) 296-307 WAC, Part Y-6.

³A "skin notation" listed with either an ACGIH TLV or WISHA/OSHA PEL indicates that skin absorption is a primary route of exposure.

⁴Examples of:

- Short-term health effects (or hazards) include eye irritation, skin damage caused by contact with corrosives, narcosis, sensitization, and lethal dose.
- Long-term health effects (or hazards) include cancer, liver degeneration, and silicosis.

⁵Signs and symptoms of exposure to hazardous substances include those that:

- Can be measured such as decreased pulmonary function

AND

- Are subjective such as feeling short of breath.

AMENDATORY SECTION (Amending WSR 03-10-068, filed 5/6/03, effective 8/1/03)

WAC 296-307-56050 Definitions. The following definitions apply to this chapter:

Article (manufactured item)

A manufactured item that

- Is not a fluid or particle

AND

- Is formed to a specific shape or design during manufacture for a particular end use function

AND

- Releases only trace amounts of a hazardous chemical during normal use and does not pose a physical or health risk to employees.

Chemical

- An element or mixture of elements

OR

- A compound or mixture of compounds

OR

- A mixture of elements and compounds

Included are manufactured items (such as bricks, welding rods and sheet metal) that are not exempt as an article.

Chemical name

- The scientific designation of a chemical developed by the

– International union of pure and applied chemistry (IUPAC)

OR

– Chemical abstracts service (CAS) rules of nomenclature

OR

- A name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

Combustible liquid

Liquids with a flashpoint of at least 100°F (37.8°C) and below 200°F (93.3°C). A mixture with at least 99% of its components having flashpoints of 200°F (93.3°C), or higher, is not considered a combustible liquid.

Commercial account

An arrangement where a retailer is selling hazardous chemicals to an employer

- Generally in large quantities over time

OR

- At costs below regular retail price.

Common name

Any designation or identification used to identify a chemical other than the chemical name, such as a

- Code name or number

OR

- Trade or brand name

OR

- Generic name.

Compressed gas

• A contained gas or mixture of gases with an absolute pressure greater than:

- 40 psi at 70°F (21.1°C)

OR

– 104 psi at 130°F (54.4°C) regardless of the pressure at 70°F (21.1°C)

OR

- A liquid with a vapor pressure greater than 40 psi at 100°F (37.8°C), as determined by ASTM D323-72.

Container

A vessel, other than a pipe or piping system, that holds a hazardous chemical. Examples include:

- Bags
- Barrels
- Bottles
- Boxes
- Cans
- Cylinders
- Drums
- Reaction vessels
- Storage tanks
- Rail cars.

Designated representative

- An individual or organization with written authorization from an employee

OR

- A recognized or certified collective bargaining agent (not necessarily authorized by an employee)

OR

- A legal representative of a deceased or legally incapacitated employee.

Distributor

A business that supplies hazardous chemicals to other employers. Included are employers who conduct retail and wholesale transactions.

Explosive

A chemical that causes a sudden, almost instant release of pressure, gas, and heat when exposed to a sudden shock, pressure, or high temperature.

Flammable

A chemical in one of the following categories:

- Aerosols that, when tested using a method described in 16 CFR 1500.45, yield either a:

- Flame projection of more than eighteen inches at full valve opening

OR

- A flashback (a flame extending back to the valve) at any degree of valve opening

- Gases that, at the temperature and pressure of the surrounding area, form a:

- Flammable mixture with air at a concentration of thirteen percent, by volume, or less

OR

- Range of flammable mixtures with air wider than twelve percent, by volume, regardless of the lower limit

- Liquids with a flashpoint below 100°F (37.8°C). A mixture with at least ninety-nine percent of its components having flashpoints of 100°F (37.8°C), or higher, is not considered a flammable liquid

- Solids, other than blasting agents or explosives, as defined in WAC 296-52-417 or 29 CFR 1910.109(a), that:

- Is likely to cause fire through friction, moisture, absorption, spontaneous chemical change or retained heat from manufacturing or processing

OR

- That can be readily ignited (and when ignited burns so vigorously and persistently that it creates a serious hazard)

OR

- When tested by the method described in 16 CFR 1500.44, ignite and burn with a self-sustained flame at a rate greater than 1/10th of an inch per second along its major axis.

Flashpoint

The minimum temperature at which a liquid gives off an ignitable concentration of vapor, when tested by any of the following measurement methods:

- Tagliabue closed tester. Use this for liquids with a viscosity less than 45 Saybolt Universal Seconds (SUS) at 100°F (37.8°C), that do not contain suspended solids and do not tend to form a surface film under test. See American National Standard Method of Test for Flashpoint by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79)

- Pensky-Martens closed tester. Use this for liquids with a viscosity equal to, or greater than, 45 SUS at 100°F (37.8°C) or for liquids that contain suspended solids or have a tendency to form a surface film under test. See American National Standard Method of Test for Flashpoint by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79)

- Setaflash closed tester. See American National Standard Method of Test for Flashpoint by Setaflash Closed Tester (ASTM D 3278-78)

Organic peroxides, which undergo auto accelerating thermal decomposition, are excluded from any of the flashpoint measurement methods specified above.

Hazardous chemical

A chemical, which is a physical or health hazard.

Hazard warning

Words, pictures or symbols (alone or in combination) that appear on labels (or other forms of warning such as placards or tags) that communicate specific physical and health hazards (including target organ effects) associated with chemicals in a container.

Health hazard

A chemical that may cause health effects in short or long-term exposed employees based on statistically significant evidence from a single study conducted by using established scientific principles.

Health hazards include, but are not limited to, any of the following:

- Carcinogens
- Toxic or highly toxic substances
- Reproductive toxins
- Irritants
- Corrosives
- Sensitizers
- Hepatotoxins (liver toxins)
- Nephrotoxins (kidney toxins)
- Neurotoxins (nervous system toxins)
- Substances that act on the hematopoietic system (blood or blood forming system)
- Substances that can damage the lungs, skin, eyes, or mucous membranes.

Identity

A chemical or common name listed on the material safety data sheet (MSDS) and label.

Importer

The first business, within the Customs Territory of the United States, that receives hazardous chemicals produced in other countries and supplies them to manufacturers, distributors or employers within the United States.

Label

Written, printed, or graphic material displayed on, or attached to, a container of hazardous chemicals.

Manufacturer

An employer with a workplace where one or more chemicals (including items not exempt as "articles," see Table 1 in this ~~(chapter)~~ part) are produced for use or distribution.

Material safety data sheet (MSDS)

Written, printed or electronic information (on paper, microfiche, or on-screen) that informs manufacturers, distributors or employers about the chemical, its hazards and protective measures as required by this rule.

Mixture

A combination of two or more chemicals that retain their chemical identity after being combined.

Organic peroxide

An organic compound containing the bivalent-O-O-structure. It may be considered a structural derivative of hydrogen peroxide if one or both of the hydrogen atoms has been replaced by an organic radical.

Oxidizer

A chemical, other than a blasting agent or explosive as defined in WAC 296-52-417 or 29 CFR 1910.109(a), that starts or promotes combustion in other materials, causing fire either of itself or through the release of oxygen or other gases.

Permissible exposure limits

See ((chapter 296-62 WAC Part H)) WAC 296-307-628, for definition of this term.

Physical hazards

A chemical that has scientifically valid evidence to show it is one of the following:

- A combustible liquid
- A compressed gas
- Explosive
- Flammable
- An organic peroxide
- An oxidizer
- Pyrophoric
- Unstable (reactive)
- Water-reactive.

Produce

To do one or more of the following:

- Manufacture
- Process
- Formulate
- Blend
- Extract
- Generate
- Emit
- Repackage.

Pyrophoric

Chemicals that ignite spontaneously in the air at a temperature of 130°F (54.4°C) or below.

Responsible party

Someone who can provide more information about the hazardous chemical and appropriate emergency procedures.

Retailer

See "distributor."

Threshold limit values (TLVs)

Airborne concentrations of substances established by the American Conference of Governmental Industrial Hygienists (ACGIH), and represent conditions under which it is believed that nearly all workers may be repeatedly exposed day after day without adverse health effects.

TLVs are specified in the most recent edition of the *Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices* and include the following categories:

- Threshold limit value-time-weighted average (TLV-TWA)

• Threshold limit value-short-term exposure limit (TLV-STEL)

• Threshold limit value-ceiling (TLV-C).

Unstable (reactive)

A chemical in its pure state, or as produced or transported, that will vigorously polymerize, decompose, condense, or become self-reactive under conditions of shocks, pressure or temperature.

Use

To do one or more of the following:

- Package
- Handle
- React
- Emit
- Extract
- Generate as a by-product
- Transfer.

Water-reactive

A chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

Wholesaler

See "distributor."

Part Y-3

Lighting

Part Y-4

Environmental Tobacco Smoke in the Office

Part Y-5

Respirators

NEW SECTION

WAC 296-307-594 Scope. This part applies to all use of respirators at work.

IMPORTANT:

Before you decide to use respirators, you are required to evaluate respiratory hazards and implement control methods as outlined in WAC 296-307-624 through 296-307-628, Respiratory hazards.

The term "respiratory hazards" will be used throughout this part to refer to oxygen deficient conditions and harmful airborne hazards.

Definition:

Respirators are a type of personal protective equipment designed to protect the wearer from respiratory hazards.

You can use Table 1 for general guidance on which sections apply to you.

Table 1
Sections that apply to your workplace

If employees...	Then the sections marked with an "X" apply...					
	596	598	600	602-618	620	622
Request and are permitted to voluntarily use filtering-face-piece respirators, and are not exposed to a respiratory hazard		X				X

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Table 1
Sections that apply to your workplace

Request and are permitted to voluntarily use respirators that are NOT filtering-facepiece respirators, and are not exposed to a respiratory hazard	X	X			X	X
Are required to use any respirator by WISHA or the employer	X		X	X	X	X
Would use an escape respirator in an emergency	X		X	X	X	X

Reference: See WAC 296-307-100, Personal protective equipment (PPE) to find requirements for other types of personal protective equipment (PPE), such as eye, hand, and head protection.

NEW SECTION

WAC 296-307-596 Respirator program administrator.

Your responsibility:

To make sure a capable individual is in charge of respirator program development and management.

NEW SECTION

WAC 296-307-59605 Designate a program administrator.

Exemption: You do not need to designate a program administrator if employees use only filtering-facepiece respirators and do so only as voluntary use.

Definition:

Voluntary use is respirator use that is requested by the employee AND permitted by the employer when NO respiratory hazard exists.

You must:

- Designate a program administrator who has overall responsibility for your program and has sufficient training or experience to:
 - Oversee program development and coordinate implementation
 - Conduct required evaluations of program effectiveness outlined in WAC 296-307-60005.

NEW SECTION

WAC 296-307-598 Voluntary respirator use requirements. Your responsibility:

To make sure voluntary use of respirators by employees does not create job safety or health hazards.

You must:

Make sure voluntary use of respirators is safe
WAC 296-307-59805

Keep voluntary use respirator program records
WAC 296-307-59810.

IMPORTANT:

- Respirator use is NOT voluntary if a respiratory hazard, such as exposure to a substance over the permissible exposure limit (PEL) or hazardous exposure to an airborne biological hazard, is present.
 - To evaluate respiratory hazards in your workplace, see WAC 296-307-624, Respiratory hazards.
 - Some requirements in this section do not apply if only filtering-facepiece respirators are used voluntarily. Some filtering-facepiece respirators are equipped with a sorbent layer

for absorbing "nuisance" organic vapors. These can be used for voluntary use, but are not NIOSH certified for protection against hazardous concentrations of organic vapor.

NEW SECTION

WAC 296-307-59805 Make sure voluntary use of respirators is safe.

Definition:

Voluntary use is respirator use that is requested by the employee AND permitted by the employer when NO respiratory hazard exists.

IMPORTANT: If you choose to require respirator use, use is NOT voluntary and the required use sections of this part apply.

You must:

- (1) Make sure voluntary respirator use does NOT:
 - Interfere with an employee's ability to work safely, such as restricting necessary vision or radio communication

OR

- Create health hazards.

Note:

- Examples of health hazards include:
- Skin irritation, dermatitis, or other health effects caused by using a dirty respirator
 - Illness created by sharing contaminated respirators
 - Health effects caused by use of an unsafe air supply, such as carbon monoxide poisoning.

You must:

- (2) Provide all voluntary respirator users with the advisory information in Table 2 at no cost to them.

Note:

If you have provided employees with the advisory information required in the previous section, WAC 296-307-598, you do not need to provide the additional information in Table 2 to those employees.

You must:

- (3) Develop and maintain a written program that includes the following:
 - Medical evaluation provisions as specified in WAC 296-307-604.
 - Procedures to properly clean and disinfect respirators, according to WAC 296-307-62015, if they are reused.
 - How to properly store respirators, according to WAC 296-307-61010, so that using them does not create hazards.
 - Procedures to make sure there is a safe air supply, according to WAC 296-307-616, when using air-line respirators and SCBAs.
 - Training according to WAC 296-307-608 when necessary to ensure respirator use does NOT create a hazard.

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Note:

- Pay for medical evaluations, training, travel related costs, and wages. You do NOT need to pay for respirators employees use only voluntarily.
- If you have both voluntary and required respirator users, you may choose to treat voluntary users as required users. Doing this exceeds the requirements in this section.

Exemption: If employees use only filtering-facepiece respirators and do so only voluntarily, you do not need to develop and maintain a written program.

Use Table 2 to provide information to employees who voluntarily use any type of respirator.

Table 2

Advisory Information for Employees Who Voluntarily Use Respirators

- Respirators protect against airborne hazards when properly selected and used. WISHA recommends voluntary use of respirators when exposure to substances is below WISHA permissible exposure limits (PELs) because respirators can provide you an additional level of comfort and protection.
- If you choose to voluntarily use a respirator (whether it is provided by you or your employer) be aware that **respirators can create hazards for you**, the user. You can avoid these hazards if you know how to use your respirator properly AND how to keep it clean. Take these steps:
 - Read and follow all instructions provided by the manufacturer about use, maintenance (cleaning and care), and warnings regarding the respirator's limitations.
 - Choose respirators that have been certified for use to protect against the substance of concern. The National Institute for Occupational Safety and Health (NIOSH) certifies respirators. If a respirator is not certified by NIOSH, you have no guarantee that it meets minimum design and performance standards for workplace use.
 - A NIOSH approval label will appear on or in the respirator packaging. It will tell you what protection the respirator provides.
 - Keep track of your respirator so you do not mistakenly use someone else's.
 - **DO NOT** wear your respirator into:
 - Atmospheres containing hazards that your respirator is not designed to protect against.
For example, a respirator designed to filter dust particles will not protect you against solvent vapor, smoke or oxygen deficiency.
 - Situations where respirator use is required.

NEW SECTION

WAC 296-307-59810 Keep voluntary use program records.

Exemption: If employees use only filtering-facepiece respirators voluntarily, you do not need to follow these record-keeping requirements.

You must:

- Keep copies of:
 - Your current written respirator program
 - Written recommendations from the LHCP
- Allow records required by this section to be examined and copied by affected employees and their representatives.

NEW SECTION

WAC 296-307-600 Written respirator program and recordkeeping.

Your responsibility:

To develop, implement, and maintain a written program that provides clear instruction for safe and reliable respirator use.

You must:

- Develop and maintain a written program
- WAC 296-307-60005
- Keep respirator program records
- WAC 296-307-60010.

NEW SECTION

WAC 296-307-60005 Develop and maintain a written program.

Exemption: This section does NOT apply to respirator use that is voluntary. See WAC 296-307-59805 for voluntary use program requirements.

You must:

(1) Develop a complete worksite-specific written respiratory protection program that includes the applicable elements listed in Table 3.

Note: Pay for respirators, medical evaluations, fit testing, training, maintenance, travel costs, and wages.

You must:

(2) Keep your program current and effective by evaluating it and making corrections. Do ALL of the following:

- Make sure procedures and program specifications are followed and appropriate.
- Make sure selected respirators continue to be effective in protecting employees. For example:
 - If changes in work area conditions, level of employee exposure, or employee physical stress have occurred, you need to reevaluate your respirator selection.
 - Have supervisors periodically monitor employee respirator use to make sure employees are using them properly.
 - Regularly ask employees required to use respirators about their views concerning program effectiveness and whether they have problems with:
 - Respirator fit during use

- Any effects of respirator use on work performance
- Respirators being appropriate for the hazards encountered
- Proper use under current worksite conditions

- Proper maintenance.
- When developing your written program include applicable elements listed in Table 3.

Table 3

Required Elements for Required-Use Respirator Programs	
<ul style="list-style-type: none"> • Selection: <ul style="list-style-type: none"> - Procedures for respirator selection - A list specifying the appropriate respirator for each respiratory hazard in your workplace - Procedures for issuing the proper type of respirator, if appropriate 	
<ul style="list-style-type: none"> • Medical evaluation provisions 	
<ul style="list-style-type: none"> • Fit-test provisions and procedures, if tight-fitting respirators are selected 	
<ul style="list-style-type: none"> • Training provisions that address: <ul style="list-style-type: none"> - Respiratory hazards encountered during: <ul style="list-style-type: none"> ■ Routine activities ■ Infrequent activities, for example, bimonthly cleaning of equipment ■ Reasonably foreseeable emergencies, for example, rescue, spill response, or escape situations - Proper use of respirators, for example, how to put on or remove respirators, and use limitations. <p>Note: You do NOT need to repeat training on respiratory hazards if employees have been trained on this in compliance with other rules such as WAC 296-307-550, employer chemical hazard communication.</p>	
<ul style="list-style-type: none"> • Respirator use procedures for: <ul style="list-style-type: none"> - Routine activities - Infrequent activities - Reasonably foreseeable emergencies 	
<ul style="list-style-type: none"> • Maintenance: <ul style="list-style-type: none"> - Procedures and schedules for respirator maintenance covering: <ul style="list-style-type: none"> ■ Cleaning and disinfecting ■ Storage ■ Inspection and repair ■ When to discard respirators - A cartridge or canister change schedule IF air-purifying respirators are selected for use against gas or vapor contaminants AND an end-of-service-life-indicator (ESLI) is not available. In addition, provide: <ul style="list-style-type: none"> ■ The data and other information you relied on to calculate change schedule values (for example, highest contaminant concentration estimates, duration of employee respirator use, expected maximum humidity levels, user breathing rates, and safety factors) 	
<ul style="list-style-type: none"> • Procedures to ensure a safe air quantity and quality IF atmosphere-supplying respirators (air-line or SCBA) are selected 	
<ul style="list-style-type: none"> • Procedures for evaluating program effectiveness on a regular basis 	

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NEW SECTION

WAC 296-307-60010 Keep respirator program records.

You must:

- Keep the following records:
 - Your current respirator program
 - Each employee's current fit test record, if fit testing is conducted. Fit test records must include:
 - Employee name
 - Test date
 - Type of fit-test performed
 - Description (type, manufacturer, model, style, and size) of the respirator tested

- Results of fit tests, for example, for quantitative fit tests include the overall fit factor AND a print out, or other recording of the test.

- Training records that include employee's names and the dates trained
- Written recommendations from the LHCP.
- Allow records required by this section to be examined and copied by affected employees and their representatives.

NEW SECTION

WAC 296-307-602 Respirator selection.

Your responsibility:

To select and provide respirators that are appropriate for the hazard, user, and worksite conditions.

Exemption: This section does NOT apply to voluntary respirator use. See WAC 296-307-598 of this part for voluntary use program requirements.

NEW SECTION

WAC 296-307-60205 Select and provide appropriate respirators.

IMPORTANT:

See WAC 296-307-624, Respiratory hazards, for:

- Hazard evaluation requirements. Evaluation results are necessary for respirator selection.
- A list of substance-specific rules that may also apply to you. Those listed rules have additional respirator selection requirements.

You must:

- Select and provide, at no cost to employees, appropriate respirators for routine use, infrequent use, and reasonably foreseeable emergencies (such as escape, emergency, and spill response situations) by completing the following process:

Respirator Selection Process

Step 1: If your only respirator use is for escape, skip to **Step 8** to select appropriate respirators.

Step 2: If the respiratory hazard is a biological aerosol, such as TB (tuberculosis), anthrax, psittacosis (parrot fever), or hanta virus, select a respirator appropriate for **nonemergency** activities recognized to present a health risk to workers AND skip to **Step 8**.

- If respirator use will occur during **emergencies**, skip to **Step 8** and document the analysis used to select the appropriate respirator.

- Use Centers for Disease Control (CDC) selection guidance for exposures to specific biological agents when this guidance exists. Visit <http://www.cdc.gov>.

Step 3: If the respiratory hazard is a pesticide, follow the respirator specification on the pesticide label AND skip to **Step 9**.

Step 4: Determine the expected exposure concentration for each respiratory hazard of concern. Use the results from the evaluation required by WAC 296-307-624, Respiratory hazards.

Step 5: Determine if the respiratory hazard is classified as IDLH; if it is NOT IDLH skip to **Step 7**.

- The respiratory hazard IS classified as IDLH if:
 - The atmosphere is oxygen deficient or oxygen enriched

OR

- You CANNOT measure or estimate your expected exposure concentration

OR

- Your measured or estimated expected exposure concentration is greater or equal to the IDLH value in the NIOSH *Pocket Guide to Chemical Hazards*

Note: • WISHA uses the IDLH values in the 1990 edition of the NIOSH *Pocket Guide to Hazardous Chemicals* to determine the existence of IDLH conditions. You may use more recent editions of this guide. Visit www.cdc.gov/niosh for more information.

- If your measured or estimated expected exposure concentration is below NIOSH's IDLH values, proceed to **Step 7**.

Step 6: Select an appropriate respirator from one of the following respirators for IDLH conditions and skip to **Step 8**:

- Full-facepiece, pressure demand, self-contained breathing apparatus (SCBA) certified by NIOSH for a minimum service life of thirty minutes

OR

- Full-facepiece, pressure demand air-line respirator equipped with an auxiliary self-contained air supply

Exception: If the respiratory hazard is oxygen deficiency AND you can show oxygen concentrations can be controlled within the ranges listed in Table 4 under ALL foreseeable conditions, you are allowed to select ANY type of SCBA or air-line respirator.

**Table 4
Concentration Ranges for Oxygen Deficiency**

Altitude (as ft. above sea level)	Oxygen Concentration Range (as percent oxygen)
Below 3,001	16.0 - 19.5
3,001 - 4,000	16.4 - 19.5
4,001 - 5,000	17.1 - 19.5
5,001 - 6,000	17.8 - 19.5
6,001 - 8,000	19.3 - 19.5
Above 8,000 feet the exception does not apply.	

Step 7: Identify respirator types with assigned protection factors (APFs) from Table 5 that are appropriate to protect employees from the expected exposure concentration.

Step 8: Consider hazards that could require selection of specific respirator types. For example, select full-facepiece respirators to prevent eye irritation or abrasive blasting helmets to provide particle rebound protection.

Step 9: Evaluate user and workplace factors that might compromise respirator performance, reliability or safety.

- If the respiratory hazard is a pesticide, follow the requirements on the pesticide label and skip to **Step 11**.

Examples:

- High humidity or temperature extremes in the workplace.
- Necessary voice communication.
- High traffic areas and moving machinery.
- Time or distance for escape.

Step 10: Follow Table 6 requirements to select an air-purifying respirator.

- If Table 6 requirements cannot be met, you must select an air-line respirator or an SCBA.

Step 11: Make sure respirators you select are certified by the National Institute for Occupational Safety and Health (NIOSH).

- To maintain certification, make sure the respirator is used according to cautions and limitations specified on the NIOSH approval label.

Note: While selecting respirators, you will need to select a sufficient number of types, models or sizes to provide for fit testing. You can also consider other respirator use issues, such as accommodating facial hair with a loose fitting respirator.

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Use Table 5 to identify the assigned protection factor for different types of respirators.

Table 5
Assigned Protection Factors (APF) for Respirator Types

If the respirator is a(n) . . .	Then the APF is . . .
Air-purifying respirator with a: • Half-facepiece	10
• Full-facepiece	100
Note: Half-facepiece includes 1/4 masks, filtering facepieces, and elastomeric facepieces.	
Powered air-purifying respirator (PAPR) with a: • Loose-fitting facepiece	25
• Half-facepiece	50
• Full-facepiece, equipped with HEPA filters, chemical cartridges or canisters	1000
• Hood or helmet, equipped with HEPA filters, chemical cartridges or canisters	1000
Air-line respirator with a: • Half-facepiece and designed to operate in demand mode	10
• Loose-fitting facepiece and designed to operate in continuous flow mode	25
• Half-facepiece and designed to operate in continuous-flow, or pressure-demand mode	50
• Full-facepiece and designed to operate in demand mode	100
• Full-facepiece and designed to operate in continuous-flow OR pressure-demand mode	1000
• Helmet or hood and designed to operate in continuous-flow mode	1000
Self-contained breathing apparatus (SCBA) with a tight fitting: • Half-facepiece and designed to operate in demand mode	10
• Full-facepiece and designed to operate in demand mode	100
• Full-facepiece and designed to operate in pressure-demand mode	10,000
Combination respirators: • Find the APF for each type of respirator in the combination. • Use the lower APF to represent the combination.	The lowest value

Use Table 6 to select air-purifying respirators for particle, vapor, or gas contaminants.

Table 6
Requirements for Selecting Any Air-purifying Respirator

If the contaminant is a . . .	Then . . .
• Gas OR vapor	<ul style="list-style-type: none"> • Provide a respirator with canisters or cartridges equipped with a NIOSH-certified, end-of-service-life indicator (ESLI) <p>OR</p> <ul style="list-style-type: none"> • If a canister or cartridge with an ESLI is NOT available, develop a cartridge change schedule to make sure the canisters or cartridges are replaced before they are no longer effective <p>OR</p> <ul style="list-style-type: none"> • Select an atmosphere-supplying respirator
• Particle, such as a dust, spray, mist, fog, fume, or aerosol	<ul style="list-style-type: none"> • Select respirators with filters certified to be at least 95% efficient by NIOSH – For example, N95s, R99s, P100s, or High Efficiency Particulate Air filters (HEPA) <p>OR</p> <ul style="list-style-type: none"> • You may select respirators NIOSH certified as "dust and mist," "dust, fume, or mist," OR "pesticides." You can only use these respirators if particles primarily have a mass median aerodynamic diameter of at least two micrometers. <p>Note: These respirators are no longer sold for occupational use.</p>

PERMANENT

NEW SECTION

WAC 296-307-604 Medical evaluations.

Your responsibility:

To make sure a respirator used under your specific work-site conditions is not a health risk to employees.

Exemption: This section does NOT apply to employees who only use:
 • Filtering-facepiece respirators voluntarily. See WAC 296-307-598 of this part for voluntary use requirements
OR

- Escape-only respirators that are mouthpiece, loose-fitting, or hooded respirators.

IMPORTANT:

• Using a respirator can create physical risks for an employee each time it is worn. The extent of these risks depends on these factors:

- Type of respirator
- Environmental conditions at the worksite
- Physical demands of the work
- Use of other protective clothing
- Employee's health status.

NEW SECTION**WAC 296-307-60405 Provide medical evaluations.****IMPORTANT:**

If you have provided an employee with a medical evaluation addressing respirator use, as required by another chapter, that evaluation will meet the requirements of this section.

You must:

• Follow the medical evaluation process, Steps 1 through 7 in this section, to provide medical evaluations for employees at no cost to them.

Medical Evaluation Process

Step 1: Identify employees who need medical evaluations AND determine the frequency of evaluations from Table 7. Include employees who:

- Are required to use respirators

OR

• Voluntarily use respirators that are **not** filtering-face-piece respirators

Note: You may use a previous employer's medical evaluation for an employee if you can:

- Show the employee's previous work and use conditions were substantially similar to yours

AND

- Obtain a copy of the licensed healthcare professional's (LHCP's) written recommendation approving the employee's use of the respirator chosen by you.

Step 2: Identify a licensed healthcare professional (LHCP) to perform your medical evaluations.

Note: If you select a different LHCP, you do not need to have new medical evaluations done.

Step 3: Make sure your LHCP has the following information **before** the evaluation is completed:

- Information describing the respirators employees may use, including the weight and type.
- How the respirators will be used, including:
 - How often the respirator will be used, for example, daily, or once a month
 - The duration of respirator use, for example, a minimum of one hour, or up to twelve hours
 - The employee's expected physical work effort
 - Additional personal protective clothing and equipment to be worn
 - Temperature and humidity extremes expected during use
- A copy of your written respiratory protection program and this part.

Note: • You may choose to send the questionnaire to the LHCP ahead of time, giving time to review it and add any necessary questions

- The LHCP determines what questions to add to the questionnaire, if any; however, questions in Parts 1-3 may not be deleted or substantially altered.

Step 4: Administer the medical questionnaire in WAC 296-307-61605 to employees, OR provide them a medical exam that obtains the same information.

Note: You may use on-line questionnaires if the questions are the same and requirements of this section are met.

• Administer the examination or questionnaire at no cost to employees:

- During the employee's normal working hours

OR

- At a time and place convenient to the employee

• Maintain employee confidentiality during examination or questionnaire administration:

- Do **not** view employee's answers on the questionnaire
- Do **not** act in a manner that may be considered a breach of confidentiality

Note: Providing confidentiality is important for securing successful medical evaluations. It helps make sure the LHCP gets complete and dependable answers on the questionnaire.

• Make sure employees understand the content of the questionnaire.

• Provide the employee with an opportunity to discuss the questionnaire or exam results with the LHCP.

Step 5: Provide follow-up evaluation for employees when:

- The LHCP needs more information to make a final recommendation

OR

• An employee gives any positive response to questions 1-8 in Part 2 OR to questions 1-6 in Part 3 of the WISHA medical evaluation questionnaire in WAC 296-307-61605.

Note: Follow-up may include:

- Employee consultation with the LHCP such as a telephone conversation to evaluate positive questionnaire responses
- Medical exams
- Medical tests or other diagnostic procedures.

Step 6: Obtain a written recommendation from the LHCP that contains only the following medical information:

- Whether or not the employee is medically able to use the respirator
- Any limitations of respirator use for the employee
- What future medical evaluations, if any, are needed
- A statement that the employee has been provided a copy of the written recommendation.

Step 7: Provide a powered, air-purifying respirator (PAPR) when the LHCP determines the employee should not wear a negative-pressure air-purifying respirator AND is able to wear a PAPR.

Reference: See WAC 296-307-602 for requirements regarding selection of air-purifying respirators.

Note: • You may discontinue medical evaluations for an employee when the employee no longer uses a respirator.
• If you have staff conducting your medical evaluations, they may keep completed questionnaires and findings as confidential medical records, if they are maintained separately from other records.

Use Table 7 to determine medical evaluation frequency.

Table 7
Evaluation Frequency

Type of Evaluation:	When required:
Initial medical evaluations	<ul style="list-style-type: none"> • Before respirators are fit-tested or used in the workplace.
Subsequent medical evaluations	<ul style="list-style-type: none"> • If any of these occur: <ul style="list-style-type: none"> – Your licensed healthcare professional (LHCP) recommends them; for example, periodic evaluations at specified intervals. – A respirator program administrator or supervisor informs you that an employee needs reevaluation. – Medical signs or symptoms (such as breathing difficulties) are: <ul style="list-style-type: none"> ■ Observed during fit-testing or program evaluation <li style="text-align: center;">OR ■ Reported by the employee – Changes in worksite conditions such as physical work effort, personal protective clothing, or temperature that could substantially increase the employee's physiological stress.

NEW SECTION

WAC 296-307-606 Fit testing.

Your responsibility:

To make sure negative and positive-pressure tight-fitting respirators can provide an adequate fit and acceptable level of comfort to employees.

- Exemption:** This section does NOT apply to any respirators that are:
- Voluntarily used. See WAC 296-307-598 for voluntary use requirements.
 - Mouthpiece respirators.

IMPORTANT:

- Fit testing is an activity where the seal of a respirator is tested to determine if it is adequate.
- This section covers general **requirements** for fit testing. Fit-testing **procedures** are covered in WAC 296-307-62010 of this part.

NEW SECTION

WAC 296-307-60605 Conduct fit testing.

You must:

- Provide, at no cost to the employee, fit tests for ALL tight fitting respirators on the following schedule:
 - Before employees are assigned duties that may require the use of respirators
 - At least every twelve months after initial testing
 - Whenever any of the following occurs:
 - A different respirator facepiece is chosen such as a different type, model, style, or size
 - You become aware of a physical change in an employee that could affect respirator fit. For example, you may observe, or be told about, facial scarring, dental changes, cosmetic surgery, or obvious weight changes
 - An employee notifies you, or your LHCP, that the respirator fit is unacceptable. During the retest, you must give an employee reasonable opportunity to select a different respirator facepiece (size, model, etc.).

Note: You may accept a fit test completed by a previous employer IF:

- You obtain written documentation of the fit test
- AND**
- The results of the fit test are not more than twelve months old
- AND**
- The employee will use the same respirator (the same type, model, style, and size)
- AND**
- The fit test was conducted in a way that meets the requirements of WAC 296-307-606 and 296-307-62010.

You must:

- Select an appropriate fit-testing procedure from WAC 296-307-62010 of this part **AND:**
 - Use quantitative fit-test methods when a negative pressure respirator will be used in concentrations requiring a protection factor greater than 10. This includes:
 - Full facepiece air-purifying respirators
 - SCBAs operated in demand (negative pressure) mode
 - Air-line respirators operated in demand mode.
 - Make sure PAPRs, SCBAs, or air-line respirators are fit tested in negative-pressure mode.
- Make sure the person conducting fit testing is able to do ALL of the following:
 - Prepare test solutions if required
 - Make sure equipment works properly
 - Perform tests properly
 - Recognize invalid tests
 - Calculate fit factors properly if required.

- Note:**
- No specific training program or certification is required for those who conduct fit tests.
 - You should consider evaluating these individuals to determine their proficiency in the fit-testing method to be used.
 - You can use an evaluation form such as the form included in the American National Standard for Respirator Fit Testing Methods, ANSI/AIHA Z88.10-2001 to determine if the individual meets these requirements. Visit www.ansi.org or www.aiha.org.

NEW SECTION

WAC 296-307-608 Training.
Your responsibility:

PERMANENT

To make sure employees who are required to use respirators understand and can demonstrate proper respirator use and maintenance.

IMPORTANT:

This section applies to employees who voluntarily use respirators only when training is necessary to prevent the respirator from creating a hazard. See WAC 296-307-598 for voluntary use requirements.

NEW SECTION

WAC 296-307-60805 Provide effective training.

You must:

• Train employees, based on their duties, if they do any of the following:

- Use respirators
- Supervise respirator users
- Issue, repair, or adjust respirators

• Present effective training in a way that employees understand.

- Note:**
- Training may be provided using audiovisuals, slide presentations, formal classroom instruction, informal discussions during safety meetings, training programs conducted by outside sources, or a combination of these methods.
 - You may want to have instructors available when using video or automated training methods to:
 - Encourage and provide responses to questions for the benefit of employees
 - Evaluate employees' understanding of the material
 - Provide other instructional interaction to employees.

You must:

• Make sure a qualified instructor provides training

• Provide training, at no cost to the employee, at these times:

– Initially, before worksite respirator use begins

– Periodically, within twelve months of the previous training

– Additionally, when the following occur:

- The employee has not retained knowledge or skills

OR

■ Changes in the worksite, or type of respirator make previous training incomplete or obsolete.

- Note:**
- You may accept an employee's previous training, such as training provided by another employer, to satisfy the initial training requirement if:
 - You can demonstrate the employee received training within the past twelve months
 - AND**
 - The employee can demonstrate the knowledge and skills to use required respirators effectively.
 - If you accept an employee's previous training to satisfy the initial training requirement, you are still responsible for providing periodic, and additional training when needed. Periodic training would need to be provided within twelve months of the employee's previous training.

You must:

• Make sure employees can demonstrate the following knowledge and skills as required by their duties:

– Why the respirator is necessary. Include, for example, information identifying respiratory hazards such as hazardous chemicals, the extent of the employee's exposure, and potential health effects and symptoms

– The respirator's capabilities and limitations. Include, for example, how the respirator provides protection and why

air-purifying respirators cannot be used in oxygen-deficient conditions

– How improper fit, use, or maintenance can compromise the respirator's effectiveness and reliability

– How to properly inspect, put on, seal check, use, and remove the respirator

– How to clean, disinfect, repair, and store the respirator, or how to get this done by someone else

– How to use the respirator effectively in emergency situations; including what to do when a respirator fails and where emergency respirators are stored

– Medical signs and symptoms that may limit or prevent the effective use of respirators such as shortness of breath or dizziness

– The employer's general obligations under this part. For example, developing a written program, selecting appropriate respirators, and providing medical evaluations.

NEW SECTION

WAC 296-307-610 Maintenance.

Your responsibility:

To make sure respirators are maintained so they will function properly and not create health hazards such as skin irritation.

You must:

Maintain respirators in a clean and reliable condition

WAC 296-307-61005

Store respirators properly

WAC 296-307-61010

Inspect and repair respirators

WAC 296-307-61015

IMPORTANT:

This section applies to employees who voluntarily use respirators only when maintenance is necessary to prevent the respirator from creating a hazard. See WAC 296-307-598 for voluntary use requirements.

NEW SECTION

WAC 296-307-61005 Maintain respirators in a clean and reliable condition.

You must:

• Make sure respirators are kept, at no cost to the employee, clean, sanitary and in good working order. Do at least the following:

– Clean and disinfect respirators as often as specified in Table 8 of this section.

- Note:**
- Use required cleaning and disinfecting procedures in WAC 296-307-62015, or the manufacturer's procedures that:

– Result in a clean and sanitary respirator

– Do not damage the respirator

– Do not harm the user

• Automated cleaning and disinfecting are permitted

• Cleaning and disinfecting may be done by a central facility as long as you make sure respirators provided are clean, sanitary, and function properly.

You must:

• Make sure respirators are assembled properly after cleaning or disinfecting.

Use Table 8 to determine how often to clean and disinfect respirators.

Table 8
Required Frequencies for Cleaning and Disinfecting Respirators

If, the respirator will be . . .	Then, clean and disinfect the respirator . . .
<ul style="list-style-type: none"> • Used exclusively by one employee 	<ul style="list-style-type: none"> • As often as needed to: <ul style="list-style-type: none"> – Keep it clean and functional AND <ul style="list-style-type: none"> – To prevent health hazards such as skin irritation
<ul style="list-style-type: none"> • Shared for nonemergency use OR <ul style="list-style-type: none"> • Used for fit-testing or training 	<ul style="list-style-type: none"> • Before it is worn by another employee
<ul style="list-style-type: none"> • Shared for emergency use 	<ul style="list-style-type: none"> • After each use so the respirator is immediately ready for use at all times

NEW SECTION

WAC 296-307-61010 Store respirators properly.

You must:

• Store respirators to protect them from ALL of the following:

- Deformation of the facepiece or exhalation valve
- Sunlight or extreme temperatures or other conditions
- Contamination such as dust or damaging chemicals
- Excessive moisture.

Note: Use coffee cans, sealable plastic bags, or other suitable means of protection.

You must:

• Follow these additional requirements for emergency respirators:

- Keep respirators accessible to the work area
- Store respirators in compartments or with covers clearly marked as containing emergency respirators
- Follow additional storage instructions from the respirator manufacturer
- Store an adequate number of emergency respirators in each area where they may be needed.

Note: Emergency respirators include mouthpiece respirators and other respirators that are limited to escape-only use by their NIOSH certification.

NEW SECTION

WAC 296-307-61015 Inspect and repair respirators.

You must:

• Conduct respirator inspections as often as specified in Table 9.

• Make sure respirator inspections cover all of the following:

- Respirator function
 - Tightness of connections
 - The condition of the facepiece, head straps, valves, connecting tubes, and cartridge, canisters or filters
 - Pliability and deterioration of elastomeric parts
 - Maintenance of air or oxygen cylinders
 - Making sure SCBA air cylinders are at ninety percent of the manufacturer's recommended pressure level
 - Proper functioning of SCBA regulators when air-flow is activated
 - Proper functioning of SCBA low-pressure warning devices when activated
- Certify inspections for emergency respirators by documenting the following:

- Inspection date
- Serial number of each respirator or other identifying information
- Inspector's name or signature
- Inspection findings
- Required action, if problems are found.

Note:

- When documenting inspections you may either:
 - Provide the information on a tag or label and attach it to the respirator compartment**OR**
 - Include the information in an inspection report stored in paper or electronic files accessible to employees.

You must:

• Repair or replace any respirator that is not functioning properly **before** the employee returns to a situation where respirators are required.

– If respirators fail inspection or are not functioning properly during use due to problems such as leakage, vapor or gas breakthrough, or increased breathing resistance, ALL of the following apply:

- Do NOT permit such respirators to be used until properly repaired or adjusted
- Use only NIOSH-certified parts
- Make sure repairs and adjustments are made by appropriately trained individuals
 - Use the manufacturer or a technician trained by the manufacturer to repair or adjust reducing and admission valves, regulators, and warning devices on SCBAs or air-line respirators.
- Follow the manufacturer's recommendations and specifications for the type and extent of repairs.

Use Table 9 to determine how often to inspect respirators.

Table 9
Required Frequencies for Respirator Inspections

If the respirator is . . .	Then inspect . . .
A SCBA in any use	<ul style="list-style-type: none"> • Before each use AND <ul style="list-style-type: none"> • During cleaning OR <ul style="list-style-type: none"> • Monthly if NOT used

PERMANENT

If the respirator is . . .	Then inspect . . .
Used for nonemergencies, including day-to-day or infrequent use	<ul style="list-style-type: none"> • Inspect before each use <p>AND</p> <ul style="list-style-type: none"> • During cleaning
Used only for emergencies	<ul style="list-style-type: none"> • Check for proper function before and after each use <p>AND</p> <ul style="list-style-type: none"> • Inspect at least monthly as instructed by the manufacturer
Used for escape-only purposes	<ul style="list-style-type: none"> • Before carrying into a work place for use

- When they detect changes in breathing resistance
- To readjust their respirators
- To wash their faces and respirators as necessary to prevent skin or eye irritation
- If they become ill
- If they experience sensations of dizziness, nausea, weakness, breathing difficulty, coughing, sneezing, vomiting, fever, or chills.

NEW SECTION

WAC 296-307-614 Standby requirements for immediately dangerous to life or health (IDLH) conditions.

Your responsibility:

To provide adequate assistance to employees using respirators in conditions immediately dangerous to life or health (IDLH).

NEW SECTION

WAC 296-307-612 Safe use and removal of respirators.

Your responsibility:

To make sure respirator use and removal is safe.

Exemption: These sections do NOT apply to employees who voluntarily use any type of respirator. See WAC 296-307-598 for voluntary use requirements.

You must:

Prevent sealing problems with tight-fitting respirators
WAC 296-307-61205

Make sure employees leave the use area before removing respirators

WAC 296-307-61210.

NEW SECTION

WAC 296-307-61205 Prevent sealing problems with tight-fitting respirators.

You must:

- Make sure employees use the procedure in WAC 296-307-62020 to perform a user seal check each time they put on their tight-fitting respirator.

- Make sure you do NOT permit respirator use if employees have a characteristic that interferes with the respirator facepiece seal or valve function. For example, stubble, moustaches, sideburns, bangs, hairlines, or scars between the face and the sealing surface of the respirator will affect the seal.

- Make sure corrective glasses or personal protective equipment (PPE) do NOT interfere with the facepiece seal. Examples of PPE include safety glasses, goggles, face-shields, clothing, and hard hats.

NEW SECTION

WAC 296-307-61210 Make sure employees leave the use area before removing respirators.

You must:

- Make sure employees leave the use area for any of these reasons:

- To replace air-purifying filters, cartridges, or canisters
- When they smell or taste (detect) vapor or gas leakage from, for example, cartridges, canister, or the facepiece seal

NEW SECTION

WAC 296-307-61405 Provide standby assistance in immediately dangerous to life or health (IDLH) conditions.

IMPORTANT:

WISHA currently uses the IDLH values in the 1990 NIOSH *Pocket Guide to Chemical Hazards* to determine the existence of IDLH conditions. You may use more recent editions of this guide. Visit www.cdc.gov/niosh for more information.

You must:

- Provide at least two standby employees outside the IDLH area.

Note: You need only one standby employee if the IDLH condition is well characterized, will remain stable AND you can show one employee can adequately do ALL of the following:

- Monitor employees in the IDLH area
- Implement communication
- Initiate rescue duties.
- Train and equip standby employees to provide effective emergency rescue. Equip them with:
 - A pressure-demand SCBA or a pressure-demand air-line respirator with an auxiliary SCBA, for each standby employee
 - Appropriate retrieval equipment, when it would help with the effective rescue of the entrant, or an equivalent means of rescue
- Make sure standby employees maintain visual, voice, or signal line communication with employees in the IDLH area
- Make sure that in the event of an emergency:
 - Standby employees notify you or your designee before they enter the IDLH area to provide emergency rescue
 - You provide necessary assistance when notified.

NEW SECTION

WAC 296-307-616 Air quality for self-contained breathing apparatus (SCBA) and air-line respirators.

Your responsibility:

To provide employees who use SCBAs or air-line respirators with an acceptable air supply.

PERMANENT

You must:

Make sure breathing air and oxygen meet established specifications

WAC 296-307-61605

Prevent conditions that could create a hazardous breathing air supply

WAC 296-307-61610

Make sure compressors do not create a hazardous breathing air supply

WAC 296-307-61615.

NEW SECTION

WAC 296-307-61605 Make sure breathing air and oxygen meet established specifications.

You must:

• Make sure that all SCBAs and air-line respirators are provided with safe breathing air and oxygen according to the following:

– Compressed breathing air must meet the following specifications for Grade D air:

- Oxygen (volume/volume) within 19.5-23.5%
- Hydrocarbon (condensed): NO MORE than five milligrams per cubic meter of air
- Carbon **monoxide** (CO): NO MORE than ten parts per million (ppm)
- Carbon **dioxide** (CO₂): NO MORE than 1,000 ppm
- No noticeable odor

Reference: See the American National Standards Institute - Compressed Gas Association Commodity Specification for Air (G-7.1.1989) for more information. Contact your local library to access a copy.

You must:

• Make sure the moisture content of the air supplied meets the following:

– Air supplied to respirators from cylinders must NOT exceed a dew point of -50°F (or -45.6°C) at 1 atmospheric pressure.

– Compressor supplied air must NOT exceed a dew point of 10°F (or 5.56°C) **BELOW** the use temperature at 1 atmospheric pressure.

• Cylinders obtained from a supplier of breathing air must have a certificate of analysis that verifies each cylinder's contents meet Grade D and dew point standards.

• Compressed and liquid oxygen must meet the United States Pharmacopoeia requirements for medical or breathing oxygen.

NEW SECTION

WAC 296-307-61610 Prevent conditions that could create a hazardous breathing air supply.

You must:

• Use SCBA and air-line respirators safely:
– Do NOT supply compressed oxygen to SCBAs or air-line respirators that previously used compressed air.

Note: Compressed air leaves residues containing hydrocarbons such as oil or grease. Fire or explosion can occur if compressed oxygen makes contact with these residues.

You must:

• Use breathing air couplings on air-line respirators that are NOT compatible with couplings for nonrespirable air or other gas systems, for example, utility air used for manufacturing purposes.

• Do NOT allow asphyxiating substances to enter breathing air lines; for example, do not flush nitrogen through worksite air lines also used for breathing air.

• Use equipment specifically designed for oxygen service or distribution **IF** oxygen concentrations greater than 23.5% are used.

Note: Respiratory equipment NOT designed for oxygen service or distribution can create fire or explosion hazards in oxygen concentrations higher than 23.5%.

You must:

• Make sure cylinders used to supply breathing air for SCBAs or air-line respirators are tested and maintained as described in the federal Department of Transportation's (DOT) Shipping Container Specification Regulations, Title 49 CFR Parts 173 and 178.

Note:

- Use only cylinders marked (with serial number, cylinder pressure, DOT exemption number, and test dates) according to these DOT regulations
- To find any Code of Federal Regulations (CFR) visit: www.access.gpo.gov.

NEW SECTION

WAC 296-307-61615 Make sure compressors do not create a hazardous breathing air supply.

IMPORTANT:

• Ambient-air movers (or pumps) used to supply air to respirators must be used according to the manufacturer's instructions.

• Respirators used with ambient-air movers must be approved by NIOSH to operate within the pressure ranges of the air mover.

You must:

(1) Locate or modify compressor intakes so they will not pick up contaminated air OR exhaust gases such as carbon monoxide from:

• Fuel-powered vehicles

OR

• The internal combustion motor of the compressor

OR

• Other contaminant sources in the area, for example, a ventilation system discharge.

Note:

- You may need to reposition or extend the compressor's intake or engine exhaust pipe or outlet, especially if they are located near each other.

- Be aware that exhaust gases may not adequately disperse when the compressor is operated in:

- An enclosed space such as a small room, a corner, or near a wall

OR

- In turbulent wind conditions.

You must:

(2) Equip compressors with suitable air-purifying filters, water traps, and sorbents (such as charcoal beds) and maintain them as follows:

- Periodically change or clean them according to the manufacturer or supplier's instructions

• Keep a tag at the compressor with the following information:

- When the sorbent and filters were last replaced or cleaned
- The date of the most recent changes or cleaning
- The signature of the person authorized by the employer to perform changes or cleaning.

Note: To be sure you are providing the recommended operating pressure for respirators, you may need to install a delivery pressure gauge at the point where the manifold respirator hose is attached.

You must:

(3) Make sure the carbon monoxide (CO) level in breathing air from compressors does NOT exceed ten parts per million (ppm).

Note: If you do not have a reliable CO-free area available for locating your compressor intake, consider these examples of methods to prevent CO contamination of the air supply:

- Use of continuous and effective carbon monoxide alarms and filters
- Conduct frequent monitoring of air quality
- Use a CO converter (converts CO to carbon dioxide).

You must:

• Maintain CO levels in oil lubricated compressors by using at least one of the following:

- An effective CO alarm
- An effective high temperature alarm AND testing the air supply often enough to see if CO levels exceed ten ppm.

Note:

- How often to test depends on a number of considerations, for example:
 - Compressor age
 - Maintenance history of the compressor
 - Stability of CO readings
- If the CO or high temperature alarm cannot be heard by the employee, a flashing light or other effective alternative to an audio alarm needs to be used
- Safeguards, such as alarms, are necessary to prevent CO contamination resulting from compressor overheating
- Any type of oil-lubricated compressor, such as screw or piston types, may produce dangerous levels of CO if overheating occurs
 - Old compressors are known to leak oil due to worn parts, increasing the possibility for overheating. Newer compressors may also overheat if maintenance practices are poor. For example, poor maintenance practices may lead to disconnected or incorrectly set alarms, inoperative shut-offs, or an impaired cooling system
 - You need to instruct employees to move to a safe area when the alarm sounds AND to stop using respirators.

NEW SECTION

WAC 296-307-618 Labeling of air-purifying respirator filters, cartridges, and canisters.

Your responsibility:

To make sure employees, their supervisors, and program administrators can easily check for the correct air-purifying filters, cartridges, and canisters on respirators.

Exemption: This section does NOT apply to filtering-facepiece respirators when used voluntarily. See WAC 296-307-598 for voluntary use requirements.

NEW SECTION

WAC 296-307-61805 Keep labels readable on respirator filters, cartridges, and canisters during use.

You must:

• Make sure the NIOSH certification labeling and color-coding on air-purifying respirator filters, cartridges, and canisters remains readable and intact during use.

NEW SECTION

WAC 296-307-620 Required procedures for respiratory protection program.

Your responsibility:

To use the procedures and questionnaire provided in this section when implementing your respiratory protection program.

You must:

Use this medical questionnaire for medical evaluations
WAC 296-307-62005

Follow these fit-testing procedures for tight-fitting respirators

WAC 296-307-62010

Follow procedures established for cleaning and disinfecting respirators

WAC 296-307-62015

Follow procedures established for seal checking respirators

WAC 296-307-62020.

NEW SECTION

WAC 296-307-62005 Use this medical questionnaire for medical evaluations.

You must:

• Use the medical questionnaire in Table 10 when conducting medical evaluations.

Note:

- You may use a physical exam instead of this questionnaire if the exam covers the same information as the questionnaire.
- You may use on-line questionnaires if the questions are the same and the requirements in WAC 296-307-604 of this part are met.
- You may choose to send the questionnaire to the LCHP ahead of time, giving time to review it and add any necessary questions.
- The LHCP determines what questions to add to the questionnaire, if any; however, questions in Parts 1-3 may not be deleted or substantially altered.

Table 10

WISHA Medical Evaluation Questionnaire	
Employer instructions:	
<ul style="list-style-type: none"> • You may use on-line questionnaires if the requirements in WAC 296-307-60405 are met. • You must tell your employee how to deliver or send the completed questionnaire to the healthcare provider you have selected. • You must NOT review employees' questionnaires. 	
Healthcare provider's instructions:	
<ul style="list-style-type: none"> • Review the information in this questionnaire and any additional information provided to you by the employer. • You may add questions to this questionnaire at your discretion; HOWEVER, questions in Parts 1-3 may not be deleted or substantially altered. • Follow-up evaluation is required for any positive response to questions 1-8 in Part 2, or questions 1-6 in Part 3. This might include: Phone consultations to evaluate positive responses, medical tests, and diagnostic procedures. • When your evaluation is complete, send a copy of your written recommendation to the employer AND employee. 	
Employee information and instructions:	
<ul style="list-style-type: none"> • Your employer must allow you to answer this questionnaire during normal working hours, or at a time and place that's convenient to you. • Your employer or supervisor must not look at or review your answers at any time. 	

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Part 1 - Employee Background Information

ALL employees must complete this part

Please print

1. Today's date: _____
 2. Your name: _____
 3. Your age (to nearest year): _____
 4. Sex (circle one): Male / Female
 5. Your height: ____ ft. ____ in.
 6. Your weight: _____ lbs.
 7. Your job title: _____
 8. A phone number where you can be reached by the healthcare professional who reviews this questionnaire (include Area Code): _____
 9. The best time to call you at this number: _____
 10. Has your employer told you how to contact the healthcare professional who will review this questionnaire? Yes / No
 11. Check the type of respirator(s) you will be using:
 - a. ____ N, R, or P filtering-facepiece respirator (for example, a dust mask, OR an N95 filtering-facepiece respirator).
 - b. Check all that apply.
 - Half mask Full facepiece mask Helmet hood Escape
 - Nonpowered cartridge or canister Powered air-purifying cartridge respirator (PAPR)
 - Supplied-air or Air-line
 - Self-contained breathing apparatus (SCBA): Demand or Pressure demand
 - Other: _____
 12. Have you previously worn a respirator? Yes / No
- If "yes," describe what type(s): _____

Part 2 - General Health Information
ALL employees must complete this part
Please circle "Yes" or "No"

1. Do you <i>currently</i> smoke tobacco, or have you smoked tobacco in the last month?	Yes	/	No
2. Have you <i>ever had</i> any of the following conditions?			
a. Seizures (fits):	Yes	/	No
b. Diabetes (sugar disease):	Yes	/	No
c. Allergic reactions that interfere with your breathing:	Yes	/	No
d. Claustrophobia (fear of closed-in places):	Yes	/	No
e. Trouble smelling odors:	Yes	/	No
3. Have you <i>ever had</i> any of the following pulmonary or lung problems?			
a. Asbestosis:	Yes	/	No
b. Asthma:	Yes	/	No
c. Chronic bronchitis:	Yes	/	No
d. Emphysema:	Yes	/	No
e. Pneumonia:	Yes	/	No
f. Tuberculosis:	Yes	/	No
g. Silicosis:	Yes	/	No
h. Pneumothorax (collapsed lung):	Yes	/	No
i. Lung cancer:	Yes	/	No
j. Broken ribs:	Yes	/	No
k. Any chest injuries or surgeries:	Yes	/	No
l. Any other lung problem that you have been told about:	Yes	/	No
4. Do you <i>currently</i> have any of the following symptoms of pulmonary or lung illness?			
a. Shortness of breath:	Yes	/	No
b. Shortness of breath when walking fast on level ground or walking up a slight hill or incline:	Yes	/	No
c. Shortness of breath when walking with other people at an ordinary pace on level ground:	Yes	/	No
d. Have to stop for breath when walking at your own pace on level ground:	Yes	/	No
e. Shortness of breath when washing or dressing yourself:	Yes	/	No
f. Shortness of breath that interferes with your job:	Yes	/	No
g. Coughing that produces phlegm (thick sputum):	Yes	/	No
h. Coughing that wakes you early in the morning:	Yes	/	No
i. Coughing that occurs mostly when you are lying down:	Yes	/	No
j. Coughing up blood in the last month:	Yes	/	No
k. Wheezing:	Yes	/	No
l. Wheezing that interferes with your job:	Yes	/	No
m. Chest pain when you breathe deeply:	Yes	/	No
n. Any other symptoms that you think may be related to lung problems:	Yes	/	No
5. Have you <i>ever had</i> any of the following cardiovascular or heart problems?	Yes	/	No
a. Heart attack:	Yes	/	No
b. Stroke:	Yes	/	No
c. Angina:	Yes	/	No
d. Heart failure:	Yes	/	No
e. Swelling in your legs or feet (not caused by walking):	Yes	/	No
f. Heart arrhythmia (heart beating irregularly):	Yes	/	No
g. High blood pressure:	Yes	/	No
h. Any other heart problem that you have been told about:	Yes	/	No

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6. Have you <i>ever had</i> any of the following cardiovascular or heart symptoms?			
a. Frequent pain or tightness in your chest:	Yes	/	No
b. Pain or tightness in your chest during physical activity:	Yes	/	No
c. Pain or tightness in your chest that interferes with your job:	Yes	/	No
d. In the past 2 years, have you noticed your heart skipping or missing a beat:	Yes	/	No
e. Heartburn or indigestion that's not related to eating:	Yes	/	No
f. Any other symptoms that you think may be related to heart or circulation problems:	Yes	/	No
7. Do you <i>currently</i> take medication for any of the following problems?	Yes	/	No
a. Breathing or lung problems:	Yes	/	No
b. Heart trouble:	Yes	/	No
c. Blood pressure:	Yes	/	No
d. Seizures (fits):	Yes	/	No
8. If you have used a respirator, have you <i>ever had</i> any of the following problems? (If you have never used a respirator, check the following space and go to question 9): _____			
a. Eye irritation:	Yes	/	No
b. Skin allergies or rashes:	Yes	/	No
c. Anxiety:	Yes	/	No
d. General weakness or fatigue:	Yes	/	No
e. Any other problem that interferes with your use of a respirator?	Yes	/	No
9. Would you like to talk to the healthcare professional who will review this questionnaire about your answers?	Yes	/	No

Part 3 - Additional Questions for Users of Full-Facepiece Respirators or SCBAs

Please circle "Yes" or "No"

1. Have you <i>ever lost</i> vision in either eye (temporarily or permanently)?	Yes	/	No
2. Do you <i>currently</i> have any of these vision problems?			
a. Need to wear contact lenses:	Yes	/	No
b. Need to wear glasses:	Yes	/	No
c. Color blindness:	Yes	/	No
d. Any other eye or vision problem:	Yes	/	No
3. Have you <i>ever had</i> an injury to your ears, including a broken ear drum?	Yes	/	No
4. Do you <i>currently</i> have any of these hearing problems?			
a. Difficulty hearing:	Yes	/	No
b. Need to wear a hearing aid:	Yes	/	No
c. Any other hearing or ear problem:	Yes	/	No
5. Have you <i>ever had</i> a back injury?	Yes	/	No
6. Do you <i>currently</i> have any of the following musculoskeletal problems?			
a. Weakness in any of your arms, hands, legs, or feet:	Yes	/	No
b. Back pain:	Yes	/	No
c. Difficulty fully moving your arms and legs:	Yes	/	No
d. Pain or stiffness when you lean forward or backward at the waist:	Yes	/	No
e. Difficulty fully moving your head up or down:	Yes	/	No
f. Difficulty fully moving your head side to side:	Yes	/	No
g. Difficulty bending at your knees:	Yes	/	No
h. Difficulty squatting to the ground:	Yes	/	No
i. Climbing a flight of stairs or a ladder carrying more than 25 lbs:	Yes	/	No
j. Any other muscle or skeletal problem that interferes with using a respirator:	Yes	/	No

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Part 4 - Discretionary Questions

Complete questions in this part ONLY IF your employer's healthcare provider says they are necessary

1. In your present job, are you working at high altitudes (over 5,000 feet) or in a place that has lower than normal amounts of oxygen? Yes / No
 If "yes," do you have feelings of dizziness, shortness of breath, pounding in your chest, or other symptoms when you are working under these conditions: Yes / No
2. Have you ever been exposed (at work or home) to hazardous solvents, hazardous airborne chemicals (such as gases, fumes, or dust), OR have you come into skin contact with hazardous chemicals? Yes / No
 If "yes," name the chemicals, if you know them: _____
3. Have you ever worked with any of the materials, or under any of the conditions, listed below:
- a. Asbestos? Yes / No
 - b. Silica (for example, in sandblasting)? Yes / No
 - c. Tungsten/cobalt (for example, grinding or welding this material)? Yes / No
 - d. Beryllium? Yes / No
 - e. Aluminum? Yes / No
 - f. Coal (for example, mining)? Yes / No
 - g. Iron? Yes / No
 - h. Tin? Yes / No
 - i. Dusty environments? Yes / No
 - j. Any other hazardous exposures? Yes / No
- If "yes," describe these exposures: _____
4. List any second jobs or side businesses you have: _____
5. List your previous occupations: _____
6. List your current and previous hobbies: _____
7. Have you been in the military services? Yes / No
 If "yes," were you exposed to biological or chemical agents (either in training or combat)? Yes / No
8. Have you ever worked on a HAZMAT team? Yes / No
9. Other than medications for breathing and lung problems, heart trouble, blood pressure, and seizures mentioned earlier in this questionnaire, are you taking any other medications for any reason (including over-the-counter medications)? Yes / No
 If "yes," name the medications if you know them: _____
10. Will you be using any of the following items with your respirator(s)?
- a. HEPA filters: Yes / No
 - b. Canisters (for example, gas masks): Yes / No
 - c. Cartridges: Yes / No
11. How often are you expected to use the respirator(s)?
- a. Escape-only (no rescue): Yes / No
 - b. Emergency rescue only: Yes / No
 - c. Less than 5 hours *per week*: Yes / No
 - d. Less than 2 hours *per day*: Yes / No
 - e. 2 to 4 hours per day: Yes / No
 - f. Over 4 hours per day: Yes / No
12. During the period you are using the respirator(s), is your work effort:
- a. *Light* (less than 200 kcal per hour): Yes / No
- If "yes," how long does this period last during the average shift: _____hrs. _____mins.
- Examples of a light work effort are sitting while writing, typing, drafting, or performing light assembly work; or standing while operating a drill press (1-3 lbs.) or controlling machines.
- b. *Moderate* (200 to 350 kcal per hour): Yes / No

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If "yes," how long does this period last during the average shift: _____ hrs. _____ mins.

Examples of moderate work effort are sitting while nailing or filing; driving a truck or bus in urban traffic; standing while drilling, nailing, performing assembly work, or transferring a moderate load (about 35 lbs.) at trunk level; walking on a level surface about 2 mph or down a 5-degree grade about 3 mph; or pushing a wheelbarrow with a heavy load (about 100 lbs.) on a level surface.

c. *Heavy* (above 350 kcal per hour): Yes / No

If "yes," how long does this period last during the average shift: _____ hrs. _____ mins.

Examples of heavy work are lifting a heavy load (about 50 lbs.) from the floor to your waist or shoulder; working on a loading dock; shoveling; standing while bricklaying or chipping castings; walking up an 8-degree grade about 2 mph; climbing stairs with a heavy load (about 50 lbs.).

13. Will you be wearing protective clothing and/or equipment (other than the respirator) when you are using your respirator? Yes / No

If "yes," describe this protective clothing and/or equipment: _____

14. Will you be working under hot conditions (temperature exceeding 77°F): Yes / No

15. Will you be working under humid conditions: Yes / No

16. Describe the work you will be doing while using your respirator(s): _____

17. Describe any special or hazardous conditions you might encounter when you are using your respirator(s) (for example, confined spaces, life-threatening gases): _____

18. Provide the following information, if you know it, for each toxic substance that you will be exposed to when you are using your respirator(s):

Name of the first toxic substance: _____

Estimated maximum exposure level per shift: _____

Duration of exposure per shift: _____

Name of the second toxic substance: _____

Estimated maximum exposure level per shift: _____

Duration of exposure per shift: _____

Name of the third toxic substance: _____

Estimated maximum exposure level per shift: _____

Duration of exposure per shift: _____

The name of any other toxic substances that you will be exposed to while using your respirator: _____

19. Describe any special responsibilities you will have while using your respirator(s) that may affect the safety and well-being of others (for example, rescue, security). _____

NEW SECTION

WAC 296-307-62010 Follow these fit-testing procedures for tight-fitting respirators.

IMPORTANT:

- This section contains procedural requirements that apply during actual fit testing.
- See WAC 296-307-606 of this part for fit-testing requirements that apply to your overall program.

Exemptions: This section does NOT apply to employees who:

- Voluntarily use respirators

OR

- Are required to use mouthpiece respirators.

You must:

- Conduct fit testing according to all of the following:
 - Follow the procedure in Table 11 to choose a respirator for fit testing:

- Prior to conducting fit tests
- AND

- Any time your employee must select a different respirator such as when a previously selected respirator fails a test

– Select and follow at least one of the following fit test procedures:

■ Qualitative fit-test procedures:

- ◆ Isoamyl acetate vapor (IAA, banana oil) in Table 12
- ◆ Saccharine aerosol in Table 13
- ◆ Bitrex™ aerosol in Table 14
- ◆ Irritant smoke in Table 15

■ Quantitative fit-test procedures:

- ◆ Ambient aerosol condensation nuclei counter such as the Portacount™, in Table 16
 - ◆ Controlled negative pressure (CNP) such as the Fit-Tester 3000™, in Table 17
 - ◆ Generated aerosol in Table 18
- Make sure employees perform the appropriate fit-test exercises listed in Table 19.

- Clean and maintain equipment according to the manufacturer's instructions.
 - Make sure during fit testing employees wear any safety equipment that could:
 - Interfere with respirator fit
- AND**
- Be worn in the workplace. For example, chemical splash goggles.
 - Check, prior to fit testing, for conditions that may interfere with the respirator seal or valve functions. If you find such conditions, do **NOT** conduct fit testing for that individual.

Note: Examples of conditions that may interfere with the respirator seal or valve functions include:

- Moustache, stubble, sideburns, bangs, hairline, and other types of facial hair in areas where the respirator facepiece seals or that interfere with valve function
- Temple bars of corrective eyewear or headgear that extend through the face seal area.

Table 11

Procedure for Choosing a Respirator for Fit Testing

1. **Inform** the employee:
 - To choose the most comfortable respirator that provides an adequate fit
 - That each respirator sample represents a different size and, if more than one model is supplied, a different shape
 - That if fitted and used properly, the respirator chosen will provide adequate protection
 2. **Provide** a mirror and show the employee how to:
 - Put on the respirator
 - Position the respirator on the face
 - Set strap tension.
- Note:**
This instruction does **NOT** take the place of the employee's formal training since it is only a review.
3. **Review** with the employee how to check for a comfortable fit around the nose, cheeks and other areas on the face.
 - Tell the employee the respirator should be comfortable while talking or wearing eye protection.
 4. **Have the employee** hold each facepiece against the face, taking enough time to compare the fit of each. The employee can then either:
 - Reject any facepiece that clearly does not feel comfortable or fit adequately

OR

 - Choose which facepiece is most acceptable and which is less acceptable, if any.

Procedure for Choosing a Respirator for Fit Testing

- Note:**
- Supply as many respirator models and sizes as needed to make sure the employee finds a respirator that's acceptable and fits correctly
 - To save time later, during this step note the more acceptable facepieces in case the one chosen fails the fit test or proves unacceptable later.
5. **Have the employee wear** the most acceptable respirator for **AT LEAST** 5 minutes to evaluate comfort and fit. Do **ALL** of the following during this time:
- Ask the employee to observe and comment about the comfort and fit:
 - Around the nose, cheeks, and other areas on the face
 - When talking or wearing eye protection
 - Have the employee put on the respirator and adjust the straps until they show proficiency
 - Evaluate the respirator's general fit by checking:
 - Proper chin placement
 - Properly tightened straps (do **NOT** over tighten)
 - Acceptable fit across the nose bridge
 - Respirator size; it must span the distance from nose to chin
 - To see if the respirator stays in position
 - Have the employee complete a successful seal check as specified in WAC 296-307-62020 of this chapter
 - Prior to the seal check they must settle the respirator on their face by taking a few slow deep breaths **WHILE SLOWLY**:
 - Moving their head from side-to-side

AND

 - Up and down.
6. **If the employee finds the respirator unacceptable**, allow the employee to select another one and return to Step 5. Otherwise, proceed to Step 7.
7. **Before starting the fit test**, you must:
- Describe the fit test including screening procedures, employee responsibilities, and test exercises
- AND**
- Make sure the employee wears the respirator **AT LEAST** five minutes.

Table 12

Isoamyl Acetate (Banana Oil) Vapor Test Procedure

- Important:**
- This is a qualitative fit-test (QLFT) procedure
 - The success of this test depends on preserving the employee's odor sensitivity to isoamyl acetate (IAA) vapor

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Isoamyl Acetate (Banana Oil) Vapor Test Procedure

- Vapor accumulations in ambient air can decrease odor sensitivity. To prevent this:
 - Prepare ALL solutions in a location separate from screening and test areas
 - Conduct screening and tests in separate well-ventilated rooms. For example, use an exhaust fan or laboratory hood to prevent IAA vapor from accumulating in the room air
- Always use odor-free water, for example, distilled or spring water that's 25°C (77°F).
- Isoamyl acetate is also known as isopentyl acetate.

Screening Preparations

Important:

Odor threshold screening determines if the employee can detect weak concentrations of IAA vapor.

1. Choose an appropriate location to conduct screening.
 - Conduct screening and tests in separate well-ventilated rooms.
2. Prepare a stock solution AT LEAST weekly as follows:
 - Add one milliliter (ml) of pure IAA to 800 ml of odor-free water in a one-liter glass jar with a metal lid using a measuring dropper or pipette
 - Seal the jar with the lid and shake it for 30 seconds
 - Clean the dropper or pipette.
3. Prepare the odor test solution daily as follows:
 - Add 0.4 ml from the stock solution to 500 ml of water in a one liter glass jar with a metal lid using a clean pipette or dropper
 - Seal the jar with the lid and shake it for 30 seconds
 - Let this solution stand for 2-3 minutes so the IAA concentration above the liquid reaches equilibrium
 - Label this jar so you know the contents but the employee cannot know its contents, for example, "1."

Note:

To maintain the integrity of the test, use labels that peel off easily AND periodically switch the labels.

4. Prepare a "test blank" solution as follows:
 - Add 500 ml of odor-free water to a one liter glass jar with a metal lid
 - Seal the jar
 - Label the jar so you know the contents but the employee cannot know its contents.
5. Type or neatly print the following instructions on a card and place it on the table in front of the two test jars:

"The purpose of this test is to find out if you can smell banana oil at a low concentration. While both jars contain water, one ALSO contains a small amount of banana oil."

Isoamyl Acetate (Banana Oil) Vapor Test Procedure

*Make sure the lid is secure then pick up a jar and shake it for two seconds. Open the jar and sniff at the opening. Repeat this for the second jar.
Tell the individual conducting the fit test which jar contains banana oil."*

Test Preparations

6. Choose an appropriate location to conduct fit testing.
 - Conduct screening and tests in separate well-ventilated rooms.
7. Assemble the fit test enclosure in the room.
 - Invert a clear 55-gallon drum liner over a circular 2-foot diameter frame made of plywood or other light-weight rigid material OR construct a similar enclosure using plastic sheeting
 - Hang the frame with the plastic covering so the top of the enclosure is about six inches above the employee's head
 - Attach a small hook inside top center of the enclosure
 - Tape a copy of the test exercises (see Table 28) to the inside of the test enclosure where the employee can read it.
8. Have organic vapor cartridges or equivalent on hand for each employee's chosen respirator.
9. Have ready a 6 x 5-inch piece of paper towel or other porous absorbent single-ply material AND 0.75 ml of pure IAA. Do NOT apply IAA yet.

Note:

As an alternative to using the paper towel, you may use an IAA test swab OR ampoule if it has been demonstrated to generate an equivalent test concentration.

Screening

10. Have the employee, while NOT wearing a respirator, follow the instructions on the card provided.
 - If the employee correctly identifies the jar containing IAA, proceed to conduct testing (Step 11)
 - If the employee is NOT able to correctly identify the jar containing IAA, you must STOP and use a different fit test protocol.

Test

11. BEFORE entering the fit test room, have the employee attach cartridges, put on, properly adjust, and seal check the respirator. Have the employee enter the test enclosure.
12. Wet the paper towel with 0.75 ml of pure IAA AND fold it in half.
13. Pass the paper towel to the employee inside the enclosure AND instruct the employee to hang it on the hook at the top of the enclosure.
14. Wait two minutes for the IAA vapor to fill the enclosure.

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Isoamyl Acetate (Banana Oil) Vapor Test Procedure

- While waiting, explain the fit test, including the purpose of the test exercises, the importance of cooperation, and that you must be informed if a banana-like odor is detected during the test
 - You may also demonstrate the test exercises.
15. Have the employee perform the appropriate fit-test exercises in Table 19.
- If the employee does **NOT** detect IAA while performing test exercises, the fit test has been **PASSED**. Proceed as follows:
 - **BEFORE** leaving the enclosure, have the employee break the respirator seal and inhale. If they **detect** IAA, the test is valid
 - When exiting the employee must remove the paper towel and give it to the individual conducting the fit test. This prevents IAA vapor from building up in the enclosure during subsequent tests
 - The individual conducting the fit test must keep used paper towels in a self-sealing plastic bag to prevent area contamination
 - If the employee detects IAA during any test exercise, the fit test has **FAILED**. **STOP** and have the employee do the following:
 - Quickly return to the selection room to remove the respirator. This avoids decreasing the employee's odor sensitivity
 - Select another respirator
 - Repeat screening and testing
 - At this stage, if the employee fails the screening part of this procedure, the employee can repeat it **AFTER** waiting at least five minutes for odor sensitivity to return.

Table 13

Saccharin Aerosol Test Procedure

Screening Preparations

Important:

- This is a qualitative fit-test (QLFT) procedure
 - Taste threshold screening determines whether the employee being tested can detect the taste of saccharin
 - The employee must **NOT** eat, smoke, chew gum or drink anything but plain water for at least fifteen minutes **BEFORE** the fit test. Sweet foods or drink consumed before the test may make the employee unable to detect saccharin during screening
 - Nebulizers must be thoroughly rinsed in water and shaken dry:
 - Each morning and afternoon
- OR**

Saccharin Aerosol Test Procedure

- At least every four hours.
 - You may use commercially prepared solutions if they meet the requirements in this procedure.
1. Obtain a test enclosure (hood) that meets the following specifications:
 - Twelve inches in diameter by fourteen inches tall
 - A clear front portion
 - Enough space inside to allow free movement of the head when a respirator is worn
 - A 3/4 inch (or 1.9 centimeter) hole to accommodate the nebulizer nozzle. The hole must line up in front of the wearer's nose and mouth.
- Note:**
- An enclosure similar to the 3M hood assembly, parts #FT 14 and #FT 15 combined, meets these specifications
 - This enclosure can also be used for testing.
2. Obtain and assemble two clean DeVilbiss Model 40 Inhalation Medication Nebulizers OR equivalent.
 3. Prepare the screening solution as follows:
 - Dissolve 83.0 milligrams of sodium saccharin USP in 100 ml of warm distilled water

OR

 - **IF** you have already prepared the fit-test solution, you can make the screening solution by adding 1 ml of this solution to 100 ml of distilled water.
 4. Add about 1 ml of the screening solution to one of the nebulizers.
 - Mark this nebulizer to distinguish it from the one to be used for fit testing.

Test Preparations

5. Prepare the fit-test solution as follows:
 - Add 83.0 grams of sodium saccharin to 100 ml of warm water.
6. Add about 1 ml of the test solution to the second nebulizer.
 - Mark this nebulizer to distinguish it from the one used for screening
7. Have particulate filters ready for the employee's chosen respirator or have filtering-facepiece respirators ready.

Screening

8. Have the employee, while **NOT** wearing a respirator, put on the test enclosure.
9. Instruct the employee to:
 - Breath through a slightly open mouth with tongue extended during screening **AND** testing
 - Immediately report when a sweet taste is detected.
10. Insert the nebulizer into the front hole of the test enclosure **AND** administer saccharin as follows:
 - Direct the nozzle away from the employee's nose and mouth

Saccharin Aerosol Test Procedure

- Complete 10 squeezes in rapid succession
 - Each time firmly squeeze the bulb so it collapses completely, then release and allow it to fully expand.
11. Ask the employee if a sweet taste is detected.
 - If **YES**, screening is completed. Proceed to conduct testing, Step 14, **AFTER** you:
 - Ask the employee to remember the taste for reference during the fit test
 - Note the employee's taste threshold as "10" regardless of the number of squeezes actually completed
 - If **NO**, screening must continue. Proceed to Step 12.
 12. Repeat with 10 more squeezes. Then follow Step 11 again; **EXCEPT** this time note the employee's taste threshold as "20" **IF** a sweet taste is reported.
 - If a sweet taste is still **NOT** detected, repeat with 10 more squeezes and follow Step 11 one last time; **EXCEPT** this time note "30" for the taste threshold **IF** a sweet taste is reported.
 13. If **NO** sweet taste is reported after 30 squeezes, you must **STOP** and choose a different fit-test protocol for the employee.

Test

Important!

- Periodically check nebulizers to make sure they do not clog during use. A test is **NOT** valid if the nebulizer is clogged at the end of the test.
14. Have the employee attach particulate filters, put on, properly adjust, and seal check the respirator. Have the employee put on the test enclosure (hood).
 15. Instruct the employee to immediately report if a sweet taste is detected.
 16. Insert the nebulizer into the front hole of the test enclosure **AND** administer the same number of squeezes, either 10, 20, or 30, as noted during screening.
 17. Have the employee perform the appropriate fit-test exercises as described in Table 19. During this step:
 - Replenish the aerosol in the hood **EVERY** 30 seconds using 1/2 the number of squeezes used in Step 16, either 5, 10, or 15
 - The employee must report if a sweet taste is detected:
 - If **NO** saccharin is tasted, the test has been **PASSED**
 - If saccharin is tasted the test has **FAILED**, have the employee select another respirator **AND**
 - Repeat screening and testing.

Table 14

Bitrex™ Aerosol Test Procedure

Important!

- This is a qualitative fit-test (QLFT) procedure
- Bitrex™ (denatonium benzoate) is routinely used as a taste aversion agent in household liquids that children shouldn't drink and is endorsed by the American Medical Association, the National Safety Council, and the American Association of Poison Control Centers
- The employee must **NOT** eat, smoke, chew gum or drink anything but plain water for at least fifteen minutes **BEFORE** the fit test.

Screening Preparations

Important!

- Taste threshold screening determines whether the employee being tested can detect the taste of Bitrex™
 - Nebulizers must be thoroughly rinsed in water and shaken dry:
 - Each morning and afternoon
- OR**
- At least every four hours.
- You may use commercially prepared solutions if they meet the requirements in this procedure.

1. Obtain a test enclosure that meets the following specifications:

- Twelve inches in diameter by fourteen inches tall
- A clear front portion
- Enough space inside the front to allow free movement of the head when a respirator is worn
- 3/4 inch (or 1.9 centimeter) hole to accommodate the nebulizer nozzle. The hole must line up in front of the wearer's nose and mouth.

Note:

- An enclosure similar to the 3M hood assembly, parts #FT 14 and #FT 15 combined, meets these specifications
- This enclosure can also be used for testing.

2. Obtain and assemble two clean DeVilbiss Model 40 Inhalation Medication Nebulizers **OR** equivalent:

3. Prepare the screening solution as follows:

- Make up a 5% salt solution by dissolving 5.0 grams of salt (sodium chloride) into 100 ml of distilled water
- Dissolve 13.5 milligrams of Bitrex™ in the salt solution.

4. Add about 1 ml of the screening solution to one of the nebulizers.

- Mark this nebulizer to distinguish it from the one to be used for fit testing.

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Bitrex™ Aerosol Test Procedure	
Test Preparations	
<p>5. Prepare the fit test solution.</p> <ul style="list-style-type: none"> • Dissolve 10.0 grams of salt (sodium chloride) into 200 ml of distilled water • Add 337.5 milligrams of Bitrex™ to the warmed salt solution. <p>6. Add about 1 ml of the test solution to the second nebulizer.</p> <ul style="list-style-type: none"> • Mark this nebulizer to distinguish it from the one used for screening. <p>7. Have particulate filters ready for the employee's chosen respirator or have filtering-facepiece respirators ready.</p>	
Screening	
<p>Important: The employee must NOT eat, smoke, chew gum or drink anything but plain water for at least fifteen minutes BEFORE the screening and test</p> <p>8. Have the employee, while NOT wearing a respirator, put on the test enclosure.</p> <p>9. Instruct the employee to:</p> <ul style="list-style-type: none"> • Breathe through a slightly opened mouth with tongue extended during screening AND testing • Immediately report when a bitter taste is detected. <p>10. Insert the nebulizer into the front hole of the test enclosure AND administer Bitrex™ as follows:</p> <ul style="list-style-type: none"> • Direct the nozzle away from the employee's nose and mouth • Complete 10 squeezes in rapid succession • Each time firmly squeeze the bulb so it collapses completely, then release and allow it to fully expand. <p>11. Ask the employee whether a bitter taste is detected.</p> <ul style="list-style-type: none"> • If YES, screening is completed. Proceed to conduct testing, Step 14, AFTER you: <ul style="list-style-type: none"> – Ask the employee to remember the taste for reference during the fit test – Note the employee's taste threshold as "10," regardless of the number of squeezes actually completed • If NO, screening must continue. Proceed to Step 12. <p>12. Repeat with 10 more squeezes. Then follow Step 11 again; EXCEPT this time note the employee's taste threshold as "20" IF a bitter taste is reported.</p> <ul style="list-style-type: none"> • If a bitter taste is still NOT detected repeat with 10 more squeezes and follow Step 11 one last time; EXCEPT this time note "30" for the taste threshold IF a bitter taste is reported. <p>13. If NO bitter taste is reported after 30 squeezes, you must STOP and choose a different fit-test protocol for the employee.</p>	

Bitrex™ Aerosol Test Procedure	
Test	
<p>14. Have the employee attach particulate filters, put on, properly adjust, and seal check the respirator. Have the employee put on the test enclosure.</p> <p>15. Instruct the employee to:</p> <ul style="list-style-type: none"> • Breathe through a slightly opened mouth with tongue extended during screening AND testing • Immediately report when a bitter taste is detected. <p>16. Insert the nebulizer into the front hole of the test enclosure AND administer the same number of squeezes, either 10, 20, or 30, as noted during screening.</p> <p>17. Have the employee perform the appropriate fit-test exercises as described in Table 19. During this step:</p> <ul style="list-style-type: none"> • Replenish the aerosol in the hood EVERY 30 seconds using 1/2 the number of squeezes used in Step 16, either 5, 10, or 15 • The employee must report if a bitter taste is detected: <ul style="list-style-type: none"> – If NO Bitrex™ is tasted, the test has been PASSED – If Bitrex™ is tasted the test has FAILED. Have the employee: <ul style="list-style-type: none"> ■ Select another respirator <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ■ Repeat all screening and testing steps. 	

Table 15

Irritant Smoke (Stannic Chloride) Test Procedure	
<p>Important:</p> <ul style="list-style-type: none"> • DO NOT USE A TEST ENCLOSURE OR HOOD FOR THIS FIT TEST! • This is a qualitative fit-test (QLFT) procedure • During this test an employee is exposed to irritating smoke containing hydrochloric acid produced by a stannic chloride ventilation smoke tube to detect leakage. The smoke will irritate eyes, lungs, and nasal passages • Employee sensitivity varies, and certain employees may respond more intensely than others exposed to irritant smoke. The individual conducting the fit test must take precautions to minimize the employees' exposure to irritant smoke • Conduct fit testing in an area with adequate ventilation to prevent exposure of the individual conducting the fit test and build-up of irritant smoke in the ambient air. 	
Screening AND Test Preparations	
<p>Important: Sensitivity screening is necessary to determine whether the employee can detect a weak concentration of irritant smoke AND whether any gross facepiece leakage is detected.</p>	

Irritant Smoke (Stannic Chloride) Test Procedure

1. Obtain only stannic chloride (ventilation) smoke tubes, **AND** an aspirator squeeze bulb **OR** use a low-flow air pump set to deliver 200 milliliters of air flow per minute.
2. Equip the employee's chosen respirator with P100 series filters if a negative pressure air-purifying respirator will be tested. If a powered air-purifying respirator (PAPR) will be tested equip the respirator with high-efficiency particulate air (HEPA) filters.

Screening

Important!

When performing sensitivity screening checks use only the **MINIMUM** amount of smoke necessary to elicit a response from the employee.

3. Advise the employee that the smoke can be irritating to eyes, lungs, and nasal passages **AND** instruct the employee to keep eyes closed while exposed.
4. Break both ends of the ventilation smoke tube **AND** fit a short piece of plastic tubing, for example, two-to-six inches of tygon tubing, over one end to prevent exposure to the sharp end of the tube. Connect the other end to an aspirator bulb or a low-flow air pump set to deliver a flow of 200 ml per minute.
5. While the employee is **NOT** wearing a respirator, have the employee smell a weak concentration of irritant smoke to become familiar with its irritating properties.
 - Carefully direct a small amount of irritant smoke toward the employee.

Test

- Test 6. Have the employee attach respirator filters, put on, adjust, and seal check the respirator without assistance. The employee must be proficient at these tasks.
7. Remind the employee to keep eyes closed during testing.
 8. Direct a stream of irritant smoke toward the respirator's face seal area as follows:
 - Begin at least 12 inches from the facepiece **AND** move the smoke around the whole perimeter of the mask
 - Gradually make two more passes around the perimeter of the facepiece, moving to within 6 inches of the respirator
 - **STOP** at any time the employee detects smoke in the facepiece. If this occurs a different respirator will need to be chosen and tested, beginning with sensitivity screening.
 9. Have the employee perform appropriate fit-test exercises in Table 19 **IF** the employee has **NOT** had an involuntary response such as evidence of coughing, flinching, or other response, **OR** detected smoke in the facepiece.
 - Continue to direct smoke from a distance of 6 inches around the facepiece perimeter

Irritant Smoke (Stannic Chloride) Test Procedure

- If smoke is detected at any time the test has **FAILED**. A different respirator must be chosen and tested, starting with sensitivity screening
 - If **NO** smoke is detected proceed to Step 10.
10. Have the employee remove the respirator **AND** perform another sensitivity screening check as follows:
 - Continue to use the smoke tube used for fit testing
 - Carefully direct a **SMALL** amount of irritant smoke toward the employee
 - The test has been **PASSED IF** the employee responds to the smoke
 - The fit test is **VOIDED IF** the employee does **NOT** respond to the smoke.

Table 16

Ambient Aerosol Condensation Nuclei Counter (Portacount™) Test Procedure

Important:

- This is a quantitative (QNFT) fit-test procedure
- This method uses a particle counting instrument that measures and compares the particle concentration both inside and outside the respirator facepiece while the employee performs a series of test exercises
- Particles in the ambient air are used as the test aerosol.

Test Preparations

1. Obtain a test instrument such as a Portacount™.
2. Have probed respirators available for each respirator model and size the employer uses, **OR** have a sampling adapter available if the employee's actual or chosen respirator will be tested.

Note:

 - A probed respirator has a special fitting installed on the facepiece designed to connect with the end of the test instrument's plastic sampling tube so that air samples can be taken inside the facepiece. Probed respirators can be obtained from the respirator manufacturer, or distributor, **AND** can only be used for fit-testing purposes
 - Contact TSI Inc., **OR** the respirator's manufacturer to obtain probed respirators or facepiece sampling adapters.
3. Follow the test instrument manufacturer's instructions for test preparation, including particle, zero, and system checks. Make sure the instrument's pass **OR** fail criterion is programmed to the following **MINIMUM** performance levels:
 - For half-facepiece respirators, an overall minimum fit factor of 100 as a passing level
 - For full-facepiece respirators, an overall minimum fit factor of 500 as a passing level

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Ambient Aerosol Condensation Nuclei Counter (Portacount™) Test Procedure

4. Have high-efficiency particulate air (HEPA) filters, OR other respirator filters available that are capable of preventing significant penetration by particles generated by the test instrument such as, P100 or N95 series filters.

- If you'll use a sampling adapter instead of probed respirators be sure to have the correct type for the respirators chosen.

Test

5. Properly attach the sampling line to the facepiece probe or sampling adapter.

6. Have the employee attach respirator filters, put on, properly adjust, and wear the respirator five minutes **BEFORE** the fit test. During this time you and the employee must evaluate the respirator's general fit by checking:

- Proper chin placement
- Properly tightened straps (do NOT over tighten)
- Acceptable fit across the nose bridge
- Respirator size. It must span the distance from nose to chin
- To see if the respirator stays in position.

Note:

Wearing the respirator for five minutes permits the employee to make certain the respirator is comfortable AND allows for purging of ambient particles trapped inside the facepiece.

7. Have the employee perform a seal check. Make sure the sampling line is crimped to avoid leakage during the seal check. If **NO** leakage is detected, proceed to Step 8. If leakage is detected:

- Determine the cause
- AND
- If leakage is due to a poorly fitting facepiece, have the employee:
 - Choose another respirator size or model
- AND
- Start again at Step 6.

8. Start the fit test cycle.

- Follow the manufacturer's instructions for operating the test instrument
- Have the employee perform the appropriate fit-test exercises in Table 19
 - The test instrument will automatically stop and calculate the overall fit factor. Use this result to determine whether or not the test is passed
 - The test has been **PASSED** if the overall fit factor is at least 100 for a half facepiece, OR 500 for a full facepiece

Ambient Aerosol Condensation Nuclei Counter (Portacount™) Test Procedure

■ The test has **FAILED** if the overall fit factor is below 100 for a half facepiece or 500 for a full facepiece.

Note:

If the test has failed, have the employee select another respirator model or size following Table 11 AND repeat this procedure.

Table 17

Controlled Negative Pressure (CNP) Test Procedure

Important!

- This is a quantitative fit-test (QNFT) procedure
- This method determines respirator fit by measuring how much the facepiece leaks when it is subject to a slight negative pressure **AFTER** various premeasurement activities
- Measurements occur while employees remain still AND hold their breath for 10 seconds
- No test aerosols are used. Respirator cartridges aren't needed for this test.

Test Preparations

1. Make sure the individual conducting the fit test is thoroughly trained to perform this test.

2. Obtain a CNP test instrument such as a FitTester 3000™. Make sure:

- Defaults are set at:
 - -15mm (-0.58 inches) of water test pressure
- AND
- A modeled inspiratory flow rate of 53.8 liters per minute
 - It has an effective audio warning device that signals when employees fail to hold their breath.

Note:

- You are not required to obtain test recording and printing equipment such as computers OR printers. Hand recording results is acceptable
- To see default settings, check the instrument's "REDON protocol."

3. Obtain facepiece adapters appropriate for each test respirator.

Note:

- Adapters are either a one-piece (for SCBA facepieces), OR two-piece (for dual cartridge facepieces) device providing a manifold and breathing valve system. For positive pressure respirators, you will need to obtain an additional fitting, available from the respirator manufacturer, to convert the facepiece to negative pressure

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<p>Controlled Negative Pressure (CNP) Test Procedure</p> <ul style="list-style-type: none"> • To obtain adapters, contact the CNP instrument's distributor, Occupational Health Dynamics, OR the respirator manufacturer.
<p>Test</p>
<p>Important!</p> <p>After the test, you must ask the employee about the comfort of the respirator AND if the respirator has become unacceptable, another size or model must be chosen and tested.</p> <p>4. Explain the test procedure to the employee.</p> <p>5. Train the employee on how to hold a breath for at least 20 seconds.</p> <p>6. Prepare the respirator for the fit test as follows:</p> <ul style="list-style-type: none"> • Remove or prop open the inhalation valves. If a breathing tube is present, disconnect it • Replace cartridges, if present, with the manifold and breathing valve adapter <ul style="list-style-type: none"> – For positive pressure facepieces, mount the manufacturer's additional fitting followed by the manifold-breathing valve adapter • Connect the respirator to the CNP device according to the CNP instrument manufacturer's directions. <p>7. Have the employee put on, adjust, and seal check the respirator.</p> <p>8. Turn on the instrument AND have the employee stand and perform the fit-test exercises in Table 19.</p> <p>9. Interpret the test results:</p> <ul style="list-style-type: none"> • The test is PASSED IF the overall fit factor obtained is at least 100 for a half facepiece, or at least 500 for a full facepiece • The test has FAILED IF the fit factor is less than 100 for a half facepiece; 500 for a full facepiece <ul style="list-style-type: none"> – If the test has FAILED you must have the employee select another respirator model or size following the steps in Table 11 AND repeat this procedure, starting at Step 6.

Table 18

<p>Generated Aerosol Test Procedure</p>
<p>Important:</p> <ul style="list-style-type: none"> • This is a quantitative (QNFT) fit-test procedure • In this method, a test aerosol is used to challenge the facepiece seal while aerosol concentrations inside and outside the facepiece are measured during test exercises • Special equipment is needed to generate, disperse, detect, and measure test aerosols.
<p>Test Preparations</p>
<p>1. Test aerosol.</p> <ul style="list-style-type: none"> • Use a particulate, for example, corn oil, polyethylene glycol 400, di-2-ethyl hexyl sebacate, or sodium chloride. <p>2. Instrumentation.</p> <ul style="list-style-type: none"> • Do ALL the following:

Generated Aerosol Test Procedure

- Obtain and use aerosol generation, dilution, and measurement systems appropriate for particulates
- Use an aerosol-generating instrument that will maintain test concentrations within a 10% variation
- Select a sampling instrument that allows for a computer record or strip chart record to be created
 - The record must show the rise and fall of test agent concentration during each inhalation and exhalation at fit factors of at least 2000.
- Note:** Integrators, or computers that integrate the amount of test agent penetration leakage into the respirator for each exercise, may be used if a record of the readings is made.
- Minimize the time interval between the activity and the recording of the activity so you can clearly connect what you see to what is being recorded. For example, use a small diameter and length of sampling line.

3. Test enclosure.

- Do **ALL** the following:
 - Make sure the enclosure is equipped and constructed to effectively:
 - Maintain a uniform concentration of the test agent inside the enclosure. For example, the enclosure must be large enough to allow **ALL** employees freedom of movement during testing **WITHOUT** disturbing the test concentration or measurement instrument
 - Keep the test agent from contaminating the air outside the enclosure. For example, use a HEPA filter to purify exhausted air
 - Allow the individual conducting the fit test to view the employee during the test
 - Make sure the tubing used to collect samples from the enclosure **AND** respirator is the same material, diameter, **AND** length. This makes the effect of aerosol loss caused by deposition in each sample line equal
 - If sodium chloride is used, relative humidity inside the enclosure must be kept below 50%.

4. Prepare test respirators.

- Do **ALL** the following:
 - Inspect test respirators regularly for missing parts **AND** damage
 - Keep test respirators in proper working order
 - Make sure in-mask sampling probes are:
 - Designed and installed so the air sample will be drawn from the employee's breathing zone; midway between the nose and mouth
 - AND**
 - The probe extends inside the facepiece at least 1/4 inch
 - Make sure sampling ports such as probes, or adapters on respirators are constructed and installed so they do **NOT**:
 - Block air flow into the sampling line
 - Leak
 - Interfere with the respirator's fit or performance
- Have high efficiency particulate air (HEPA) filters **OR** P100 series filter available
 - Replace filters when increased breathing resistance is detected **OR** when the test agent has altered the filter material's integrity.

Test

Important!

- Throughout the test, maintain the employee's exposure to any test agent below the established exposure limit. Exposures allowed must be based on exposure time and exposure limit duration
- If a single peak penetration exceeds 5% for half facepieces **OR** 1% for full facepieces:
 - **STOP** the test
- AND**
 - Have the employee select another respirator for testing.

5. Have the employee attach filters, put on, adjust, and seal check the respirator.

- Be sure to crimp the sampling line to avoid pressure leaks during the seal check
- AND**

Generated Aerosol Test Procedure

- Have the employee adjust the respirator straps, without assistance, so the fit is comfortable. Do NOT over tighten.
6. **OPTIONAL Step.** To save time conduct a screening test to quickly identify poorly fitting respirators.
- Note:**
You may use a qualitative screening test **OR** an ambient aerosol condensation nuclei counter instrument in the count mode.
7. Make sure test aerosol concentration is reasonably stable.
- If a canopy or shower curtain enclosure is used, determine stability of the test aerosol concentration **AFTER** the employee enters the enclosure.
8. Have the employee enter the test enclosure and connect the respirator to the sample lines.
9. Immediately after entering the enclosure measure test aerosol concentration inside the respirator.
- Make sure the peak penetration does **NOT** exceed 5% for half facepieces, **OR** 1% for full facepieces.
10. Have employee perform the appropriate fit-test exercises in Table 19.
- Do **NOT** adjust the respirator once exercises begin.
11. Calculate the overall fit factor as specified in Steps 12-13. The fit test is:
- **PASSED IF** the minimum fit factor of 100 for half facepieces **OR** 500 for full facepieces is obtained
 - OR**
 - IF a passing fit factor is **NOT** obtained, the test has **FAILED** and you must have the employee select and test another respirator.

Calculations

Important!

- Do **NOT** count the grimace exercise measurements during these calculations
 - Take into account the limitations of instrument detection when determining fit factors.
12. Calculate individual fit factors for **EACH** exercise by applying the following:
- $$\text{Exercise fit factor (ffE)} = \frac{\text{Average test enclosure concentration}}{\text{Test aerosol concentration inside the respirator}}$$
- To determine the average test enclosure concentration use one of the following methods:
 - Arithmetic average of the concentration before and after each **test** (an average of two values per entire test)
 - Arithmetic average of concentration before and after each **exercise** (an average of two values per exercise)
 - True average measured continuously during the respirator sample
 - Determine the test aerosol concentration inside the respirator in one of the following ways:
 - Average peak penetration values. Determine aerosol penetration for each exercise by:
 - Using integrators or computers that calculate the actual test agent penetration
 - OR**
 - Average the peak heights shown on the strip chart recording, graph, or by computer integration
 - Maximum peak penetration. Use strip chart recordings to determine the highest peak penetration for each exercise and use this value
 - Area under the peaks. Use computerized integration or other appropriate calculations to integrate the area under individual peaks for each exercise.
13. Using individual exercise fit factors (ffE) calculate the **overall fit factor** by doing **ALL** of the following:
- Convert each exercise fit factor to a penetration value
 - Determine the average penetration value
 - Convert the average penetration value back to a fit factor
 - OR**
 - Use this equation to calculate the **overall fit factor**:

$$\text{Overall fit factor} = \frac{n}{1/\text{ffE}_1 + 1/\text{ffE}_2 + 1/\text{ffE}_3 \dots + 1/\text{ffE}_n}$$

Table 19

Fit-Test Exercises

Important:

- This list applies when you use any fit test
- Employees tested must perform ALL exercises marked with an "X" as described for the fit-test procedure used
 - Once exercises begin, any adjustments made void the test AND you must begin again
 - After test exercises are completed, you must ask the employee about the comfort of the respirator. If it has become unacceptable, have the employee choose another one for testing
- When the controlled negative pressure procedure is used, **STOP and repeat** the test if the employee adjusts the respirator OR takes a breath and fails to hold it for 10 seconds
- Controlled negative pressure tests conducted according to the method published in 29 CFR 1910.134, Appendix A are an acceptable alternative to the method outlined below.

Description of Required Fit-Test Exercises	Fit-Test Procedures		
	Qualitative Procedures	Quantitative Procedures; EXCEPT the CNPP	Controlled Negative Pressure Procedure (CNPP)
<ul style="list-style-type: none"> • Normal breathing <ul style="list-style-type: none"> – Breathe normally, while standing for one minute 	X	X	
<ul style="list-style-type: none"> • Deep breathing <ul style="list-style-type: none"> – Breathe slowly and deeply while standing for one minute – Take caution to avoid hyperventilating 	X	X	
<ul style="list-style-type: none"> • Head side to side <ul style="list-style-type: none"> – Slowly turn head from side to side while standing for one minute, pausing at each extreme position to inhale – Be careful to NOT bump the respirator 	X	X	
<ul style="list-style-type: none"> • Head up and down <ul style="list-style-type: none"> – Slowly move head up and down while standing for one minute, inhaling in the up position – Be careful to NOT bump the respirator 	X	X	
<ul style="list-style-type: none"> • Talking <ul style="list-style-type: none"> – Talk slowly and loud enough to be heard clearly by the individual conducting fit testing for one minute. Choose ONE of the following: <ul style="list-style-type: none"> ■ Read from a prepared text such as the Rainbow Passage¹ ■ Count backward from 100 ■ Recite a memorized poem or song. 	X	X	
<ul style="list-style-type: none"> • Grimace <ul style="list-style-type: none"> – Smile or frown for fifteen seconds. 		X	
<ul style="list-style-type: none"> • Bending over <ul style="list-style-type: none"> – Bend over to touch toes while standing. Repeat at a comfortable pace for one minute OR – Jog in place for one minute if the test enclosure, such as a hood, does not permit bending over 	X	X	
<ul style="list-style-type: none"> • Normal breathing <ul style="list-style-type: none"> – Breathe normally while standing for one minute 	X	X	

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Fit-Test Exercises			
<ul style="list-style-type: none"> • Face forward <ul style="list-style-type: none"> – Premeasurement activity: Stand and breath normally, without talking – Measurement position: Face forward while holding breath for 10 seconds 			X
<ul style="list-style-type: none"> • Bending over <ul style="list-style-type: none"> – Premeasurement activity: While standing, bend over to touch toes – Measurement position: Hold the bending position with face parallel to the floor while holding breath for 10 seconds 			X
<ul style="list-style-type: none"> • Head shaking <ul style="list-style-type: none"> – Premeasurement activity: Vigorously shake head from side to side for 3 seconds while shouting or making the sound of "BRRRR" loudly – Measurement position: Face forward, while holding breath for 10 seconds 			X
<ul style="list-style-type: none"> • Redon-1 <ul style="list-style-type: none"> – Premeasurement activity: Remove the respirator completely and put it back on – Measurement position: Face forward while holding breath for 10 seconds 			X
<ul style="list-style-type: none"> • Redon-2 <ul style="list-style-type: none"> – Repeat the premeasurement activity and measurement position described in Redon-1 			X

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The Rainbow Passage:

"When the sunlight strikes raindrops in the air, they act like a prism and form a rainbow. The rainbow is a division of white light into many beautiful colors. These take the shape of a long round arch, with its path high above, and its two ends apparently beyond the horizon. There is, according to legend, a boiling pot of gold at one end. People look, but no one ever finds it. When a man looks for something beyond reach, his friends say he is looking for the pot of gold at the end of the rainbow."

NEW SECTION

WAC 296-307-62015 Follow procedures established for cleaning and disinfecting respirators.

You must:

- Follow the procedure in Table 20 for cleaning and disinfecting respirators.

**Table 20
Respirator Cleaning Procedure**

Step	Task
1.	Remove filters, cartridges, canisters, speaking diaphragms, demand and pressure valve assemblies, hoses, or any components recommended by the manufacturer. <ul style="list-style-type: none"> • Discard or repair any defective parts.
2.	Wash components in warm (43°C (110°F) maximum) water with a mild detergent or with a cleaner recommended by the manufacturer <ul style="list-style-type: none"> • A stiff bristle (not wire) brush may be used to help remove the dirt • If the detergent or cleaner does not contain a disinfecting agent, respirator components should be immersed for two minutes in one of the following:

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Step	Task
	<ul style="list-style-type: none"> - A bleach solution (concentration of 50 parts per million of chlorine). Make this by adding approximately one milliliter of laundry bleach to one liter of water at 43°C (110°F) - A solution of iodine (50 parts per million iodine). Make this in two steps: <ul style="list-style-type: none"> ■ First, make a tincture of iodine by adding 6-8 grams of solid ammonium iodide and/or potassium iodide to 100 cc of 45% alcohol approximately ■ Second, add 0.8 milliliters of the tincture to one liter of water at 43°C (110°F) to get the final solution - Other commercially available cleansers of equivalent disinfectant quality when used as directed, if their use is recommended or approved by the respirator manufacturer.
3.	Rinse components thoroughly in clean, warm (43°C (110°F) maximum), preferably, running water. Note: The importance of thorough rinsing cannot be overemphasized. Detergents or disinfectants that dry on facepieces could cause dermatitis. In addition, some disinfectants may cause deterioration of rubber or corrosion of metal parts, if not completely removed.
4.	Drain components.
5.	Air-dry components or hand dry components with a clean, lint-free cloth.
6.	Reassemble the facepiece components. <ul style="list-style-type: none"> • Replace filters, cartridges, and canisters, if necessary (for testing).
7.	Test the respirator to make sure all components work properly.

NEW SECTION

WAC 296-307-62020 Follow procedures established for seal checking respirators.

IMPORTANT:

- User seal checks are NOT a substitute for fit tests. See WAC 296-307-62010 for fit test procedures.

- You may use a seal check procedure recommended by the respirator manufacturer **INSTEAD** of the procedure outlined in Table 21 if you can demonstrate the procedure is based on a scientific study that, for example, demonstrates the procedure effectively identifies respirators that fit poorly when put on or adjusted.

You must:

- Make sure employees perform a user seal check as outlined in Table 21, **EACH TIME** the respirator is worn, to make sure the seal is adequate.

Table 21

User Seal Check Procedure
<p>Important information for employees:</p> <ul style="list-style-type: none"> • You need to conduct a seal check each time you put your respirator on BEFORE you enter the respirator use area. The purpose of a seal check is to make sure your respirator (which has been previously fit tested by your employer) is properly positioned on your face to prevent leakage during use and to detect functional problems • The procedure below has two parts; a positive pressure check and a negative pressure check. You must complete both parts each time. It should only take a few seconds to perform, once you learn it

User Seal Check Procedure
<ul style="list-style-type: none"> - If you cannot pass both parts, your respirator is NOT functioning properly, see your supervisor for further instruction.
<p>Positive pressure check:</p> <ol style="list-style-type: none"> 1. Remove exhalation valve cover, if removable. 2. Cover the exhalation valve completely with the palm of your hand WHILE exhaling gently to inflate the facepiece slightly. 3. The respirator facepiece should remain inflated (indicating a build-up of positive pressure and NO outward leakage). <ul style="list-style-type: none"> • If you detect NO leakage, replace the exhalation valve cover (if removed), and proceed to conduct the negative pressure check • If you detect evidence of leakage, reposition the respirator (after removing and inspecting it), and try the positive pressure check again.
<p>Negative pressure check:</p> <ol style="list-style-type: none"> 4. Completely cover the inhalation opening(s) on the cartridges or canister with the palm(s) of your hands WHILE inhaling gently to collapse the facepiece slightly. <ul style="list-style-type: none"> • If you cannot use the palm(s) of your hands to effectively cover the inhalation openings on cartridges or canisters, you may use: <ul style="list-style-type: none"> - Filter seal(s) (if available) <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> - Thin rubber gloves.

User Seal Check Procedure

5. Once the facepiece is collapsed, hold your breath for 10 seconds **WHILE** keeping the inhalation openings covered.
6. The facepiece should remain slightly collapsed (indicating negative pressure and **NO** inward leakage).
 - If you detect **NO** evidence of leakage, the tightness of the facepiece is considered adequate, the procedure is completed, and you may now use the respirator
 - If you detect leakage, reposition the respirator (after removing and inspecting it) and repeat **BOTH** the positive and negative fit checks.

NEW SECTION

WAC 296-307-622 Definitions.

Air-purifying respirator (APR)

A respirator equipped with an air-purifying element such as a filter, cartridge, or canister, **OR** having a filtering facepiece, for example, a dust mask.

The element or filtering facepiece is designed to remove specific contaminants, such as particles, vapors, or gases, from air that passes through it.

Air-line respirator

An atmosphere-supplying respirator for which breathing air is drawn from a source separate from and not worn by the user, such as:

- A cylinder or a tank
- A compressor
- An uncontaminated environment.

Air supplied respirator (see air-line respirator)

Assigned protection factor (APF)

Indicates the expected level of workplace respiratory protection **WHEN** the respirator is:

- Functioning properly

AND

- Fitted to the user

AND

- Worn by trained individuals

AND

• Used with the limitations specified on the NIOSH approval label.

Atmosphere-supplying respirator

A respirator that supplies the user with breathing air from sources, such as:

- A cylinder or a tank
- A compressor
- An uncontaminated environment.

Breathing air

Air supplied to an atmosphere-supplying respirator. This air meets the specifications found in WAC 296-307-616.

Canister or cartridge (air-purifying)

Part of an air-purifying respirator that consists of a container holding materials such as fiber, treated charcoal, or a combination of the two, that removes contaminants from the air passing through the cartridge or canister.

Cartridge respirator (see also air-purifying respirator)

An air-purifying respirator equipped with one or more cartridges. These respirators have a facepiece made from silicone, rubber **OR** other plastic-like materials.

Demand respirator

An atmosphere-supplying respirator that sends breathing air to the facepiece only when suction (negative pressure) is created inside the facepiece by inhalation. Demand respirators are "**negative pressure**" respirators.

Dust mask

A name used to refer to filtering-facepiece respirators. Dust masks may or may not be NIOSH certified. See filtering facepiece.

Emergency respirator

Respirators suitable for rescue, escape, or other activities during emergency situations.

Emergency situation

Any occurrence that could **OR** does result in a significant uncontrolled release of an airborne contaminant. Causes of emergency situations include, but are not limited to, equipment failure, rupture of containers, or failure of control equipment.

End-of-service-life indicator (ESLI)

A system that warns the air-purifying respirator user that cartridges or canisters must be changed. An example of an ESLI is a dot on the respirator cartridge that changes color.

Escape-only respirator

A respirator that can only be used to exit during emergencies. Look for this use limitation on the respirator's NIOSH approval label.

Exposed, or exposure

The contact an employee has with a toxic substance, harmful physical agent, or oxygen deficient condition. Exposure can occur through various routes of entry, such as inhalation, ingestion, skin contact, or skin absorption.

Filter

Fibrous material that removes dust, spray, mist, fume, fog, smoke particles, **OR** other aerosols from the air.

Filtering-facepiece respirator

A tight-fitting, half-facepiece, negative-pressure, particulate air-purifying respirator with the facepiece **MAINLY** composed of filter material. These respirators do not use cartridges or canisters and may have sealing surfaces composed of rubber, silicone or other plastic-like materials. They are sometimes referred to as "dust masks."

Fit factor

A number providing an estimate of fit for a particular respiratory inlet covering to a specific individual during quantitative fit testing.

Fit test (see also qualitative fit test and quantitative fit test)

Fit testing is an activity where the facepiece seal of a respirator is challenged, using a WISHA accepted procedure, to determine if the respirator provides an adequate seal.

Full-facepiece respirator

A tight-fitting respirator that covers the wearer's nose, mouth, and eyes.

Gas mask

An air-purifying respirator equipped with one or more canisters. These respirators have a facepiece made from silicone, rubber OR other plastic-like materials.

Half-facepiece respirator

A tight-fitting respirator that only covers the wearer's nose and mouth.

Helmet

The rigid part of a respirator that covers the wearer's head AND also provides head protection against impact or penetration.

High-efficiency particulate air filter (HEPA)

A powered air purifying respirator (PAPR) filter that removes at least 99.97% of monodisperse dioctyl phthalate (DOP) particles with a mean particle diameter of 0.3 micrometer from contaminated air.

Note: Filters designated, under 42 CFR Part 84, as an "N100," "R100," or "P100" provide the same filter efficiency (99.97%) as HEPA filters.

Hood

The part of a respirator that completely covers the wearer's head and neck AND may also cover some or all of the shoulders and torso.

Immediately dangerous to life or health (IDLH)

An atmospheric condition that would:

- Cause an immediate threat to life

OR

- Cause permanent or delayed adverse health effects

OR

- Interfere with an employee's ability to escape.

Licensed healthcare professional (LHCP)

An individual whose legally permitted scope of medical practice allows him or her to provide **SOME OR ALL** of the healthcare services required for respirator users' medical evaluations.

Loose-fitting facepiece

A respiratory inlet covering that is designed to form a partial seal with the face.

Negative-pressure respirator

Any tight-fitting respirator in which the air pressure inside the facepiece is less than the air pressure outside the respirator during inhalation.

NIOSH

The National Institute for Occupational Safety and Health. NIOSH is the federal agency that certifies respirators for occupational use.

Oxygen deficient

An atmosphere with an oxygen content below 19.5% by volume.

Permissible exposure limit (PEL)

Permissible exposure limits (PELs) are employee exposures to toxic substances or harmful agents that must not be exceeded. PELs are specified in applicable WISHA chapters.

Positive-pressure respirator

A respirator in which the air pressure inside the respiratory-inlet covering is greater than the air pressure outside the respirator.

Powered air-purifying respirators (PAPRs)

An air-purifying respirator equipped with a blower that draws ambient air through cartridges or canisters. These res-

pirators, as a group, are NOT classified as positive pressure respirators and must not be used as such.

Pressure-demand respirator

A positive-pressure atmosphere-supplying respirator that sends breathing air to the respiratory inlet covering when the positive pressure is reduced inside the facepiece by inhalation or leakage.

Qualitative fit test (QLFT)

A test that determines the adequacy of respirator fit for an individual. The test relies on the employee's ability to detect a test substance. Test results are either "pass" or "fail."

Quantitative fit test (QNFT)

A test that determines the adequacy of respirator fit for an individual. The test relies on specialized equipment that performs numeric measurements of leakage into the respiratory inlet covering. Test results are used to calculate a "fit factor."

Respiratory hazard

Harmful airborne hazards and oxygen deficiency that are addressed in WAC 296-307-624, Identifying and controlling airborne hazards and oxygen deficiency.

Required use

Respirator use:

- That is necessary to protect employees from respiratory hazards

OR

- That the employer decides to require for his or her own reasons. For example, the employer decides to follow more rigorous exposure limits

- The employer for his or her own reasons. For example, the employer decides to follow more rigorous exposure limits, OR the employer is required to follow a medical recommendation.

Respirator

A type of personal protective equipment designed to protect the wearer from harmful airborne hazards, oxygen deficiency, or both.

Respiratory inlet covering

The part of a respirator that forms the protective barrier between the user's respiratory tract and an air-purifying device or breathing air source or both. The respiratory inlet covering may be a facepiece, helmet, hood, suit, or mouthpiece respirator with nose clamp.

Seal check

Actions conducted by the respirator user each time the respirator is put on, to determine if the respirator is properly seated on the face.

Self-contained breathing apparatus (SCBA)

An atmosphere-supplying respirator designed for the breathing air source, to be carried by the user.

Service-life

The period of time that a respirator, filter or sorbent, or other respiratory equipment provides adequate protection to the wearer. For example, the period of time that sorbent cartridge is effective for removing a harmful substance from the air.

Sorbent

Rigid, porous material, such as charcoal, used to remove vapor or gas from the air.

Supplied-air respirator (see air-line respirator)**Tight-fitting facepiece**

A respiratory inlet covering forming a complete seal with the face OR neck. Mouthpiece respirators aren't tight-fitting facepieces.

Voluntary use

Respirator use that is requested by the employee AND permitted by the employer when NO respiratory hazard exists.

Part Y-6**Respiratory Hazards****NEW SECTION****WAC 296-307-624 Scope.**

This part applies **only** if your employees:

- Are exposed to a respiratory hazard

OR

- Could be exposed to one of the specific hazards listed below.

This part applies to any workplace with potential or actual employee exposure to respiratory hazards. It requires you to protect employees from respiratory hazards by applying this protection strategy:

- Evaluate employee exposures to determine if controls are needed
- Use feasible controls. For example, enclose or confine the operation, use ventilation systems, or substitute with less toxic material
- Use respirators if controls are not feasible or if they cannot completely remove the hazard.

Definition:**Exposed or exposure:**

The contact an employee has with a toxic substance, harmful physical agent or oxygen deficient condition, whether or not protection is provided by respirators or other personal protective equipment (PPE). Exposure can occur through various routes of entry, such as inhalation, ingestion, skin contact, or skin absorption

Note: Examples of substances that may be respiratory hazards when airborne include:

- Chemicals listed in Table 3
- Any substance
 - Listed in the latest edition of the NIOSH Registry of Toxic Effects of Chemical Substances
 - For which positive evidence of an acute or chronic health hazard exists through tests conducted by, or known to, the employer
 - That may pose a hazard to human health as stated on a material safety data sheet kept by, or known to, the employer
- Atmospheres considered oxygen deficient
- Biological agents such as harmful bacteria, viruses or fungi
 - Examples include airborne TB aerosols and anthrax
- Pesticides with a label requirement for respirator use
- Chemicals used as crowd control agents such as pepper spray
- Chemicals present at clandestine drug labs. These substances can be airborne as dusts, fibers, fogs, fumes, mists, gases, smoke, sprays, vapors, or aerosols.

Reference:

- Substances in Table 3 that are marked with an X in the "skin" column may require personal protective equipment (PPE). See WAC 296-307-100, Personal protective equipment, for additional information and requirements.

• If any of the following hazards are present in your workplace, you will need both this part and any of the following specific rules that apply:

Hazard	Rule that applies
Acrylonitrile	WAC 296-62-07336
Arsenic (inorganic)	WAC 296-62-07347
Asbestos	WAC 296-62-077
Benzene	WAC 296-62-07523
Butadiene	WAC 296-62-07460
Cadmium	WAC 296-62-074 through 296-62-07449 or 296-155-174
Carcinogens	Chapter 296-62 WAC, Part F
Coke ovens	Chapter 296-62 WAC, Part O
Cotton dust	Chapter 296-62 WAC, Part N
1,2-Dibromo-3-chloropropane	WAC 296-62-07342
Ethylene oxide	WAC 296-62-07355
Formaldehyde	WAC 296-62-07540
Lead	WAC 296-62-07521 or 296-155-176
Methylene chloride	WAC 296-62-07470
Methylenedianiline	WAC 296-62-076 or 296-155-173
Thiram	WAC 296-62-07519
Vinyl chloride	WAC 296-62-07329

NEW SECTION**WAC 296-307-626 Evaluate and control employee exposures.****Summary:****Your responsibility:**

To protect your employees from exposure to respiratory hazards in the workplace by identifying and controlling the hazards.

You must:

- Identify and evaluate employee exposures
WAC 296-307-62605
- Control employee exposures
WAC 296-307-62610
- Use respirators
WAC 296-307-62615
- Notify employees
WAC 296-307-62620
- Permissible exposure limits of air contaminants
WAC 296-307-62625.

NEW SECTION**WAC 296-307-62605 Identify and evaluate respiratory hazards.****You must:**

- Make sure employees are protected from potentially hazardous exposure while you perform your evaluation
- Perform your evaluation without considering the protection provided to employees by a respirator

- Determine the form of the hazard, such as dust, mist, gas, oxygen deficiency, or biological agent
- Make sure you consider:
 - Potential emergency and rescue situations that may occur, such as equipment or power failures, uncontrolled chemical reactions, fire, explosion, or human error
 - Workplace conditions such as work processes, types of material, control methods, work practices and environmental conditions.
- Determine or reasonably estimate whether any employee is or could be exposed to any of the following:
 - Any airborne substance above a permissible exposure limit (PEL) listed in Table 3
 - A substance at or above the action level (AL) specified in the rule for that substance
 - Any other respiratory hazard.
- Use any of the following to determine employee exposure:
 - Information that would allow an estimate of the level of employee exposure, such as MSDSs or pesticide labels, observations, measurements or calculations
 - Data demonstrating that a particular product, material or activity cannot result in employee exposure at or above the AL or PEL
 - Personal air samples that represent an employee's usual or worst case exposure for the entire shift.

Note:

- Rules for specific substances may contain additional requirements for determining employee exposure.
- Use methods of sampling and analysis that have been validated by the laboratory performing the analysis.
- Samples from a representative group of employees may be used for other employees performing the same work activities when the duration and level of exposure are similar.

You must:

- Consider the atmosphere to be immediately dangerous to life or health (IDLH) when you cannot determine or reasonably estimate employee exposure
- Make sure employee exposure, to 2 or more substances with additive health effects, is evaluated using this formula:

$$E_m = \frac{C_1}{L_1} + \frac{C_2}{L_2} + \dots + \frac{C_n}{L_n}$$

The symbol	Is the . . .
E	Equivalent exposure for the mixture. When the value of E is greater than 1, a respiratory hazard is present.
C	Concentration of a particular substance.
L	TWA, STEL, or ceiling for that substance from Table 3.

NEW SECTION

WAC 296-307-62610 Control employee exposures.

You must:

- Use feasible controls to protect employees from exposure to respiratory hazards by:
 - Reducing employee exposure to a level that removes the respiratory hazard, such as to a level below the permissible exposure limit (PEL) in Table 3;

OR

- Reducing the exposure to the lowest achievable level, when the respiratory hazard cannot be removed.

Note: The following table gives you examples of control methods.

Table 1
Examples of Possible Controls

Control:	For example:
Using a different chemical (substitution)	<ul style="list-style-type: none"> • Choose a chemical with a lower evaporation rate or vapor pressure. • Choose a chemical without hazardous ingredients.
Changing a process to lessen emissions	<ul style="list-style-type: none"> • Use hand rolling or paint dipping instead of paint spraying. • Bolt items instead of welding them.
Separating employees from emissions areas and sources	<ul style="list-style-type: none"> • Use control rooms. • Build an enclosure around process machinery or other emissions sources. • Automate a process.
Removing emissions at or near the source (local exhaust ventilation)	<ul style="list-style-type: none"> • Install exhaust hoods or slots to capture emissions. • Use an exhausted enclosure (like a blasting cabinet or laboratory hood).
Diluting and removing emissions in the work area (general exhaust ventilation)	<ul style="list-style-type: none"> • Allow natural air movement to create an adequate airflow through an area. • Use mechanical fans.
Modify work practices	<ul style="list-style-type: none"> • Change the position of the worker relative to the work so fumes, vapors, or smoke do not go into their face.
Rotate employees – Some specific rules prohibit the use of this control method	<ul style="list-style-type: none"> • Move employees to another job that is without exposure, on a schedule to keep their total exposure below the permissible exposure limit.

NEW SECTION

WAC 296-307-62615 Use respirators.

You must:

- Require employees to use respiratory protection when respiratory hazards have not been removed using feasible controls. For example, use respirators at any of the following times:
 - While controls are being evaluated or put in place
 - When the respiratory hazard is not completely removed

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- When controls are **not** feasible.

Reference: See WAC 296-307-594, Respirators, for respirator program requirements.

NEW SECTION

WAC 296-307-62620 Notify employees.

You must:

• Notify employees who are or may be exposed to respiratory hazards, as specified in Table 2.

Note: • The notification may be provided either individually, to a group, or by posting of results in an appropriate location that's accessible to affected employees.

**Table 2
Notification Requirements**

Notify employees of:	As follows:
Any exposure result above a permissible exposure limit (PEL)	Within five business days, after the employee's exposure result is known to the employer
The corrective action being taken to reduce employee exposure to or below the PEL AND The schedule for completion of the corrective action and any reasons why exposures cannot be lowered to below the PEL	Within fifteen business days, after the employee's exposure result is known to the employer
An exposure to these substances: • Acrylonitrile • Arsenic (inorganic) • Asbestos • Benzene • Butadiene • Cadmium • Coke oven emissions • Cotton dust • 1,2-Dibromo-3-chloropropane • Ethylene oxide • Formaldehyde • Lead • Methylene chloride • Methylenedianiline • Vinyl chloride	In writing, as specified in the rule specific to the substance

NEW SECTION

WAC 296-307-62625 Permissible exposure limits of air contaminants.

IMPORTANT:

The following information applies to Table 3, Permissible Exposure Limits for Air Contaminants.

• Exposure needs to be determined from personal air samples taken in the breathing zone or from monitoring representative of the employee's breathing zone.

• Ppm refers to parts of vapor or gas per million parts of air by volume, at 25 degrees C and 760 mm Hg pressure.

• Mg/m³ refers to milligrams of substance per cubic meter of air.

• For a metal that is measured as the metal itself, only the CAS number for the metal is given. The CAS numbers for individual compounds of the metal are not provided. For more information about CAS registry numbers see the website: <http://www.cas.org>.

• Time weighted averages (TWA₈) represent the maximum allowed average exposure for any 8-hour time period. For work periods longer than 8 hours the TWA₈ needs to be determined using the 8 continuous hours with the highest average concentration.

• Short-term exposure limits (STEL) represent maximum allowed average exposure for any fifteen-minute period, unless another time period is noted in Table 3.

• The ceiling represents the maximum allowed exposure for the shortest time period that can feasibly be measured.

• An "X" in the "skin" column indicates the substance can be absorbed through the skin, either by airborne or direct contact.

• Requirements for the use of gloves, coveralls, goggles, and other personal protective equipment can be found in WAC 296-307-100.

• The respirable fraction of particulate is measured by sampling with a size-selector having the following characteristics:

Mean aerodynamic diameter in micrometers	Percent passing the selector
1	97
2	91
3	74
4	50
5	30
6	17
7	9
8	5
10	1

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Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Abate (Temephos)	3383-96-8	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Acetaldehyde	75-07-0	100 ppm	150 ppm	—	—
Acetic acid	64-19-7	10 ppm	20 ppm	—	—
Acetic anhydride	108-24-7	—	—	5 ppm	—
Acetone	67-64-1	750 ppm	1,000 ppm	—	—
Acetonitrile	75-05-8	40 ppm	60 ppm	—	—
2-Acetylaminofluorene (see WAC 296-62-073)	53-96-3	—	—	—	—
Acetylene	74-86-2	Simple asphyxiant	—	—	—
Acetylene dichloride (1,2-Dichloroethylene)	540-59-0	200 ppm	250 ppm	—	—
Acetylene tetrabromide	79-27-6	1 ppm	3 ppm	—	—
Acetylsalicylic acid (Aspirin)	50-78-2	5 mg/m ³	10 mg/m ³	—	—
Acrolein	107-02-8	0.1 ppm	0.3 ppm	—	—
Acrylamide	79-06-1	0.03 mg/m ³	0.09 mg/m ³	—	X
Acrylic acid	79-10-7	10 ppm	20 ppm	—	X
Acrylonitrile (Vinyl cyanide) (see WAC 296-62-07336)	107-13-1	2 ppm	10 ppm	—	—
Aldrin	309-00-2	0.25 mg/m ³	0.75 mg/m ³	—	X
Allyl alcohol	107-18-6	2 ppm	4 ppm	—	X
Allyl chloride	107-05-1	1 ppm	2 ppm	—	—
Allyl glycidyl ether (AGE)	106-92-3	5 ppm	10 ppm	—	—
Allyl propyl disulfide	2179-59-1	2 ppm	3 ppm	—	—
alpha-Alumina (Aluminum oxide)	1344-28-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Aluminum (as Al)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Pyro powders	—	5 mg/m ³	10 mg/m ³	—	—
Welding fumes	—	5 mg/m ³	10 mg/m ³	—	—
Soluble salts	—	2 mg/m ³	4 mg/m ³	—	—
Alkyls (NOC)	—	2 mg/m ³	4 mg/m ³	—	—
Aluminum oxide (Alundum, Corundum)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
4-Aminodiphenyl (see WAC 296-62-073)	92-67-1	—	—	—	—
2-Aminoethanol (Ethanolamine)	141-43-5	3 ppm	6 ppm	—	—
2-Aminopyridine	504-29-0	0.5 ppm	1.5 ppm	—	—
Amitrole	61-82-5	0.2 mg/m ³	0.6 mg/m ³	—	—
Ammonia	7664-41-7	25 ppm	35 ppm	—	—
Ammonium chloride, fume	12125-02-9	10 mg/m ³	20 mg/m ³	—	—
Ammonium sulfamate (Ammate)	7773-06-0	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5.0 mg/m ³	10 mg/m ³	—	—
n-Amyl acetate	628-63-7	100 ppm	150 ppm	—	—
sec-Amyl acetate	626-38-0	125 ppm	156 ppm	—	—
Aniline and homologues	62-53-3	2 ppm	4 ppm	—	X

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Anisidine (o, p-isomers)	29191-52-4	0.1 ppm	0.3 ppm	—	X
Antimony and compounds (as Sb)	7440-36-0	0.5 mg/m ³	1.5 mg/m ³	—	—
ANTU (alpha Naphthyl thiourea)	86-88-4	0.3 mg/m ³	0.9 mg/m ³	—	—
Argon	7440-37-1	Simple asphyxiant	—	—	—
Arsenic, organic compounds (as As)	7440-38-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Arsenic, inorganic compounds (as As) (when use is covered by WAC 296-62-07347)	7440-38-2	0.01 mg/m ³	—	—	—
Arsenic, inorganic compounds (as As) (when use is not covered by WAC 296-62-07347)	7440-38-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Arsine	7784-42-1	0.05 ppm	0.15 ppm	—	—
Asbestos (see WAC 296-62-077)	—	—	—	—	—
Asphalt (Petroleum fumes)	8052-42-4	5 mg/m ³	10 mg/m ³	—	—
Atrazine	1912-24-9	5 mg/m ³	10 mg/m ³	—	—
Azinphos methyl (Guthion)	86-50-0	0.2 mg/m ³	0.6 mg/m ³	—	X
Azodrin (Monocrotophos)	6923-22-4	0.25 mg/m ³	0.75 mg/m ³	—	—
Barium, soluble compounds (as Ba)	7440-39-3	0.5 mg/m ³	1.5 mg/m ³	—	—
Barium sulfate	7727-43-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Baygon (Propoxur)	114-26-1	0.5 mg/m ³	1.5 mg/m ³	—	—
Benomyl	17804-35-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Benzene (see WAC 296-62-07523)	71-43-2	1 ppm	5 ppm	—	—
Benzidine (see WAC 296-62-073)	92-87-5	—	—	—	—
p-Benzoquinone (Quinone)	106-51-4	0.1 ppm	0.3 ppm	—	—
Benzo(a) pyrene (Coal tar pitch volatiles)	65996-93-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Benzoyl peroxide	94-36-0	5 mg/m ³	10 mg/m ³	—	—
Benzyl chloride	100-44-7	1 ppm	3 ppm	—	—
Beryllium and beryllium compounds (as Be)	7440-41-7	0.002 mg/m ³	0.005 mg/m ³ (30 min.)	0.025 mg/m ³	—
Biphenyl (Diphenyl)	92-52-4	0.2 ppm	0.6 ppm	—	—
Bismuth telluride, undoped	1304-82-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Bismuth telluride, Se-doped	—	5 mg/m ³	10 mg/m ³	—	—
Borates, tetra, sodium salts	—	—	—	—	—
Anhydrous	1330-43-4	1 mg/m ³	3 mg/m ³	—	—
Decahydrate	1303-96-4	5 mg/m ³	10 mg/m ³	—	—
Pentahydrate	12179-04-3	1 mg/m ³	3 mg/m ³	—	—
Boron oxide	1303-86-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Boron tribromide	10294-33-4	—	—	1 ppm	—

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Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Boron trifluoride	6737-07-2	—	—	1 ppm	—
Bromacil	314-40-9	1 ppm	3 ppm	—	—
Bromine	7726-95-6	0.1 ppm	0.3 ppm	—	—
Bromine pentafluoride	7789-30-2	0.1 ppm	0.3 ppm	—	—
Bromochloromethane (Chlorobromomthane)	74-97-5	200 ppm	250 ppm	—	—
Bromoform	15-25-2	0.5 ppm	1.5 ppm	—	X
Butadiene (1,3-butadiene)	106-99-0	1 ppm	5 ppm	—	—
Butane	106-97-8	800 ppm	1,000 ppm	—	—
Butanethiol (Butyl mercaptan)	109-79-5	0.5 ppm	1.5 ppm	—	—
2-Butanone (Methyl ethyl ketone)	78-93-3	200 ppm	300 ppm	—	—
2-Butoxy ethanol (Butyl cellosolve)	111-76-2	25 ppm	38 ppm	—	X
n-Butyl acetate	123-86-4	150 ppm	200 ppm	—	—
sec-Butyl acetate	105-46-4	200 ppm	250 ppm	—	—
tert-Butyl acetate	540-88-5	200 ppm	250 ppm	—	—
Butyl acrylate	141-32-2	10 ppm	20 ppm	—	—
n-Butyl alcohol	71-36-3	—	—	50 ppm	X
sec-Butyl alcohol	78-92-2	100 ppm	150 ppm	—	—
tert-Butyl alcohol	75-65-0	100 ppm	150 ppm	—	—
Butylamine	109-73-9	—	—	5 ppm	X
Butyl cellosolve (2-Butoxy ethanol)	111-76-2	25 ppm	38 ppm	—	—
tert-Butyl chromate (as CrOs)	1189-85-1	—	—	0.1 mg/m ³	X
n-Butyl glycidyl ether (BGE)	2426-08-6	25 ppm	38 ppm	—	—
n-Butyl lactate	138-22-7	5 ppm	10 ppm	—	—
Butyl mercaptan	109-79-5	0.5 ppm	1.5 ppm	—	—
o-sec-Butylphenol	89-72-5	5 ppm	10 ppm	—	X
p-tert-Butyl-toluene	98-51-1	10 ppm	20 ppm	—	—
Cadmium oxide fume (as Cd) (see WAC 296-62-074)	1306-19-0	0.005 mg/m ³	—	—	—
Cadmium dust and salts (as Cd) (see WAC 296-62-074)	7440-43-9	0.005 mg/m ³	—	—	—
Calcium arsenate (see WAC 296-62-07347)	—	0.01 mg/m ³	—	—	—
Calcium carbonate	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Calcium cyanamide	156-62-7	0.5 mg/m ³	1.5 mg/m ³	—	—
Calcium hydroxide	1305-62-0	5 mg/m ³	10 mg/m ³	—	—
Calcium oxide	1305-78-8	2 mg/m ³	4 mg/m ³	—	—
Calcium silicate	1344-95-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Calcium sulfate	7778-18-9	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Camphor (synthetic)	76-22-2	2 mg/m ³	4 mg/m ³	—	—
Caprolactam	105-60-2	—	—	—	—
Dust	—	1 mg/m ³	3 mg/m ³	—	—
Vapor	—	5 ppm	10 ppm	—	—
Captafol (Difolatan)	2425-06-1	0.1 mg/m ³	0.3 mg/m ³	—	X

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Captan	133-06-2	5 mg/m ³	10 mg/m ³	—	—
Carbaryl (Sevin)	63-25-2	5 mg/m ³	10 mg/m ³	—	—
Carbofuran (Furadon)	1563-66-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Carbon black	1333-86-4	3.5 mg/m ³	7 mg/m ³	—	—
Carbon dioxide	124-38-9	5,000 ppm	30,000 ppm	—	—
Carbon disulfide	75-15-0	4 ppm	12 ppm	—	X
Carbon monoxide	630-08-0	35 ppm	200 ppm (5 min.)	1,500 ppm	—
Carbon tetrabromide	558-13-4	0.1 ppm	0.3 ppm	—	—
Carbon tetrachloride (Tetrachloromethane)	56-23-5	2 ppm	4 ppm	—	X
Carbonyl chloride (Phosgene)	7803-51-2	0.1 ppm	0.3 ppm	—	—
Carbonyl fluoride	353-50-4	2 ppm	5 ppm	—	—
Catechol (Pyrocatechol)	120-80-9	5 ppm	10 ppm	—	X
Cellosolve acetate (2-Ethoxyethylacetate)	111-15-9	5 ppm	10 ppm	—	X
Cellulose (paper fiber)	9004-34-6	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Cesium hydroxide	21351-79-1	2 mg/m ³	4 mg/m ³	—	—
Chlordane	57-74-9	0.5 mg/m ³	1.5 mg/m ³	—	X
Chlorinated camphene (Toxaphen)	8001-35-2	0.5 mg/m ³	1 mg/m ³	—	X
Chlorinated diphenyl oxide	55720-99-5	0.5 mg/m ³	1.5 mg/m ³	—	—
Chlorine	7782-50-5	0.5 ppm	—	1 ppm	—
Chlorine dioxide	10049-04-4	0.1 ppm	0.3 ppm	—	—
Chlorine trifluoride	7790-91-2	—	—	0.1 ppm	—
Chloroacetaldehyde	107-20-0	—	—	1 ppm	—
o-Chloroacetophenone (Phenacyl chloride)	532-21-4	0.05 ppm	0.15 ppm	—	—
Chloroacetyl chloride	79-04-9	0.05 ppm	0.15 ppm	—	—
Chlorobenzene (Monochlorobenzene)	108-90-7	75 ppm	113 ppm	—	—
o-Chlorobenzylidene malononitrile (OCBM)	2698-41-1	—	—	0.05 ppm	X
Chlorobromomethane	74-97-5	200 ppm	250 ppm	—	—
2-Chloro-1, 3-butadiene (beta-Chloroprene)	126-99-8	10 ppm	20 ppm	—	X
Chlorodifluoromethane	75-45-6	1,000 ppm	1,250 ppm	—	—
Chlorodiphenyl (42% Chlorine) (PCB) (Polychlorobiphenyls)	53469-21-9	1 mg/m ³	3 mg/m ³	—	X
Chlorodiphenyl (54% Chlorine) (Polychlorobiphenyls (PCB))	11097-69-1	0.5 mg/m ³	1.5 mg/m ³	—	X
1-Chloro-2, 3-epoxypropane (Epichlorhydrin)	106-89-8	2 ppm	4 ppm	—	X
2-Chloroethanol (Ethylene chlorohydrin)	107-07-3	—	—	1 ppm	X
Chloroethylene (vinyl chloride) (See WAC 296-62-07329)	75-01-4	1 ppm	5 ppm	—	—
Chloroform (Trichloromethane)	67-66-3	2 ppm	4 ppm	—	—
1-Chloro-1-nitropropane	600-25-9	2 ppm	4 ppm	—	—
bis-Chloromethyl ether (see WAC 296-62-073)	542-88-1	—	—	—	—

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Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Chloromethyl methyl ether (Methyl chloromethyl ether) (see WAC 296-62-073)	107-30-2	—	—	—	—
Chloropentafluoroethane	76-15-3	1,000 ppm	1,250 ppm	—	—
Chloropicrin (Nitrotrichloromethane)	76-06-2	0.1 ppm	0.3 ppm	—	—
beta-Chloroprene (2-Chloro-1,3-butadiene)	126-99-8	10 ppm	20 ppm	—	X
o-Chlorostyrene	2039-87-4	50 ppm	75 ppm	—	—
o-Chlorotoluene	95-49-8	50 ppm	75 ppm	—	—
2-Chloro-6-trichloromethyl pyridine (Nitrapyrin)	1929-82-4	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Chlorpyrifos	2921-88-2	0.2 mg/m ³	0.6 mg/m ³	—	X
Chromic acid and chromates (as CrO ₃)	Varies with compound	0.1 mg/m ³	0.3 mg/m ³	—	—
Chromium, soluble, chromic and chromous salts (as Cr)	7440-47-3	0.5 mg/m ³	1.5 mg/m ³	—	—
Chromium (VI) compounds (as Cr)	—	0.05 mg/m ³	0.15 mg/m ³	—	—
Chromium metal and insoluble salts	7440-47-3	0.5 mg/m ³	1.5 mg/m ³	—	—
Chromyl chloride	14977-61-8	0.025 ppm	0.075 ppm	—	—
Chrysene (Coal tar pitch volatiles)	65996-93-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Clopidol	2971-90-6	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Coal dust (less than 5% SiO ₂)	—	—	—	—	—
Respirable fraction	—	2 mg/m ³	4 mg/m ³	—	—
Coal dust (greater than or equal to 5% SiO ₂)	—	—	—	—	—
Respirable fraction	—	0.1 mg/m ³	0.3 mg/m ³	—	—
Coal tar pitch volatiles (benzene soluble fraction) • (Particulate polycyclic aromatic hydrocarbons)	65996-93-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Cobalt, metal fume & dust (as Co)	7440-48-4	0.05 mg/m ³	0.15 mg/m ³	—	—
Cobalt carbonyl (as Co)	10210-68-1	0.1 mg/m ³	0.3 mg/m ³	—	—
Cobalt hydrocarbonyl (as Co)	16842-03-8	0.1 mg/m ³	0.3 mg/m ³	—	—
Coke oven emissions (see WAC 296-62-200)	—	0.15 mg/m ³	—	—	—
Copper (as Cu)	7440-50-8	—	—	—	—
Fume	—	0.1 mg/m ³	0.3 mg/m ³	—	—
Dusts and mists	—	1 mg/m ³	3 mg/m ³	—	—
Cotton dust (raw) (waste sorting, blending, cleaning, willowing and garetting) (see WAC 296-62-14533)	—	1 mg/m ³	—	—	—
Corundum (Aluminum oxide)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Crag herbicide (Sesone, Sodium-2,4-dichloro-phenoxyethyl sulfate)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—

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Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Cresol (all isomers)	1319-77-3	5 ppm	10 ppm	—	X
Crotonaldehyde	123-73-9; 4170-30-3	2 ppm	4 ppm	—	—
Crufomate	299-86-5	5 mg/m ³	10 mg/m ³	—	—
Cumene	98-82-8	50 ppm	75 ppm	—	X
Cyanamide	420-04-2	2 mg/m ³	4 mg/m ³	—	—
Cyanide (as CN)	Varies with compound	5 mg/m ³	10 mg/m ³	—	X
Cyanogen	460-19-5	10 ppm	20 ppm	—	—
Cyanogen chloride	506-77-4	—	—	0.3 ppm	—
Cyclohexane	110-82-7	300 ppm	375 ppm	—	—
Cyclohexanol	108-93-0	50 ppm	75 ppm	—	X
Cyclohexanone	108-94-1	25 ppm	38 ppm	—	X
Cyclohexene	110-83-8	300 ppm	375 ppm	—	—
Cyclohexylamine	108-91-8	10 ppm	20 ppm	—	—
Cyclonite (RDX)	121-82-4	1.5 mg/m ³	3.0 mg/m ³	—	X
Cyclopentadiene	542-92-7	75 ppm	113 ppm	—	—
Cyclopentane	287-92-3	600 ppm	750 ppm	—	—
Cyhexatin (Tricyclohexyltin hydroxide)	13121-70-5	5 mg/m ³	10 mg/m ³	—	—
2,4-D (Dichlorophenoxy- acetic acid)	94-75-7	10 mg/m ³	20 mg/m ³	—	—
DBCP (1,2-Dibromo-3- chloropropane) (See WAC 296-62-07342)	96-12-8	0.001 ppm	—	0.005 ppm	—
DDT (Dichlorodiphenyltri- chloroethane)	50-29-3	1 mg/m ³	3 mg/m ³	—	X
DDVP, (Dichlorvos)	62-73-7	0.1 ppm	0.3 ppm	—	X
Dasanit (Fensulfothion)	115-90-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Decaborane	17702-41-9	0.05 ppm	0.15 ppm	—	X
Demeton	8065-48-3	0.01 ppm	0.03 ppm	—	X
Diacetone alcohol (4-hydroxy-4-methyl- 2-pentanone)	123-42-2	50 ppm	75 ppm	—	—
1, 2-Diaminoethane (Ethylenediamine)	107-15-3	10 ppm	20 ppm	—	—
Diazinon	333-41-5	0.1 mg/m ³	0.3 mg/m ³	—	X
Diazomethane	334-88-3	0.2 ppm	0.6 ppm	—	—
Diborane	19287-45-7	0.1 ppm	0.3 ppm	—	—
Dibrom (see Naled)	300-76-5	3 mg/m ³	6 mg/m ³	—	X
1, 2-Dibromo-3-chloropropane (DBCP) (see WAC 296-62-07342)	96-12-8	0.001 ppm	—	0.005 ppm	—
2-N-Dibutylamino ethanol	102-81-8	2 ppm	4 ppm	—	X
Dibutyl phosphate	107-66-4	1 ppm	2 ppm	—	—
Dibutyl phthalate	84-74-2	5 mg/m ³	10 mg/m ³	—	—
Dichloroacetylene	7572-29-4	—	—	0.1 ppm	—
o-Dichlorobenzene	95-50-1	—	—	50 ppm	—
p-Dichlorobenzene	106-46-7	75 ppm	110 ppm	—	—
3, 3'-Dichlorobenzidine (see WAC 296-62-073)	91-94-1	—	—	—	—
Dichlorodiphenyltri- chloroethane (DDT)	50-29-3	1 mg/m ³	3 mg/m ³	—	X
Dichlorodifluoromethane	75-71-8	1,000 ppm	1,250 ppm	—	—

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Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
1, 3-Dichloro-5, 5-dimethyl hydantoin	118-52-5	0.2 mg/m ³	0.4 mg/m ³	—	—
1, 1-Dichloroethane (Ethylidene chloride)	75-34-3	100 ppm	150 ppm	—	—
1, 2-Dichloroethane (Ethylene dichloride)	107-06-2	1 ppm	2 ppm	—	—
1, 1-Dichloroethylene (Vinylidene chloride)	75-35-4	1 ppm	3 ppm	—	—
1, 2-Dichloroethylene (Acetylene dichloride)	540-59-0	200 ppm	250 ppm	—	—
Dichloroethyl ether	111-44-4	5 ppm	10 ppm	—	X
Dichlorofluoromethane	75-43-4	10 ppm	20 ppm	—	—
Dichloromethane (Methylene chloride) (See WAC 296-62-07470)	75-09-2	25 ppm	125 ppm	—	—
1, 1-Dichloro-1-nitroethane	594-72-9	2 ppm	10 ppm	—	—
Dichlorophenoxyacetic acid (2, 4-D)	94-75-7	10 mg/m ³	20 mg/m ³	—	—
1, 2-Dichloropropane (Propylene dichloride)	78-87-5	75 ppm	110 ppm	—	—
Dichloropropene	542-75-6	1 ppm	3 ppm	—	X
2, 2-Dichloropropionic acid	75-99-0	1 ppm	3 ppm	—	—
Dichlorotetrafluoroethane	76-14-2	1,000 ppm	1,250 ppm	—	—
Dichlorvos (DDVP)	62-73-7	0.1 ppm	0.3 ppm	—	X
Dicrotophos	141-66-2	0.25 mg/m ³	0.75 mg/m ³	—	X
Dicyclopentadiene	77-73-6	5 ppm	10 ppm	—	—
Dicyclopentadienyl iron	102-54-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Dieldrin	60-57-1	0.25 mg/m ³	0.75 mg/m ³	—	X
Diethanolamine	111-42-2	3 ppm	6 ppm	—	—
Diethylamine	109-89-7	10 ppm	25 ppm	—	—
2-Diethylaminoethanol	100-37-8	10 ppm	20 ppm	—	X
Diethylene triamine	111-40-0	1 ppm	3 ppm	—	X
Diethyl ether (Ethyl ether)	60-29-7	400 ppm	500 ppm	—	—
Diethyl ketone	96-22-0	200 ppm	250 ppm	—	—
Diethyl phthalate	84-66-2	5 mg/m ³	10 mg/m ³	—	—
Difluorodibromomethane	75-61-6	100 ppm	150 ppm	—	—
Difolatan (Captafol)	2425-06-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Diglycidyl ether (DGE)	2238-07-5	0.1 ppm	0.3 ppm	—	—
Dihydroxybenzene (Hydroquinone)	123-31-9	2 mg/m ³	4 mg/m ³	—	—
Diisobutyl ketone (2, 6-Dimethylheptanone)	108-83-8	25 ppm	38 ppm	—	—
Diisopropylamine	108-18-9	5 ppm	10 ppm	—	X
Dimethoxymethane (Methylal)	109-87-5	1,000 ppm	1,250 ppm	—	—
Dimethyl acetamide	127-19-5	10 ppm	20 ppm	—	X
Dimethylamine	124-40-3	10 ppm	20 ppm	—	—
4-Dimethylaminoazo benzene (see WAC 296-62-073)	60-11-7	—	—	—	—
Dimethylaminobenzene (Xylidene)	1300-73-8	2 ppm	4 ppm	—	X
Dimethylaniline (N, N-Dimethylaniline)	121-69-7	5 ppm	10 ppm	—	X
Dimethylbenzene (Xylene)	1300-73-8	100 ppm	150 ppm	—	—

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin	
Dimethyl-1, 2-dibromo-2, 2-dichloroethyl phosphate (Naled)	300-76-5	3 mg/m ³	6 mg/m ³	—	X	
Dimethylformamide	68-12-2	10 ppm	20 ppm	—	X	
2, 6-Dimethylheptanone (Diisobutyl ketone)	108-83-8	25 ppm	38 ppm	—	—	
1, 1-Dimethylhydrazine	57-14-7	0.5 ppm	1.5 ppm	—	X	
Dimethyl phthalate	131-11-3	5 mg/m ³	10 mg/m ³	—	—	
Dimethyl sulfate	77-78-1	0.1 ppm	0.3 ppm	—	X	
Dinitolmide (3, 5-Dinitro-o-toluamide)	148-01-6	5 mg/m ³	10 mg/m ³	—	—	
Dinitrobenzene (all isomers - alpha, meta and para)	528-29-0; 99-65-0;	100-25-4	0.15 ppm	0.45 ppm	—	X
Dinitro-o-cresol	534-52-1	0.2 mg/m ³	0.6 mg/m ³	—	X	
3, 5-Dinitro-o-toluamide (Dinitolmide)	148-01-6	5 mg/m ³	10 mg/m ³	—	—	
Dinitrotoluene	25321-14-6	1.5 mg/m ³	3 mg/m ³	—	X	
Dioxane (Diethylene dioxide)	123-91-1	25 ppm	38 ppm	—	X	
Dioxathion	78-34-2	0.2 mg/m ³	0.6 mg/m ³	—	X	
Diphenyl (Biphenyl)	92-52-4	0.2 ppm	0.6 ppm	—	—	
Diphenylamine	122-39-4	10 mg/m ³	20 mg/m ³	—	—	
Diphenylmethane diisocyanate (Methylene bisphenyl isocyanate (MDI))	101-68-8	—	—	0.02 ppm	—	
Dipropylene glycol methyl ether	34590-94-8	100 ppm	150 ppm	—	X	
Dipropyl ketone	123-19-3	50 ppm	75 ppm	—	—	
Diquat	85-00-7	0.5 mg/m ³	1.5 mg/m ³	—	—	
Di-sec, Octyl phthalate (Di-2-ethylhexylphthalate)	117-81-7	5 mg/m ³	10 mg/m ³	—	—	
Disulfiram	97-77-8	2 mg/m ³	4 mg/m ³	—	—	
Disulfoton	298-04-4	0.1 mg/m ³	0.3 mg/m ³	—	X	
2, 6-Di-tert-butyl-p-cresol	128-37-0	10 mg/m ³	20 mg/m ³	—	—	
Diuron	330-54-1	10 mg/m ³	20 mg/m ³	—	—	
Divinyl benzene	1321-74-0	10 ppm	20 ppm	—	—	
Emery	12415-34-8	—	—	—	—	
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—	
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—	
Endosulfan (Thiodan)	115-29-7	0.1 mg/m ³	0.3 mg/m ³	—	X	
Endrin	72-20-8	0.1 mg/m ³	0.3 mg/m ³	—	X	
Epichlorhydrin (1-Chloro-2, 3-epoxypropane)	106-89-8	2 ppm	4 ppm	—	X	
EPN	2104-64-5	0.5 mg/m ³	1.5 mg/m ³	—	X	
1, 2-Epoxypropane (Propylene oxide)	75-56-9	20 ppm	30 ppm	—	—	
2, 3-Epoxy-1-propanol (Glycidol)	556-52-5	25 ppm	38 ppm	—	—	
Ethane	—	Simple asphyxiant	—	—	—	
Ethanethiol (Ethyl mercaptan)	75-08-1	0.5 ppm	1.5 ppm	—	—	
Ethanol (Ethyl alcohol)	64-17-5	1,000 ppm	1,250 ppm	—	—	
Ethanolamine (2-Aminoethanol)	141-43-5	3 ppm	6 ppm	—	—	
Ethion	563-12-2	0.4 mg/m ³	1.2 mg/m ³	—	X	
2-Ethoxyethanol (Glycol monoethyl ether)	110-80-5	5 ppm	10 ppm	—	X	

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Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	5 ppm	10 ppm	—	X
Ethyl acetate	141-78-6	400 ppm	500 ppm	—	—
Ethyl acrylate	140-88-5	5 ppm	25 ppm	—	X
Ethyl alcohol (ethanol)	64-17-5	1,000 ppm	1,250 ppm	—	—
Ethylamine	75-04-07	10 ppm	20 ppm	—	—
Ethyl amyl ketone (5-Methyl-3-heptanone)	541-85-5	25 ppm	38 ppm	—	—
Ethyl benzene	100-41-4	100 ppm	125 ppm	—	—
Ethyl bromide	74-96-4	200 ppm	250 ppm	—	—
Ethyl butyl ketone (3-Heptanone)	106-35-4	50 ppm	75 ppm	—	—
Ethyl chloride	75-00-3	1,000 ppm	1,250 ppm	—	—
Ethylene	74-85-1	Simple asphyxiant	—	—	—
Ethylene chlorohydrin (2-Chloroethanol)	107-07-3	—	—	1 ppm	X
Ethylenediamine (1,2-Diaminoethane)	107-15-3	10 ppm	20 ppm	—	X
Ethylene dibromide	106-93-4	0.1 ppm	0.5 ppm	—	—
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	1 ppm	2 ppm	—	—
Ethylene glycol	107-21-1	—	—	50 ppm	—
Ethylene glycol dinitrate	628-96-6	—	0.1 mg/m ³	—	X
Ethylene glycol monomethyl ether acetate (Methyl cellosolve acetate)	—	5 ppm	10 ppm	—	X
Ethyleneimine (see WAC 296-62-073)	151-56-4	—	—	—	X
Ethylene oxide (see WAC 296-62-07359)	75-21-8	1 ppm	5 ppm	—	—
Ethyl ether (Diethyl ether)	60-29-7	400 ppm	500 ppm	—	—
Ethyl formate	109-94-4	100 ppm	125 ppm	—	—
Ethylidene chloride (1, 1-Dichloroethane)	107-06-2	1 ppm	2 ppm	—	—
Ethylidene norbornene	16219-75-3	—	—	5.0 ppm	—
Ethyl mercaptan (Ethanethiol)	75-08-1	0.5 ppm	1.5 ppm	—	—
n-Ethylmorpholine	100-74-3	5 ppm	10 ppm	—	X
Ethyl sec-amyl ketone (5-methyl-3-heptanone)	541-85-5	25 ppm	38 ppm	—	—
Ethyl silicate	78-10-4	10 ppm	20 ppm	—	—
Fenamiphos	22224-92-6	0.1 mg/m ³	0.3 mg/m ³	—	X
Fensulfothion (Dasanit)	115-90-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Fenthion	55-38-9	0.2 mg/m ³	0.6 mg/m ³	—	X
Ferbam	—	—	—	—	—
Total particulate	14484-64-1	10 mg/m ³	20 mg/m ³	—	—
Ferrovanadium dust	12604-58-9	1 mg/m ³	3 mg/m ³	—	—
Fluorides (as F)	Varies with compound	2.5 mg/m ³	5 mg/m ³	—	—
Fluorine	7782-41-4	0.1 ppm	0.3 ppm	—	—
Fluorotrichloromethane (see Trichlorofluoro methane)	75-69-4	—	—	1,000 ppm	—
Fonofos	944-22-9	0.1 mg/m ³	0.3 mg/m ³	—	X
Formaldehyde (see WAC 296-62-07540)	50-00-0	0.75 ppm	2 ppm	—	—
Formamide	75-12-7	20 ppm	30 ppm	—	—
Formic acid	64-18-6	5 ppm	10 ppm	—	—

PERMANENT

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Furadon (carbofuran)	1563-66-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Furfural	98-01-1	2 ppm	4 ppm	—	X
Furfuryl alcohol	98-00-0	10 ppm	15 ppm	—	X
Gasoline	8006-61-9	300 ppm	500 ppm	—	—
Germanium tetrahydride	7782-65-2	0.2 ppm	0.6 ppm	—	—
Glass, fibrous or dust	—	10 mg/m ³	20 mg/m ³	—	—
Gluteraldehyde	111-30-8	—	—	0.2 ppm	—
Glycerin mist	56-81-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Glycidol (2, 3-Epoxy-1-propanol)	556-52-5	25 ppm	38 ppm	—	—
Glycol monoethyl ether (2-Ethoxyethanol)	110-80-5	5 ppm	10 ppm	—	X
Grain dust (oat, wheat, barley)	—	10 mg/m ³	20 mg/m ³	—	—
Graphite, natural	7782-42-5	—	—	—	—
Respirable particulate	—	2.5 mg/m ³	5 mg/m ³	—	—
Graphite, synthetic	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Guthion (Azinphosmethyl)	86-50-0	0.2 mg/m ³	0.6 mg/m ³	—	X
Gypsum	13397-24-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Hafnium	7440-58-6	0.5 mg/m ³	1.5 mg/m ³	—	—
Helium	—	Simple asphyxiant	—	—	—
Heptachlor	76-44-8	0.5 mg/m ³	1.5 mg/m ³	—	X
Heptane (n-heptane)	142-82-5	400 ppm	500 ppm	—	—
2-Heptanone (Methyl n-amyl ketone)	110-43-0	50 ppm	75 ppm	—	—
3-Heptanone (Ethyl butyl ketone)	106-35-4	50 ppm	75 ppm	—	—
Hexachlorobutadiene	87-68-3	0.02 ppm	0.06 ppm	—	X
Hexachlorocyclopentadiene	77-47-4	0.01 ppm	0.03 ppm	—	—
Hexachloroethane	67-72-1	1 ppm	3 ppm	—	X
Hexachloronaphthalene	1335-87-1	0.2 mg/m ³	0.6 mg/m ³	—	X
Hexafluoroacetone	684-16-2	0.1 ppm	0.3 ppm	—	X
Hexane	—	—	—	—	—
n-hexane	110-54-3	50 ppm	75 ppm	—	—
other isomers	Varies with compound	500 ppm	1,000 ppm	—	—
2-Hexanone (Methyl-n-butyl ketone)	591-78-6	5 ppm	10 ppm	—	—
Hexone (Methyl isobutyl ketone)	108-10-1	50 ppm	75 ppm	—	—
sec-Hexyl acetate	108-84-9	50 ppm	75 ppm	—	—
Hexylene glycol	107-41-5	—	—	25 ppm	—
Hydrazine	302-01-2	0.1 ppm	0.3 ppm	—	X
Hydrogen	—	Simple asphyxiant	—	—	—
Hydrogenated terphenyls	61788-32-7	0.5 ppm	1.5 ppm	—	—
Hydrogen bromide	10035-10-6	—	—	3.0 ppm	—
Hydrogen chloride	7647-01-0	—	—	5.0 ppm	—
Hydrogen cyanide	74-90-8	—	4.7 ppm	—	X
Hydrogen fluoride	7664-39-3	—	—	3 ppm	—

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Hydrogen peroxide	7722-84-1	1 ppm	3 ppm	—	—
Hydrogen selenide (as Se)	7783-07-5	0.05 ppm	0.15 ppm	—	—
Hydrogen sulfide	7783-06-4	10 ppm	15 ppm	—	—
Hydroquinone (Dihydroxybenzene)	123-31-9	2 mg/m ³	4 mg/m ³	—	—
4-Hydroxy-4-methyl-2-pentanone (Diacetone alcohol)	123-42-2	50 ppm	75 ppm	—	—
2-Hydroxypropyl acrylate	99-61-1	0.5 ppm	1.5 ppm	—	X
Indene	95-13-6	10 ppm	20 ppm	—	—
Indium and compounds (as In)	7440-74-6	0.1 mg/m ³	0.3 mg/m ³	—	—
Iodine	7553-56-2	—	—	0.1 ppm	—
Iodoform	75-47-8	0.6 ppm	1.8 ppm	—	—
Iron oxide dust and fume (as Fe)	1309-37-1	—	—	—	—
Total particulate	—	5 mg/m ³	10 mg/m ³	—	—
Iron pentacarbonyl (as Fe)	13463-40-6	0.1 ppm	0.2 ppm	—	—
Iron salts, soluble (as Fe)	Varies with compound	1 mg/m ³	3 mg/m ³	—	—
Isoamyl acetate	123-92-2	100 ppm	150 ppm	—	—
Isoamyl alcohol (primary and secondary)	123-51-3	100 ppm	125 ppm	—	—
Isobutyl acetate	110-19-0	150 ppm	188 ppm	—	—
Isobutyl alcohol	78-83-1	50 ppm	75 ppm	—	—
Isooctyl alcohol	26952-21-6	50 ppm	75 ppm	—	X
Isophorone	78-59-1	4 ppm	—	5 ppm	—
Isophorone diisocyanate	4098-71-9	0.005 ppm	0.02 ppm	—	X
Isopropoxyethanol	109-59-1	25 ppm	38 ppm	—	—
Isopropyl acetate	108-21-4	250 ppm	310 ppm	—	—
Isopropyl alcohol	67-63-0	400 ppm	500 ppm	—	—
Isopropylamine	75-31-0	5 ppm	10 ppm	—	—
N-Isopropylaniline	768-52-5	2 ppm	4 ppm	—	X
Isopropyl ether	108-20-3	250 ppm	313 ppm	—	—
Isopropyl glycidyl ether (IGE)	4016-14-2	50 ppm	75 ppm	—	—
Kaolin	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Ketene	463-51-4	0.5 mg/m ³	1.5 mg/m ³	—	—
Lannate (Methomyl)	16752-77-5	2.5 mg/m ³	5 mg/m ³	—	—
Lead, inorganic (as Pb) (see WAC 296-62-07521 and 296-155-176)	7439-92-1	0.05 mg/m ³	—	—	—
Lead arsenate (as Pb) (see WAC 296-62-07347)	3687-31-8	0.05 mg/m ³	—	—	—
Lead chromate (as Pb)	7758-97-6	0.05 mg/m ³	—	—	—
Limestone	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Lindane	58-89-9	0.5 mg/m ³	1.5 mg/m ³	—	X
Lithium hydride	7580-67-8	0.025 mg/m ³	0.075 mg/m ³	—	—
L.P.G. (liquefied petroleum gas)	68476-85-7	1,000 ppm	1,250 ppm	—	—
Magnesite	546-93-0	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Magnesium oxide fume	1309-48-4	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Malathion	121-75-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	X
Maleic anhydride	108-31-6	0.25 ppm	0.75 ppm	—	—
Manganese and compounds (as Mn)	7439-96-5	—	—	5 mg/m ³	—
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Manganese tetroxide and fume (as Mn)	7439-96-5	1 mg/m ³	3 mg/m ³	—	—
Marble	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
MBOCA (4, 4'-Methylene bis (2-chloro-aniline)) (see WAC 296-62-073)	101-14-4	—	—	—	X
MDA (4, 4-Methylene dianiline) (see WAC 296-62-076)	101-77-9	0.01 ppm	0.1 ppm	—	X
MDI (Methylene bisphenyl isocyanate) (Diphenylmethane diisocyanate)	101-68-8	—	—	0.02 ppm	—
MEK (Methyl ethyl ketone) (2-Butanone)	78-93-3	200 ppm	300 ppm	—	—
MEKP (Methyl ethyl ketone peroxide)	1338-23-4	—	—	0.2 ppm	—
Mercury (as Hg)	7439-97-6	—	—	—	—
Aryl and inorganic	—	0.1 mg/m ³	0.3 mg/m ³	—	X
Organo-alkyl compounds	—	0.01 mg/m ³	0.03 mg/m ³	—	X
Vapor	—	0.05 mg/m ³	0.15 mg/m ³	—	X
Mesityl oxide	141-79-7	15 ppm	25 ppm	—	—
Methacrylic acid	79-41-4	20 ppm	30 ppm	—	X
Methane	—	Simple asphyxiant	—	—	—
Methanethiol (Methyl mercaptan)	74-93-1	0.5 ppm	1.5 ppm	—	—
Methanol (Methyl alcohol)	67-56-1	200 ppm	250 ppm	—	X
Methomyl (Iannate)	16752-77-5	2.5 mg/m ³	5 mg/m ³	—	—
Methoxychlor	72-43-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
2-Methoxyethanol (Methyl cellosolve)	109-86-4	5 ppm	10 ppm	—	X
2-Methoxyethyl acetate (Methyl cellosolve acetate)	110-49-6	5 ppm	10 ppm	—	X
4-Methoxyphenol	150-76-5	5 mg/m ³	10 mg/m ³	—	—
Methyl acetate	79-20-9	200 ppm	250 ppm	—	—
Methyl acetylene (propyne)	74-99-7	1,000 ppm	1,250 ppm	—	—
Methyl acetylene-propadiene mixture (MAPP)	—	1,000 ppm	1,250 ppm	—	—
Methyl acrylate	96-33-3	10 ppm	20 ppm	—	X
Methylacrylonitrile	126-98-7	1 ppm	3 ppm	—	X
Methylal (Dimethoxy-methane)	109-87-5	1,000 ppm	1,250 ppm	—	—
Methyl alcohol (methanol)	67-56-1	200 ppm	250 ppm	—	X
Methylamine	74-89-5	10 ppm	20 ppm	—	—
Methyl amyl alcohol (Methyl isobutyl carbinol)	108-11-2	25 ppm	40 ppm	—	X

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Methyl n-amyyl ketone (2-Heptanone)	110-43-0	50 ppm	75 ppm	—	—
N-Methyl aniline (Monomethyl aniline)	100-61-8	0.5 ppm	1.5 ppm	—	X
Methyl bromide	74-83-9	5 ppm	10 ppm	—	X
Methyl-n-butyl ketone (2-Hexanone)	591-78-6	5 ppm	10 ppm	—	—
Methyl cellosolve (2-Methoxyethanol)	109-86-4	5 ppm	10 ppm	—	X
Methyl cellosolve acetate (2-Methoxyethyl acetate)	110-49-6	5 ppm	10 ppm	—	X
Methyl chloride	74-87-3	50 ppm	100 ppm	—	—
Methyl chloroform (1, 1, 1-trichlorethane)	71-55-6	350 ppm	450 ppm	—	—
Methyl chloromethyl ether (chloromethyl methyl ether) (see WAC 296-62-073)	107-30-2	—	—	—	—
Methyl 2-cyanoacrylate	137-05-3	2 ppm	4 ppm	—	—
Methylcyclohexane	108-87-2	400 ppm	500 ppm	—	—
Methylcyclohexanol	25639-42-3	50 ppm	75 ppm	—	—
Methylcyclohexanone	583-60-8	50 ppm	75 ppm	—	X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12108-13-3	0.2 mg/m ³	0.6 mg/m ³	—	X
Methyl demeton	8022-00-2	0.5 mg/m ³	1.5 mg/m ³	—	X
Methylene bisphenyl isocyanate (MDI) (Diphenylmethane diisocyan- ate)	101-68-8	—	—	0.02 ppm	—
4, 4'-Methylene bis (2-chloro-aniline) (MBOCA) (see WAC 296-62-073)	101-14-4	—	—	—	X
Methylene bis (4-cyclohexylisocyanate)	5124-30-1	—	—	0.01 ppm	—
Methylene chloride (Dichloromethane) (see WAC 296-62-07470)	75-09-2	25 ppm	125 ppm	—	—
4, 4-Methylene dianiline (MDA) (see WAC 296-62-076)	101-77-9	0.01 ppm	0.1 ppm	—	X
Methyl ethyl ketone (MEK) (2-Butanone)	78-93-3	200 ppm	300 ppm	—	—
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	—	—	0.2 ppm	—
Methyl formate	107-31-3	100 ppm	150 ppm	—	—
5-Methyl-3-heptanone (Ethyl amyl ketone)	541-85-5	25 ppm	38 ppm	—	—
Methyl hydrazine (Monomethyl hydrazine)	60-34-4	—	—	0.2 ppm	X
Methyl iodide	74-88-4	2 ppm	4 ppm	—	X
Methyl isoamyl ketone	110-12-3	50 ppm	75 ppm	—	—
Methyl isobutyl carbinol (Methyl amyl alcohol)	108-11-2	25 ppm	40 ppm	—	X
Methyl isobutyl ketone (Hexone)	108-10-1	50 ppm	75 ppm	—	—
Methyl isocyanate	624-83-9	0.02 ppm	0.06 ppm	—	X
Methyl isopropyl ketone	563-80-4	200 ppm	250 ppm	—	—
Methyl mercaptan (Methanethiol)	74-93-1	0.5 ppm	1.5 ppm	—	—
Methyl methacrylate	80-62-6	100 ppm	150 ppm	—	—
Methyl parathion	298-00-0	0.2 mg/m ³	0.6 mg/m ³	—	X

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Methyl propyl ketone (2-Pentanone)	107-87-9	200 ppm	250 ppm	—	—
Methyl silicate	684-84-5	1 ppm	3 ppm	—	—
alpha-Methyl styrene	98-83-9	50 ppm	100 ppm	—	—
Mevinphos (Phosdrin)	7786-34-7	0.01 ppm	0.03 ppm	—	X
Metribuzin	21087-64-9	5 mg/m ³	10 mg/m ³	—	—
Mica (Silicates)					
Respirable fraction	12001-26-2	3 mg/m ³	6 mg/m ³	—	—
Molybdenum (as Mo)	7439-98-7	—	—	—	—
Soluble compounds	—	5 mg/m ³	10 mg/m ³	—	—
Insoluble compounds	—	10 mg/m ³	20 mg/m ³	—	—
Monochlorobenzene (Chlorobenzene)	108-90-7	75 ppm	113 ppm	—	—
Monocrotophos (Azodrin)	6923-22-4	0.25 mg/m ³	0.75 mg/m ³	—	—
Monomethyl aniline (N-Methyl aniline)	100-61-8	0.5 ppm	1.5 ppm	—	X
Monomethyl hydrazine	—	—	—	0.2 ppm	—
Morpholine	110-91-8	20 ppm	30 ppm	—	X
Naled (Dibrom)	300-76-5	3 mg/m ³	6 mg/m ³	—	X
Naphtha	8030-30-6	100 ppm	150 ppm	—	X
Naphthalene	91-20-3	10 ppm	15 ppm	—	—
alpha-Naphthylamine (see WAC 296-62-073)	134-32-7	—	—	—	—
beta-Naphthylamine (see WAC 296-62-073)	91-59-8	—	—	—	—
Neon	7440-01-9	Simple asphyxiant	—	—	—
Nickel carbonyl (as Ni)	13463-39-3	0.001 ppm	0.003 ppm	—	—
Nickel (as Ni)	7440-02-0	—	—	—	—
Metal and insoluble compounds	—	1 mg/m ³	3 mg/m ³	—	—
Soluble compounds	—	0.1 mg/m ³	0.3 mg/m ³	—	—
Nicotine	54-11-5	0.5 mg/m ³	1.5 mg/m ³	—	X
Nitrapyrin (2-Chloro-6 trichloromethyl pyridine)	1929-82-4	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Nitric acid	7697-37-2	2 ppm	4 ppm	—	—
Nitric oxide	10102-43-9	25 ppm	38 ppm	—	—
p-Nitroaniline	100-01-6	3 mg/m ³	6 mg/m ³	—	X
Nitrobenzene	98-95-3	1 ppm	3 ppm	—	X
4-Nitrobiphenyl (see WAC 296-62-073)	92-93-3	—	—	—	—
p-Nitrochlorobenzene	100-00-5	0.5 mg/m ³	1.5 mg/m ³	—	X
4-Nitrodiphenyl (see WAC 296-62-073)	—	—	—	—	—
Nitroethane	79-24-3	100 ppm	150 ppm	—	—
Nitrogen	7727-37-9	Simple asphyxiant	—	—	—
Nitrogen dioxide	10102-44-0	—	1 ppm	—	—
Nitrogen oxide (Nitrous oxide)	10024-97-2	50 ppm	75 ppm	—	—
Nitrogen trifluoride	7783-54-2	10 ppm	20 ppm	—	—
Nitroglycerin	55-63-0	—	0.1 mg/m ³	—	X
Nitromethane	75-52-5	100 ppm	150 ppm	—	—
1-Nitropropane	108-03-2	25 ppm	38 ppm	—	—
2-Nitropropane	79-46-9	10 ppm	20 ppm	—	—

PERMANENT

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
N-Nitrosodimethylamine (see WAC 296-62-073)	62-75-9	—	—	—	—
Nitrotoluene	—	—	—	—	—
o-isomer	88-72-2	2 ppm	4 ppm	—	X
m-isomer	98-08-2	2 ppm	4 ppm	—	X
p-isomer	99-99-0	2 ppm	4 ppm	—	X
Nitrotrichloromethane (Chloropicrin)	76-06-2	0.1 ppm	0.3 ppm	—	—
Nitrous oxide (Nitrogen oxide)	10024-97-2	50 ppm	75 ppm	—	—
Nonane	111-84-2	200 ppm	250 ppm	—	—
Octachloronaphthalene	2234-13-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Octane	111-65-9	300 ppm	375 ppm	—	—
Oil mist mineral (particulate)	8012-95-1	5 mg/m ³	10 mg/m ³	—	—
Osmium tetroxide (as Os)	20816-12-0	0.0002 ppm	0.0006 ppm	—	—
Oxalic acid	144-62-7	1 mg/m ³	2 mg/m ³	—	—
Oxygen difluoride	7783-41-7	—	—	0.05 ppm	—
Ozone	10028-15-6	0.1 ppm	0.3 ppm	—	—
Paper fiber (Cellulose)	9004-34-6	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Paraffin wax fume	8002-74-2	2 mg/m ³	4 mg/m ³	—	—
Paraquat	—	—	—	—	—
Respirable fraction	4685-14-7 1910-42-5 2074-50-2	0.1 mg/m ³	0.3 mg/m ³	—	X
Parathion	56-38-2	0.1 mg/m ³	0.3 mg/m ³	—	X
Particulate polycyclic aromatic hydrocarbons (benzene soluble fraction) (coal tar pitch volatiles)	65996-93-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Particulates not otherwise regulated	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Pentaborane	19624-22-7	0.005 ppm	0.015 ppm	—	—
Pentachloronaphthalene	1321-64-8	0.5 mg/m ³	1.5 mg/m ³	—	X
Pentachlorophenol	87-86-5	0.5 mg/m ³	1.5 mg/m ³	—	X
Pentaerythritol	115-77-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Pentane	109-66-0	600 ppm	750 ppm	—	—
2-Pentanone (methyl propyl ketone)	107-87-9	200 ppm	250 ppm	—	—
Perchloroethylene (tetrachloroethylene)	127-18-4	25 ppm	38 ppm	—	—
Perchloromethyl mercaptan	594-42-3	0.1 ppm	0.3 ppm	—	—
Perchloryl fluoride	7616-94-6	3 ppm	6 ppm	—	—
Perlite	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Petroleum distillates (Naphtha, rubber solvent)	—	100 ppm	150 ppm	—	—
Phenacyl chloride (a-Chloroacetophenone)	532-21-4	0.05 ppm	0.15 ppm	—	—

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Phenol	108-95-2	5 ppm	10 ppm	—	X
Phenothiazine	92-84-2	5 mg/m ³	10 mg/m ³	—	X
p-Phenylene diamine	106-50-3	0.1 mg/m ³	0.3 mg/m ³	—	X
Phenyl ether (vapor)	101-84-8	1 ppm	3 ppm	—	—
Phenyl ether-diphenyl mixture (vapor)	—	1 ppm	3 ppm	—	—
Phenylethylene (Styrene)	100-42-5	50 ppm	100 ppm	—	—
Phenyl glycidyl ether (PGE)	122-60-1	1 ppm	3 ppm	—	—
Phenylhydrazine	100-63-0	5 ppm	10 ppm	—	X
Phenyl mercaptan	108-98-5	0.5 ppm	1.5 ppm	—	—
Phenylphosphine	638-21-1	—	—	0.05 ppm	—
Phorate	298-02-2	0.05 mg/m ³	0.2 mg/m ³	—	X
Phosdrin (Mevinphos)	7786-34-7	0.01 ppm	0.03 ppm	—	X
Phosgene (carbonyl chloride)	75-44-5	0.1 ppm	0.3 ppm	—	—
Phosphine	7803-51-2	0.3 ppm	1 ppm	—	—
Phosphoric acid	7664-38-2	1 mg/m ³	3 mg/m ³	—	—
Phosphorus (yellow)	7723-14-0	0.1 mg/m ³	0.3 mg/m ³	—	—
Phosphorous oxychloride	10025-87-3	0.1 ppm	0.3 ppm	—	—
Phosphorus pentachloride	10026-13-8	0.1 ppm	0.3 ppm	—	—
Phosphorus pentasulfide	1314-80-3	1 mg/m ³	3 mg/m ³	—	—
Phosphorus trichloride	12-2-19	0.2 ppm	0.5 ppm	—	—
Phthalic anhydride	85-44-9	1 ppm	3 ppm	—	—
m-Phthalodinitrile	626-17-5	5 mg/m ³	10 mg/m ³	—	—
Picloram	1918-02-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Picric acid (2, 4, 6- Trinitrophenol)	88-89-1	0.1 mg/m ³	0.3 mg/m ³	—	X
Pindone					
(2-Pivalyl-1, 3-indandione, Pival)	83-26-1	0.1 mg/m ³	0.3 mg/m ³	—	—
Piperazine dihydrochloride	142-64-3	5 mg/m ³	10 mg/m ³	—	—
Pival (Pindone)	83-26-1	0.1 mg/m ³	0.3 mg/m ³	—	—
Plaster of Paris	26499-65-0	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Platinum (as Pt)	7440-06-4	—	—	—	—
Metal	—	1 mg/m ³	3 mg/m ³	—	—
Soluble salts	—	0.002 mg/m ³	0.006 mg/m ³	—	—
Polychlorobiphenyls (Chlorodiphenyls)	—	—	—	—	—
42% Chlorine (PCB)	53469-21-9	1 mg/m ³	3 mg/m ³	—	X
54% Chlorine (PCB)	11097-69-1	0.5 mg/m ³	1.5 mg/m ³	—	X
Portland cement	65997-15-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Potassium hydroxide	1310-58-3	—	—	2 mg/m ³	—
Propane	74-98-6	1,000 ppm	1,250 ppm	—	—
Propargyl alcohol	107-19-7	1 ppm	3 ppm	—	X
beta-Propiolactone (see WAC 296-62-073)	57-57-8	—	—	—	—
Propionic acid	79-09-4	10 ppm	20 ppm	—	—
Propoxur (Baygon)	114-26-1	0.5 mg/m ³	1.5 mg/m ³	—	—
n-Propyl acetate	109-60-4	200 ppm	250 ppm	—	—
n-Propyl alcohol	71-23-8	200 ppm	250 ppm	—	X
n-Propyl nitrate	627-13-4	25 ppm	40 ppm	—	—

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Propylene	—	Simple asphyxiant	—	—	—
Propylene dichloride (1, 2-Dichloropropane)	78-87-5	75 ppm	110 ppm	—	—
Propylene glycol dinitrate	6423-43-4	0.05 ppm	0.15 ppm	—	X
Propylene glycol monomethyl ether	107-98-2	100 ppm	150 ppm	—	—
Propylene imine	75-55-8	2 ppm	4 ppm	—	X
Propylene oxide (1,2- Epoxyp propane)	75-56-9	20 ppm	30 ppm	—	—
Propyne (Methyl acetylene)	74-99-7	1,000 ppm	1,250 ppm	—	—
Pyrethrum	8003-34-7	5 mg/m ³	10 mg/m ³	—	—
Pyridine	110-86-1	5 ppm	10 ppm	—	—
Pyrocatachol (Catechol)	120-80-9	5 ppm	10 ppm	—	X
Quinone (p-Benzoquinone)	106-51-4	0.1 ppm	0.3 ppm	—	—
RDX (Cyclonite)	—	1.5 mg/m ³	3 mg/m ³	—	X
Resorcinol	108-46-3	10 ppm	20 ppm	—	—
Rhodium (as Rh)	7440-16-6	—	—	—	—
Insoluble compounds, metal fumes and dusts	—	0.1 mg/m ³	0.3 mg/m ³	—	—
Soluble compounds, salts	—	0.001 mg/m ³	0.003 mg/m ³	—	—
Ronnel	299-84-3	10 mg/m ³	20 mg/m ³	—	—
Rosin core solder, pyrolysis products (as formaldehyde)	8050-09-7	0.1 mg/m ³	0.3 mg/m ³	—	—
Rotenone	83-79-4	5 mg/m ³	10 mg/m ³	—	—
Rouge	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Rubber solvent (naphtha)	8030-30-6	100 ppm	150 ppm	—	—
Selenium compounds (as Se)	7782-49-2	0.2 mg/m ³	0.6 mg/m ³	—	—
Selenium hexafluoride (as Se)	7783-79-1	0.05 ppm	0.15 ppm	—	—
Sesone (Crag herbicide)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Sevin (Carbaryl)	63-25-2	5 mg/m ³	10 mg/m ³	—	—
Silane (see Silicon tetrahydride)	7803-62-5	5 ppm	10 ppm	—	—
Silica, amorphous, precipitated and gel	112926-00-8	6 mg/m ³	12 mg/m ³	—	—
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	61790-53-2	—	—	—	—
Total particulate	—	6 mg/m ³	12 mg/m ³	—	—
Respirable fraction	—	3 mg/m ³	6 mg/m ³	—	—
Silica, crystalline cristobalite	—	—	—	—	—
Respirable fraction	14464-46-1	0.05 mg/m ³	0.15 mg/m ³	—	—
Silica, crystalline quartz	—	—	—	—	—
Respirable fraction	14808-60-7	0.1 mg/m ³	0.3 mg/m ³	—	—
Silica, crystalline tripoli (as quartz)	—	—	—	—	—
Respirable fraction	1317-95-9	0.1 mg/m ³	0.3 mg/m ³	—	—
Silica, crystalline tridymite	—	—	—	—	—
Respirable fraction	15468-32-3	0.05 mg/m ³	0.15 mg/m ³	—	—
Silica, fused	—	—	—	—	—
Respirable fraction	60676-86-0	0.1 mg/m ³	0.3 mg/m ³	—	—

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Silicates (less than 1% crystalline silica)	—	—	—	—	—
Mica	—	—	—	—	—
Respirable fraction	12001-26-2	3 mg/m ³	6 mg/m ³	—	—
Soapstone	—	—	—	—	—
Total particulate	—	6 mg/m ³	12 mg/m ³	—	—
Respirable fraction	—	3 mg/m ³	6 mg/m ³	—	—
Talc (containing asbestos) (see WAC 296-62-07705)	—	—	—	—	—
Talc (containing no asbestos)	—	—	—	—	—
Respirable fraction	14807-96-6	2 mg/m ³	4 mg/m ³	—	—
Tremolite (see WAC 296-62-07705)	—	—	—	—	—
Silicon	7440-21-3	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Silicon carbide	409-21-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Silicon tetrahydride (Silane)	7803-62-5	5 ppm	10 ppm	—	—
Silver, metal dust and soluble compounds (as Ag)	7440-22-4	0.01 mg/m ³	0.03 mg/m ³	—	—
Soapstone	—	—	—	—	—
Total particulate	—	6 mg/m ³	12 mg/m ³	—	—
Respirable fraction	—	3 mg/m ³	6 mg/m ³	—	—
Sodium azide (as HN ₃ or NaN ₃)	26628-22-8	—	—	0.1 ppm	X
Sodium bisulfite	7631-90-5	5 mg/m ³	10 mg/m ³	—	—
Sodium-2, 4-dichloro- phenoxyethyl sulfate (Crag herbicide)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Sodium fluoroacetate	62-74-8	0.05 mg/m ³	0.15 mg/m ³	—	X
Sodium hydroxide	1310-73-2	—	—	2 mg/m ³	—
Sodium metabisulfite	7681-57-4	5 mg/m ³	10 mg/m ³	—	—
Starch	9005-25-8	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Stibine	7803-52-3	0.1 ppm	0.3 ppm	—	—
Stoddard solvent	8052-41-3	100 ppm	150 ppm	—	—
Strychnine	57-24-9	0.15 mg/m ³	0.45 mg/m ³	—	—
Styrene (Phenylethylene, Vinyl benzene)	100-42-5	50 ppm	100 ppm	—	—
Subtilisins	9014-01-1	—	0.00006 mg/m ³ (60 min.)	—	—
Sucrose	57-50-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Sulfotep (TEDP)	3689-24-5	0.2 mg/m ³	0.6 mg/m ³	—	X
Sulfur dioxide	7446-09-5	2 ppm	5 ppm	—	—
Sulfur hexafluoride	2551-62-4	1,000 ppm	1,250 ppm	—	—

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Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Sulfuric acid	7664-93-9	1 mg/m ³	3 mg/m ³	—	—
Sulfur monochloride	10025-67-9	—	—	1 ppm	—
Sulfur pentafluoride	5714-22-1	—	—	0.01 ppm	—
Sulfur tetrafluoride	7783-60-0	—	—	0.1 ppm	—
Sulfuryl fluoride	2699-79-8	5 ppm	10 ppm	—	—
Sulprofos	35400-43-2	1 mg/m ³	3 mg/m ³	—	—
Systox (Demeton)	8065-48-3	0.01 ppm	0.03 ppm	—	X
2, 4, 5-T	93-76-5	10 mg/m ³	20 mg/m ³	—	—
Talc (containing asbestos) (see WAC 296-62-07705)	—	—	—	—	—
Talc (containing no asbestos)	—	—	—	—	—
Respirable fraction	14807-96-6	2 mg/m ³	4 mg/m ³	—	—
Tantalum	—	—	—	—	—
Metal and oxide dusts	7440-25-7	5 mg/m ³	10 mg/m ³	—	—
TDI (Toluene-2, 4-diisocyanate)	584-84-9	0.005 ppm	0.02 ppm	—	—
TEDP (Sulfotep)	3689-24-5	0.2 mg/m ³	0.6 mg/m ³	—	X
Tellurium and compounds (as Te)	13494-80-9	0.1 mg/m ³	0.3 mg/m ³	—	—
Tellurium hexafluoride (as Te)	7783-80-4	0.02 ppm	0.06 ppm	—	—
Temephos (Abate)	3383-96-8	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
TEPP	107-49-3	0.004 ppm	0.012 ppm	—	X
Terphenyls	26140-60-3	—	—	0.5 ppm	—
1, 1, 1, 2-Tetrachloro-2, 2-difluoroethane	76-11-0	500 ppm	625 ppm	—	—
1, 1, 2, 2-Tetrachloro-1, 2-difluoroethane	76-12-0	500 ppm	625 ppm	—	—
1, 1, 2, 2-Tetrachloroethane	79-34-5	1 ppm	3 ppm	—	X
Tetrachloroethylene (Perchloroethylene)	127-18-4	25 ppm	38 ppm	—	—
Tetrachloromethane (Carbon tetrachloride)	56-23-5	2 ppm	4 ppm	—	X
Tetrachloronaphthalene	1335-88-2	2 mg/m ³	4 mg/m ³	—	X
Tetraethyl lead (as Pb)	78-00-2	0.075 mg/m ³	0.225 mg/m ³	—	X
Tetrahydrofuran	109-99-9	200 ppm	250 ppm	—	—
Tetramethyl lead (as Pb)	75-74-1	0.075 mg/m ³	0.225 mg/m ³	—	X
Tetramethyl succinonitrile	3333-52-6	0.5 ppm	1.5 ppm	—	X
Tetranitromethane	509-14-8	1 ppm	3 ppm	—	—
Tetrasodium pyrophosphate	7722-88-5	5 mg/m ³	10 mg/m ³	—	—
Tetryl (2, 4, 6-trinitrophenyl- methylnitramine)	479-45-8	1.5 mg/m ³	3 mg/m ³	—	X
Thallium (soluble compounds) (as Tl)	7440-28-0	0.1 mg/m ³	0.3 mg/m ³	—	X
4, 4-Thiobis (6-tert-butyl-m-cresol)	96-69-5	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Thiodan (Endosulfan)	115-29-7	0.1 mg/m ³	0.3 mg/m ³	—	X
Thioglycolic acid	68-11-1	1 ppm	3 ppm	—	X
Thionyl chloride	7719-09-7	—	—	1 ppm	—
Thiram (see WAC 296-62-07519)	137-26-8	5 mg/m ³	10 mg/m ³	—	—
Tin (as Sn)	—	—	—	—	—
Inorganic compounds	7440-31-5	2 mg/m ³	4 mg/m ³	—	—

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Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Tin (as Sn)	—	—	—	—	—
Organic compounds	7440-31-5	0.1 mg/m ³	0.3 mg/m ³	—	X
Tin oxide (as Sn)	21651-19-4	2 mg/m ³	4 mg/m ³	—	—
Titanium dioxide	13463-67-7	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
TNT					
(2, 4, 6-Trinitrotoluene)	118-96-7	0.5 mg/m ³	1.5 mg/m ³	—	X
Toluene	108-88-3	100 ppm	150 ppm	—	—
Toluene-2, 4-diisocyanate (TDI)	584-84-9	0.005 ppm	0.02 ppm	—	—
m-Toluidine	108-44-1	2 ppm	4 ppm	—	X
o-Toluidine	95-53-4	2 ppm	4 ppm	—	X
p-Toluidine	106-49-0	2.0 ppm	4 ppm	—	X
Toxaphene					
(Chlorinated camphene)	8001-35-2	0.5 mg/m ³	1 mg/m ³	—	X
Tremolite (see WAC 296-62-07705)	—	—	—	—	—
Tributyl phosphate	126-73-8	0.2 ppm	0.6 ppm	—	—
Trichloroacetic acid	76-03-9	1 ppm	3 ppm	—	—
1, 2, 4-Trichlorobenzene	120-82-1	—	—	5 ppm	—
1, 1, 1-Trichloroethane					
(Methyl chloroform)	71-55-6	350 ppm	450 ppm	—	—
1, 1, 2-Trichloroethane	79-00-5	10 ppm	20 ppm	—	—
Trichloroethylene	79-01-6	50 ppm	200 ppm	—	—
Trichlorofluoromethane					
(Fluorotrichloromethane)	75-69-4	—	—	1,000 ppm	—
Trichloromethane					
(Chloroform)	67-66-3	2 ppm	4 ppm	—	—
Trichloronaphthalene	1321-65-9	5 mg/m ³	10 mg/m ³	—	X
1, 2, 3-Trichloropropane	96-18-4	10 ppm	20 ppm	—	X
1, 1, 2-Trichloro-1, 2, 2-trifluoroethane	76-13-1	1,000 ppm	1,250 ppm	—	—
Tricyclohexyltin hydroxide					
(Cyhexatin)	13121-70-5	5 mg/m ³	10 mg/m ³	—	—
Triethylamine	121-44-8	10 ppm	15 ppm	—	—
Trifluorobromomethane	75-63-8	1,000 ppm	1,250 ppm	—	—
Trimellitic anhydride	552-30-7	0.005 ppm	0.015 ppm	—	—
Trimethylamine	75-50-3	10 ppm	15 ppm	—	—
Trimethyl benzene	25551-13-7	25 ppm	38 ppm	—	—
Trimethyl phosphite	121-45-9	2 ppm	4 ppm	—	—
2, 4, 6-Trinitrophenol					
(Picric acid)	88-89-1	0.1 mg/m ³	0.3 mg/m ³	—	X
2, 4, 6-Trinitrophenyl- methylnitramine					
(Tetryl)	479-45-8	1.5 mg/m ³	3 mg/m ³	—	X
2, 4, 6-Trinitrotoluene (TNT)	118-96-7	0.5 mg/m ³	1.5 mg/m ³	—	X
Triorthocresyl phosphate	78-30-8	0.1 mg/m ³	0.3 mg/m ³	—	X
Triphenyl amine	603-34-9	5 mg/m ³	10 mg/m ³	—	—
Triphenyl phosphate	115-86-6	3 mg/m ³	6 mg/m ³	—	—
Tungsten (as W)	7440-33-7	—	—	—	—
Soluble compounds	—	1 mg/m ³	3 mg/m ³	—	—
Insoluble compounds	—	5 mg/m ³	10 mg/m ³	—	—
Turpentine	8006-64-2	100 ppm	150 ppm	—	—
Uranium (as U)	7440-61-1	—	—	—	—
Soluble compounds	—	0.05 mg/m ³	0.15 mg/m ³	—	—
Insoluble compounds	—	0.2 mg/m ³	0.6 mg/m ³	—	—
n-Valeraldehyde	110-62-3	50 ppm	75 ppm	—	—

PERMANENT

Table 3 "Permissible Exposure Limits for Air Contaminants"

Substance	CAS	TWA ₈	STEL	Ceiling	Skin
Vanadium (as V2O5)	—	—	—	—	—
Respirable fraction	1314-62-1	0.05 mg/m ³	0.15 mg/m ³	—	—
Vegetable oil mist	—	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Vinyl acetate	108-05-1	10 ppm	20 ppm	—	—
Vinyl benzene (Styrene)	100-42-5	50 ppm	100 ppm	—	—
Vinyl bromide	593-60-2	5 ppm	10 ppm	—	—
Vinyl chloride (Chloroethylene) (see WAC 296-62-07329)	75-01-4	1 ppm	5 ppm	—	—
Vinyl cyanide (Acrylonitrile) (see WAC 296-62-07336)	107-13-1	2 ppm	10 ppm	—	—
Vinyl cyclohexene dioxide	106-87-6	10 ppm	20 ppm	—	X
Vinyl toluene	25013-15-4	50 ppm	75 ppm	—	—
Vinylidene chloride (1, 1-Dichloroethylene)	75-35-4	1 ppm	3 ppm	—	—
VM & P Naphtha	8032-32-4	300 ppm	400 ppm	—	—
Warfarin	81-81-2	0.1 mg/m ³	0.3 mg/m ³	—	—
Welding fumes (total particulate)	—	5 mg/m ³	10 mg/m ³	—	—
Wood dust	—	—	—	—	—
Nonallergenic; (All woods except allergenic)	—	5 mg/m ³	10 mg/m ³	—	—
Allergenic (e.g. cedar, mahogany and teak)	—	2.5 mg/m ³	5 mg/m ³	—	—
Xylenes (ortho, meta, and para isomers) (Dimethylbenzene)	1330-20-7	100 ppm	150 ppm	—	—
m-Xylene alpha, alpha-diamine	1477-55-0	—	—	0.1 mg/m ³	X
Xylidine (Dimethylaminobenzene)	1300-73-8	2 ppm	4 ppm	—	X
Yttrium	7440-65-5	1 mg/m ³	3 mg/m ³	—	—
Zinc chloride fume	7646-85-7	1 mg/m ³	2 mg/m ³	—	—
Zinc chromate (as CrO ₃)	Varies with com- pound	0.05 mg/m ³	—	0.1 mg/m ³	—
Zinc oxide	1314-13-2	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Zinc oxide fume	1314-13-2	5 mg/g ³	10 mg/m ³	—	—
Zinc stearate	557-05-1	—	—	—	—
Total particulate	—	10 mg/m ³	20 mg/m ³	—	—
Respirable fraction	—	5 mg/m ³	10 mg/m ³	—	—
Zirconium compounds (as Zr)	7440-67-2	5 mg/m ³	10 mg/m ³	—	—

NEW SECTION**WAC 296-307-628 Definitions.**

Ceiling - An exposure limit, measured over the shortest time period feasible, that must not be exceeded during any part of the employee's workday.

Dust - Solid particles suspended in air. Dusts are generated by handling, drilling, crushing, grinding, rapid impact, detonation, or decrepitation of organic or inorganic materials such as rock, ore, metal, coal, wood, grain, etc.

Exposed or exposure - The contact an employee has with a toxic substance, harmful physical agent or oxygen

deficient condition. Exposure can occur through various routes of entry, such as inhalation, ingestion, skin contact, or skin absorption.

Fume - Solid particles suspended in air, generated by condensation from the gaseous state, generally after volatilization from molten metals, etc.

Gas - A normally formless fluid which can be changed to the liquid or solid state by the effect of increased pressure or decreased temperature or both.

Mist - Liquid droplets suspended in air, generated by condensation from the gaseous to the liquid state or by break-

ing up a liquid into a dispersed state, such as by splashing, foaming, spraying or atomizing.

Oxygen deficient - An atmosphere with an oxygen content below 19.5% by volume.

Permissible exposure limits (PEL) - Permissible exposure limits (PELs) are employee exposures to toxic substances or harmful agents that must not be exceeded. PELs are specified in applicable WISHA rules.

Short-term exposure limit (STEL) - An exposure limit averaged over a short time period (usually measured for 15 minutes) that must not be exceeded during any part of an employee's workday.

Time weighted average (TWA₈) - An exposure limit averaged over 8 hours that must not be exceeded during an employee's workday.

Toxic substance - Any chemical substance or biological agent, such as bacteria, virus, and fungus, which is any of the following:

- Listed in the latest edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS)

- Shows positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer.

The subject of a material safety data sheet kept by or known to the employer showing the material may pose a hazard to human health.

Vapor - The gaseous form of a substance that is normally in the solid or liquid state.

Part Y-7

Hearing Loss Prevention (Noise)

NEW SECTION

WAC 296-307-630 Scope. The purpose of this part is to:

- Prevent employee hearing loss by minimizing employee noise exposures

AND

- Make sure employees exposed to noise are protected.

These goals are accomplished by:

- Measuring and computing the employee noise exposure from all equipment and machinery in the workplace, as well as any other noise sources in the work area

- Protecting employees from noise exposure by using feasible noise controls

- Making sure employees use hearing protection, if you cannot feasibly control the noise

- Training employees about hearing loss prevention

- Evaluating your hearing loss prevention efforts by tracking employee hearing or periodically reviewing controls and protection

- Making appropriate corrections to your program.

Reference: Table 1 will help you determine the hearing loss prevention requirements for your workplace. For the specific requirements associated with Noise Evaluation Criteria, see WAC 296-307-63410 of this part.

**Table 1
Noise Evaluation Criteria**

Criteria	Description	Requirements
85 dBA TWA ₈	Full-day employee noise exposure dose. If you have one or more employees whose exposure equals or exceeds this level, you must have a hearing loss prevention program	– Hearing protection – Training – Audiometric testing
90 dBA TWA ₈	Full-day employee noise exposure dose. If you have one or more employees whose exposure equals or exceeds this level, you must reduce employee noise exposures in the workplace	– Noise controls AND – Hearing protection – Training – Audiometric testing
115 dBA measured using slow response	Extreme noise level (greater than one second in duration)	– Hearing protection – Signs posted in work areas warning of exposure
140 dBC measured using fast response	Extreme impulse or impact noise (less than one second in duration)	Hearing protection

PERMANENT

HEARING LOSS PREVENTION PROGRAM

NEW SECTION

WAC 296-307-632 Summary.

Your responsibility:

To prevent employee hearing loss by minimizing, and providing protection from, noise exposures.

You must:

Conduct employee noise exposure monitoring
WAC 296-307-63205

Control employee noise exposures that equal or exceed 90 dBA TWA₈

WAC 296-307-63210

Make sure employees use hearing protection when their noise exposure equals or exceed 85 dBA TWA₈

WAC 296-307-63215

Make sure exposed employees receive training about noise and hearing protection

WAC 296-307-63220

Make sure warning signs are posted for areas with noise levels that equal or exceed 115 dBA

WAC 296-307-63225

Arrange for oversight of audiometric testing

WAC 296-307-63230

Identify and correct deficiencies in your hearing loss prevention program

WAC 296-307-63235

Document your hearing loss prevention activities

WAC 296-307-63240.

NEW SECTION

WAC 296-307-63205 Conduct employee noise exposure monitoring.

You must:

- Conduct employee noise exposure monitoring to determine the employee's actual exposure when reasonable information indicates that any employee's exposure may equal or exceed 85 dBA TWA₈.

- Note:**
- Representative monitoring may be used where several employees perform the same tasks in substantially similar conditions
 - Examples of information or situations that can indicate exposures which equal or exceed 85 dBA TWA₈, include:
 - Noise in the workplace that interferes with people speaking, even at close range
 - Information from the manufacturer of equipment you use in the workplace that indicates high noise levels for machines in use
 - Reports from employees of ringing in their ears or temporary hearing loss
 - Warning signals or alarms that are difficult to hear
 - Work near abrasive blasting or jack hammering operations
 - Use of tools and equipment such as the following:
 - Heavy equipment or machinery
 - Fuel-powered hand tools
 - Compressed air-driven tools or equipment in frequent use
 - Power saws, grinders or chippers
 - Powder-actuated tools.

You must:

- Follow applicable guidance in WAC 296-307-634 when conducting noise exposure monitoring
- Make sure your sampling for noise exposure monitoring identifies:
 - All employees whose exposure equals or exceeds the following:
 - 85 dBA TWA₈ (noise dosimetry, providing an average exposure over an eight-hour time period)
 - 115 dBA (slow response sound level meter, identifying short-term noise exposures)
 - 140 dBC (fast response sound level meter, identifying almost instantaneous noise exposures).
 - Exposure levels for selection of hearing protection.
- Provide exposed employees and their representatives with an opportunity to observe any measurements of employee noise exposure that are conducted
 - Notify each employee whose exposure equals or exceeds 85 dBA TWA₈ of the monitoring results within five working days of when you receive the results
 - Conduct additional noise monitoring whenever a change in production, process, equipment or controls, may reasonably be expected to result in:

- Additional employees whose exposure equals or exceeds 85 dBA TWA₈

- Employees exposed to higher level of noise requiring more effective hearing protection.

Note: Conditions that may be expected to increase exposure include:

- Adding machinery to the work area
- Increasing production rates
- Removal or deterioration of noise control devices
- Increased use of noisy equipment
- Change in work schedule
- Change of job duties.

NEW SECTION

WAC 296-307-63210 Control employee noise exposures that equal or exceed 90 dBA TWA₈.

IMPORTANT:

Hearing protection provides a barrier to noise and protects employees but is not considered a control of the noise hazard. Separate requirements apply to hearing protection and are found in WAC 296-307-63215.

You must:

- Reduce employee noise exposure, using feasible controls, wherever exposure equals or exceeds 90 dBA TWA₈.

- Note:**
- Once noise exposures are brought below 90 dBA TWA₈, no further reduction is required. However, further reduction of noise may reduce the need for other hearing loss prevention requirements
 - Controls that eliminate noise at the source or establish a permanent barrier to noise are typically more reliable. For example:
 - Replacing noisy equipment with quiet equipment
 - Using silencers and mufflers
 - Installing enclosures
 - Damping noisy equipment and parts.
 - Other controls and work practices may also be useful for reducing noise exposures. Examples include:
 - Employee rotation
 - Limiting use of noisy equipment
 - Rescheduling work.

NEW SECTION

WAC 296-307-63215 Make sure employees use hearing protection when their noise exposure equals or exceeds 85 dBA TWA₈.

You must:

- Make sure employees wear hearing protectors that will provide sufficient protection when exposure equals or exceeds:
 - 85 dBA TWA₈ (noise dosimetry, providing an average exposure over an eight-hour time period)
 - 115 dBA (slow response sound level meter, identifying short-term noise exposures)
 - 140 dBC (fast response sound level meter, identifying almost instantaneous noise exposures).
- Provide employees with an appropriate selection of hearing protectors:
 - The selection must include at least two distinct types (such as molded earplugs, foam earplugs; custom-molded earplugs, earcaps, or earmuffs) for each exposed employee and must be sufficient to cover:

■ Different levels of hearing protection needed in order to reduce all employee exposures to a level below 85 dBA TWA₈

- Different sizes
- Different working conditions.
 - Consider requests of the employees regarding:
- Physical comfort
- Environmental conditions
- Medical needs
- Communication requirements.

Note: Hearing protector selection should include earplugs, ear-caps and earmuffs.

You must:

- Provide hearing protection at no cost to employees
- Supervise employees to make sure that hearing protection is used correctly
 - Make sure hearing protectors are:
 - Properly chosen for fit
 - Replaced as necessary.
 - Make sure all hearing protection is sufficient to reduce the employee's equivalent eight-hour noise exposure to 85 dBA or less. When using the A-weighted exposure measurements, reported as "dBA TWA₈," the reduction in noise exposure by hearing protectors is given by Table 2:

Table 2

Effective Protection of Hearing Protectors

Type of hearing protection	Effective protection
Single hearing protection (earplugs, earcaps or earmuffs)	7 dB less than the manufacturer assigned noise reduction rating (NRR); for example, earplugs with an NRR of 20 dB are considered to reduce employee exposures of 95 dBA TWA ₈ to 82 dBA TWA ₈
Dual hearing protection (earplug and earmuff worn together)	2 dB less than the higher NRR of the two protectors; for example, earplugs with an NRR of 20 dB and earmuffs with an NRR of 12 dB are considered to reduce employee exposures of 100 dBA TWA ₈ to 82 dBA TWA ₈

• In addition to protection based on daily noise dose, make sure hearing protection has an NRR of at least 20 dB when exposures involve noise that equals or exceeds 115 dBA (slow response sound level meter) or 140 dBC (fast response sound level meter).

Note: You may also evaluate hearing protection by using the other methods given in the NIOSH *Compendium of Hearing Protection* (DHHS (NIOSH)) Publication No. 95-105 or online at <http://www.cdc.gov/niosh/topics/noise/hpcomp.html>. These methods require additional monitoring and are more complex, but provide a more thorough evaluation of protection. This may be useful in cases where communication is critical or for evaluating hearing protection for employees with hearing impairment.

NEW SECTION

WAC 296-307-63220 Make sure exposed employees receive training about noise and hearing protection.

You must:

- Train all employees whose noise exposure equals or exceeds 85 dBA TWA₈
 - Provide training when an employee is first assigned to a position involving noise exposure that equals or exceeds 85 dBA TWA₈ and at least annually after that
 - Update information provided in the training program to be consistent with changes in controls, hearing protectors and work processes
- Make sure your noise and hearing protection training includes:
 - The effects of noise on hearing (including both occupational and nonoccupational exposures)
 - Noise controls used in your workplace
 - The purpose of hearing protectors: The advantages, disadvantages, and attenuation of various types
 - Instructions about selecting, fitting, using, and caring for hearing protection
 - The purpose and procedures for program evaluation including audiometric testing and hearing protection auditing when you choose to rely upon auditing (see WAC 296-307-638)
 - The employees' right to access records kept by the employer.
 - Maintain a written program describing initial and refresher training.

NEW SECTION

WAC 296-307-63225 Make sure warning signs are posted for areas where noise levels equal or exceed 115 dBA.

You must:

- Make sure warning signs are posted at the entrances or boundaries of all well-defined work areas where employees may be exposed to noise that equals or exceeds 115 dBA (measured using a sound level meter with slow response).
 - Warning signs must clearly indicate that the area is a high noise area and that hearing protectors are required.

NEW SECTION

WAC 296-307-63230 Arrange for oversight of audiometric testing.

You must:

- Make sure audiometric testing as described by WAC 296-307-636 is supervised and reviewed by one of the following licensed or certified individuals:
 - An audiologist
 - An otolaryngologist
 - Another qualified physician.
- Make sure audiograms are conducted by one of the above individuals or by a technician certified by the Council of Accreditation in Occupational Hearing Conservation (CAOHC) and responsible to a qualified reviewer.

PERMANENT

NEW SECTION**WAC 296-307-63235 Identify and correct deficiencies in your hearing loss prevention program.****You must:**

- Use audiometric testing to identify hearing loss, which may indicate program deficiencies
 - Take appropriate actions when deficiencies are found with your program.
 - A deficiency may be indicated when:
 - Any employee experiences measurable hearing loss indicated by a standard threshold shift
- OR
- Any employee isn't wearing appropriate hearing protection during an audit when auditing is used in place of baseline audiograms for short term employees (see WAC 296-307-638, Option to audiometric testing).

Note: A standard threshold shift or audit deficiency does not necessarily indicate that a significant hearing loss has occurred. These criteria are intended to help identify where there may be flaws in your hearing loss prevention program that can be fixed before permanent hearing loss occurs. There are additional statistical tools and tests that may be used to improve the effectiveness of your program. Staff conducting audiometric testing and auditing may be able to suggest additional ways to improve your hearing loss prevention program and tailor it to your worksite.

You must:

- Evaluate the following, at a minimum, when responding to a standard threshold shift:
 - Employee noise exposure measurements
 - Noise controls in the work area
 - The selection of hearing protection available and refit employees as necessary
 - Employee training on noise and the use of hearing protection and conduct additional training as necessary.

Reference: You may use the option of auditing hearing protection (see WAC 296-307-638) for employees hired or transferred to jobs with noise exposure for less than one year. You may also use audiograms provided by a third-party hearing loss prevention program in some circumstances. Details of these program options are found in WAC 296-307-638, Options to audiometric testing.

NEW SECTION**WAC 296-307-63240 Document your hearing loss prevention activities.****You must:**

- Create and retain records documenting noise exposures. Include, at a minimum:
 - Exposure measurements required by this part for at least two years and for as long as you rely upon them to determine employee exposure
 - Audiometric test records for the duration of employment for the affected employees
 - Hearing protection audits, if you choose to rely upon them, for the duration of employment of the affected employees.

Note: • You need to keep as complete a record as possible. Records developed under previous rules or in other jurisdictions need to be kept, even when they do not fulfill the full requirements of this part. Similarly, records found to have errors in collection or processing need to be kept if they

provide an indication of employee exposure or medical condition not found in other records

- You may want to consider your other business needs, such as worker's compensation claims management, before discarding these records.

NOISE MEASUREMENT AND COMPUTATIONNEW SECTION**WAC 296-307-634 Summary.****Your responsibility:**

Conduct noise monitoring or measurement to evaluate employee exposures in your workplace.

You must:

Make sure that noise-measuring equipment meets recognized standards

WAC 296-307-63405

Measure employee noise exposure

WAC 296-307-63410

Use these equations when estimating full-day noise exposure from sound level measurements

WAC 296-307-63415.

NEW SECTION**WAC 296-307-63405 Make sure that noise-measuring equipment meets recognized standards.****You must:**

- Make sure that noise dosimetry equipment meets these specifications:
 - Dosimeters must be equipment class 2AS-90/80-5 of the American National Rule Specification for Personal Noise Dosimeters, ANSI S1.25-1991, such dosimeters are normally marked "Type 2."

Note: Make sure any dosimeter you use is Type 2 equipment that:

- Uses slow integration and A-weighting of sound levels.
- Has the **criterion level** set to 90 dB, so the dosimeter will report a constant 8-hour exposure at 90 dBA as a 100% dose.
- Has the **threshold level** set at 80 dB, so the dosimeter will register all noise above 80 dB.
- Uses a 5 dB **exchange rate** for averaging of noise levels over the sample period.

You must:

- Make sure that sound level meters meet these specifications:
 - American National Standard Specification for Sound Level Meters, S1.4-1984, Type 2 requirements for sound level meters, such sound level meters are normally marked "Type 2."
 - For continuous noise measurements, the meter must be capable of measuring A-weighted sound levels with slow response
 - For impulse or impact noise measurements, the meter must be capable of indicating maximum C-weighted sound level measurements with fast response.
 - Calibrate dosimeters and sound level meters used to monitor employee noise exposure:
 - Before and after each day's use
- AND**
- Following the instrument manufacturer's calibration instructions.

- Note:**
- You may conduct dosimetry using an exchange rate less than 5 dB and compare the results directly to the noise evaluation criteria in Table 1
 - For measuring impulse and impact noise you may also use a sound level meter set to measure maximum impulse C-weighted sound levels or peak C-weighted sound levels.

NEW SECTION

WAC 296-307-63410 Measure employee noise exposure.

IMPORTANT:

A noise dosimeter is the basis for determining total daily noise exposure for employees. However, where you have constant noise levels, you may estimate employee noise exposure using measurements from a sound level meter. Calculation of the employee noise exposure must be consistent with WAC 296-307-63415.

You must:

- Include all:
 - Workplace noise from equipment and machinery in use
 - Other noise from sources necessary to perform the work
 - Noise outside the control of the exposed employees.
- Use a noise dosimeter when necessary to measure employee noise dose
 - Use a sound level meter to evaluate continuous and impulse noise levels
 - Identify all employees whose exposures equal or exceed the Noise Evaluation Criteria as follows:

Noise Evaluation Criteria

Criteria	Description	Requirements
85 dBA TWA ₈	Full-day employee noise exposure dose. If you have one or more employees whose exposure equals or exceeds this level, you must have a hearing loss prevention program	<ul style="list-style-type: none"> – Hearing protection – Training – Audiometric testing
90 dBA TWA ₈	Full-day employee noise exposure dose. If you have one or more employees whose exposure equals or exceeds this level, you must reduce employee noise exposures in the workplace	Noise controls (in addition to the requirements for 85 dBA TWA ₈)
115 dBA measured using slow response	Extreme noise level (greater than one second in duration)	<ul style="list-style-type: none"> – Hearing protection – Signs posted in work areas warning of exposure

Criteria	Description	Requirements
140 dBC measured using fast response	Extreme impulse or impact noise (less than one second in duration)	Hearing protection

NEW SECTION

WAC 296-307-63415 Use these equations when estimating full-day noise exposure from sound level measurements.

You must:

- Compute employee's full-day noise exposure by using the appropriate equations from Table 3 "Noise Dose Computation" when using a sound level meter to estimate noise dose.

**Table 3
Noise Dose Computation**

Description	Equation
Compute the noise dose based on several time periods of constant noise during the shift	The total noise dose over the work day, as a percentage, is given by the following equation where C _n indicates the total time of exposure at a specific noise level, and T _n indicates the reference duration for that level. $D = 100 * ((C_1/T_1) + (C_2/T_2) + (C_3/T_3) + \dots + (C_n/T_n))$
The reference duration is equal to the time of exposure to continuous noise at a specific sound level that will result in a one hundred percent dose	The reference duration, T, for sound level, L, is given in hours by the equation: $T = 8 / (2^{((L - 90) / 5)})$
Given a noise dose as a percentage, compute the equivalent eight-hour time weighted average noise level	The equivalent eight-hour time weighted average, TWA ₈ , is computed from the dose, D, by the equation: $TWA_8 = 16.61 * \text{Log}_{10}(D/100) + 90$

AUDIOMETRIC TESTING

NEW SECTION

WAC 296-307-636 Summary.

Your responsibility:

To conduct audiometric testing of employees exposed to noise to make sure that their hearing protection is effective.

You must:

Provide audiometric testing at no cost to employees
WAC 296-307-63605

PERMANENT

Establish a baseline audiogram for each exposed employee

WAC 296-307-63610

Conduct annual audiograms

WAC 296-307-63615

Review audiograms that indicate a standard threshold shift

WAC 296-307-63620

Keep the baseline audiogram without revision, unless annual audiograms indicate a persistent threshold shift or a significant improvement in hearing

WAC 296-307-63625

Make sure a record is kept of audiometric tests

WAC 296-307-63630

Make sure audiometric testing equipment meets these requirements

WAC 296-307-63635.

NEW SECTION

WAC 296-307-63605 Provide audiometric testing at no cost to employees.

You must:

- Provide audiograms, including any required travel or necessary additional examinations or testing, at no cost to exposed employees.

NEW SECTION

WAC 296-307-63610 Establish a baseline audiogram for each exposed employee.

You must:

- Conduct a baseline audiogram when an employee is first assigned to work involving noise exposures that equal or exceed 85 dBA TWA₈.

- Make sure this audiogram is completed no more than one hundred eighty days after the employee is first assigned

OR

- Make sure employee is covered by a hearing protection audit program (as described by WAC 296-307-638 and available as an alternative only for employees hired for less than one year).

Note: Employers who utilize mobile test units are allowed up to one year to obtain a valid baseline audiogram for each exposed employee. The employees must still be given training and hearing protection as required by this part.

You must:

- Make sure employees are not exposed to workplace noise at least fourteen hours before testing to establish a baseline audiogram.

- Hearing protectors may be used to accomplish this.

- Notify employees of the need to avoid high levels of nonoccupational noise exposure (such as loud music, headphones, guns, power tools, motorcycles, etc.) during the fourteen-hour period immediately preceding the baseline audiometric examination.

NEW SECTION

WAC 296-307-63615 Conduct annual audiograms.

You must:

- Conduct annual audiograms for employees as long as they continue to be exposed to noise that equals or exceeds 85 dBA TWA₈.

Note: Annual audiometric testing may be conducted at any time during the work shift. By conducting the annual audiogram during the work shift with the employee exposed to typical noise for their job, the test may record a temporary threshold shift. This makes the test more sensitive to potential hearing loss and may help you improve employee protection before a permanent threshold shift occurs. A suspected temporary shift is one reason an employer may choose to retest employee hearing.

You must:

- Make sure each employee is informed of the results of his or her audiometric test.

- Include whether or not there has been a hearing level decrease or improvement since their previous test.

- Make sure each employee's annual audiogram is compared to his or her baseline audiogram by an audiologist, otolaryngologist, another qualified physician, or the technician conducting the test to determine if a standard threshold shift has occurred.

- If the annual audiogram indicates that an employee has suffered a standard threshold shift, you may obtain a retest within thirty days and consider the results of the retest as the annual audiogram.

- Make sure that an audiologist, otolaryngologist, or other qualified physician sees any annual audiogram that indicates a standard threshold shift.

NEW SECTION

WAC 296-307-63620 Review audiograms that indicate a standard threshold shift.

You must:

- Make sure the healthcare professional supervising audiograms has:

- A copy of this part

- The baseline audiogram and most recent audiogram of the employee to be evaluated

- Background noise level records for the testing room

- Calibration records for the audiometer.

- Obtain an opinion from the healthcare professional supervising audiograms as to whether the audiograms indicate possible occupational hearing loss and any recommendations for changes in hearing protection.

- Pay for any clinical audiological evaluation or otological examination required by the reviewer, if:

- Additional review is necessary to evaluate the cause of hearing loss

OR

- If there is indication of a medical condition of the ear caused or aggravated by the wearing of hearing protectors.

- Inform the employee in writing of the existence of a standard threshold shift within twenty-one calendar days of the determination.

- Make arrangements for the reviewer to communicate to the employee any suspected medical conditions that are

found unrelated to your workplace. This information is confidential and must be handled appropriately.

NEW SECTION

WAC 296-307-63625 Keep the baseline audiogram without revision, unless annual audiograms indicate a persistent threshold shift or a significant improvement in hearing.

You must:

- Keep the baseline audiogram without revision, unless a qualified reviewer determines:
 - The standard threshold shift revealed by the audiogram is persistent

OR

- The hearing threshold shown in the annual audiogram indicates significant improvement over the baseline audiogram.

NEW SECTION

WAC 296-307-63630 Make sure a record is kept of audiometric tests.

You must:

- Retain a legible copy of all employee audiograms conducted under this part.
 - Make sure the record includes:
 - Name and job classification of the employee
 - Date of the audiogram
 - The examiner's name
 - Date of the last acoustic or exhaustive calibration of the audiometer
 - Employee's most recent noise exposure assessment
 - The background sound pressure levels in audiometric test rooms.

NEW SECTION

WAC 296-307-63635 Make sure audiometric testing equipment meets these requirements.

You must:

- Use pure tone, air conduction, hearing threshold examinations, with test frequencies including as a minimum 500, 1000, 2000, 3000, 4000, and 6000 Hz
 - Tests at each frequency must be taken separately for each ear
 - Supra-aural headphones must be used.
 - Conduct audiometric tests with audiometers (including microprocessor audiometers) that meet the specifications of, and are maintained and used according to, American National Standard Specification for Audiometers, S3.6-1996
 - Check the functional operation of the audiometer each day before use by doing all of the following:
 - Make sure the audiometer's output is free from distorted or unwanted sound
 - Test either a person with known, stable hearing thresholds or a bio-acoustic simulator
 - Perform acoustic calibration for deviations of 10 dB or greater.
 - Audiometer calibration must be checked acoustically at least annually to verify continued conformance with ANSI

S3.6-1996. Test frequencies below 500 Hz and above 6000 Hz may be omitted from this check

- An exhaustive calibration must be performed at least every two years according to the American National Standard Specification for Audiometers, S3.6-1996. Test frequencies below 500 Hz and above 6000 Hz may be omitted from the calibration

- Provide audiometric test rooms that meet the requirements of ANSI S3.1-1999 American National Standard Maximum Permissible Ambient Noise Levels for Audiometric Test Rooms using the following table of Maximum Ambient Sound Pressure Levels:

Table 4

Maximum Ambient Sound Pressure Levels

Frequency (Hz)	500	1000	2000	4000	8000
Sound Pressure Level (dB)	40	40	47	57	62

Note: The American Industrial Hygiene Association and National Hearing Conservation Association recommend conducting audiograms using the requirements of ANSI S3.1-1999 American National Standard Maximum Permissible Ambient Noise Levels for Audiometric Test Rooms with adjustments at only 500 Hz and below.

OPTIONS TO AUDIOMETRIC TESTING

NEW SECTION

WAC 296-307-638 Summary.

Your responsibility:

This section provides options to baseline audiometric testing for employees assigned to duties with noise exposures for **less than one year**. These program options may also be used to provide added assessment of longer-term employees in addition to audiometric testing.

The requirements of this section apply only if you decide to use auditing or a third-party hearing loss prevention program and do not conduct baseline audiometric testing for those employees.

Hearing Protection Audits

You must:

Conduct hearing protection audits at least quarterly

WAC 296-307-63805

Make sure staff conducting audits are properly trained

WAC 296-307-63810

Assess the hearing protection used by each employee during audits

WAC 296-307-63815

Document your hearing protection audits

WAC 296-307-63820

Third-Party Audiometric Testing

You must:

Make sure third-party hearing loss prevention programs meet the following requirements

WAC 296-307-63825

PERMANENT

IMPORTANT:

Hearing protection audits are a tool for use in evaluating your hearing loss prevention program in cases where audiometric testing does not provide a useful measure. For example, if most of your employees are hired on a temporary basis for a few months at a time, audiometric testing may not identify the small changes in hearing acuity that could occur. Auditing provides an alternative to audiometric testing in these cases.

Auditing is not required unless you use it in place of baseline audiometric testing for employees hired for a period of **less than one year** and is permitted as a substitute for audiometric testing only for these employees.

Third-party hearing loss prevention programs are full hearing loss prevention programs and are distinct from audiometric testing provided by third parties as part of your own hearing loss prevention program. These programs may be organized by labor groups, trade associations, labor-management cooperatives, or other organizations to:

- Cover a specific group of employees

OR

- Combine efforts for several employers with common employees.

Although you remain responsible for the program, third-party programs can have at least two benefits over running your own program:

- The audiometric testing is portable between the participating employers so new testing will not be needed when an employee changes employers
- Employees who only work for short periods for any one employer can be monitored under the group program over a longer period of time increasing the effectiveness of the audiometric testing in preventing hearing loss for these employees.

NEW SECTION

WAC 296-307-63805 Conduct hearing protection audits at least quarterly.

You must:

- Conduct audits at least quarterly to provide a representative assessment of your workplace
 - The assessment is representative if it:
 - Covers all processes and work activities in your business at full production levels
- AND**
- Covers all employees present on the audit day.
 - If your business is mobile or involves variable processes, auditing may need to be repeated more often than quarterly
 - Auditing does not need to be repeated more than monthly as long as a reasonable effort is made to cover:

- The activities with greatest exposure

AND

- As many employees as possible.

- Assess exposures and hearing protection for the full shift for each employee covered at the time of the audit.

NEW SECTION

WAC 296-307-63810 Make sure staff conducting audits are properly trained.

You must:

- Make sure staff conducting hearing protection audits:
 - Can demonstrate competence in:
 - Evaluating hearing protection attenuation
 - Evaluating hearing protector choices
 - Assessing the correct use of hearing protectors.
 - Are certified by the Council for Accreditation in Occupational Hearing Conservation (CAOHC) or have training in the following areas:
 - Noise and hearing loss prevention
 - Washington state noise regulations
 - Hearing protectors
 - Fitting of hearing protectors
 - Basic noise measurement
 - Hearing loss prevention recordkeeping.

NEW SECTION

WAC 296-307-63815 Assess the hearing protection used by each employee during audits.

You must:

- Confirm that:
 - Current site conditions during audits are consistent with conditions existing during noise monitoring
 - The hearing protection used by the employee is sufficient and appropriate for the conditions
 - The hearing protection is worn properly
 - The employees are satisfied with the performance and comfort of the hearing protection.

NEW SECTION

WAC 296-307-63820 Document your hearing protection audits.

You must:

- Keep a record of audit results for each employee assessed for the length of their employment and for the length of time you will rely upon the audit results
- Include the following information in the record:
 - The make and model of the hearing protectors
 - The size of the protectors
 - Average noise exposure of the employee
 - Any problems found with use of the hearing protection
 - Any comments or complaints from the employee regarding the hearing protection.

THIRD-PARTY AUDIOMETRIC TESTS

NEW SECTION

WAC 296-307-63825 Make sure third-party hearing loss prevention programs meet the following requirements.

IMPORTANT:

Third-party hearing loss prevention programs are intended:

PERMANENT

- For short-term employees hired or assigned to duties having noise exposures for less than one year

AND

- For seasonal employees.

However, other employees may be included as long as you meet all requirements for hearing loss follow-ups and recordkeeping.

You must:

- Make sure that the third-party program is:
 - Equivalent to an employer program as required by this part

AND

- Uses audiometric testing to evaluate hearing loss.

- Make sure a licensed or certified audiologist, otolaryngologist, or other qualified physician administers the third-party program

- Make sure the third-party program has written procedures for:
 - Communicating with participating employers of program requirements
 - Follow-up procedures for detected hearing loss
 - Annual review of participating employer programs.

- Make sure the following program elements are corrected by you or the third-party program when deficiencies are found:
 - Noise exposures
 - Hearing protection
 - Employee training
 - Noise controls.

- Obtain a review of your hearing loss prevention program at least once per year, conducted by the third-party program administrator or their representative, in order to:
 - Identify any tasks needing a revised selection of hearing protection

AND

- Provide an overall assessment of the employers' hearing loss prevention activities.

AND

NEW SECTION

WAC 296-307-640 Noise definitions.

A-weighted - An adjustment to sound level measurements that reflects the sensitivity of the human ear. Used for evaluating continuous or average noise levels.

Audiogram - A chart, graph, or table resulting from an audiometric test showing an individual's hearing threshold levels as a function of frequency.

Audiologist - A professional, specializing in the study and rehabilitation of hearing, who is certified by the American Speech, Hearing, and Language Association, or the American Academy of Audiology, and is licensed by the state board of examiners.

Baseline audiogram - The audiogram against which future audiograms are compared. The baseline audiogram is collected when an employee is first assigned to work with noise exposure. The baseline audiogram may be revised if persistent standard threshold shift (STS) of improvement is found.

Continuous noise - Noise with peaks spaced no more than one second apart. Continuous noise is measured using

sound level meters and noise dosimeters with the slow response setting.

Criterion sound level - A sound level of ninety decibels. An eight-hour exposure to constant 90 dBA noise is a one hundred percent noise dose exposure.

C-weighted - An adjustment to sound level measurements that evenly represents frequencies within the range of human hearing. Used for evaluating impact or impulse noise.

Decibel (dB) - Unit of measurement of sound level. A-weighting, adjusting for the sensitivity of the human ear, is indicated as "dBA." C-weighting, an even reading across the frequencies of human hearing, is indicated as "dBC."

Fast response - A setting for a sound level meter that will allow the meter to respond to noise events of less than one second. Used for evaluating impulse and impact noise levels.

Hertz (Hz) - Unit of measurement of frequency, numerically equal to cycles per second.

Impulsive or impact noise - Noise levels which involve maxima at intervals greater than one second. Impulse and impact noise are measured using the fast response setting on a sound level meter.

Noise dose - The total noise exposure received by an employee during their shift. It can be expressed as a percentage indicating the ratio of exposure received to the noise exposure received in an eight-hour exposure to constant noise at 90 dBA. It may also be expressed as the sound level that would produce the equivalent exposure during an eight-hour period (TWA_8).

Noise dosimeter - An instrument that integrates a function of sound pressure over a period of time in such a manner that it directly indicates a noise dose.

Occupational hearing loss - A reduction in the ability of an individual to hear either caused or contributed to by exposure in the work environment.

Otolaryngologist - A physician specializing in diagnosis and treatment of disorders of the ear, nose and throat.

Permanent threshold shift - A hearing level change that has become persistent and is not expected to improve.

Qualified reviewer - An audiologist, otolaryngologist, or other qualified physician who has experience and training in evaluating occupational audiograms.

Slow response - A setting for sound level meters and dosimeters in which the meter does not register events of less than about one second. Used for evaluating continuous and average noise levels.

Sound level - The intensity of noise as indicated by a sound level meter.

Sound level meter - An instrument that measures sound levels.

Standard threshold shift (STS) - A hearing level change, relative to the baseline audiogram, of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear.

Temporary threshold shift - A hearing level change that improves. A temporary threshold shift may occur with exposure to noise and hearing will return to normal within a few days. Temporary threshold shifts can be indicators of exposures that lead to permanent hearing loss.

TWA_8 - Equivalent eight-hour time-weighted average sound level - That sound level, which if constant over an

eight-hour period, would result in the same noise dose measured in an environment where the noise level varies.

**Part Y-8
Confined Spaces**

NEW SECTION

WAC 296-307-642 Scope. This part applies to all confined spaces and provides requirements to protect employees

from the hazards of entering and working in confined spaces. This part applies in any of the following circumstances:

- You have confined spaces in your workplace.
- Your employees will enter another employer's confined spaces.
- A contractor will enter your confined spaces.
- You provide confined space rescue services.

You can use Table 1 to help you decide which requirements to follow for confined spaces.

**Table 1
Requirements for Confined Spaces**

For confined spaces that are	The requirements in the following sections apply					
	644	646	648	650	652	654
Permit-required confined spaces	X	X	X	X	X	X
Entered by a contractor	X	X	X	X	X	X
Nonpermit confined spaces	X					X
Never entered	X					
If you only:						
Use alternate entry procedures	X	X	X		X	
Have a contractor enter your space	X					
Are a rescue service provider		X	X	X		

Definition:

A **confined space** is a space that is ALL of the following:

- Large enough and arranged so an employee could fully enter the space and work.
- Has limited or restricted entry or exit. Examples of spaces with limited or restricted entry are tanks, vessels, silos, storage bins, hoppers, vaults, excavations, and pits.
- Not primarily designed for human occupancy.

Note: • Requirements in other chapters may apply to your work. You will find some safety and health requirements are addressed on a broad level in this part, while being addressed for a specific application in another rule. When this happens, both requirements apply and should not conflict. When a conflict does occur, you need to follow the more specific requirement.
• If you are uncertain which requirements to follow, contact your local labor and industries (L&I) office.

NEW SECTION

WAC 296-307-644 Summary. Identifying and controlling permit-required confined spaces.

Your responsibility:

To identify your permit-required confined spaces and control employee entry.

You must:

Identify permit-required confined spaces.

WAC 296-307-64402

Inform employees and control entry to permit-required confined spaces.

WAC 296-307-64404

Follow these requirements when you contract with another employer to enter your confined space.

WAC 296-307-64406

NEW SECTION

WAC 296-307-64402 Identify permit-required confined spaces.

IMPORTANT:

If your workplace contains only nonpermit confined spaces and your employees do not enter another employer's confined space, you may follow only the requirements in:

- WAC 296-307-644, Identifying and controlling permit-required confined spaces; and
- WAC 296-307-654, Nonpermit confined space requirements.

You must:

- Identify all permit-required confined spaces in your workplace.
- Assume any confined space is a permit-required confined space, unless you determine the space to be a nonpermit confined space.

- If you enter the space to determine the hazards, follow the requirements in WAC 296-307-650, Permit entry procedures.

- If you evaluate the confined space and there are no potential or actual hazards, you can consider it to be a nonpermit confined space.

- Document your determination that the space is nonpermit, as required by WAC 296-307-654.

Definitions:

A **permit-required confined space or permit space** is a confined space that has one or more of the following characteristics capable of causing death or serious physical harm:

- Contains or has a potential to contain a hazardous atmosphere.

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- Contains a material with the potential for engulfing someone who enters the space.
 - Has an internal configuration that could allow someone entering to be trapped or asphyxiated by inwardly converging walls or by a floor, which slopes downward and tapers to a smaller cross-section.
 - Contains any physical hazard. This includes any recognized health or safety hazards including engulfment in solid or liquid material, electrical shock, or moving parts.
 - Contains any other recognized safety or health hazard that could either:
 - Impair the ability to self rescue;
- OR**
- Result in a situation that presents an immediate danger to life or health.

A **nonpermit confined space** is a confined space that does NOT contain actual hazards or potential hazards capable of causing death or serious physical harm.

NEW SECTION

WAC 296-307-64404 Inform employees and control entry to permit-required confined spaces.

You must:

- (1) Provide information about confined spaces as follows:
 - Make available to affected employees and their authorized representatives all information and documents required by this part.
 - Inform affected employees about the existence, location, and danger of any permit-required confined spaces in your workplace by:
 - Posting danger signs; or
 - Using any other equally effective means to inform employees.

Note: A sign reading "Danger-Permit Required Confined Space, DO NOT ENTER" or using pictures or other similar wording employees can understand would satisfy the requirement for a sign.

You must:

- (2) Take effective measures to prevent unauthorized employees from entering permit-required confined spaces.

Note: Examples of measures to prevent employee entry include padlocks, bolted covers, special tools to remove covers, and providing employee training.

NEW SECTION

WAC 296-307-64406 Follow these requirements when you contract with another employer to enter your confined space.

IMPORTANT:

The contractor is responsible for following all confined space requirements in this part and in other rules that apply.

You must:

- Do **all** of the following if you arrange to have another employer (contractor) perform work that involves entry into your permit-required confined space:
 - Inform the contractor:

- That the workplace contains permit-required confined spaces and entry is allowed only if the applicable requirements of this part are met.
- Of the identified hazards and your experience with each permit-required confined space.
- Of any precautions or procedures you require for the protection of employees in or near spaces where the contractor will be working.
 - Coordinate entry operations with the contractor, when either employees or employers from the different companies will be working in or near permit-required confined spaces.
 - Discuss entry operations with the contractor when they are complete. Include the following in your discussion:
 - The program followed during confined space entry; and
 - Any hazards confronted or created.

PERMIT-REQUIRED CONFINED SPACE PROGRAM

NEW SECTION

WAC 296-307-646 Summary.

Your responsibility:

To develop your permit-required confined space program and practices.

IMPORTANT:

This section applies if employees will enter a permit-required confined space.

You must:

Develop a written permit-required confined space program.

WAC 296-307-64602

Meet these additional requirements if your employees enter another employer's confined space.

WAC 296-307-64604

NEW SECTION

WAC 296-307-64602 Develop a written permit-required confined space program.

IMPORTANT:

• Identify and evaluate the hazards of permit-required confined spaces and the work performed, to assist you in developing your entry program.

You must:

- Develop a written program, before employees enter, that describes the means, procedures, and practices you use for the safe entry of permit-required confined spaces as required by this part. Include the following when applicable to your confined space entry program:
 - Documentation of permit entry procedures.
 - Documentation used for alternate entry procedures.
 - How to reclassify permit-required confined spaces to nonpermit spaces.
 - Designation of employee roles, such as entrants, attendants, entry supervisors, rescuers, or those who test or monitor the atmosphere in a permit-required space.
 - Identification of designated employee duties.
 - Training employees on their designated roles.

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- How to identify and evaluate hazards.
- Use and maintenance of equipment.
- How to prevent unauthorized entry.
- How to coordinate entry with another employer.
- How to rescue entrants.

Note: For alternate entry, your written program only needs to meet the requirements of WAC 296-307-648, Employee training, and WAC 296-307-652, Alternate entry procedures, of this part.

You must:

- Consult with affected employees and their authorized representatives when developing and implementing all aspects of your permit-required confined space program.
- Make the written program available to employees and their authorized representatives.
- Update your written program as necessary.

NEW SECTION

WAC 296-307-64604 Meet these additional requirements if your employees enter another employer's confined space.

You must:

- Obtain any available information about permit-required confined space hazards and entry operations from the host employer.
- Coordinate entry operations with any other employers whose employees will be working in or near the permit-required confined space.
- Inform the host employer, either through a debriefing or during entry operations, about:
 - The entry program you will follow; and
 - Any hazards you confronted or created in the space during entry operations.

EMPLOYEE TRAINING

NEW SECTION

WAC 296-307-648 Summary.

Your responsibility:

To make sure employees are trained to perform their designated roles safely.

You must:

Provide employee training.

WAC 296-307-64802

Certify employee proficiency.

WAC 296-307-64804

NEW SECTION

WAC 296-307-64802 Provide employee training.

You must:

- Provide training to each employee involved in permit-required confined space activities, so they acquire the understanding, knowledge and skills necessary to safely perform assigned duties.
 - Establish employee proficiency in their confined space duties.
 - Introduce new or revised procedures as necessary.

- Note:**
- Employers can determine employee proficiency by:
 - Observing employee performance during training exercises that simulate actual confined space conditions.
 - A comprehensive written examination; or
 - Any other method that is effective for the employer.

You must:

- Provide training at the following times:
 - Before an employee is first assigned to duties covered by this part.
 - Before there is a change in an employee's assigned duties.
 - When there is a permit-required confined space hazard for which the employee has not already been trained.
 - If you have reason to believe that there are either:
 - Deviations from your procedures for permit-required confined space entry; or
 - Employee knowledge or use of your procedures is inadequate.

NEW SECTION

WAC 296-307-64804 Certify employee proficiency.

You must:

- Certify employee proficiency in their assigned duties.
- Make sure the certification:
 - Contains each employee's name, the trainer's written or electronic signature or initials, and the dates of training.
 - Is available for inspection by employees and their authorized representatives.

PERMIT ENTRY PROCEDURES

NEW SECTION

WAC 296-307-650 Summary.

Your responsibility:

To establish procedures for the safe permit-required entry of confined spaces.

Implement procedures for entry permits.

WAC 296-307-65002

Use an entry permit that contains all required information.

WAC 296-307-65004

Keep and review your entry permits.

WAC 296-307-65006

Prevent unauthorized entry.

WAC 296-307-65008

Provide, maintain, and use proper equipment.

WAC 296-307-65010

Evaluate and control hazards for safe entry.

WAC 296-307-65012

Make sure you have adequate rescue and emergency services available.

WAC 296-307-65014

Use nonentry rescue systems or methods whenever possible.

WAC 296-307-65016

Make sure entry supervisors perform their responsibilities and duties.

WAC 296-307-65018

Provide an attendant outside the permit-required confined space.

WAC 296-307-65020

Make sure entrants know the hazardous conditions and their duties.

WAC 296-307-65022

Implement procedures for ending entry.

WAC 296-307-65024

NEW SECTION

WAC 296-307-65002 Implement procedures for entry permits.

You must:

• Identify and evaluate, before employees enter, potential hazards from:

- The permit-required confined space; and
- The work to be performed.

• Complete an entry permit before entry is authorized, documenting that you have completed the means, procedures and practices necessary for safe entry and work.

• Make sure that entrants or their representatives have an opportunity to observe any monitoring or testing, or any actions to eliminate or control hazards, performed to complete the permit.

• Identify the entry supervisor.

– Make sure the entry supervisor signs the entry permit, authorizing entry, before the space is entered.

• Make the completed permit available to entrants or their authorized representatives at the time of entry.

– Do this by either posting the completed permit at the entry location, or by any other equally effective means.

• Make sure the duration of the permit does not exceed the time required to complete the assigned task or job identified on the permit.

• Note any problems encountered during an entry operation on the permit. Use the information to make appropriate revisions to your program, entry operations, means, systems, procedures and practices.

NEW SECTION

WAC 296-307-65004 Use an entry permit that contains all required information.

You must:

• Make sure your entry permit identifies **all** of the following that apply to your entry operation:

- The space to be entered.
- Purpose of the entry.
- Date and the authorized duration of the entry permit.
- Hazards of the space to be entered.
- Acceptable entry conditions.
- Results of initial and periodic tests performed to evaluate and identify the hazards and conditions of the space, accompanied by the names or initials of the testers and by an indication of when the tests were performed.

– Appropriate measures used before entry to isolate the space, and eliminate or control hazards.

• Examples of appropriate measures include the lockout or tagging of equipment and procedures for purging, inerting, ventilating, and flushing permit-required confined spaces.

– Names of entrants and current attendants.

• Other means include the use of rosters or tracking systems as long as the attendant can determine quickly and accurately, for the duration of the permit, which entrants are inside the space.

– The current entry supervisor.

– A space for the signature or initials of the original supervisor authorizing entry.

– Communication procedures for entrants and attendants to maintain contact during the entry.

– Equipment provided for safe entry, such as:

- Personal protective equipment (PPE).
- Testing equipment.
- Communications equipment.
- Alarm systems.
- Rescue equipment.

– Rescue and emergency services available, and how to contact them. Include equipment to use, and names and contact information.

– Other information needed for safety in the particular confined space.

– Additional permits issued for work in the space, such as for hot work.

NEW SECTION

WAC 296-307-65006 Keep and review your entry permits.

You must:

• Keep entry permits for at least one year.

• Keep entry permits or other atmospheric monitoring records that show the actual atmosphere an employee entered or worked in, as employee exposure records.

• Review your permit-required confined space entry program as follows:

– Conduct a review when you have any reason to believe your entry program may not protect employees, and revise your program before allowing subsequent entries.

Note: Examples of circumstances requiring the review of your program include the following:

- There is unauthorized entry of a permit space.
- A permit space hazard not covered by the permit is found.
- A condition prohibited by the permit occurs.
- An injury or near-miss occurs during entry.
- There is a change in the use or configuration of a permit space.
- An employee complains about the effectiveness of the program.

You must:

• Review canceled entry permits within one year following each entry to evaluate:

– Your permit-required confined space program.

– The protection provided to employees entering permit-required confined spaces.

• Update your written permit-required confined space entry program as necessary.

Note: Employers may perform a single annual review covering all entries performed during a twelve-month period. If no entry is performed during a twelve-month period, no review is necessary.

NEW SECTION

WAC 296-307-65008 Prevent unauthorized entry.

You must:

- Implement measures necessary to prevent unauthorized entry into permit-required confined spaces, when conducting authorized entry.

Note:

- When removing entrance covers to open the confined space, protect entrants and those outside the confined space from hazards.
- Examples of measures to prevent unauthorized entry are signs, barricades, warning tape, and an attendant.

NEW SECTION

WAC 296-307-65010 Provide, maintain, and use proper equipment.

You must:

- Provide the equipment in Table 2, when needed and at no cost to employees.
- Make sure that employees use provided equipment properly.
- Maintain the provided equipment.

**Table 2
Equipment Provided to Employees at No Cost**

Type of equipment	For
Testing and monitoring equipment	Evaluating permit-required confined space conditions
Ventilating equipment	Obtaining and maintaining acceptable entry conditions
Communication equipment	Effective communication between the attendant and the entrants and to initiate rescue when required
Personal protective equipment (PPE)	Protecting employees from hazards of the space or the work performed
Lighting equipment	Employees to see well enough to work safely and to exit the space quickly in an emergency
Barriers or shields, such as pedestrian, vehicle or other barriers	Protecting employees from hazards outside of the space
Ladders	Safe entry and exit by entrants
Rescue and emergency equipment, except for equipment provided by the rescue service provider	Safe and effective rescue
Any other equipment	Safe entry into and rescue from permit-required confined spaces

NEW SECTION

WAC 296-307-65012 Evaluate and control hazards for safe entry.

- Evaluate and control hazards for safe entry into permit-required confined spaces by doing all the following:

- Test for atmospheric hazards, in this order:
 - Oxygen.
 - Combustible gases and vapors.
 - Toxic gases and vapors.

- Provide each entrant or their authorized representative an opportunity to observe any of the following:

- Preentry testing.
- Subsequent testing.
- Monitoring of permit-required spaces.

- Reevaluate the permit-required space in the presence of any entrant, or their authorized representative, who requests this to be done because they have reason to believe that the evaluation of that space may not have been adequate.

- Upon request, immediately provide each entrant or their authorized representative, with the results of any testing required by this rule.

- Continuously monitor conditions in areas where entrants are working, when isolation of the space is not feasible.

- Examples would be a large space or space that is part of a continuous system, such as a sewer.

- Evaluate space conditions during entry as follows:

**Table 3
Evaluating Space Conditions**

You must:	In order to
Test conditions before entry	Determine that acceptable entry conditions exist before entry is authorized by the entry supervisor
Test or evaluate space conditions during entry	Determine that acceptable entry conditions are being maintained during entry operations
Evaluate entry operations	Make sure entrants of more than one employer working at the same time in or around a permit-required confined space, do not endanger each other

IMPORTANT:

This section applies to both:

- Employers whose employees use permit entry procedures; and
- Employers who provide rescue services.

NEW SECTION

WAC 296-307-65014 Make sure you have adequate rescue and emergency services available.

You must:

- (1) Make sure you have adequate rescue and emergency services available during your permit-required confined space entry operations.

- Evaluate and select rescue teams or services who can:

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– Respond to a rescue call in a timely manner. Timeliness is based on the identified hazards. Rescuers must have the capability to reach potential victims within an appropriate time frame based on the identified permit space hazards.

– Proficiently rescue employees from a permit-required confined space in your workplace. Rescuers must have the appropriate equipment for the type of rescue.

• Make sure that at least one member of the rescue team or service holds a current certification in first aid and cardiopulmonary resuscitation (CPR).

• Inform each rescue team or service about the hazards they may confront when called to perform rescue.

• Provide the rescue team or service with access to all permit spaces from which rescue may be necessary.

– This will allow them to develop appropriate rescue plans and to practice rescue operations.

Note: What will be considered timely will vary according to the specific hazards involved in each entry. For example, WAC 296-307-594, Respirators, requires that employers provide a standby person or persons capable of immediate action to rescue employee(s) for work areas considered to contain an IDLH atmosphere.

You must:

(2) Provide employees, assigned to provide permit-required confined space rescue and emergency services, with:

• Personal protective equipment (PPE) needed for safe entry.

• Other equipment required to conduct rescues safely.

• Training so they are:

– Proficient in the use of the PPE and other equipment.

– Proficient as an entrant of permit-required confined spaces.

– Able to safely perform assigned rescue and emergency duties.

– Knowledgeable in basic first aid and cardiopulmonary resuscitation (CPR).

• Practice sessions for permit-required confined space rescues **at least** once every twelve months where dummies, manikins, or actual persons are removed from either:

– The actual permit spaces; or

– Representative permit spaces that simulate the opening size, configuration, and accessibility, of permit spaces where rescue will be performed.

(3) Establish procedures for:

• Contacting rescue and emergency services.

• Rescuing entrants from permit-required confined spaces.

• Providing necessary emergency services to rescued entrants.

• Preventing unauthorized persons from attempting a rescue.

NEW SECTION

WAC 296-307-65016 Use nonentry rescue systems or methods whenever possible.

You must:

• Use nonentry retrieval systems or methods to rescue entrants in a permit-required confined space unless this:

– Would increase the overall risk of injury to entrants; or

– Would not contribute to the rescue of the entrant.

• Make sure each entrant uses a chest or full-body harness, with a retrieval line attached to the harness at one of the following locations:

– At the center of the employee's back, near shoulder level.

– Above the employee's head.

– At another point which presents a profile small enough for the successful removal of the employee.

• Attach the retrieval line to a mechanical device or fixed point outside the space, so rescue can begin as soon as necessary.

• Make sure a mechanical device is available to retrieve entrants from vertical spaces more than five feet (1.52 m) deep.

Note: When you can demonstrate that the use of a chest or full-body harness is not feasible or creates a greater hazard, then you may use wristlets or another method shown to be the safest and most effective alternative.

NEW SECTION

WAC 296-307-65018 Make sure entry supervisors perform their responsibilities and duties.

You must:

• Make sure that an entry supervisor:

– Authorizes the entry into a permit-required confined space by signing the entry permit.

– Oversees entry operations.

– Knows about the hazards that may be faced during entry, including the mode, signs or symptoms, and consequences of the exposure.

– Verifies and checks **all** of the following:

■ The appropriate entries have been made on the permit.

■ All tests specified by the permit have been conducted.

■ All procedures and equipment specified by the permit are in place before approving the permit and allowing entry to the space.

– Terminates the entry and cancels the permit when:

■ The assigned task or job has been completed.

■ A condition in the space that is not covered by the entry permit is discovered.

– Verifies that rescue services are available and that there is a way to contact them.

– Removes unauthorized individuals who enter or attempt to enter the permit-required confined space during entry operations.

– Determines that entry operations remain consistent with the terms of the entry permit and acceptable entry conditions are maintained:

■ Whenever responsibility for a permit-required space entry operation is transferred; and

■ At regular intervals dictated by the hazards and operations performed within the space.

Note: • Make sure entry supervisors have the required knowledge and proficiency to perform the job duties and responsibilities required by this part.
• The entry supervisor may also perform other duties under this part, such as attendant or entrant, if they are trained and proficient in those duties.

- The responsibility of the entry supervisor may be passed from one supervisor to another during an entry operation.

NEW SECTION

WAC 296-307-65020 Provide an attendant outside the permit-required confined space.

IMPORTANT:

- The number of attendants assigned should be tailored to the requirements of the space and the work performed.
- You need to assess if it is appropriate or possible to have multiple permit spaces monitored by a single attendant, or have an attendant stationed at a location outside each space. Video cameras and radios are examples of tools that may assist an attendant monitoring more than one space.
- Attendants may be stationed at any location outside the permit-required confined space if the duties described in this section can be effectively performed for each space that is monitored.

You must:

- Provide at least one attendant outside the permit-required confined space during entry operations.
- Make sure each permit-required confined space attendant:
 - Understands the hazards that may be faced during entry, including the mode, signs or symptoms, and results of exposure to the hazards.
 - Is aware of the behavioral effects of exposure to the hazard.
 - Continuously maintains an accurate count of entrants in the space.
 - Maintains an accurate record of who is in the permit-required confined space.
 - Communicates with entrants as necessary to monitor their status or alert them of the need to evacuate the space.
 - Monitors activities inside and outside the space to determine if it is safe for entrants to remain in the space.
 - Orders entrants to evacuate the space immediately if any of the following conditions occur:
 - A prohibited condition.
 - The behavioral effects of hazardous exposure on an entrant.
 - A situation outside the space that could endanger entrants.
 - The attendant cannot effectively and safely perform all the duties required in this part.
 - Takes the following actions when unauthorized persons approach or enter a space:
 - Warns unauthorized persons to stay away from the space.
 - Tells the unauthorized persons to exit immediately if they have entered the space.
 - Informs entrants and the entry supervisor if unauthorized persons have entered the space.
 - Performs nonentry rescues as specified by your rescue procedure.
 - Has the means to respond to an emergency affecting one or more of the permit spaces being monitored without preventing performance of the attendant's duties to the other spaces being monitored.

- Carries out no duties that might interfere with their primary duty to monitor and protect the entrants.
- Calls for rescue and other emergency services as soon as entrants may need assistance to escape from the space.
- Monitors entry operations until relieved by another attendant or all entrants are out of the space.

NEW SECTION

WAC 296-307-65022 Make sure entrants know the hazardous conditions and their duties.

You must:

- Make sure that all entrants:
 - Know the hazards they may face during entry, including the mode, signs or symptoms, and results of exposure to the hazards.
 - Use equipment properly.
 - Communicate with the attendant as necessary so the attendant can:
 - Monitor entrant status.
 - Alert entrants of the need to evacuate.
 - Alert the attendant whenever either of these situations exist:
 - A warning sign or symptom of exposure to a dangerous situation such as, behavioral changes, euphoria, giddiness potentially from lack of oxygen or exposure to solvents.
 - A prohibited condition.
 - Exit from the permit-required confined space as quickly as possible when one of the following occurs:
 - The attendant or entry supervisor gives an order to evacuate.
 - The entrant recognizes any warning sign or symptom of exposure to a dangerous situation.
 - The entrant detects a prohibited condition.
 - An evacuation alarm is activated.

NEW SECTION

WAC 296-307-65024 Implement procedures for ending entry.

You must:

- Make sure you terminate the entry when entry operations are completed, including securing an entrance cover and canceling the permit.

NEW SECTION

WAC 296-307-652 Alternate entry procedures.

Summary:

Your responsibility:

To choose alternate entry procedures for spaces where the only hazard is a hazardous atmosphere.

IMPORTANT:

In addition to this section, you also need to meet the requirements in the following sections of this part:

- WAC 296-307-644, Identifying and controlling permit-required confined spaces.
- WAC 296-307-646, Permit-required confined space program.
- WAC 296-307-648, Employee training.

You must:

Make sure the following conditions are met if using alternate entry procedures.

WAC 296-307-65202

Follow these alternate entry procedures for permit-required confined spaces.

WAC 296-307-65204NEW SECTION

WAC 296-307-65202 Make sure the following conditions are met if using alternate entry procedures.

You must:

• Make sure, when using alternate entry procedures, instead of permit entry procedures, that you have monitoring and inspection data that supports the following:

– That the only hazard of the permit-required confined space is an actual or potentially hazardous atmosphere.

– That continuous forced air ventilation alone is all that is needed to maintain the permit-required confined space for safe entry.

• Make sure an entry to obtain monitoring and inspection data or to eliminate hazards is performed according to WAC 296-307-500, Permit entry procedures.

• Make sure all documentation produced is available to each affected employee and their authorized representative.

NEW SECTION

WAC 296-307-65204 Follow these alternate entry procedures for permit-required confined spaces.

You must:

• Use the following alternate entry procedures:

– Eliminate any unsafe conditions before removing an entrance cover.

■ When entrance covers are removed, promptly guard the opening with a railing, temporary cover, or other temporary barrier to prevent accidental falls through the opening and protect entrants from objects falling into the space.

■ Certify that preentry measures have been taken (such as safe removal of the cover and having protection needed to gather preentry data), with the date, location of the space, and signature of the person certifying.

• Make the preentry certification available before entry to each entrant.

– Before an employee enters the confined space, test the internal atmosphere with a calibrated, direct-reading instrument for all of the following, in this order:

- Oxygen content.
- Flammable gases and vapors.
- Potential toxic air contaminants.

– Provide entrants, or their authorized representatives, with an opportunity to observe the preentry and periodic testing.

– Make sure the atmosphere within the space is not hazardous when entrants are present.

– Use continuous forced air ventilation, as follows:

■ Wait until the forced air ventilation has removed any hazardous atmosphere before allowing entrants into the space.

■ Direct forced air ventilation toward the immediate areas where employees are, or will be, and continue ventilation until all employees have left the space.

• Provide the air supply from a clean source and make sure it does not increase hazards in the space.

– Test the atmosphere within the space as needed to make sure hazards do not accumulate.

– If a hazardous atmosphere is detected during entry, do all of the following:

■ Evacuate employees from the space immediately.

■ Evaluate the space to determine how the hazardous atmosphere developed.

■ Implement measures to protect employees from the hazardous atmosphere before continuing the entry operation.

■ Verify the space is safe for entry before continuing the entry operation.

NEW SECTION

WAC 296-307-654 Nonpermit confined spaces requirements.

Summary:**IMPORTANT:**

A confined space may be classified as a nonpermit confined space for as long as the hazards remain eliminated. Once a hazard is present, you must follow all requirements of this part that apply.

Your responsibility:

To make sure any space you classify as nonpermit does not have the potential to contain serious health or safety hazards.

You must:

Follow these requirements when classifying a confined space as a nonpermit confined space.

WAC 296-307-65402

Reevaluate nonpermit confined spaces if hazards develop.

WAC 296-307-65404NEW SECTION

WAC 296-307-65402 Follow these requirements when classifying a confined space as a nonpermit confined space.

You must:

• Make sure the confined space meets these conditions to be classified as nonpermit confined spaces:

– The confined space does not contain an actual or potential hazardous atmosphere.

– The confined space does not contain hazards capable of causing death or serious physical harm. This includes any recognized health or safety hazards including engulfment in solid or liquid material, electrical shock, or moving parts.

– If you must enter to remove hazards, the space must be treated as a permit-required confined space until hazards have been eliminated.

Note:

• Controlling atmospheric hazards through forced air ventilation does not eliminate the hazards.

• You should evaluate the use of lockout-tagout, as covered in WAC 296-307-320, to determine if using it fully eliminates the hazard.

- You are allowed to use alternate entry procedures covered in WAC 296-307-652, if you can demonstrate that forced air ventilation alone will control all hazards in the space.

You must:

• Document how you determined the confined space contained no permit-required confined space hazards. Certify this documentation with the following:

- Date.
- Location of the space.
- Signature of the person making the determination.

• Make the certification available to each entrant, or their authorized representative.

Note: This certification must be completed every time a permit-required confined space is reclassified as a nonpermit space.

NEW SECTION**WAC 296-307-65404 Reevaluate nonpermit confined spaces if hazards develop.****You must:**

• Reclassify a nonpermit confined space to a permit-required confined space, if necessary, when changes in the use or configuration of the space increase the hazards to entrants.

• Make sure all employees exit the space if hazards develop. You must then reevaluate the space and determine whether it must be reclassified as a permit-required confined space.

NEW SECTION**WAC 296-307-656 Definitions.****Acceptable entry conditions:**

The conditions that must exist in a permit-required confined space to allow safe entry and work.

Attendant:

An individual stationed outside one or more permit-required confined spaces to monitor the entrants.

Blanking or blinding:

The absolute closure of a pipe, line, or duct by fastening a solid plate (such as a spectacle blind or a skillet blind) that completely covers the bore. It is capable of withstanding the maximum pressure of the pipe, line, or duct with no leakage beyond the plate.

Confined space:

A space that is **all** of the following:

- Large enough and arranged so an employee could fully enter the space and work.
- Has limited or restricted entry or exit. Examples of spaces with limited or restricted entry are tanks, vessels, silos, storage bins, hoppers, vaults, excavations, and pits.
- Not primarily designed for human occupancy.

Double block and bleed:

The closure of a line, duct, or pipe by closing and locking or tagging two in-line valves and by opening and locking or tagging a drain or vent valve in the line between the two closed valves.

Emergency:

Any occurrence (including any failure of hazard control or monitoring equipment) or event internal or external to the

permit-required confined space that could endanger authorized entrants.

Engulfment:

The surrounding capture of a person by a liquid or finely divided (flowable) solid substance that can be inhaled to cause death by filling or plugging the respiratory system or that can exert enough force on the body to cause death by strangulation, constriction, or crushing.

Enter (entry):

The action by which a person passes through an opening into a permit-required confined space and includes work activities in that space. Entry is considered to have occurred as soon as any part of the entrant's body breaks the plane of an opening into the space.

Note: If the opening is large enough for the worker to fully enter the space, a permit is required even for partial body entry. Permits are not required for partial body entry where the opening is not large enough for full entry, although other rules such as lockout-tagout, WAC 296-307-320 or respiratory hazards, WAC 296-307-624 may apply.

Entrant:

An employee who is authorized by the employer to enter a permit-required confined space.

Entry permit (permit):

The written or printed document that is provided by you to allow and control entry into a permit-required confined space and that contains the information required in WAC 296-307-650, Permit entry procedures.

Entry supervisor:

The person (such as the employer, crew leader, or crew chief) responsible for:

- Determining if acceptable entry conditions are present at a permit-required confined space where entry is planned;
- Authorizing entry and overseeing entry operations; and
- Terminating entry as required.

Hazardous atmosphere:

An atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from a permit-required confined space), injury, or acute illness caused by one or more of the following:

- Flammable gas, vapor, or mist in excess of ten percent of its lower flammable limit (LFL).
- Airborne combustible dust at a concentration that meets or exceeds its LFL.

Note: This concentration may be approximated as a condition in which the dust obscures vision at a distance of five feet (1.52 m) or less.

- Atmospheric oxygen concentration below 19.5 percent or above 23.5 percent.
- Atmospheric concentration of any substance which may exceed a permissible exposure limit. For additional information about atmospheric concentration, see chapter 296-62 WAC, Parts F, G, and I, General occupational health standards and WAC 296-307-624, Respiratory hazards.

Note: An airborne concentration of a substance that is not capable of causing death, incapacitation, impairment of ability to self-rescue, injury, or acute illness due to its health effects is not covered by this definition.

- Any other atmospheric condition that is immediately dangerous to life or health.

- Note:** You can find guidance on establishing acceptable atmospheric conditions for air contaminants, which have no WISHA-determined doses or permissible exposure limits using other sources of information, such as:
- Material safety data sheets required by WAC 296-307-550, Employer chemical hazard communication.
 - Published information.
 - Internal documents.

Hot work permit:

A written authorization to perform operations, for example, riveting, welding, cutting, burning, and heating, that can provide a source of ignition.

Immediately dangerous to life or health (IDLH):

Any of the following conditions:

- An immediate or delayed threat to life.
- Anything that would cause irreversible adverse health effects.
- Anything that would interfere with an individual's ability to escape unaided from a permit-required confined space.

Note: Some materials - hydrogen fluoride gas and cadmium vapor, for example - may produce immediate transient effects that, even if severe, may pass without medical attention, but are followed by sudden, possibly fatal collapse twelve to seventy-two hours after exposure. The victim "feels normal" after recovery from transient effects until collapse. Such materials in hazardous quantities are considered to be "immediately" dangerous to life or health (IDLH).

Inerting:

The displacement of the atmosphere in a permit-required confined space by a noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible.

Note: This procedure produces an IDLH oxygen-deficient atmosphere.

Isolation:

The process by which a permit-required confined space is removed from service and completely protected against the release of energy and material into the space by such means as: Blanking or blinding; misaligning or removing sections of lines, pipes, or ducts; a double block and bleed system; lockout or tagout of all sources of energy; or blocking or disconnecting all mechanical linkages.

Line breaking:

The intentional opening of a pipe, line, or duct that is or has been carrying flammable, corrosive, or toxic material, an inert gas, or any fluid at a volume, pressure, or temperature capable of causing injury.

Nonpermit confined space:

A confined space that does NOT contain actual hazards or potential hazards capable of causing death or serious physical harm.

Oxygen deficient atmosphere:

An atmosphere containing less than 19.5 percent oxygen by volume.

Oxygen enriched atmosphere:

An atmosphere containing more than 23.5 percent oxygen by volume.

Permit-required confined space or permit space:

A confined space that has one or more of the following characteristics capable of causing death or serious physical harm:

- Contains or has a potential to contain a hazardous atmosphere.

- Contains a material with the potential for engulfing someone who enters.

- Has an internal configuration that could allow someone entering to be trapped or asphyxiated by inwardly converging walls or by a floor, which slopes downward and tapers to a smaller cross section.

- Contains any physical hazard. This includes any recognized health or safety hazards including engulfment in solid or liquid material, electrical shock, or moving parts.

- Contains any other recognized serious safety or health hazard that could either:

- Impair the ability to self-rescue; or
- Result in a situation that presents an immediate danger to life or health.

Permit-required confined space program:

An overall program for:

- Controlling and appropriately protecting employees from permit-required confined space hazards; and
- Regulating employee entry into permit-required confined spaces.

Prohibited condition:

Any condition in a permit-required confined space that is not allowed by the permit during the authorized entry period.

Rescue service:

The personnel designated to rescue employees from permit-required confined spaces.

Retrieval system:

The equipment used for nonentry rescue of persons from permit-required confined spaces, such as a retrieval line, full-body harness or wristlets, and a lifting device or anchor.

Testing:

The process of identifying and evaluating the hazards that entrants may be exposed to in a permit-required confined space. Testing includes specifying the tests that are to be performed in the permit-required confined space.

Note: Testing allows employers to devise and implement adequate controls to protect entrants during entry, and to determine if acceptable entry conditions are present.

Part Y-10

Emergency Response

NEW SECTION

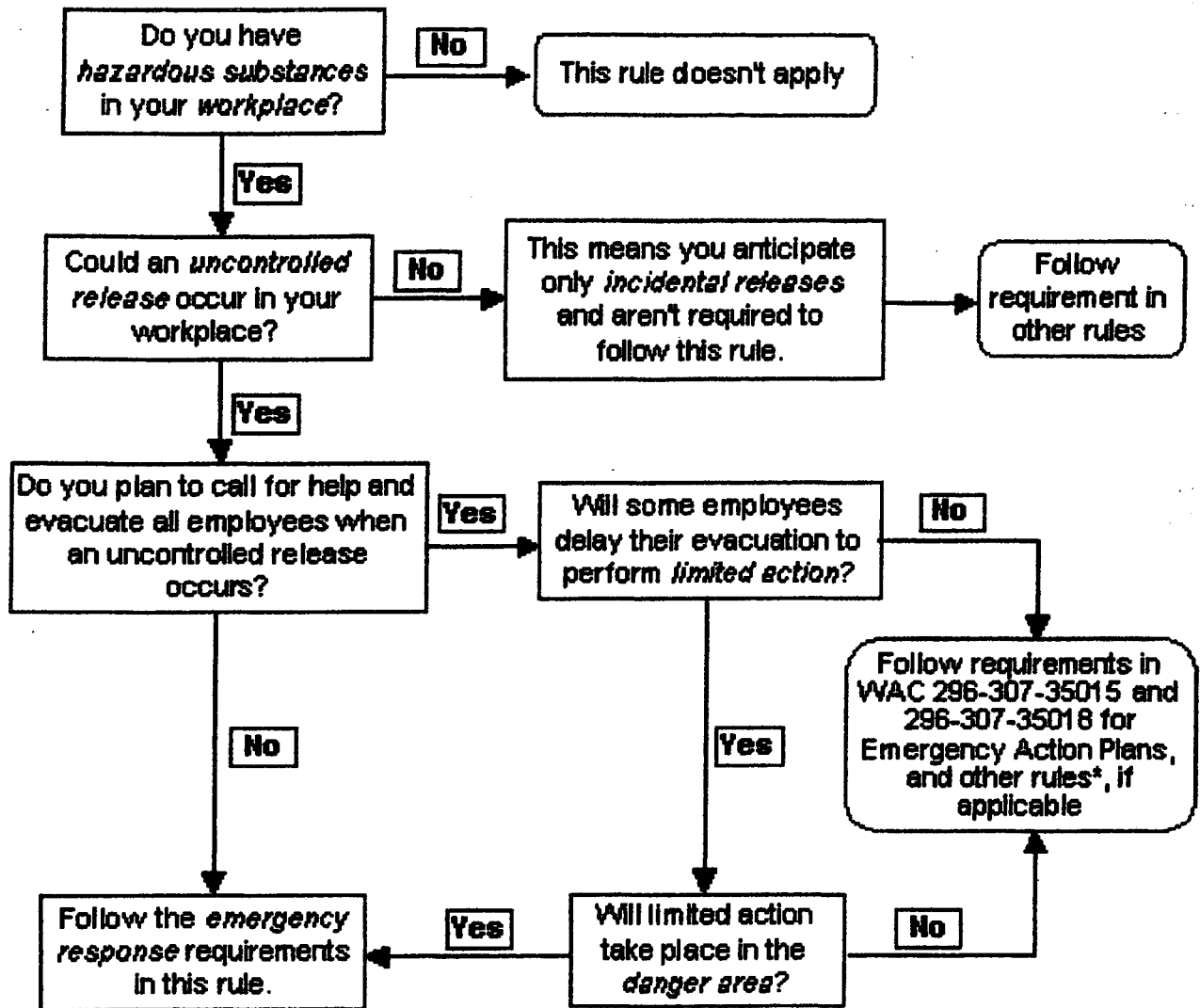
WAC 296-307-704 Scope. What is the purpose of WAC 296-307-704, Emergency response to hazardous substance releases?

To state the minimum requirements that help you protect the safety and health of your employees during a response to hazardous substance releases in your workplace or any other location.

Do the requirements of this rule apply to your workplace?

This section applies if your employees are, or could become, involved in responding to uncontrolled releases of hazardous substances in your workplace or any other location. Use the scope flow chart, and definitions that follow, to determine if this section applies to your workplace(s). Defined words are *italicized* in the flow chart.

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*The flow chart references other rules applicable to your workplace depending on conditions and hazards.

Examples include:

- WAC 296-62-400, Hazardous chemicals in laboratories
- WAC 296-307-594, Respiratory protection.

Definitions applicable to the flow chart (see WAC 296-307-70480 for additional definitions used in this section):

Danger area

Areas where conditions pose a serious danger to employees, such as areas where:

- Immediately dangerous to life or health (IDLH) conditions could exist

OR

- High levels of exposure to toxic substances could exist

OR

- There is a potential for exceeding the lower explosive limit (LEL), also known as the lower flammability limit (LFL), of a substance.

Emergency response

A response to an anticipated release of a hazardous substance that is, or could become, an *uncontrolled release*.

Hazardous substance

Any biological, radiological, or chemical substance that can have adverse effects on humans. (See WAC 296-307-70480 for a more specific definition.)

Immediately dangerous to life or health (IDLH)

Any atmospheric condition that would:

- Cause an immediate threat to life
- Cause permanent or delayed adverse health effects
- Interfere with an employee's ability to escape.

Incidental release

A release that can be safely controlled at the time of the release and does not have the potential to become an *uncontrolled release*.

Example of a situation that results in an incidental release:

A tanker truck is receiving a load of hazardous liquid when a leak occurs. The driver knows the only

hazard from the liquid is minor skin irritation. The employer has trained the driver on procedures and provided equipment to use for a release of this quantity. The driver puts on skin protection and stops the leak. A spill kit is used to contain, absorb, and pick up the spilled material for disposal.

Limited action

Action necessary to:

- Secure an operation during emergency responses,

OR

- Prevent an incident from increasing in severity.

Examples include shutting down processes and closing emergency valves.

Release

A spill, leak, or other type of hazardous substance discharge.

Uncontrolled release

A release where significant safety and health risks could be created. Releases of hazardous substances that are either incidental or could not create a safety or health hazard (i.e., fire, explosion or chemical exposure) are not considered to be uncontrolled releases.

Examples of conditions that could create a significant safety and health risk:

- Large-quantity releases
- Small-releases that could be highly toxic
- Airborne exposures that could exceed a WISHA permissible exposure limit or a published exposure limit and employees are not adequately trained or equipped to control the release.

Example of an uncontrolled release:

A forklift driver knocks over a container of a solvent-based liquid, releasing the contents onto the warehouse floor. The driver has been trained to recognize the vapor is flammable and moderately toxic when inhaled. The driver has not been trained or provided appropriate equipment to address this type of spill. In this situation, it is not safe for the driver to attempt a response. The driver needs to notify someone of the release so an emergency response can be initiated.

Workplace

- A fixed facility

OR

- A temporary location (such as a traffic corridor)

OR

- Locations where employees respond to emergencies.

Summary:

Your responsibility:

To anticipate, plan for, and manage emergency response operations so employees are protected from hazardous substances and conditions.

- Note:** Other chapters may apply to your workplace, such as:
- Chapter 296-62 WAC, General occupational health standards.

You will find some safety and health requirements (for example, personal protective equipment) are addressed on a general level in the core rules, while being addressed for a specific application in this section. When this happens, both requirements apply and should not conflict.

If you are uncertain which requirements to follow, you must comply with the more protective requirement. Contact your local L&I office if you need assistance in making this determination.

You must:

WAC 296-307-70410 Planning

WAC 296-307-70415 Training

WAC 296-307-70420 Medical surveillance

WAC 296-307-70425 Keep records

WAC 296-307-70430 Incident requirements

WAC 296-307-70435 Implement and maintain an incident command system (ICS) (incident command system)

WAC 296-307-70440 Prepare skilled support personnel

WAC 296-307-70445 Make sure the incident commander oversees activities during the response

WAC 296-307-70450 Use the buddy system in danger areas

WAC 296-307-70455 Provide rescue and medical assistance

WAC 296-307-70460 Personal protective equipment

WAC 296-307-70465 Control hazards created by personal protective equipment (PPE)

WAC 296-307-70470 Use personal protective equipment (PPE) properly

WAC 296-307-70475 Postemergency response

WAC 296-307-70480 Definitions.

NEW SECTION

WAC 296-307-70410 Planning. Develop an emergency response plan.

- Note:**
- You may already have an emergency response plan, such as required by chapter 296-843 WAC, Hazardous waste operations or by state and locally coordinated response efforts (Section 303 of Superfund Amendments and Reauthorization Act (SARA), Title III). You may use those plans to comply with this section, if they include the items listed below.

- Before a written emergency response plan can be developed, you will need to anticipate the types of uncontrolled releases that employees could encounter in your workplace(s).

You must:

(1) Make sure your plan is written and adequately addresses, as a minimum, all of the following:

- Preemergency planning and coordination with additional responders (including personnel from other employers such as: Fire departments, law enforcement agencies, emergency medical services, and state or federal agencies).
- Personnel roles, (see Table 1) and lines of authority and communications for all affected parties including responders.
- Employee training (see WAC 296-307-70415, train your employees), for more detail:

- Note:**
- Responders' level of training depends on the duties and roles the employer assigns.
 - Training for the employees' role should address the competencies specified in Tables 3 through 6.

• Training on specific substances may be appropriate depending on the number and characteristics of hazardous substances expected to be encountered. For example, if employees may only respond to one substance, you could provide training (covering the knowledge and skills specified in Tables 3 through 6) relevant to that single substance. If employees might respond to a range of hazardous substances, training may be required to cover categories of hazardous substances.

You must:

- Videos and automated training methods (for example: Interactive computer based programs) may be used in training; however, instructors must be readily available to:
 - Encourage and provide responses to questions for the benefit of the group
 - Evaluate employees' understanding of the material
 - Provide instructional interaction to the group.
- Emergency recognition
- Immediate emergency procedures including:
 - Methods of alerting employees (see WAC 296-307-345, Employee alarm systems) and outside responders
 - Procedures for limited action (emergency prevention).

Note: *Limited action* includes shutting down processes, closing emergency valves and other critical actions to secure the operation, or prevent the incident from increasing in severity.

Limited Action and Employee Roles

If . . .	Then employees involved would be:
Limited action could be conducted in the danger area	Considered emergency responders
Limited action will not be conducted in IDLH conditions	Considered evacuees, not emergency responders

- Details of who will evacuate immediately and who will remain behind for limited action
- Evacuation routes and procedures
- How to establish safe distances and places of refuge (for example, during emergency response the incident commander (IC) decides to make changes based on new developments, i.e., changes in the wind direction).

You must:

- Methods of securing and controlling access to the site
- Emergency medical treatment and first aid
- A complete personal protective equipment (PPE) program that addresses:
 - Selection of PPE including selection criteria to be used and the identification, specified use and limitations of the PPE selected
 - Training on proper use of PPE (including maintenance)
 - Hazards created by wearing PPE including heat stress during temperature extremes, and/or other appropriate medical considerations
 - Criteria used for determining the proper fit of PPE
 - Procedures covering proper use of PPE including procedures for inspection, putting it on (donning) and removing it (doffing)
 - Maintenance of PPE including procedures for decontamination, disposal and storage
 - Methods used to evaluate the effectiveness of your PPE program.

Note:

- If a manufacturer's printed information or WISHA rule adequately addresses procedural requirements (such as donning or doffing for PPE), it is not necessary to rewrite this into your program; simply attach the printed information.
- You may use written procedures provided by the equipment manufacturer when they meet the requirements of other chapters, including chapter 296-307 WAC, Part Y-5, Respirators.

- Emergency equipment
- Emergency response procedures
- Decontamination procedures determined by a hazardous materials specialist or other qualified individual
- Methods to critically assess the response and conduct appropriate follow-up.

You must:

(2) Make your written emergency response plan available to employees, their representatives, and WISHA personnel for inspecting or copying.

Note: In situations where multiple employers could respond to an incident, all plans should consistently address:

- Who will be designated as the incident commander (IC)
- AND**
- If, when, and how transfer of the incident commander (IC) position will take place.

**Table 1
Roles and Duties of Emergency Responders**

If the employee's role is:	Then all the following apply. They:
First responder at the awareness level	<ul style="list-style-type: none"> • Are likely to witness or discover a hazardous substance release • Are trained to initiate an emergency response by notifying the proper authorities of the release • Take no further action beyond notifying the authorities
First responder at the operations level	<ul style="list-style-type: none"> • Respond to actual or potential releases in order to protect nearby persons, property, and/or the environment from the effects of the release • Are trained to respond defensively, without trying to stop the release • May try to: <ul style="list-style-type: none"> - Confine the release from a safe distance

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**Table 1
Roles and Duties of Emergency Responders**

If the employee's role is:	Then all the following apply. They:
	<ul style="list-style-type: none"> - Keep it from spreading - Protect others from hazardous exposures
Hazardous materials technician	<ul style="list-style-type: none"> • Respond to releases or potential releases, with the intent of stopping the release • Are trained to approach the point of release offensively in order to, either: <ul style="list-style-type: none"> - Plug - Patch - Stop the release using other methods
Hazardous materials specialist	<ul style="list-style-type: none"> • Respond along with, and provide support to, hazardous materials technicians • Are required to have more specific knowledge of hazardous substances than a hazardous materials technician • Act as the site activity liaison when federal, state, local, and other government authorities participate
Incident commander	<ul style="list-style-type: none"> • Have ultimate responsibility for: <ul style="list-style-type: none"> - Direction - Control - Coordination of the response effort - Will assume control of the incident beyond the first responder awareness level
Specialist employee	<ul style="list-style-type: none"> • Are a technical, medical, environmental, or other type of expert • May represent a hazardous substance manufacturer, shipper, or a government agency • May be present at the scene or may assist from an off-site location • Regularly work with specific hazardous substances • Are trained in the hazards of specific substances • Are expected to give technical advice or assistance to the incident commander or incident safety officer, when requested
Skilled support personnel	<ul style="list-style-type: none"> • Are needed to perform an immediate, specific emergency support task at the site • Are skilled in the operation of equipment including: <ul style="list-style-type: none"> - Earth moving equipment - Cranes - Hoisting equipment
Incident safety officer	<ul style="list-style-type: none"> • Are designated by the incident commander • Are knowledgeable in operations being implemented at the site • Have specific responsibility to <ul style="list-style-type: none"> - Identify and evaluate hazards - Provide direction on employee safety matters

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NEW SECTION

WAC 296-307-70415 Training.

Train your employees

- Note:**
- Use Tables 3 through 6 to identify your employees' training competencies.
 - You may conduct training internally, or use outside training services to comply with this section.
 - When outside trainers are hired, you are still responsible for making sure the requirements of this section are met. For example, employers may compare the course outline to the competencies listed in Tables 3 through 6.

You must:

- Make sure employees are appropriately trained for their assigned roles and duties as follows:

Exemption: Skilled support employees are not covered by the training requirements of this section (see WAC 296-307-70440).

Initial training:

- Provide initial training before the employee is allowed to participate in an actual emergency response operation.

Note: When first responders at the awareness or operations level have sufficient experience to objectively demonstrate com-

petencies specified in Table 3, you may accept experience instead of training.

- Make sure initial training adequately addresses the competencies in Tables 3 through 6 and the minimum training durations in Table 2.
- Certify that employees objectively demonstrate competencies specified in Tables 3 through 6 (except for employees trained as first responders at the awareness level).

You must:

Retraining (refresher) training:

- Provide retraining annually.
- Make sure retraining covers necessary content.
- Document training or demonstrated competency.

Note: Retraining is not required when employees demonstrate competencies annually and a record is kept of the demonstration methodology used.

You must:

Trainer qualifications:

- Verify trainers have satisfactorily completed an instructors' training course for the subjects they teach. For example, courses offered by the United States National Academy, or equivalent courses are acceptable.

OR

- Have the educational and instructional experience necessary for training.

Specialist employees:

- Specialist employees who have been sent to the scene to advise or assist must receive training or demonstrate competency in their specialty, annually.

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Table 2 Minimum Training Durations for all Responders	
If you are a:	Then:
First responder at the awareness level	Training duration needs to be sufficient to provide the required competencies
First responder at the operations level	You need a minimum of 8 hours training (see Table 3)
Hazardous materials technician	You need a minimum of 24 hours training (see Table 4)
Hazardous materials specialist	You need a minimum of 24 hours training (see Table 4)
Incident commander	You need a minimum of 24 hours training (see Table 5)

Table 3 Competencies for First Responders at the Awareness Level and Operations Level		
Employees must be able to show they:	When they are designated as First Responders at the:	
	Awareness Level	Operations Level
Understand what hazardous substances are and their associated risks.	X	X
Recognize the presence of hazardous substances in an emergency.	X	X
Can identify the hazardous substances, when possible.	X	X
Understand the potential consequences of hazardous substances in an emergency.	X	X
Understand the role of a first responder at the awareness level as described in: <ul style="list-style-type: none"> • The employer's emergency response plan, including site security and control. • The United States Department of Transportation's Emergency Response Guidebook. (Search at: http://www.dot.gov.) 	X	X
Can use The United States Department of Transportation's Emergency Response Guidebook.	X	X
Recognize the need for additional resources and the need to notify the incident's communication center accordingly.	X	X
Know basic hazard and risk assessment techniques.		X
Can select and use personal protective equipment (PPE) appropriate for first responder operations level.		X
Understand basic hazardous materials terms.		X
Can perform basic control, containment, and/or confinement operations within the capabilities of the resources and PPE available.		X
Can implement decontamination procedures to their level of training.		X
Understand relevant standard operating and termination procedures.		X

**Table 4
Competencies for Hazardous Materials Technicians and Hazardous Materials Specialist**

Employees must be able to show they:	When they are designated as a Hazardous Materials:	
	Technician	Specialist
Have the competencies specified for the first responder operations level. (See Table 3)	X	X
Can implement an employer's emergency response plan.	X	X
Can function within their assigned role in the incident command system.	X	X
Understand hazard and risk assessment techniques.	X	X
Understand basic chemical and toxicological terminology and behavior.	X	X
Can use field survey instruments and equipment to classify, identify, and verify materials at the incident.	X	X
Can select and use personal protective equipment (PPE) appropriate for hazardous materials technicians.	X	X
Can perform advance control, containment, and/or confinement operations within the capabilities of the resources and PPE available.	X	X
Can implement decontamination procedures to their level of training.	X	X
Understand termination procedures.	X	X
Can implement the local emergency response plan.		X
Know of the state emergency response plan.		X
Can develop a site safety and control plan.		X
Understand chemical, radiological, and toxicological terminology and behavior.		X
Understand in-depth hazard and risk techniques.		X
Can use advanced survey instruments and equipment to classify, identify and verify materials at the incident.		X
Can select and use proper specialized chemical PPE given to hazardous materials specialists.		X
Can perform specialized control, containment, and/or confinement operations within the capabilities of the resources and PPE available.		X
Can determine decontamination procedures.		X

**Table 5
Competencies for Incident Commanders**

Employees designated as Incident Commanders must be able to show they:
<ul style="list-style-type: none"> • Have competencies specified for the First Responder Operations Level. (See Table 3.) • Know of the state emergency response plan and the Federal Regional Response Team. • Can implement the local emergency response plan. • Can implement the employer's emergency response plan. • Have knowledge of the incident command system (ICS) and understand how they relate to it. • Can implement the employer's ICS. • Understand the hazards and risks associated with employees working in chemical protective clothing. • Understand the importance of decontamination procedures.
Note: If the first employee arriving at the scene is not trained as an IC, they may take control of the incident within their designated role and training level.

**Table 6
Competencies for Specialist Employees**

Employees designated as Specialist Employees must be able to show they:
<ul style="list-style-type: none"> • Have current knowledge in their field regarding safety and health practices relating to the specific hazardous substances. • Have the knowledge of the ICS and understand how they relate to it. • Understand the care and use of personal protective equipment (PPE).

PERMANENT

NEW SECTION

WAC 296-307-70420 Medical surveillance. Provide medical surveillance to employees.

You must:

(1) Provide medical surveillance for employees to comply with Tables 7 and 8, and the following:

- Make medical surveillance available at:
 - Reasonable times and places.

- No cost to employees, including travel associated costs such as mileage, gas or bus fare if the employee is required to travel off site

AND

- Wages for additional time spent outside of employees' normal work hours.

- Make sure a licensed physician performs or supervises exams and procedures.

- Give complete information to the examining physician including:

- A copy of this section.
- A description of the employee's duties that relate to hazardous substance exposure.
- The hazardous substance exposure levels anticipated for the employee.
- A description of the personal protective equipment (PPE) the employee could use.
- Information available from previous medical examinations.
- The medical evaluation information required by chapter 296-307 WAC, Part Y-5, Respirators.
- Medical exams must include, at a minimum:
 - A medical history.

- A work history (or updated history if on file).
- A special emphasis on:
 - Assessment of symptoms related to handling hazardous substances.
 - Health hazards.
 - Evaluation of fitness for duty (including the ability to wear any personal protective equipment (PPE) or other conditions that may be expected at the workplace).
- Other content as determined by the examining physician.

Note: The physician should consult the *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities* and the *Medical Management Guidelines for Acute Chemical Exposure* (search OSHA website: <http://www.osha.gov>).

You must:

(2) Obtain the physician's written opinion and give a copy to the employee that includes:

- A statement of whether or not medical conditions were found which would increase the employee's risk for impairment during emergency response work or respirator use.
- Do not include specific findings or diagnoses unrelated to occupational exposures.
- Limitations recommended to the employee's assigned work, if any.
- Exam and test results if the employee requests this information.
- A statement that affirms the employee has been confidentially informed of medical exam results (including medical conditions requiring follow-up).

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Table 7 Medical Surveillance for Employee Categories	
If the employee is covered by this section and is:	Then you must:
<ul style="list-style-type: none"> • Exposed for at least 30 days a year to health hazards or hazardous substances at or above the permissible exposure limit or published exposure levels (even when respirators are used), OR • Required to wear a respirator for at least 30 days a year.* 	<ul style="list-style-type: none"> • Offer standard medical surveillance as specified in Table 8.*
<ul style="list-style-type: none"> • A hazardous materials (HAZMAT) team member. • A hazardous materials specialist. 	<ul style="list-style-type: none"> • Provide standard medical surveillance as specified in Table 8.
<ul style="list-style-type: none"> • An emergency responder who shows immediate or delayed signs or symptoms possibly resulting from exposure to hazardous substances during an incident. 	<ul style="list-style-type: none"> • Provide incident-specific medical surveillance as specified in Table 8.
<ul style="list-style-type: none"> • Not an emergency responder and: <ul style="list-style-type: none"> – May be injured. – Shows immediate or delayed signs or symptoms possibly resulting from exposure to hazardous substances. – May have been exposed to hazardous substances at concentrations above the permissible exposure limits (PELs) or the published exposure levels without appropriate PPE. 	<ul style="list-style-type: none"> • Offer incident-specific medical surveillance as specified in Table 8.

*Note: A medical evaluation for respirator use is required by chapter 296-307 WAC, Part Y-5, Respiratory protection, for those employees who have not been cleared for respirator use during medical surveillance activities.

Table 8
Frequency of Exams and Consultations

If the employee is covered by:	Then medical surveillance must include:
<ul style="list-style-type: none"> • Standard medical surveillance 	<p>Exams and consultations:</p> <ul style="list-style-type: none"> • Before assignment. <p>Note: If the employee is a hazardous materials (HAZMAT) team member or a hazardous materials specialist, the employee must receive a baseline physical examination.</p> <ul style="list-style-type: none"> • At least once every 12 months after their initial assignment unless the physician believes a shorter, or longer interval (but no more than 24 months) is appropriate. • Whenever employees are reassigned to an area where they will no longer be covered by medical surveillance and they have not been examined within the past 6 months. • As soon as possible after an employee reports: <ul style="list-style-type: none"> – Signs or symptoms of possible overexposure to hazardous substances or health hazards. – Injury. – Exposure above the permissible exposure limits or published exposure levels. • At the termination of their employment unless they were examined within the past 6 months.
<ul style="list-style-type: none"> • Incident-specific medical surveillance 	<p>Medical consultations and exams:</p> <ul style="list-style-type: none"> • As soon as possible following the incident or development of signs or symptoms. • At additional times, if the physician determines follow-up is medically necessary.

PERMANENT

NEW SECTION

WAC 296-307-70425 Keep records.

You must:

- Keep a record of:
 - Name and Social Security number of the employee receiving medical surveillance
 - Physicians' written opinions, recommended limitations, and results of examinations and tests
 - Any employee medical complaints regarding hazardous substance exposures
 - A copy of all information given to the examining physician (except a copy of this section).

NEW SECTION

WAC 296-307-70430 Incident requirements. Recognize emergencies and initiate a response.

You must:

- Make sure employees follow procedures in your emergency response plan to:
 - Recognize when an emergency response must be initiated
 - Notify employees, and others designated in your plan, of the release
 - Follow immediate emergency procedures
 - Prevent the incident from increasing in severity or to secure the operation.

NEW SECTION

WAC 296-307-70435 Implement and maintain an incident command system (ICS).

You must:

- (1) Make sure a single individual, acting as the incident commander (IC), is in charge of the site-specific incident command system (ICS) and acts within their designated role and training level.

Note:

- For multiemployer worksites:
 - The IC has responsibility for controlling emergency response operations at the site for all employers.
 - Emergency response plans should be consistent in designating who assumes the IC position.
 - If the first employee arriving at the scene is not trained as an IC (see Table 5, Training Requirements for Incident Commanders and Specialist Employees, WAC 296-307-70415), they may take control of the incident within their designated role and training level.

You must:

- (2) Make sure all employers' emergency responders and their communications are coordinated and controlled by the IC.

Note:

The IC may delegate tasks to subordinates (within their training level).

You must:

- (3) Make sure each employer at the scene has designated a representative to assist the IC.
- (4) Establish security and control of the site as specified in your written emergency response plan.

NEW SECTION**WAC 296-307-70440 Prepare skilled support personnel.**

Note: The duties of skilled support personnel are described in Table 1, Roles and Duties of Emergency Responders.

You must:

(1) Make sure that your skilled support personnel (including those employees who are not regularly employed by you) who could be exposed to on-scene hazards are given an initial briefing at the site before they participate in any emergency response. The initial briefing must include:

- What chemical hazards are involved
- What duties are to be performed
- Instruction in the wearing of appropriate personal protective equipment.

Note: Skilled support personnel do not need to comply with the other training requirements of this section.

You must:

(2) Make sure the safety and health precautions given to your employees are also given to skilled support personnel.

NEW SECTION**WAC 296-307-70445 Make sure the incident commander oversees activities during the response. The employer of the incident commander (IC) must:**

(1) Identify all hazardous substances and conditions present, within their training level, using site analysis and maximum exposure limits, when appropriate.

(2) Implement emergency response procedures appropriate to the hazardous substances and conditions present, such as:

- Procedures that address the use of engineering controls, hazardous substance handling, and new technologies
- Procedures that address decontamination
- Procedures that address PPE
- Procedures that limit the number of personnel to those who are actively performing emergency response operations, in areas where exposure could exist.

(3) Designate an incident safety officer (ISO).

• Make sure the ISO demonstrates knowledge about operations being implemented at the emergency response site. They must:

- Identify and evaluate hazards
- Communicate with the IC about hazards, immediately informing the IC of corrective actions that must be taken when conditions are judged to be:

■ An imminent danger

OR

■ Immediately dangerous to life or health (IDLH).

– Provide direction about the safety of operations.

NEW SECTION**WAC 296-307-70450 Use the buddy system in danger areas.****You must:**

• Make sure operations and tasks (including limited actions) in danger areas are conducted using the buddy system in teams of two or more.

Definition:

Danger areas are areas where conditions pose a serious danger to employees, such as areas where:

• Immediately dangerous to life or health (IDLH) conditions could exist.

OR

• High levels of exposure to toxic substances could exist.

OR

• There is a potential for exceeding the lower explosive limit (LEL), also known as the lower flammability limit (LFL) of a hazardous substance.

NEW SECTION**WAC 296-307-70455 Provide rescue and medical assistance.****You must:**

(1) Provide stand-by employees equipped with the same level of personal protective equipment (PPE) as the entrants, for assistance or rescue.

- Note:**
- The buddy system applies to stand-by employees (WAC 296-307-70450).
 - One of the two stand-by employees can be assigned to another task provided it does not interfere with the performance of the stand-by role.
 - Rescue equipment should be selected and provided based on the types of rescue situations that could occur.

You must:

(2) Make sure employees trained in first aid are readily available with necessary medical equipment and have a way to transport the injured.

- Note:**
- Employers who require their employees to provide first aid must comply with the bloodborne pathogen rule, chapter 296-823 WAC.

NEW SECTION**WAC 296-307-70460 Personal protective equipment.**

- Note:**
- Only properly trained employees should select PPE. Hazardous materials technicians and hazardous materials specialists can select PPE within the competencies specified in Table 4.
 - Selection requirements in other PPE rules also apply, including:
 - Chapter 296-307 WAC, Part Y-5, Respirators.
 - Chapter 296-305 WAC, Safety standards for fire fighting.

You must:

- Provide employees with appropriate PPE and make sure it is used if hazards could be present.
- Select PPE (such as respirators, gloves, protective suits and other PPE) based on:
 - An evaluation of the performance characteristics (such as breakthrough time and hazardous substance-specificity of

the material or item) relevant to the requirements and limitations of the site.

- Task-specific conditions and durations.
- The hazards and potential hazards of the site (see Table 9, Selecting PPE for Specific Hazards).
- Select totally encapsulating chemical protective (TECP) suits, as specified in Table 9, that:

- Maintain positive air pressure.
- Prevent inward test gas leakage of more than 0.5 percent.

Note: Follow the manufacturer's recommended procedure for testing a TECP suit's ability to maintain positive air pressure and prevent inward gas leakage. Other established test protocols for these suits, for example NFPA 1991 and ASTM F1052-97, may also be used.

Table 9 Selecting PPE for Specific Hazards	
If:	Then use:
<ul style="list-style-type: none"> • Inhalation hazards could be present. 	<ul style="list-style-type: none"> • Positive-pressure (pressure-demand) self-contained breathing apparatus (SCBA) <p>OR</p> <ul style="list-style-type: none"> • A decreased level of respiratory protection only when the incident commander determines, from air monitoring results, that employees will be adequately protected.
Chemical exposure levels will create a substantial possibility of: <ul style="list-style-type: none"> • Immediate death. • Immediate serious illness or injury. • Reduced ability to escape. 	Either positive-pressure (pressure-demand): <ul style="list-style-type: none"> • SCBA • Air-line respirators equipped with an escape air supply.
Skin absorption of a hazardous substance may result in a substantial possibility of: <ul style="list-style-type: none"> • Immediate death. • Immediate serious illness or injury. • Reduced ability to escape. 	Protection equivalent to Level A including a totally encapsulating chemical protective (TECP) suit.

PERMANENT

NEW SECTION

WAC 296-307-70465 Control hazards created by personal protective equipment (PPE).

You must:

- Control hazards created by the use of PPE, including:
 - Heat stress due to extremely high temperatures.
 - Any other employee health hazard and consideration.

NEW SECTION

WAC 296-307-70470 Use personal protective equipment (PPE) properly.

You must:

- (1) Make sure employees inspect PPE before, during and after use, following your plan's procedures.
- (2) Make sure employees put on (don) and remove (doff) PPE following your plan's procedures.
- (3) Make sure employees do not interchange self-contained breathing apparatus (SCBA) air cylinders from different manufacturers, unless all of the following apply:
 - There is a life-saving emergency
 - You need a supplemental air supply
 - The cylinders are of the same capacity and pressure rating.
- (4) Make sure compressed air cylinders used with SCBAs meet the testing and service life requirements of the United States Department of Transportation (USDOT). Search at: <http://www.dot.gov>.

Note: You can also check with the cylinder manufacturers to obtain USDOT test and service life specifications.

You must:

(5) Make sure PPE is maintained in a safe and reliable condition using your plan's procedures. PPE maintenance includes:

- Decontamination
- Cleaning
- Inspection
- Identification of damage or defects
- Parts repair or replacement
- Storage or disposal.

NEW SECTION

WAC 296-307-70475 Postemergency response.

IMPORTANT:

Postemergency response is the stage of the emergency response where the immediate threat from the release has been stabilized or eliminated, and cleanup of the site has started.

When cleanup is done by the employees who were part of the initial emergency response, the employees are not covered by this section (however, training, PPE and other requirements in WAC 296-307-70460 through 296-307-70470 apply to these employees).

You must:

- (1) Follow Table 10 to determine which requirements apply to your postemergency response activities.
- (2) Maintain clean-up equipment as specified in Table 10.

Table 10 Rules that Apply to Postemergency Response Activities	
When postemergency response cleanup is performed by employees who were not part of the initial emergency response and:	The following rules or requirements apply:
It is necessary to remove hazardous substances, health hazards and contaminated materials (example: Soil) from the site.	Chapter 296-843 WAC, Hazardous waste operations.
Cleanup is done on plant property using plant or workplace employees AND It is not necessary to remove hazardous substances, health hazards and contaminated materials from the site.	For training: <ul style="list-style-type: none"> • WAC 296-307-35015 and 296-307-35018, Employee emergency action plans • Chapter 296-307 WAC, Part Y-5, Respiratory protection • WAC 296-307-550, Employer chemical hazard communication • Other appropriate training requirements relevant to personal protective equipment (PPE) and decontamination For equipment: <ul style="list-style-type: none"> • Make sure that all equipment used for clean-up work is serviced and inspected before use.

PERMANENT

NEW SECTION

WAC 296-307-70480 Definitions. The following definitions are specific to this section:

Annually

Any twelve-month cycle.

Buddy system

A system of organizing employees (who enter or stand by danger areas) into work groups, so each employee can be observed by at least one other member of the group. The purpose of this system is to provide rapid assistance to employees in an emergency.

Clean-up operation(s)

An operation where hazardous substances are removed, contained, incinerated, neutralized, stabilized, cleared up or, in any other manner, processed or handled with the goal of making the site safer for people or the environment.

Danger area

Areas where conditions pose a serious danger to employees, such as areas where:

- Immediately dangerous to life or health (IDLH) conditions could exist

OR

- High levels of exposure to toxic substances could exist

OR

- There is a potential for exceeding the lower explosive limit (LEL), also known as the lower flammability limit (LFL), of a substance.

Decontamination

Removing hazardous substances from employees and their equipment so potential adverse health effects will not occur. **Emergency response**

An organized response to an anticipated release of a hazardous substance that is, or could become, an uncontrolled release.

Emergency response plan

A written plan that requires coordination between emergency response participants, and contains procedures, criteria, and other information that will be applied to emergency

response operations. Each employer's plan should be compatible with local and state plans.

Engineering controls

Methods of controlling employee exposures by modifying the source or reducing the quantity of contaminants.

Hazardous materials team (HAZMAT team)

A group of employees who are expected to perform responses to releases, or possible releases, of hazardous substances for the purpose of control and stabilization. As a result of their duties, HAZMAT team members may have close contact with hazardous substances.

Note: A HAZMAT team may be a separate component of a fire brigade or fire department.

Hazardous substance

Any of the following substances that could adversely affect an exposed employee's health or safety:

- Substances defined under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) or "Superfund" Act (visit: <http://www.epa.gov>)

- Biological or other disease-causing agents released that could reasonably be expected to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations in a person or their offspring when the person:
 - Is directly exposed to the agent in the environment
 - Directly ingests, inhales, or assimilates the agent from the environment
 - Indirectly ingests the agent through a food chain

- Substances listed by the United States Department of Transportation as hazardous materials under Title 49 (Transportation) in the Code of Federal Regulations (CFR), Part 172, section 101 and appendices (visit: <http://www.nara.gov> and search for "List of CFR subjects")

- Hazardous wastes as defined in this section.

Hazardous waste

A substance designated by chapter 173-303 WAC, Dangerous waste regulations, department of ecology, as a dangerous waste or an extremely hazardous waste and any waste fitting the definition of "health hazard" in this section.

Note: For department of ecology regulations, visit: <http://www.ecy.wa.gov>.

Health hazard

A chemical, a mixture of chemicals, or a pathogen for which there is statistically significant evidence, based on at least one study conducted according to established scientific principles, that acute or chronic health effects may occur in exposed employees.

The term "health hazard" includes stress due to temperature extremes and chemicals that are:

- Carcinogens
- Toxic or highly toxic agents
- Reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, or neurotoxins
- Agents acting on the hematopoietic system agents that damage lungs, skin, eyes, or mucous membranes. (Detailed definitions of these chemical terms can be found in the Safety and health core rules, WAC 296-307-550, chemical hazard communication.)

Immediately dangerous to life or health (IDLH)

Any atmospheric condition that would:

- Cause an immediate threat to life

OR

- Cause permanent or delayed adverse health effects

OR

- Interfere with an employee's ability to escape.

Incident command system (ICS)

An organized approach to control and manage operations at an emergency response incident.

Incidental release

A release that can be safely controlled at the time of the release and does not have the potential to become an uncontrolled release.

Note: Example of a situation that results in an incidental release: A tanker truck is receiving a load of hazardous liquid when a leak occurs. The driver knows the only hazard from the liquid is minor skin irritation. The employer has trained the driver on procedures and provided equipment to use for a release of this quantity. The driver puts on skin protection and stops the leak. A spill kit is used to contain, absorb, and pick up the spilled material for disposal.

Limited action

Action necessary to:

- Secure an operation during emergency responses,

OR

- Prevent an incident from increasing in severity.

Examples include shutting down processes and closing emergency valves.

Lines of authority

A preestablished ranking of individuals, qualified to assume a commanding role during an emergency response, noted in an emergency response plan and implemented during a response. This is most important when responders from multiple employers could participate in an emergency response.

Lower explosive limit (LEL)

See lower flammable limit (LFL).

Lower flammable limit (LFL)

The lowest concentration of a material that will propagate a flame. The LFL is usually expressed as a percent (by volume) of the material in air (or other oxidant).

Must

Must means mandatory.

Permissible exposure limit (PEL)

Means the established time-weighted-average (TWA) concentration or ceiling concentration of a contaminant that must not be exceeded.

The exposure, inhalation, or dermal permissible limit specified in chapter 296-307 WAC, Part Y-6, Respiratory hazards.

Personal protective equipment (PPE)

Protective items designed to be worn by the user to protect them against airborne, skin contact and other hazards. This includes items such as respiratory protection, protective suits, gloves, eye protection, etc.

Postemergency response

The stage of the emergency response where the immediate threat from the release has been stabilized or eliminated, and cleanup of the site has started.

Published exposure level

Exposure limits published in "National Institute for Occupational Safety and Health (NIOSH) Recommendations for Occupational Safety and Health" (DHHS publication #92-100, 1992).

If an exposure limit is not published by NIOSH, then "published exposure level" means the exposure limits published by the American Conference of Governmental Industrial Hygienists (ACGIH) in "TLVs and BEIs-Threshold Limit Values for Chemical Substances and Physical Agents" (1999 edition).

Note: Additional exposure levels published by recognized organizations such as the American Industrial Hygiene Association are not required to be observed by this rule; however, they may be a useful resource when a hazardous substance is not covered by NIOSH and ACGIH publications.

Release

A spill, leak, or other type of hazardous substance discharge.

Uncontrolled release

A release where significant safety and health risks could be created. Releases of hazardous substances that are either incidental or could not create a safety or health hazard (i.e., fire, explosion or chemical exposure) are not considered to be uncontrolled releases.

Examples of conditions that could create a significant safety and health risk:

Large-quantity releases

Small releases that could be highly toxic

Airborne exposures that could exceed a WISHA permissible exposure limit or a published exposure limit and employees are not adequately trained or equipped to control the release.

Example of an uncontrolled release:

A forklift driver knocks over a container of a solvent-based liquid, releasing the contents onto the warehouse floor. The driver has been trained to recognize the vapor is flammable and moderately toxic when inhaled. The driver has not been trained or provided appropriate equipment to address this type of spill. In this situation, it is not safe for the driver to attempt a response. The driver needs to notify someone of the release so an emergency response can be initiated.

Workplace

- A fixed facility
- OR
- A temporary location (such as a traffic corridor)
- OR
- Locations where employees respond to emergencies.

- (i) When prior authorized by MAA; or
- (ii) When they meet MAA's published expedited prior authorization (EPA) criteria and the dispensing pharmacist follows the EPA process described in WAC 388-530-1250 (4).

(c) For preferred drugs in drug classes on the preferred drug list(s):

- (i) Without prior authorization; and
- (ii) According to WAC 388-530-1280.

(3) MAA covers the following medically necessary drugs, devices, and supplies:...

(c) ~~Drugs requiring prior authorization when:~~

- (i) ~~Prior authorized by MAA; and~~
- (ii) ~~They meet MAA's published expedited prior authorization (EPA) criteria and the dispensing pharmacist follows the EPA process described in WAC 388-530-1250(4).~~

~~(i) Preferred drugs in drug classes on the preferred drug list(s), according to WAC 388-530-1280. Oral, topical, and/or injectable drugs, vaccines for immunizations, and biologicals, prepared or packaged for individual use.~~

(d), (e), (f), (g), and (h) in this subsection are relettered to ensure consistency.

WAC 388-530-1150

(1) The Medical Assistance Administration (MAA) does not cover:...

(n) Nonpreferred drugs when a therapeutic equivalent is on the preferred drug list(s) (PDL), according to WAC 388-530-1100, and subject to the dispense as written (DAW) provisions in WAC 388-530-1280 and 388-530-1290.

A final cost-benefit analysis is available by contacting Ann Myers, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1345, fax (360) 586-9727, e-mail myerseas@dshs.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 11, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 11, Repealed 0.

Date Adopted: December 27, 2004.

Jim Schnellman
for Brian H. Lindgren, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-17-023, filed 8/9/02, effective 9/9/02)

WAC 388-530-1050 Definitions. The following definitions and abbreviations and those found in WAC 388-500-0005, Medical definitions, apply to this chapter.

WSR 05-02-044

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medical Assistance Administration)

[Filed December 30, 2004, 3:59 p.m., effective January 30, 2005]

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

Purpose: The rules implement SB 6088 (chapter 29, Laws of 2003) which directs state agencies to establish an evidence-based prescription drug program that identifies preferred drugs, develop programs to provide prescription drugs at a reasonable price to those in need, and increase public awareness regarding their sale and cost-effective use. To fulfill this legislative mandate, the rules establish new sections within chapter 388-530 WAC, Pharmacy services, for preferred drug lists and the therapeutic interchange program (TIP). The rules also amend sections to update, clarify, and make them consistent with the new sections.

Citation of Existing Rules Affected by this Order: Amending WAC 388-530-1050, 388-530-1100, 388-530-1125, 388-530-1150, 388-530-1200, 388-530-1250, 388-530-1260, 388-530-1270, 388-530-1400, 388-530-1900, and 388-530-1950.

Statutory Authority for Adoption: RCW 74.08.090, 70.14.050, 69.41.150, 69.41.190, chapter 41.05 RCW.

Adopted under notice filed as WSR 04-19-109 on September 21, 2004.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-530-1100**, (moved text from (3)(c) to (2)(b) and (c) as follows):

(2) MAA reimburses a provider for medically necessary drugs, devices, and supplies as follows:

(a) Only when the manufacturer has signed a drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC 388-530-1125 which describes the drug rebate program.

(b) For drugs requiring prior authorization:

PERMANENT

"Active ingredient" means the chemical component of a drug responsible for a drug's prescribed/intended therapeutic effect. The medical assistance administration (MAA) limits coverage of active ingredients to those with a national drug code (NDC) and those specifically authorized by MAA.

"Actual acquisition cost (AAC)" means the actual price a provider paid for a drug marketed in the package size of drug purchased, or sold by a particular manufacturer or labeler. Actual acquisition cost is calculated based on factors including, but not limited to:

(1) Invoice price, including other invoice-based considerations, such as prompt payment discounts;

(2) Order quantity and periodic purchase volume discount policies of suppliers (wholesalers and/or manufacturers);

(3) Membership/participation in purchasing cooperatives;

(4) Advertising and other promotion/display allowances, free merchandise deals; and

(5) Transportation or freight allowances.

"Administer" means the direct application of a prescription drug by injection, inhalation, ingestion, or any other means, to the body of a patient by a practitioner, or at the direction of the practitioner.

"Appointing authority" means, for the evidence-based prescription drug program of the participating agencies in the state-operated health care programs, the following persons acting jointly: the administrator of the health care authority (HCA), the secretary of the department of social and health services (DSHS), and the director of the department of labor and industries (L&I).

"Automated maximum allowable cost (AMAC)" means the rate established by the medical assistance administration (MAA) for a multiple-source drug that is not on the maximum allowable cost (MAC) list and that is designated by two or more products at least one of which must be under a federal drug rebate contract.

"Average wholesale price (AWP)" means the average price of a drug product that is calculated from wholesale prices nationwide at a point in time and reported to the medical assistance administration (MAA) by MAA's drug pricing file contractor.

"Certified average wholesale price (CAWP)" means the price certified by the First Data Bank to be the actual average wholesale price of an infusion, injectable, or inhalation drug marketed by a manufacturer or labeler who is subject to a consent order with the United States Department of Justice regarding the reporting of average wholesale price(s).

"Combination drug" means a commercially available drug including two or more active ingredients.

"Compendia of drug information" includes the following:

(1) The American Hospital Formulary Service Drug Information;

(2) The United States Pharmacopeia Drug Information; and

(3) DRUGDEX Information System.

"Compounding" means the act of combining two or more active ingredients or adjusting therapeutic strengths in the preparation of a prescription.

"Contract drugs" means drugs manufactured or distributed by manufacturers/labelers who signed a drug rebate agreement with the federal Department of Health and Human Services (DHHS).

"Deliver or delivery" means the transfer of a drug or device from one person to another.

"Dispense as written (DAW)" means an instruction to the pharmacist forbidding substitution of a generic drug or a therapeutically equivalent product for the specific drug product prescribed.

"Dispensing fee" means the fee the medical assistance administration (MAA) sets to reimburse pharmacy providers for dispensing MAA covered prescriptions. The fee is MAA's maximum reimbursement for expenses involved in the practice of pharmacy and is in addition to MAA's payment for the costs of covered ingredients.

~~("Drug Evaluation Unit (DEU)" means a unit or group designated by the medical assistance administration (MAA) that makes drug coverage recommendations after studying the clinical and pharmacoeconomic attributes of drugs using the Academy of Managed Care Pharmacy drug review submission process. The DEU has physician and pharmacist staff and an advisory committee of actively practicing physicians and pharmacists.)~~

"Drug file" means a list of drug products, pricing and other information provided to the medical assistance administration's (MAA's) drug data base and maintained by a drug file contractor.

"Drug file contractor" also referred to as **"drug pricing file contractor,"** means the entity which has contracted to provide the medical assistance administration (MAA), at specified intervals, the latest information and/or data base on drugs and related supplies produced, prepared, processed, packaged, labeled, distributed, marketed, or sold in the marketplace. Contractor-provided information includes, but is not limited to, identifying characteristics of the drug (national drug code, drug name, manufacturer/labeler, dosage form, and strength) for the purpose of identifying and facilitating payment for drugs billed to MAA.

"Drug rebates" means payments provided by pharmaceutical manufacturers to state Medicaid programs under the terms of the manufacturers' agreements with the Department of Health and Human Services.

"Drug-related supplies" means nondrug items necessary for the administration, delivery, or monitoring of a drug or drug regimen.

"Drug (utilization) use review (DUR)" means a review of covered outpatient drugs that assures prescriptions are appropriate, medically necessary, and not likely to result in adverse medical outcomes.

"Emergency kit" means a set of limited pharmaceuticals furnished to a nursing facility by the pharmacy that provides prescription dispensing services to that facility. Each kit is specifically set up to meet the emergency needs of each nursing facility's client population and is for use during those hours when pharmacy services are unavailable.

"Endorsing practitioner" means a practitioner who has reviewed the Washington preferred drug list (PDL) and has enrolled with the health care authority (HCA), agreeing to allow therapeutic interchange (substitution) of a preferred

drug for any nonpreferred drug in a given therapeutic class on the Washington PDL.

"Estimated acquisition cost (EAC)" means the medical assistance administration's estimate of the price providers generally and currently pay for a drug marketed or sold by a particular manufacturer or labeler.

"Evidence-based practice center" means a research organization that has been designated by the Agency for Healthcare Research and Quality (AHRQ) of the U.S. government to conduct systematic reviews of all the evidence to produce evidence tables and technology assessments to guide health care decisions.

"Expedited prior authorization (EPA)" means the process for authorizing selected drugs in which providers use a set of numeric codes to indicate to the medical assistance administration (MAA) the acceptable indications, conditions, diagnoses, and criteria that are applicable to a particular request for drug authorization.

"Experimental drugs" means drugs the Food and Drug Administration (FDA) has not approved, or approved drugs when used for medical indications other than those listed by the FDA.

"Expired drug" means a drug for which the shelf life expiration date has been reached.

"Federal upper limit (FUL)" means the maximum allowable payment set by the Centers for Medicare and Medicaid Services (CMS) (formerly known as HCFA) for a multiple-source drug.

"Four brand name prescriptions per calendar month limit" means the maximum number of paid prescription claims for brand name drugs that MAA allows for each client in a calendar month without a complete review of the client's drug profile.

"Generic code number sequence number" means a number used by the medical assistance administration's drug file contractor to group together products that have the same ingredients, route of administration, drug strength, and dosage form. It is applied to all manufacturers and package sizes.

"Generic drug" means a nonproprietary drug that is required to meet the same bioequivalency tests as the original brand name drug.

"Inactive ingredient" means a drug component that remains chemically unchanged during compounding but serves as the:

- (1) Necessary vehicle for the delivery of the therapeutic effect; or
- (2) Agent for the intended method or rate of absorption for the drug's active therapeutic agent.

"Ingredient cost" means the portion of a prescription's cost attributable to the covered drug ingredients or chemical components.

"Less than effective drug" or **"DESI"** means a drug for which:

- (1) Effective approval of the drug application has been withdrawn by the Food and Drug Administration (FDA) for safety or efficacy reasons as a result of the drug efficacy study implementation (DESI) review; or
- (2) The secretary of the department of health and human services (DHHS) has issued a notice of an opportunity for a hearing under section 505(e) of the federal Food, Drug, and

Cosmetic Act on a proposed order of the secretary to withdraw approval of an application for such drug under such section because the secretary has determined the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling.

"Long-term therapy" means a drug regimen a client receives or will receive continuously through and beyond ninety days.

"MAA preferred drug list (PDL)" means the medical assistance administration's (MAA's) list of drugs of choice within selected therapeutic drug classes.

"Maximum allowable cost (MAC)" means the maximum amount that the medical assistance administration pays for a specific dosage form and strength of a multiple-source drug product.

"Medically accepted indication" means any use for a covered outpatient drug:

- (1) Which is approved under the federal Food, Drug, and Cosmetic Act; or
- (2) The use of which is supported by one or more citations included or approved for inclusion in any of the compendia of drug information, as defined in this chapter.

"Modified unit dose delivery system" (also known as blister packs or "bingo/punch cards") means a method in which each patient's medication is delivered to a nursing facility:

- (1) In individually sealed, single dose packages or "blisters"; and
- (2) In quantities for one month's supply, unless the prescriber specifies a shorter period of therapy.

"Multiple-source drug" means a drug marketed or sold by:

- (1) Two or more manufacturers or labelers; or
- (2) The same manufacturer or labeler:
 - (a) Under two or more different proprietary names; or
 - (b) Under a proprietary name and a generic name.

"National drug code (NDC)" means the eleven-digit number the manufacturer or labeler assigns to a pharmaceutical product and attaches to the product container at the time of packaging. The NDC is composed of digits in 5-4-2 groupings. The first five digits comprise the labeler code assigned to the manufacturer by the Food and Drug Administration (FDA). The second grouping of four digits is assigned by the manufacturer to describe the ingredients, dose form, and strength. The last grouping of two digits describes the package size.

"Noncontract drugs" are drugs manufactured or distributed by manufacturers/labelers who have not signed a drug rebate agreement with the federal Department of Health and Human Services.

"Nonpreferred drug" means a drug that has not been selected as a preferred drug within the therapeutic class(es) of drugs on the preferred drug list.

"Obsolete NDC" means a national drug code replaced or discontinued by the manufacturer or labeler.

"Over-the-counter (OTC) drugs" means drugs that do not require a prescription before they can be sold or dispensed.

"Peer reviewed medical literature" means a research study, report, or findings regarding the specific use of a drug

that has been submitted to one or more professional journals, reviewed by experts with appropriate credentials, and subsequently published by a reputable professional journal. A clinical drug study used as the basis for the publication must be a double blind, randomized, placebo or active control study.

"Pharmacist" means a person licensed in the practice of pharmacy by the state in which the prescription is filled.

"Pharmacy" means every location licensed by the State Board of Pharmacy in the state where the practice of pharmacy is conducted.

"Point-of-sale (POS)" means a pharmacy claims processing system capable of receiving and adjudicating claims on-line.

"Practice of pharmacy" means the practice of and responsibility for:

- (1) Accurately interpreting prescription orders;
- (2) Compounding drugs;
- (3) Dispensing, labeling, administering, and distributing of drugs and devices;
- (4) Providing drug information to the client that includes, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices;
- (5) Monitoring of drug therapy and use;
- (6) Proper and safe storage of drugs and devices;
- (7) Documenting and maintaining records;
- (8) Initiating or modifying drug therapy in accordance with written guidelines or protocols previously established and approved for a pharmacist's practice by a practitioner authorized to prescribe drugs; and
- (9) Participating in drug utilization reviews and drug product selection.

"Practitioner" means an individual who has met the professional and legal requirements necessary to provide a health care service, such as a physician, nurse, dentist, physical therapist, pharmacist or other person authorized by state law as a practitioner.

"Preferred drug" means ((MAA's)) drug(s) of choice within a selected therapeutic class that are selected based on clinical evidence of safety, efficacy, and effectiveness.

"Prescriber" means a physician, osteopathic physician/surgeon, dentist, nurse, physician assistant, optometrist, pharmacist, or other person authorized by law or rule to prescribe drugs. See WAC 246-863-100 for pharmacists' prescriptive authority.

"Prescription" means an order for drugs or devices issued by a practitioner authorized by state law or rule to prescribe drugs or devices, in the course of the practitioner's professional practice, for a legitimate medical purpose.

"Prescription drugs" means drugs required by any applicable federal or state law or regulation to be dispensed by prescription only or that are restricted to use by practitioners only.

"Prior authorization program" means a medical assistance administration (MAA) program, subject to the requirements of 42 U.S.C. 1396r-8 (d)(5), that may require, as a condition of payment, that a drug on MAA's drug file be prior authorized. See WAC 388-530-1200.

"Prospective drug ((utilization)) use review (Pro-DUR)" means a process in which a request for a drug product

for a particular client is screened, before the product is dispensed, for potential drug therapy problems.

"Reconstitution" means the process of returning a single active ingredient, previously altered for preservation and storage, to its approximate original state. Reconstitution is not compounding.

"Retrospective drug ((utilization)) use review (Ret-DUR)" means the process in which client's drug utilization is reviewed on a periodic basis to identify patterns of fraud, abuse, gross overuse, or inappropriate or unnecessary care.

"Risk/benefit ratio" means the result of assessing the side effects of a drug or drug regimen compared to the positive therapeutic outcome of therapy.

"Single source drug" means a drug produced or distributed under an original new drug application approved by the Food and Drug Administration (FDA).

"Substitute" means to replace a prescribed drug, with the prescriber's authorization, with:

- (1) An equivalent generic drug product of the identical base or salt as the specific drug product prescribed; or
- (2) A therapeutically equivalent drug other than the identical base or salt.

"Systematic review" means a specific and reproducible method to identify, select, and appraise all the studies that meet minimum quality standards and are relevant to a particular question. The results of the studies are then analyzed and summarized into evidence tables to be used to guide evidence-based decisions.

"TCS" See "therapeutic consultation service."

"Terminated NDC" means a national drug code (NDC) that is discontinued by the manufacturer for any reason. The NDC may be terminated immediately due to health or safety issues or it may be phased out based on the product's shelf life.

"Therapeutic alternative" means a drug product that contains a different chemical structure than the drug prescribed, but is in the same pharmacologic or therapeutic class and can be expected to have a similar therapeutic effect and adverse reaction profile when administered to patients in a therapeutically equivalent dosage.

"Therapeutic class" means a group of drugs used for the treatment, remediation, or cure of a specific disorder or disease.

"Therapeutic consultation service (TCS)" means the prescriber and a medical assistance administration (MAA) designated clinical pharmacist jointly review prescribing activity when drug claims for a medical assistance client exceed program limitations.

"Therapeutic interchange" means to dispense a therapeutic alternative to the prescribed drug when an endorsing practitioner who has indicated that substitution is permitted, prescribes the drug. See Therapeutic interchange program (TIP).

"Therapeutic interchange program (TIP)" means the process developed by participating state agencies under RCW 69.41.190 and 70.14.050, to allow prescribers to endorse a Washington preferred drug list, and in most cases, required pharmacists to automatically substitute a preferred, equivalent drug from the list.

"Therapeutically equivalent" means drug products that contain different chemical structures but have the same efficacy and safety when administered to an individual, as determined by:

- (1) Information from the Food and Drug Administration (FDA);
- (2) Published and peer-reviewed scientific data;
- (3) Randomized controlled clinical trials; or
- (4) Other scientific evidence.

"Tiered dispensing fee system" means a system of paying pharmacies different dispensing fee rates, based on the individual pharmacy's total annual prescription volume and/or the drug delivery system used.

"True unit dose delivery" means a method in which each patient's medication is delivered to the nursing facility in quantities sufficient only for the day's required dosage.

"Unit dose drug delivery" means true unit dose or modified unit dose delivery systems.

"Usual and customary charge" means the fee that the provider typically charges the general public for the product or service.

"Washington preferred drug list (Washington PDL)" means the list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for purchase of drugs in state-operated health care programs.

AMENDATORY SECTION (Amending WSR 02-17-023, filed 8/9/02, effective 9/9/02)

WAC 388-530-1100 Covered drugs, devices, and pharmaceutical supplies. (1) The medical assistance administration (MAA) covers medically necessary drugs, devices, and pharmaceutical supplies when they are prescribed for medically accepted indications, subject to the restrictions described in this section and other published WAC. For exceptions to the prescription requirement, see subsection (4) of this section.

(2) MAA reimburses a provider for medically necessary drugs, devices and supplies as follows:

(a) Only when the manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC 388-530-1125 which describes the drug rebate program.

(b) For drugs requiring prior authorization when:

(i) Prior authorized by MAA; and

(ii) They meet MAA's published expedited prior authorization (EPA) criteria and the dispensing pharmacist follows the EPA process described in WAC 388-530-1250(4).

(c) For preferred drugs in drug classes on the preferred drug list(s):

(i) Without prior authorization; and

(ii) According to WAC 388-530-1280.

(3) MAA covers the following medically necessary drugs, devices, and supplies:

(a) Outpatient drugs, generic or brand name.

(b) Over-the-counter (OTC) drugs when the drug:

(i) Is prescribed by a provider with prescribing authority (see exceptions in subsection (4) of this section);

(ii) Is not excluded from coverage under WAC 388-530-1150;

(iii) Is a less costly therapeutic alternative; and

(iv) Does not require prior authorization.

(c) ~~((Drugs requiring prior authorization when:~~

~~(i) Prior authorized by MAA; or~~

~~(ii) They meet MAA's published expedited prior authorization (EPA) criteria and the dispensing pharmacist follows the EPA process described in WAC 388-530-1250(4).~~

~~((d))~~ Oral, topical and/or injectable drugs, vaccines for immunizations, and biologicals, prepared or packaged for individual use.

~~((e))~~ (d) Drugs with obsolete national drug codes (NDCs) for up to two years from the date the NDC is designated obsolete, unless the drug is expired as defined in WAC 388-530-1050.

~~((f))~~ (e) Drugs and supplies used in conjunction with family planning under subsection (4) of this section and under chapter 388-532 WAC, including drugs dispensed for emergency contraception and nonprescribed OTC contraceptive supplies.

~~((g))~~ (f) Drugs, devices, and supplies provided under unusual and extenuating circumstances to clients by providers who request and receive MAA approval.

~~((h))~~ (g) Drug-related supplies as determined in consultation with federal guidelines.

(4) MAA covers family planning drugs, devices, and supplies per chapter 388-532 WAC and as follows:

(a) MAA covers certain over-the-counter (OTC) family planning drugs, devices, and supplies without a prescription when they meet the criteria of WAC 388-530-1200(3); ~~((and))~~

(b) MAA may cover family planning drugs that do not meet the federal drug rebate requirement in WAC 388-530-1125 on a case-by-case basis, under the provisions of subsection (6) of this section; and

(c) MAA covers contraceptive patches, contraceptive rings, and oral contraceptives (excluding emergency contraceptive pills, which are not subject to the at-least-three-month supply limitation), only when dispensed in at least a three-month supply, unless otherwise directed by the prescriber.

(5) MAA determines if certain drugs are medically necessary and covered with or without restrictions based on evidence contained in compendia of drug information and peer-reviewed medical literature.

(a) Decisions regarding restrictions are based on, but are not limited to:

(i) Client safety;

(ii) FDA-approved indications;

(iii) Quantity;

(iv) Client age and/or gender; and

(v) Cost.

(b) Restrictions ~~((apply))~~ and limitations may include, but are not limited to:

(i) Exclusion of drugs covered in the nursing facility per diem rate;

(ii) Number of refills within a calendar month; ~~((and))~~

(iii) Refills requested before seventy-five percent of the previously dispensed supply is scheduled to be exhausted; and

(iv) Quantity and days-supply dispensed.

(6) MAA evaluates requests for drugs, devices, and pharmaceutical supplies that are subject to limitations or other restrictions in this chapter on a case-by-case basis. MAA approves the requested services that are beyond the stated limits or restrictions of this chapter when MAA determines that the services are medically necessary, under subsection (5) of this section and under the standards for covered services in WAC 388-501-0165.

AMENDATORY SECTION (Amending WSR 02-17-023, filed 8/9/02, effective 9/9/02)

WAC 388-530-1125 Drug rebate program. The medical assistance administration (MAA) covers only those outpatient prescription drugs and over-the-counter (OTC) drugs supplied by manufacturers who have a drug rebate contract with the Department of Health and Human Services (DHHS) ~~((MAA may make exceptions to the drug rebate requirement based on medical necessity on a case-by-case basis. Exceptions to this requirement must be prior authorized by MAA)), according to 42 U.S.C. 1396r-8.~~ MAA may exempt the following from the drug rebate requirement in WAC 388-530-1100(2):

- (1) Family planning drugs as provided by WAC 388-530-1100(4); and
- (2) Other drugs approved under WAC 388-501-0165.

AMENDATORY SECTION (Amending WSR 02-17-023, filed 8/9/02, effective 9/9/02)

WAC 388-530-1150 Noncovered drugs and pharmaceutical supplies and reimbursement limitations. (1) The medical assistance administration (MAA) does not cover:

(a) Brand or generic drugs, when the manufacturer has not signed a rebate agreement with the federal Department of Health and Human Services. Refer to WAC 388-530-1125 for information on the drug rebate program.

(b) A drug prescribed:

- (i) For weight loss or gain;
- (ii) For infertility, frigidity, impotency, or sexual dysfunction;
- (iii) For cosmetic purposes or hair growth; or
- (iv) To promote ~~((smoking))~~ tobacco cessation, except as described in WAC ~~((388-533-0400(21), smoking))~~ 388-533-0345 (3)(d) tobacco cessation for pregnant women.

(c) Over-the-counter (OTC) drugs and supplies, except as described under WAC 388-530-1100.

(d) Prescription vitamins and mineral products, except:

- (i) When prescribed for clinically documented deficiencies;
- (ii) Prenatal vitamins, only when prescribed and dispensed to pregnant women; or
- (iii) Fluoride preparations for children under the early and periodic screening, diagnosis, and treatment (EPSDT) program.

(e) A drug prescribed for an indication that is not evidence based as determined by:

- (i) MAA in consultation with federal guidelines; or
- (ii) The Drug ~~((Utilization and Education (DUE) Council))~~ Use Review (DUR) board; and

(iii) MAA medical consultants and MAA pharmacist(s).

(f) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.

(g) Drugs that are:

(i) Not approved by the Food and Drug Administration (FDA); or

(ii) Prescribed for non-FDA approved indications or dosing, unless prior authorized; or

(iii) Unproven for efficacy or safety.

(h) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.

(i) Drugs requiring prior authorization for which MAA authorization has been denied.

(j) Preservatives, flavoring and/or coloring agents.

(k) Less than a one-month supply of drugs for long-term therapy.

(l) A drug with an obsolete National Drug Code (NDC) more than two years from the date the NDC is designated obsolete by the manufacturer.

(m) Products or items that do not have an eleven-digit NDC.

(n) Nonpreferred drugs when a therapeutic equivalent is on the preferred drug list(s) (PDL), according to WAC 388-530-1100, and subject to the dispense as written (DAW) provisions of WAC 388-530-1280, and 388-530-1290.

(o) Less than a three-month supply of contraceptive patches, contraceptive rings, or oral contraceptives (excluding emergency contraceptive pills), unless otherwise directed by the prescriber.

(2) MAA does not reimburse enrolled providers for:

(a) Outpatient drugs, biological products, insulin, supplies, appliances, and equipment included in other reimbursement methods including, but not limited to:

- (i) Diagnosis-related group (DRG);
- (ii) Ratio of costs-to-charges (RCC);
- (iii) Nursing facility per diem;
- (iv) Managed care capitation rates;
- (v) Block grants; or

(vi) Drugs prescribed for clients who are on the MAA hospice program when the drugs are related to the client's terminal condition.

(b) Any drug regularly supplied as an integral part of program activity by other public agencies (e.g., immunization vaccines for children).

(c) Prescriptions written on pre-signed prescription blanks filled out by nursing facility operators or pharmacists. MAA may terminate the core provider agreement of pharmacies involved in this practice.

(d) Drugs used to replace those taken from nursing facility emergency kits.

(e) Drugs used to replace a physician's stock supply.

(f) Free pharmaceutical samples.

(g) A drug product after the product's national drug code (NDC) termination date.

(h) A drug product whose shelf life has expired.

(3) MAA evaluates each request for a noncovered drug under WAC 388-530-1100(5) and under the provisions of WAC 388-501-0165.

AMENDATORY SECTION (Amending WSR 02-17-023, filed 8/9/02, effective 9/9/02)

WAC 388-530-1200 Prior authorization program.

(1) The medical assistance administration (MAA) pharmacist(s), medical consultants, and drug utilization review team evaluate drugs to determine prior authorization status on the drug file. MAA may consult with ~~((a drug evaluation unit, the Drug Utilization and Education (DUE) Council))~~ an evidence-based practice center, the Drug Use Review (DUR) Board, and/or participating MAA providers in this evaluation.

(2) To facilitate the evaluation process for a drug product, a drug manufacturer may send the MAA pharmacist(s) a written request and the following supporting documentation:

- (a) Background data about the drug;
- (b) Product package information;
- (c) Any pertinent clinical studies;
- (d) Outcome and effectiveness data using the Academy of Managed Care Pharmacy's drug review submission process; and
- (e) Any additional information the manufacturer considers appropriate.

(3) MAA evaluates a drug based on, but not limited to, the following criteria:

- (a) Whether the manufacturer has signed a federal drug rebate agreement except as specified in WAC 388-530-1125;
- (b) Whether the drug is a less-than-effective drug;
- (c) The drug's risk/benefit ratio;
- (d) Whether like drugs are on MAA's drug file list and there are less costly therapeutic alternative drugs;
- (e) Whether the drug falls into one of the categories authorized by federal law to be excluded from coverage;
- (f) The drug's potential for abuse; and
- (g) Whether outcome data demonstrate that the drug is cost effective.

(4) MAA updates and reviews the drug file list as necessary and periodically publishes a list of drugs not requiring prior authorization.

(5) Manufacturers may seek review of MAA's prior authorization decisions by writing to MAA's chief medical officer.

AMENDATORY SECTION (Amending WSR 02-17-023, filed 8/9/02, effective 9/9/02)

WAC 388-530-1250 Prior authorization process. (1)

The medical assistance administration (MAA) requires pharmacies to obtain prior authorization for:

- (a) Drugs with a prior authorization indicator on the MAA drug file list;
- (b) Drugs that exceed specific dosage or unit limits as indicated by the Food and Drug Administration (FDA); ~~((and))~~
- (c) Additional fills in a calendar month for drugs dispensed for a less than thirty-four day supply when:

(i) Two fills for the same prescription have been dispensed, except for:

- (A) Over-the-counter (OTC) contraceptives; or
- (B) Drugs prescribed to a suicidal patient or a patient at risk for potential drug abuse; or

(ii) Four fills in the same calendar month for the same prescription have been dispensed for any of the following:

- (A) Antibiotics;
- (B) Anti-asthmatics;
- (C) Schedule II and III drugs;
- (D) Antineoplastic agents;
- (E) Topical preparations; or
- (F) Propoxyphene, propoxyphene napsylate, and all propxyphene combinations.

(d) A nonpreferred drug in a drug class on the Washington PDL when the prescription is received from a nonendorsing practitioner, according to WAC 388-530-1290; and

(e) A nonpreferred drug in a drug class that is not on the Washington PDL and is not subject to TIP, when the prescription is received from an endorsing or a nonendorsing practitioner, according to WAC 388-530-1280.

(2) The pharmacy provider must make a request to MAA for a drug requiring prior authorization before dispensing the drug. The pharmacy provider must:

(a) Ensure the request states the medical diagnosis and includes medical justification for the drug; and

(b) Keep on file documentation of the prescriber's medical justification that is communicated to the pharmacy by the prescriber at the time the prescription is filled. The records must be retained for the period specified in WAC 388-502-0020 (1)(c).

(3) MAA evaluates a request for prior authorization based on, but not limited to:

- (a) Requirements in this section;
- (b) Requirements under WAC 388-530-1000, 388-530-1150, and 388-501-0165; and
- (c) The least costly alternative between two or more products of equal effectiveness.

(4) MAA authorizes certain prescribed drugs through a process called "expedited prior authorization (EPA)." MAA determines which drugs can be authorized through the EPA process by using factors (~~((which))~~) that include, but are not limited to:

- (a) Product cost;
- (b) Potential for clinical misuse;
- (c) Narrow therapeutic indication; and
- (d) Safety concerns.

(5) MAA may authorize reimbursement at the brand name estimated acquisition cost (EAC) for a brand name multiple-source drug that would have been reimbursed at the maximum allowable cost (MAC) for that multiple-source drug, if:

- (a) The pharmacist calls for prior authorization; and
- (b) The prescriber indicates:
 - (i) "Dispense as written" on the prescription; and
 - (ii) That a specific brand is "medically necessary" for a particular client; or
- (c) The availability of generic equivalents in the marketplace is severely curtailed and the price disparity between the

brand name EAC and the generic MAC reimbursement affects clients' access to the medication.

(6) MAA provides a response, by telephone or other telecommunication device, within twenty-four hours of a request for drugs that require prior authorization, if the request is received during normal state business hours. If a provider needs prior authorization to dispense a drug during a week-end or Washington state holiday, the provider may dispense the drug without prior authorization only when:

(a) Given in an emergency;

(b) MAA receives justification within seventy-two hours of the fill date, excluding weekends and Washington state holidays; and

(c) MAA agrees with the justification and approves the request.

(7) MAA's prior authorization:

(a) Is limited to a decision of medical appropriateness for a drug; and

(b) Does not guarantee payment.

AMENDATORY SECTION (Amending WSR 01-24-066, filed 11/30/01, effective 1/2/02)

WAC 388-530-1260 Therapeutic consultation service. (1) The medical assistance administration (MAA) provides a therapeutic consultation service (TCS) to aid appropriate utilization of prescription drugs, improve quality of care and health care outcomes for medical assistance clients, and promote cost effectiveness.

(2) A TCS review occurs when a drug claim

~~(a)) exceeds the four-brand-name-prescriptions-per calendar-month limit~~

~~(b) Is for a nonpreferred drug within selected therapeutic classes). The exceptions to this are:~~

(a) When the brand-name drug is a preferred drug on the Washington Preferred Drug List (PDL) (preferred brand-name drugs on the Washington PDL do not count against the limit); or

(b) When an endorsing practitioner indicates dispense as written (DAW) for a nonpreferred drug. Nonpreferred drugs do not count against the limit in these cases. However, if a nonendorsing practitioner indicates DAW for a nonpreferred drug, the nonpreferred drug counts against the limit and requires prior authorization, regardless of the DAW indication. See WAC 388-530-1290.

(3) Through TCS, MAA

~~(a)) provides a complete drug profile review for each client whose claims exceed four brand name prescriptions in a calendar month. MAA excludes the following from the four brand name prescriptions per calendar month limit:~~

~~((i)) (a) Generic drugs; and~~

~~((ii)) (b) The following drugs:~~

~~((A)) (i) Antidepressants;~~

~~((B)) (ii) Antipsychotics;~~

~~((C)) (iii) Chemotherapy;~~

~~((D)) (iv) Contraceptives;~~

~~((E)) (v) HIV;~~

~~((F)) (vi) Immunosuppressants; and~~

~~((G)) (vii) Hypoglycemia rescue agents.~~

~~((b) Publishes a list of preferred drugs within selected therapeutic classes. MAA chooses a drug or drugs from a selected therapeutic class for placement on the preferred list when:~~

~~(i) The drugs in the class are essentially equal in terms of safety and efficacy; and~~

~~(ii) The selected drug or drugs may be the least costly in the therapeutic class.)~~

(4) When a pharmacy provider submits a claim that exceeds ~~((TCS limitations))~~ the four-brand-name-prescriptions-per-calendar-month limitation for a client, MAA notifies the pharmacy provider that a TCS review is required.

(5) The TCS review process includes all of the following:

(a) Pharmacy provider requirements:

(i) The pharmacy provider notifies the prescriber that the prescriber or prescriber designee must call the TCS toll-free telephone number to begin a TCS review according to subsection (2) of this section; and

(ii) If the TCS review cannot take place due to the prescriber's or prescriber designee's unavailability, the pharmacy provider has the option to dispense an emergency supply of the requested drug only when:

(A) Given in an emergency;

(B) MAA receives justification within seventy-two hours of the fill date, excluding weekends and Washington state holidays; and

(C) MAA agrees with the justification and approves the request.

(b) Prescriber requirements:

(i) When the pharmacy provider contacts the client's prescriber as described in subsection (5)(a)(i) of this section, the prescriber or prescriber designee ~~((contacts))~~ calls the TCS toll-free telephone number to contact the MAA designee (MAA-designated clinical pharmacist) to begin a TCS review;

(ii) After the prescriber or prescriber designee and the MAA designee review the client's drug profile and discuss clinically sound options and cost effective alternative drug(s), the prescriber does one of the following:

(A) Changes the prescription to an alternate drug or preferred drug and contacts the client's pharmacy with the new prescription;

(B) Provides the MAA designee with medical justification for the requested drug and the MAA designee authorizes the drug under the provisions of medical necessity as defined in WAC 388-500-0005; or

(C) Does not agree to prescribe an alternate drug or preferred drug and does not provide medical justification for the requested drug, then:

(I) The MAA designee authorizes only a one-month supply of the requested drug with no refills and sends the initiating prescriber a copy of the client's drug profile and a therapy authorization turnaround form;

(II) The prescriber signs the therapy authorization turnaround form and returns it to the MAA designee; and

(III) Upon receipt of the therapy authorization turnaround form, the MAA designee authorizes ~~((six additional))~~ up to twelve months of the requested drug.

(c) MAA designee responsibilities:

(i) Notifies the following by facsimile, electronic mail, or telephone call, the results of the TCS review:

(A) Prescriber; and

(B) Pharmacy provider; and

~~(C) MAA for notification to the client. When the TCS indicates a need for a change, limitation, or denial of the requested drug, MAA notifies the client according to WAC 388-501-0165(7)).~~

(ii) Notifies MAA clinical program staff when concerns for client safety are identified during the TCS reviews. See WAC 388-530-1100(2) for how MAA determines restrictions on drug coverage based on, but not limited to, client safety.

(iii) Contacts other prescribers identified during the TCS review when opportunities to further improve the client's healthcare outcome are discovered.

~~((6) A client who does not agree with a TCS decision has a right to a fair hearing under chapter 388-02 WAC. After receiving a request for a fair hearing, MAA may request additional information from the client, the prescriber, or the pharmacy provider. After MAA reviews the available information, the result may be:~~

~~(a) A reversal of the initial department decision;~~

~~(b) Resolution of the client's issue(s); or~~

~~(c) A fair hearing conducted per chapter 388-02 WAC.)~~

AMENDATORY SECTION (Amending WSR 03-05-043, filed 2/13/03, effective 3/16/03)

WAC 388-530-1270 Mail-order services. The medical assistance administration (MAA) provides a contracted mail-order pharmacy service for client use. The mail-order contractor is selected as a result of a competitive procurement process.

(1) The contracted mail-order pharmacy service is available as an option to all medical assistance clients, subject to the:

(a) Scope of the client's medical care program;

(b) Availability of services from the contracted mail-order provider; and

(c) Special terms and conditions described in subsection (2) and (3) of this section.

(2) The mail-order prescription service may not dispense medication in a quantity greater than authorized by the prescriber. (See RCW 18.64.360(5), Nonresident pharmacies.)

(3) Prescribed medications may be filled by the mail-order pharmacy service within the following restrictions:

(a) Drugs available from mail-order in no more than a ninety day supply include:

(i) Preferred drugs (see WAC ((388-530-1260)) 388-530-1280);

(ii) Generic drugs; and,

(iii) Drugs that do not require prior authorization or expedited prior authorization (see WAC 388-530-1200 and 388-530-1250).

(b) Drugs available in no more than a thirty-four-day supply:

(i) Controlled substances (schedules II through V); and

(ii) Drugs requiring prior authorization or expedited prior authorization (see WAC 388-530-1200).

(c) Other pharmacy restrictions (chapter 388-530 WAC, Pharmacy services) continue to apply.

(4) The contracted mail-order pharmacy services are reimbursed at levels lower than those established for the regular outpatient pharmacy services.

NEW SECTION

WAC 388-530-1280 Preferred drug list(s). This section contains the medical assistance administration's (MAA) rules for preferred drug list(s) (PDL). Under RCW 69.41.090 and 70.14.050, MAA and other state agencies cooperate in developing and maintaining preferred drug list(s).

(1) The Washington preferred drug list (PDL):

(a) Washington state contracts with evidence-based practice center(s) for systematic reviews of drug(s).

(b) The Pharmacy and Therapeutics (P&T) Committee reviews and evaluates the safety, efficacy, and outcomes of prescribed drugs, using evidence-based information provided by the evidence-based practice center(s).

(c) The P&T committee makes recommendations to state agencies as to which drug(s) to include on the Washington PDL, under chapter 182-50 WAC.

(d) The appointing authority makes the final selection of drugs included on the Washington PDL.

(e) Nonpreferred drugs within a therapeutic class on the Washington PDL are subject to the Therapeutic Interchange Program (TIP) according to WAC 388-530-1290.

(2) The medical assistance administration's (MAA's) PDL. Drugs on MAA's PDL:

(a) Are not part of the Washington PDL;

(b) Are not subject to TIP; and

(c) Continue to require prior authorization when they are designated as nonpreferred.

(3) Combination drugs that are not on the Washington PDL, that are not reviewed by the evidence-based practice center(s), and that are not subject to TIP under WAC 388-530-1290, are considered for coverage according to MAA's prior authorization program.

NEW SECTION

WAC 388-530-1290 Therapeutic interchange program (TIP). This section contains the medical assistance administration's (MAA) rules for the Endorsing Practitioner Therapeutic Interchange Program (TIP). TIP is established under RCW 69.41.190 and 70.14.050. The statutes require state-operated prescription drug programs to allow physicians and other prescribers to endorse a Washington preferred drug list (PDL) and, in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

(1) The Therapeutic Interchange Program (TIP) applies only to drugs within therapeutic classes on the Washington PDL that are prescribed by an endorsing practitioner. TIP does not apply to other drugs that require MAA's prior authorization or to other program limitations.

(2) A practitioner who wishes to become an endorsing practitioner must specifically enroll with the health care authority (HCA) as such, under the provisions of chapter 182-50 WAC.

(3) When an endorsing practitioner writes a prescription for an MAA client for a nonpreferred drug and indicates that substitution is permitted, the pharmacist must:

(a) Dispense the preferred drug in that therapeutic class in place of the nonpreferred drug. In the event that more than one preferred drug in that therapeutic class is on the Washington PDL, dispense one of the preferred drugs in place of the nonpreferred drug; and

(b) Notify the endorsing practitioner of the specific drug and dose dispensed.

(4) When an endorsing practitioner determines that a nonpreferred drug is medically necessary, all of the following apply:

(a) The practitioner must indicate that the prescription is to be dispensed as written (DAW);

(b) The filling pharmacist dispenses the nonpreferred drug as prescribed; and

(c) MAA does not require prior authorization to dispense the nonpreferred drug.

(5) In the event the following therapeutic drug classes are on the Washington PDL, pharmacists will not substitute a preferred drug for a nonpreferred drug in these therapeutic drug classes when the endorsing practitioner prescribes a refill (including the renewal of a previous prescription or adjustments in dosage):

- (a) Antipsychotic;
- (b) Antidepressant;
- (c) Chemotherapy;
- (d) Antiretroviral; or
- (e) Immunosuppressive.

(6) When a pharmacist fills a prescription from a nonendorsing practitioner for an MAA client and the prescription is for a nonpreferred drug, the pharmacist must obtain prior authorization from MAA or its designee to dispense the nonpreferred drug.

AMENDATORY SECTION (Amending WSR 02-17-023, filed 8/9/02, effective 9/9/02)

WAC 388-530-1400 Maximum allowable cost (MAC) methodology. (1) The medical assistance administration (MAA) establishes a maximum allowable cost (MAC) for a multiple-source drug which is available from at least two manufacturers/labelers.

(2) MAA determines the MAC for a multiple-source drug by:

(a) When drug wholesalers make acquisition cost data available to MAA, MAA:

(i) Identifies what products are available from wholesalers for each MAC drug;

(ii) Determines pharmacy subscribers' approximate acquisition costs for these products;

(iii) Ranks the products in descending order by approximate acquisition cost; and

(iv) Establishes the MAC at a level which gives pharmacists access to one product from a manufacturer with a qualified rebate agreement (see WAC 388-530-1125).

(b) When drug wholesalers do not make acquisition cost data available to MAA, MAA may set a MAC for a drug in the same manner described in WAC 388-530-1350 (1)(b).

(3) The MAC established for a multiple-source drug does not apply if the written prescription identifies that a specific brand is medically necessary for a particular client. In such cases, the estimated acquisition cost (EAC) for the particular brand applies, provided prior authorization is obtained from MAA as specified under WAC 388-530-1250(5), Prior authorization.

(4) Except as provided in subsection (3) of this section, MAA reimburses providers for a multiple-source drug at the lowest of the rates calculated under the methods listed in WAC 388-530-1300(1).

(5) The MAC established for a multiple-source drug applies to all package sizes of that drug, including those identified as unit dose National Drug Codes (NDCs) by the manufacturer(s) of the drug.

AMENDATORY SECTION (Amending WSR 02-17-023, filed 8/9/02, effective 9/9/02)

WAC 388-530-1900 Drug ((utilization)) use and claims review. (1) The medical assistance administration's (MAA's) drug ((utilization)) use review (DUR) consists of:

(a) A prospective drug ((utilization)) use review (Pro-DUR) that requires all pharmacy providers to:

(i) Obtain patient histories of allergies, idiosyncrasies, or chronic condition(s) which may relate to drug utilization;

(ii) Screen for potential drug therapy problems; and

(iii) Counsel the patient in accordance with existing state pharmacy laws and federal regulations; and

(b) A retrospective drug ((utilization)) use review (Retro-DUR), in which MAA provides for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and individuals receiving benefits.

(2) MAA performs a periodic sampling of claims to determine if drugs are appropriately dispensed and billed. If a review of the sample finds that a provider is inappropriately dispensing or billing for drugs, MAA may implement corrective action that includes, but is not limited to:

(a) Educating the provider regarding the problem practice(s);

(b) Requiring the provider to maintain specific documentation in addition to the normal documentation requirements regarding the provider's dispensing or billing actions;

(c) Recouping the payment for the drug(s); and/or

(d) Terminating the provider's core provider agreement.

AMENDATORY SECTION (Amending WSR 02-17-023, filed 8/9/02, effective 9/9/02)

WAC 388-530-1950 Point-of-sale (POS) system/prospective drug ((utilization)) use review (Pro-DUR). (1) Pharmacy claims for drugs and other products listed in the medical assistance administration (MAA) drug file list and billed to MAA by National Drug Code (NDC) are adjudicated by the MAA point-of-sale (POS) system. Claims must be submitted for payment using the billing unit standard identified in WAC 388-530-1800.

(2) All pharmacy drug claims processed through the POS system undergo a system-facilitated prospective drug ((utili-

zation)) use review (Pro-DUR) screening as a complement to the Pro-DUR screening required of pharmacists.

(3) If the MAA POS system identifies a potential drug therapy problem during Pro-DUR screening, a message will alert the pharmacy provider indicating the type of potential problem.

The alerts regarding possible drug therapy problems include, but are not limited to:

- (a) Therapeutic duplication;
- (b) Duration of therapy exceeds the recommended maximum period;
- (c) Drug-to-drug interaction;
- (d) Drug disease precaution;
- (e) High dose;
- (f) Ingredient duplication;
- (g) Drug-to-client age conflict;
- (h) Drug-to-client gender conflict; or
- (i) Refill too soon.

(4) MAA provides pharmacy providers with a list of codes from which to choose in overriding MAA POS system alert messages. The override codes come from the national council for prescription drug programs (NCPDP).

(5) The dispensing pharmacist evaluates the potential drug therapy conflict and chooses one of the following:

- (a) If the conflict is resolved, the pharmacy may process the claim using the applicable NCPDP override code.
- (b) If the conflict is not resolved, MAA requires prior authorization. This includes all claims for which an alert message is triggered in the POS system and an NCPDP override code is not appropriate.

(6) MAA requires providers to retain documentation of the justification for the use of payment system override codes as described in subsections (4) and (5) of this section. MAA requires the documentation be retained for the same period as that described in WAC 388-502-0020.

(7) POS/Pro-DUR screening is not applicable to pharmacy claims included in the managed care capitated rate.

Purpose: Provides criteria and requirements for reporting service for public employees' retirement system (PERS) members who work concurrently in some teachers' retirement system (TRS) positions.

Citation of Existing Rules Affected by this Order: Amending WAC 415-108-728 and 415-112-155.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: Chapters 41.32 and 41.40 RCW.

Adopted under notice filed as WSR 04-24-014 on November 22, 2004.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 5, 2005.

John Charles
Director

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-108-728 If I work concurrently in ((~~both~~)) a PERS position and TRS position ((~~during the same school year~~)), which system will I be in? (1) If you work concurrently in ((~~both~~)) a PERS and TRS position ((~~during the same year~~)), your membership status and the nature of your positions will determine the system your employer will report you in. You will be reported in either PERS or TRS according to the following table:

Former TRS Plan 1 Members ^{1/}

Type of Employment ^{2/}	Type of Employer(s)	System You Will Be Reported In
A substitute or less than full-time teaching position and a PERS-eligible position	Same employer	PERS - for both positions.

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**WSR 05-03-001
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed January 5, 2005, 1:52 p.m., effective February 5, 2005]

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

Type of Employment ^{2/}	Type of Employer(s)	System You Will Be Reported In
	Separate TRS employers	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, you must elect either to: <ol style="list-style-type: none"> 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.
A full-time teaching position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must elect to: <ol style="list-style-type: none"> 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

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TRS Plan 1 Members

Type of Employment ^{2/}	Type of Employer(s)	System You Will Be Reported In
A full-time or less than full-time TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must elect either to: <ol style="list-style-type: none"> 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for PERS position.
A full-time or less than full-time TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	TRS - for the TRS position only; your ineligible PERS position is not reportable.

TRS Plan 2 Members

Type of Employment ^{2/}	Type of Employer(s)	System You Will Be Reported In
An eligible TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for TRS position only; your ineligible PERS position is not reported.
	A TRS employer and non-TRS employer	TRS - for TRS position only; your ineligible PERS position is not reported.

Type of Employment ^{2/}	Type of Employer(s)	System You Will Be Reported In
An eligible TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions. ^{2/}
	A TRS employer and non-TRS employer	You must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

PERS Members

Type of Employment ^{2/}	Type of Employer(s)	System You Will Be Reported In
An eligible PERS position and an ineligible TRS or substitute position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for the PERS position only((;)). Your TRS service will not be reported unless you ((qualify for and elect to establish membership in TRS at the end of the school year under WAC 415-112-125(1)). <u>If you elect to establish TRS membership, your employers will report you in TRS for both positions)) have met the eligibility criteria for TRS membership and choose to either:</u> <u>1. Have your TRS service reported in PERS for both positions^{4/}; or</u> <u>2. Establish TRS membership and have your service in both positions reported in TRS.</u> Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for the PERS position only. You will not be reported for the TRS position unless you ((elect)) <u>have met the eligibility criteria for TRS membership and choose to either:</u> 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

Neither TRS Nor PERS Member

Type of Employment ^{2/}	Type of Employer(s)	System You Will Be Reported In
An ineligible TRS and an ineligible PERS position	Same employer	TRS - for both positions if the positions combined, qualify as an eligible position.
	Separate employers, TRS or non-TRS	Neither position reported.
A substitute teaching position and an ineligible PERS position	Same employer	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.
	Separate employers, TRS or non-TRS	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.

^{1/} "Former TRS 1 member", as used here, means you terminate your membership by withdrawing your contributions.

^{2/} Means during the same school year.

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3/ **EXAMPLE:** A TRS 2 member teaches in an eligible position and during the summer, she works for a state agency in an eligible position under PERS. Because the member has established membership in TRS 2 through employment as a teacher, her state agency employer must report her service and compensation from the PERS position to the Department in TRS 2.

EXAMPLE: A TRS 2 member is employed concurrently by School District A in an eligible TRS position and by School District B in an eligible PERS position. Because he is a TRS 2 member, School District B employer must report his service and compensation from the PERS position to the Department in TRS 2. If the member terminates his employment in the TRS position with School District A, School District B will report him in PERS for the PERS position.

4/ This provision applies retroactively to July 1, 1996.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Eligible position" - RCW 41.40.010.
- (b) "Employer" - RCW 41.40.010 (PERS); RCW 41.32.010 (TRS).
- (c) "Ineligible position" - RCW 41.40.010.
- (d) "Member" - RCW 41.40.010.
- (e) "Membership" - RCW 41.40.023.
- (f) "Report" - WAC 415-108-010.
- (g) "Service" - RCW 41.40.010.

AMENDATORY SECTION (Amending WSR 04-21-080, filed 10/20/04, effective 11/20/04)

WAC 415-112-155 If I work concurrently in a TRS position and PERS position, which system will I be in? (1)
 If you work concurrently in a TRS and PERS position, your membership status and the nature of your positions will determine the system your employer will report you in. You will be reported in either TRS or PERS according to the following tables:

Former TRS Plan 1 Members ¹

Type of Employment ²	Type of Employer(s)	System You Will Be Reported In
A substitute or less than full-time teaching position and a PERS-eligible position	Same employer	PERS - for both positions.
	Separate TRS employers	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and choose to establish TRS membership under RCW 41.32.240. If you choose to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - for PERS position only. Your substitute part-time position is not reported unless you qualify for and choose to establish TRS membership under RCW 41.32.240. If you choose to establish TRS membership, you must choose either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.
A full-time teaching position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must choose to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

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TRS Plan 1 Members

Type of Employment ²	Type of Employer(s)	System You Will Be Reported In
A full-time or less than full-time TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	You must choose either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.
A full-time or less than full-time TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions.
	A TRS employer and non-TRS employer	TRS - for the TRS position only; your ineligible PERS position is not reportable.

TRS Plan 2 Members

Type of Employment ²	Type of Employer(s)	System You Will Be Reported In
An eligible TRS position and an ineligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for TRS position only; your ineligible PERS position is not reported.
	A TRS employer and non-TRS employer	TRS - for TRS position only; your ineligible PERS position is not reported.
An eligible TRS position and an eligible PERS position	Same employer	TRS - for both positions.
	Separate TRS employers	TRS - for both positions. ²
	A TRS employer and non-TRS employer	You must choose either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

PERS Members

Type of Employment ²	Type of Employer(s)	System You Will Be Reported In
An eligible PERS position and an ineligible TRS or substitute position	Same employer	PERS - for both positions.
	Separate TRS employers	<u>PERS - for the PERS position only((, unless you qualify for and elect to establish membership in TRS under WAC 415-112-125(1))). Your TRS service will not be reported unless you have met the eligibility criteria for TRS membership and choose to either:</u> <u>1. Have your TRS service reported in PERS for both positions²; or</u> <u>2. Establish TRS membership and have your service in both positions reported in TRS. Any previously reported service credit and compensation in PERS will be transferred to TRS.</u>

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PERS Members

Type of Employment ²	Type of Employer(s)	System You Will Be Reported In
	A TRS employer and non-TRS employer	PERS - for the PERS position only. You will not be reported for the TRS position unless you <u>have met the eligibility criteria for TRS membership and choose to either:</u> 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions:or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

Neither TRS Nor PERS Member

Type of Employment ²	Type of Employer(s)	System You Will Be Reported In
An ineligible TRS and an ineligible PERS position	Same employer	TRS - for both positions if the positions combined, qualify as an eligible position.
	Separate employers, TRS or non-TRS	Neither position reported.
A substitute teaching position and an ineligible PERS position	Same employer	Neither position reported. However, if you qualify, you may choose to establish membership in TRS for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.
	Separate employers, TRS or non-TRS	Neither position reported. However, if you qualify, you may choose to establish membership in TRS for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.

¹ "Former TRS 1 member", as used here, means you terminate your membership by withdrawing your contributions.

² Means during the same time period.

³ **EXAMPLE:** A TRS Plan 2 member teaches in an eligible position and during the summer, she works for a state agency in an eligible position under PERS. Because the member has established membership in TRS Plan 2 through employment as a teacher, her state agency employer must report her service and compensation from the PERS position to the Department in TRS Plan 2.

EXAMPLE: A TRS Plan 2 member is employed concurrently by School District A in an eligible TRS position and by School District B in an eligible PERS position. Because he is a TRS Plan 2 member, School District B employer must report his service and compensation from the PERS position to the Department in TRS Plan 2. If the member terminates his employment in the TRS position with School District A, School District B will report him in PERS for the PERS position.

⁴ This provision applies retroactively to July 1, 1996.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

- (a) "Eligible position" - RCW 41.32.010 (TRS); RCW 41.40.010 (PERS).
- (b) "Employer" - RCW 41.40.010 (PERS); RCW 41.32.010 (TRS).
- (c) "Full time" - RCW 41.32.240.
- (d) "Ineligible position" - WAC 415-112-015 (TRS); RCW 41.40.010 (PERS).
- (e) "Member" - RCW 41.40.010.
- (f) "Membership" - RCW 41.40.023.
- (g) "Report" - WAC 415-108-0104.
- (h) "Service" - RCW 41.40.010.

WSR 05-03-002

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 5, 2005, 2:00 p.m., effective February 5, 2005]

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

Purpose: WAC 458-20-190 explains the tax reporting responsibilities of persons making sales to the United States and to foreign governments. It also explains the tax reporting responsibilities of persons engaging in business activities within federal reservations, which is currently addressed in WAC 458-20-191. Tax reporting guidance regarding the preferential tax rate for cleaning up radioactive waste and other byproducts of weapons production for the United States (RCW 82.04.263) has also been added to the rule. Pertinent information from the following excise tax advisories (ETAs) has been incorporated and they will be cancelled in conjunction with this rule action.

- ETA 2007.04.190 (Taxability of federal instrumentalities and federally created corporate entities);

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- ETA 350.04.190 (Business and Occupation Tax—Medical Service Associations); and
- ETA 258.08.190 (National Guard Post Exchange Sales).

Citation of Existing Rules Affected by this Order: Repealing WAC 458-20-191 Federal reservations and 458-20-99999 Appendix—The Buck Act; and amending WAC 458-20-190 Sales to and by the United States, its departments, institutions and instrumentalities—Doing business on federal reservations—Sales to foreign governments.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(1), and 34.05.230.

Adopted under notice filed as WSR 04-19-098 on September 20, 2004.

Changes Other than Editing from Proposed to Adopted Version: Subsection (9)(c)(iv) example regarding security services has been changed to explain that security services provided at a clean-up site may qualify for the preferential B&O tax rate provided by RCW 82.04.263. The example explains that if the contract does not identify the income attributable to qualifying security services, but the taxpayer can substantiate that qualifying services are the predominant activity/services performed under the contract, the income attributable to the entire contract qualifies for the preferential tax rate.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 2.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 2.

Date Adopted: January 5, 2005.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending Order ET 83-16, filed 3/15/83)

WAC 458-20-190 Sales to and by the United States(~~its departments, institutions and instrumentalities~~)—Doing business on federal reservations—Sales to foreign governments.

~~((Business and Occupation Tax~~

~~The United States, its departments, institutions and instrumentalities, including corporate instrumentalities, are not subject to tax under chapter 82.04 RCW.~~

~~In computing business tax liability of others, no deduction from value of products, gross sales or gross income is allowed in respect to business transacted with the United States, its departments, institutions or instrumentalities.~~

Retail Sales Tax

The retail sales tax does not apply to sales to the United States, its departments, institutions and instrumentalities, except sales to such institutions as have been chartered or created under federal authority, but which are not directly operated and controlled by the government for the benefit of the public generally.

~~Departments, instrumentalities or agencies which are directly operated and controlled by the federal government for the benefit of the public generally include, among others, the departments of Agriculture, Commerce, Interior (including the Bonneville Power Administration and the Tennessee Valley Authority), Justice, Labor, Post Office, State, and Treasury, also the National Military Establishment which includes the departments of the Army, the Navy and the Air Force. Also, the following federal agencies are exempt from payment of sales tax either by reason of congressional exemption in the course of their establishment or by reason of specific federal statutory exemption: The Civil Service Commission, Farm Credit Administration, Federal Housing Administration (including Housing and Urban Development), Federal Land Banks, Federal Reserve Banks, Home Owner's Loan Corporation, Interstate Commerce Commission, Rural Electrification Administration, Social Security Board, United States Maritime Commission, Veterans' Administration, and federally chartered credit unions, federal home loan banks, farm credit banks, export-import bank, Federal Savings and Loan Insurance Corporation, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, Federal National Mortgage Association, Farm Loan Associations, and Central Banks for Cooperatives, the stock of which is owned by the United States.~~

The retail sales tax does not apply to sales made by the United States, or any instrumentality thereof, or by voluntary unincorporated organizations of Army or Navy personnel to authorized purchasers within a federal area. The term "authorized purchasers" means civil employees and members of the armed forces of the United States who are permitted to purchase from such organizations under regulation by the secretaries of Navy, Army, Air Force, or Defense.

~~Sales to persons in the Army or Navy service of the United States, including civilian employees in such service, are not exempt from the retail sales tax, except where such sales are made to them as authorized purchasers by an instrumentality of the United States operating exclusively within a federal area. Furthermore, no exemption is permitted with respect to sales to or by voluntary unincorporated organizations of Army or Navy personnel which are not instrumentalities of the United States, national banking associations, persons licensed to engage in private businesses under federal statutes, or contractors engaged in performing contracts for the United States government. Likewise, the retail sales tax applies upon the sales made to the department of employment security of the state of Washington, irrespective of whether or not such department is reimbursed therefor with federal funds.~~

Sales to federal employees or representatives of the federal government are subject to sales tax, even though the federal government may reimburse them for all or a part of such

~~expenses. Direct purchases by the federal government are sales tax exempt, but purchases by others whether with federal funds or through a reimbursement arrangement are fully subject to the retail sales tax.~~

~~Foreign governments. The retail sales tax does not apply to sales to a foreign government or to any department thereof.~~

Use Tax

~~The use tax does not apply upon the use of any article by the United States, its departments, institutions and instrumentalities, except institutions chartered or created under federal authority, but which are not directly operated and controlled by the government for the benefit of the public generally, nor does said tax apply upon the use of any article by a foreign government.~~

Public Utility Tax

~~In computing the public utility tax no deduction is allowed with respect to gross operating revenue derived from services supplied or furnished to the United States, its departments, institutions or instrumentalities.)) (1) **Introduction.** Federal law prohibits Washington from directly imposing taxes upon the United States. Persons doing business with the United States are nonetheless subject to the taxes imposed by the state of Washington, unless specifically exempt. This rule explains the tax reporting responsibilities of persons making sales to the United States and to foreign governments. The rule also explains the tax reporting responsibilities of persons engaging in business activities within federal reservations and cleaning up radioactive waste and other by-products of weapons production for the United States.~~

~~Persons engaged in construction, installation, or improvement to real property of or for the United States should also refer to WAC 458-20-17001 (Government contracting, etc.). Persons building, repairing, or improving streets, roads, and other transportation facilities, which are owned by the United States should also refer to WAC 458-20-171 (Building, repairing or improving streets, roads, etc.). Persons selling cigarettes to the United States or any other federal entity should also refer to WAC 458-20-186 (Tax on cigarettes).~~

(2) "United States" defined.

~~(a) For the purposes of this rule, the term "United States" means the federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by reason of specific federal statutory exemption.~~

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

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

(3) Prohibition against taxing the United States. The state of Washington is prohibited from imposing taxes directly upon the United States.

(a) This prohibition applies to taxes imposed for the privilege of engaging in business such as the business and occupation (chapter 82.04 RCW) and the public utility (chapter 82.16 RCW) taxes.

It also applies to taxes imposed on a buyer or user of goods or services, including, but not limited to, the:

(i) State and local retail sales and car rental taxes (chapters 82.08 and 82.14 RCW);

(ii) State and local use tax (chapters 82.12 and 82.14 RCW);

(iii) Solid waste collection tax (chapter 82.18 RCW); and

(iv) Local government taxes such as the special hotel/motel (chapter 67.28 RCW) and convention and trade center (chapter 67.40 RCW) taxes.

(b) The state is also prohibited from requiring the United States to collect taxes imposed on the buyer (e.g., the retail sales tax) as an agent for the state. However, buyers must pay use tax on retail purchases from the United States, unless specifically exempt by law.

(c) In addition, federal law exempts certain nongovernmental entities from state taxes (for which Congress has given specific federal statutory tax exemptions). These specific federal statutory exemptions given by Congress may not be absolute and may be limited to specific activities of an entity.

(d) The American Red Cross is an instrumentality of the United States. As a federal corporation providing aid and relief, it is exempt from retail sales, use, and business and occupation taxes under state law. RCW 82.08.0258, 82.12.0259, and 82.04.380.

(4) Persons doing business with the United States. Persons selling goods or services to the United States are subject to taxes imposed on the seller, such as the business and occupation (B&O) and public utility taxes, unless a specific tax exemption applies. Persons receiving income from contracting with the United States government to administer its programs, either in whole or in part, are also subject to tax, unless a specific tax exemption applies.

(a) Certain invoiced amounts not included in gross income. Persons who contract with the United States may, for federal accounting purposes, be contractually required to invoice goods or services provided to the United States by third parties. The purpose of the invoices is to match the expenditures with the appropriate category of congressional funding. These amounts should be excluded from the person's gross income when reporting on the combined excise tax return if all of the following conditions exist with respect to the goods or services:

(i) The third party directly invoices the United States;

(ii) The United States directly pays the third party; and

(iii) The person has no liability, either primarily or secondarily, for making payment to the third party or for remitting payment to the third party.

(b) Tax obligation with respect to the use of tangible personal property. Persons performing services for the United States are also subject to the retail sales or use tax on

property they use or consume when performing services for the United States, unless specifically exempt.

(i) Manufacturing articles for commercial or industrial use. In the case of products manufactured or produced by the person using the products as a consumer, the measure of the use tax is generally the value of the products as explained in WAC 458-20-112 (Value of products). However, if the articles manufactured or produced by the user are used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of articles used is the value of the ingredients of such articles. The manufacturing B&O tax also applies to the value of articles manufactured for commercial or industrial use.

(ii) Use of government provided property. When articles or goods used are acquired by bailment, the measure of the use tax to the bailee is the reasonable rental with the value to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. See WAC 458-20-211 (Leases or rental of tangible personal property, bailments). Thus, if a person has a contract to provide services for the United States and uses government supplied tangible personal property to perform the services, then the person must pay use tax on the fair market rental value of the government supplied tangible personal property.

Persons who incorporate government provided articles into construction projects or improvements made to real property of or for the United States should refer to WAC 458-20-17001 (Government contracting, etc.) for more specific tax-reporting information.

(c) Exemption for certain machinery and equipment. Manufacturers or processors for hire may be eligible for the retail sales or use tax exemption provided by RCW 82.08.02565 and 82.12.02565 on machinery and equipment used directly in a manufacturing or research and development operation. See WAC 458-20-13601 (Manufacturers and processor for hire—Sales and use tax exemption for machinery and equipment).

(5) Documenting exempt sales to the United States. Only those sales made directly to the United States are exempt from retail sales tax or other tax imposed on the buyer. To be entitled to the exemption, the purchase must be paid for using a qualified U.S. government credit card, a check from the United States payable to the seller, a United States voucher, or with cash accompanied by the federal SF (Standard Form) 1165.

Sales to employees or representatives of the United States are subject to tax, even though the United States may reimburse the employee or representative for all or a part of the expense. Purchases by any other person, whether with federal funds or through a reimbursement arrangement, are subject to tax unless specifically exempt by law.

(a) Documenting tax-exempt sales. Sellers document the tax-exempt nature of sales made to the United States by keeping a copy of the United States credit card receipt, a copy of the check from the United States, a copy of the federal government voucher, or a signed copy of federal SF 1165.

(b) Payment occurring via government contracted credit card. Various United States government contracted

credit cards are used to make payment for purchases of goods and services by or for the United States government. Sole responsibility for payment of these purchases may rest with the United States government or with the employee. The United States government's system of issuing government contracted credit cards is subject to change. For specific information about determining when payment is the direct responsibility of the United States government or the employee, contact the department's taxpayer services division at:

Department of Revenue

Taxpayer Services

P.O. Box 47478

Olympia, WA 98504-7478

or call the department's telephone information center at 1-800-647-7706 or visit the department's website at <http://dor.wa.gov>.

(6) Doing business on federal reservations. The state of Washington has jurisdiction and authority to levy and collect taxes upon persons residing within, or with respect to business transactions conducted upon, federal reservations. 4 U.S.C. §§ 105-110. The term "federal reservation," as used in this rule, means any land or premises within the exterior boundaries of the state of Washington that are held or acquired by and for the use of the United States, its departments, institutions or entities. This means that a concessionaire operating within a federal reservation under a grant or permit issued by the United States or by a department or entity of the United States is taxable to the same extent as any private operator engaging in a similar business outside a federal reservation and without specific authority from the United States.

(a) Sales tax collection requirements. Persons making retail sales to members of the armed forces or others residing within or conducting business upon federal reservations are required to collect and remit retail sales tax from the buyer.

(b) Cigarette tax stamps. Washington cigarette tax stamps must generally be affixed to all cigarettes sold to persons residing within or conducting business upon federal reservations. However, such stamps need not be affixed to cigarettes sold to the United States or any of its entities including voluntary organizations of military personnel authorized by the Secretary of Defense or the Secretary of the Navy or by the United States or any of its entities to authorized purchasers, for use on such reservation. See WAC 458-20-186 (Tax on cigarettes).

(7) Sales made to authorized purchasers of the United States. As explained in subsection (3)(b) of this rule, while sales by the United States are exempt of retail sales tax the purchaser is generally responsible for remitting use tax directly to the department of revenue. Federal law prohibits the imposition of use tax on tangible personal property sold to authorized purchasers by the United States, its entities, or voluntary unincorporated organization of armed forces personnel. 4 U.S.C. § 107(a).

(a) Who is an "authorized purchaser"? A person is an "authorized purchaser" only with respect to purchases he or she is permitted to make from commissaries, ships' stores, or voluntary unincorporated organizations of personnel of any branch of the armed forces of the United States, under regu-

lations promulgated by the departmental secretary having jurisdiction over such branch. 4 U.S.C. § 107(b).

(b) What is a "voluntary unincorporated organization"? "Voluntary unincorporated organizations" are those organizations comprised of armed forces personnel operated under regulations promulgated by the departmental secretary having jurisdiction over such branch. Examples of voluntary unincorporated organizations are post flying clubs, officers or noncommissioned officers open messes, and recreation associations.

(8) Purchases by persons using federal funds. Retail sales or use tax is applicable to retail purchases made by any buyer, other than the United States, including the state of Washington and all of its political subdivisions, irrespective of whether or not the buyer uses or is reimbursed with federal funds.

(9) Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development. RCW 82.04.263 provides a preferential tax rate for the gross income derived from cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development. This tax rate applies whether the person performing these activities is a general contractor or subcontractor.

(a) What activities are entitled to the preferential tax rate? Only those activities that meet the definition of "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" are entitled to the preferential tax rate. The statute defines "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" to mean:

(i) The handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel;

(ii) Conditioning of spent nuclear fuel;

(iii) Removing contamination in soils and ground water;

(iv) Decontaminating and decommissioning of facilities;

and

(v) Performing activities integral and necessary to the direct performance of cleanup.

(b) What does it mean to be integral and necessary to the direct performance of cleanup? To be considered an activity integral and necessary to the direct performance of cleanup, the activity must be directly connected to and essential for the furtherance of activities described in subsection (9)(a)(i) through (iv) above. "Directly connected to and essential for" means that there is both a sequential relationship and a necessity relationship between activities eligible for the tax treatment under subsection (9)(a)(v) above and those activities described in subsection (9)(a)(i) through (iv) above.

(i) Sequential relationship. The sequential relationship means that the activity directly precedes, directly follows, or is concurrent with the activity in question.

(ii) Necessity relationship. The necessity relationship means that the activity under subsection (9)(a)(v) above must take place in order for the direct cleanup to take place. In other words, the activity under subsection (9)(a)(v) above

must be more than just highly desirable; the activity under subsection (9)(a)(v) above must be indispensable to the direct cleanup. As used in this subsection (9)(b)(ii), the phrase "direct cleanup" refers to those activities described in subsection (9)(a)(i) through (iv) above.

(c) Clean-up examples. The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.

(i) Company C is a land excavation contractor who contracts with Prime Contractor to dig trenches where waste will be reburied after processing. Company C's contract for digging trenches qualifies for the preferential tax rate under RCW 82.04.263 because the activity of digging trenches is one of the physical acts of cleaning up. Later Company C contracts with Prime Contractor to grade land for a general-purpose road that is not used for any cleanup purposes. The contract to grade the road does not qualify for the rate under RCW 82.04.263 because road grading is not an activity involving the physical act of cleaning up.

(ii) Company D contracts with Company C from the previous example to provide payroll and accounting services. Company D's activity does not qualify for the preferential tax rate under RCW 82.04.263 because the activity of accounting is not an activity involving the physical act of cleaning up, nor is it directly connected to and essential for any of the cleanup activities listed in subsection (9)(a)(i) through (iv) above.

(iii) Company E is an environmental engineering company which contracts with Prime Contractor to develop a plan on how best to decontaminate the soil at a tank farm and will monitor the cleanup/decontamination as it progresses. Company E's activities qualify for the preferential tax rate under RCW 82.04.263 because the activities are directly connected to and essential for removing contamination in soils.

(iv) Company F is a security company that contracts with Prime Contractor to provide overall security to the federal reservation, including providing security at clean-up sites. Security services at clean-up sites are directly connected to and essential for clean-up services. If the attribution of income to security services performed at the clean-up sites was negotiated and reflected in Company F's contract with the Prime Contractor, before the provision of those services, that income is eligible for the preferential tax rate under RCW 82.04.263. If Company F cannot identify in the contract the income attributable to security services performed at the clean-up sites, but can substantiate that security services performed at clean-up sites is the predominant activity/services performed under the contract, the income attributable to the entire contract qualifies for the preferential tax rate.

(d) Taxability of tangible personal property used or consumed in cleaning up radioactive waste and other by-products of weapons production and nuclear research and development. Persons cleaning up radioactive waste and other by-products of weapons production and nuclear research and development for the United States, or its instrumentalities, are consumers of any property they use or consume when performing these services. RCW 82.04.190. Therefore, tangible personal property used or consumed in

the cleanup is subject to retail sales or use tax. If the seller does not collect retail sales tax on a retail sale, the buyer is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. The "combined excise tax return" does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's combined excise tax return. Refer to WAC 458-20-178 for detailed information regarding use tax.

(10) Sales to foreign governments or foreign diplomats. For specific details concerning the taxability of sales of goods and services to foreign missions and diplomats, contact the department's taxpayer services division at:

Department of Revenue

Taxpayer Services

P.O. Box 47478

Olympia, WA 98504-7478

or call the department's telephone information center at 1-800-647-7706 or visit the department's website at <http://dor.wa.gov>.

WSR 05-03-003

PERMANENT RULES

OFFICE OF

ADMINISTRATIVE HEARINGS

[Filed January 5, 2005, 2:18 p.m., effective February 5, 2005]

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

Purpose: This rule would prohibit firearms or other dangerous weapons at all Office of Administrative Hearings (OAH) facilities or other rooms where OAH is conducting an administrative hearing. Some state agencies may already prohibit weapons in their facilities where hearings are held, but there is no consistent rule for all OAH hearings.

Statutory Authority for Adoption: RCW 34.12.030(6) and 34.12.080.

Adopted under notice filed as WSR 04-24-005 on November 19, 2004.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 0.

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

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

Date Adopted: January 5, 2005.

Art Wang
Chief Administrative
Law Judge

Chapter 10-20 WAC

FIREARMS AND WEAPONS IN ADMINISTRATIVE HEARINGS

NEW SECTION

WAC 10-20-010 Firearms, weapons prohibited in administrative hearings. (1) Firearms or other dangerous weapons are prohibited at all facilities owned, leased, or operated by the office of administrative hearings and in rooms where the office of administrative hearings is conducting an administrative hearing. This prohibition applies to all parties or witnesses at hearings, all office of administrative hearings employees, and all other persons present. However, it does not apply to law enforcement personnel, security personnel, or military personnel, all while engaged in official duties.

(2) As used in this chapter, "firearm or other dangerous weapon" means any firearm as defined in RCW 9.41.010, explosive as defined in RCW 70.74.010, or weapon listed in RCW 9.41.250.

(3) Possession of a valid concealed weapons permit is not a defense to the prohibition in this section.

(4) This prohibition does not apply to lawful firearms or other lawful weapons while confined to private motor vehicles in parking areas at hearings facilities.

(5) This prohibition does not apply to firearms or other dangerous weapons offered as evidence in an administrative hearing.

NEW SECTION

WAC 10-20-020 Notice of prohibited weapons. Notice that firearms and other dangerous weapons are prohibited shall be posted conspicuously in the waiting area of all office of administrative hearings offices and shall be included with every notice of hearing issued by the office of administrative hearings.

NEW SECTION

WAC 10-20-030 Sanctions for possession of weapons. Any person in possession of a firearm or other dangerous weapon at facilities owned, leased, or operated by the office of administrative hearings or in rooms being used by the office of administrative hearings for administrative hearings may be excluded from the hearings facility or room, may be held in default from the hearing, and may face any other applicable legal consequences.

WSR 05-03-005
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-03—Filed January 5, 2005, 4:33 p.m., effective February 5, 2005]

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

Purpose: Amend exceptions to statewide rules as per 2004 North of Falcon recommendations.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 04-22-121 on November 3, 2004.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 5, 2005.

Susan Yeager
for Will Roehl, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 04-242, filed 9/2/04, effective 10/3/04)

WAC 232-28-619 Washington food fish and game fish—Freshwater exceptions to statewide rules. (1) All freshwater streams and lakes not listed as open for salmon fishing are closed.

(2) County freshwater exceptions to statewide rules:

(a) Adams and Grant counties: All seasons in specific freshwater exceptions to statewide rules apply to inlet and outlet streams of named lakes in Grant and Adams counties.

(b) Adams, Douglas, Franklin, Grant, and Okanogan counties, except Zosel Dam (Okanogan River): Lawful to fish to base of all dams.

(c) Benton County: Rivers, streams and beaver ponds open year around.

(d) Ferry and Lincoln counties: Except those tributaries listed under specific water exceptions to statewide rules, all tributaries to Lake Roosevelt between Grand Coulee Dam and the State Highway 25 Bridge at Northport except Barnaby and Nancy creeks: Trout: Daily limit 5, no minimum size.

(e) Kitsap County and Mason County on Tahuya Peninsula west of Belfair-Bremerton Highway (S.R. 3): Beaver ponds: Last Saturday in April through October 31 season. Trout: No minimum length.

(3) Specific freshwater exceptions to statewide rules:

Aberdeen Lake (Grays Harbor County): Last Saturday in April through October 31 season.

Abernathy Creek (Cowlitz County):

From mouth to a point five hundred feet downstream from salmon hatchery: June 1 through August 31 and November 1 through March 15 season. Trout: Release all fish except up to two hatchery steelhead may be retained per day.

From Abernathy Falls to posted markers five hundred feet downstream from salmon hatchery: Closed waters.

Aeneas Lake (Okanogan County): Last Saturday in April through October 31 season. Fly fishing only. Fishing from a floating device equipped with a motor prohibited. Trout: Daily limit one.

Ahtanum Creek, including North and Middle Forks (Yakima County): Selective gear rules. North Fork from Grey Rock Trailhead Bridge crossing to Shellneck Creek: Closed waters.

Alder Creek (Cowlitz County): Closed waters.

Aldrich Lake (Mason County): Last Saturday in April through October 31 season.

Aldwell Lake (Clallam County): Last Saturday in April through October 31 season. Selective gear rules except fishing from a floating device equipped with a motor permitted. Trout: Daily limit two, minimum length twelve inches.

Alexander Lake (Kitsap County): Closed waters.

Alkali Lake (Grant County): Crappie: Not more than five greater than eight inches in length. Bluegill: Not more than five greater than six inches in length.

Alta Lake (Okanogan County): Last Saturday in April through September 30 season.

Amber Lake (Spokane County): Last Saturday in April through September 30 season. Selective gear rules, except electric motors allowed. Trout: Daily limit two, minimum length fourteen inches; release rainbow trout missing adipose fin. Additional season October 1 through November 30 and March 1 through last Saturday in April. Selective gear rules except electric motors allowed. All species: Release all fish.

American Lake (Pierce County): Chumming permitted.

American River (Yakima County): Selective gear rules.

Anderson Lake (Jefferson County): Last Saturday in April through October 31 season. Fishing from a floating device equipped with an internal combustion motor prohibited. From September 1 through October 31, selective gear rules and all species: Release all fish.

Armstrong Lake (Snohomish County): Last Saturday in April through October 31 season.

Asotin Creek, mainstem and forks (Asotin County): Closed to fishing for steelhead.

PERMANENT

From SR 129 Bridge upstream to the forks: Lawful to fish up to base of Headgate Dam.

North Fork from mouth upstream to USFS boundary: Selective gear rules.

North Fork from USFS boundary upstream and all other tributaries: Closed waters.

South Fork and tributaries: Closed waters.

B.C. Mill Pond (Stevens County): Last Saturday in April through October 31 season.

Bachelor Creek (Yakima County): Year around season. Trout: Daily limit five, no minimum length.

Badger Lake (Spokane County): Last Saturday in April through September 30 season.

Baker Lake (Whatcom County): Last Saturday in April through October 31 season, except closed waters in an area two hundred feet in radius around the pump discharge at the south end of the lake. Chumming permitted. Trout: Minimum length six inches and maximum length eighteen inches.

Baker River (Skagit County): Mouth to Highway 20 Bridge: September 1 through October 31 season. Nonbuoyant lure restriction and night closure. Trout: Minimum length fourteen inches, except Dolly Varden/Bull Trout. Legal to retain Dolly Varden/Bull Trout as part of the trout daily limit, minimum length twenty inches. Salmon: Open only July 1 through July 31 (~~except closed 12:01 a.m. July 6 through 2:00 p.m. July 7 and 12:01 a.m. July 12 through 2:00 p.m. July 13~~) except closed 12:01 a.m. July 6 through 2:00 p.m. July 7 and 12:01 a.m. July 12 through 2:00 p.m. July 13. Nonbuoyant lure restriction and night closure. Daily limit 2 sockeye salmon.

Highway 20 Bridge to Baker River fish barrier dam: Closed waters.

Banks Lake (Grant County): Chumming allowed. Perch: Daily limit twenty-five.

Barnaby Slough (Skagit County): Closed waters.

Battle Ground Lake (Clark County): Fishing from a floating device equipped with an internal combustion motor prohibited. Trout: No more than 2 trout 20 inches or greater in length may be retained.

Bay Lake (Pierce County): Last Saturday in April through October 31 season.

Bayley Lake (Stevens County): Last Saturday in April through July 4 season. Fly fishing only. Fishing from a floating device equipped with a motor prohibited. Trout: Daily limit one, minimum length fourteen inches. Additional season, July 5 through October 31. Fly fishing only. Fishing from a floating device equipped with a motor prohibited. All species: Release all fish. Inlet stream: Closed waters.

Bear Creek (Yakima County), tributary to South Fork Tieton River: From the mouth to the falls (approximately 3/4 mile): Closed waters.

Bear Lake (Spokane County): Juveniles, holders of disability licenses, and licensed adults accompanied by a juvenile only.

Bear River (Pacific County): June 1 through March 31 season. Nonbuoyant lure restriction and night closure August 16 through November 30. Single point barbless hooks required August 16 through November 30 downstream from the Lime Quarry Road. Upstream from the Lime Quarry Road: Selective gear rules June 1 through March 31. All game fish: Release all fish. Salmon: Open only September 1 through November 30 from mouth to Lime Quarry Road. Daily limit 6 fish of which no more than 2 may be adult fish and of these two fish no more than one may be a wild adult coho. Release adult chinook.

Beaver Creek (tributary to Elochoman River) (Wahkiakum County): Closed waters.

Beaver Lake (Clallam County): Selective gear rules except electric motors allowed. Trout: Maximum size 12 inches in length.

Beaver Lake (Columbia County): March 1 through October 31 season. Fishing from any floating device prohibited.

Beda Lake (Grant County): Selective gear rules. Trout: Daily limit one fish.

Beehive (Lake) Reservoir (Chelan County): Last Saturday in April through October 31 season. July 5 through October 31, selective gear rules, and all species: Release all fish.

Bennington Lake (Mill Creek Reservoir) (Walla Walla County): Fishing from a floating device equipped with an internal combustion motor prohibited.

Benson Lake (Mason County): Last Saturday in April through October 31 season.

Berry Creek (tributary to Nisqually River) (Lewis County): Selective gear rules.

Big Bear Creek (tributary of Sammamish River) (Snohomish/King counties): Closed waters.

Big Beaver Creek (Whatcom County):

From closed water markers on Ross Lake upstream one-quarter mile: Closed waters.

From one-quarter mile markers upstream, including tributary streams, and beaver ponds that are tributary to Big Beaver Creek: July 1 through October 31 season. Selective gear rules. All species: Release all fish.

Big Beef Creek (Kitsap County): June 1 through August 31 season. Selective gear rules. All species: Release all fish.

Big Four Lake (Columbia County): March 1 through October 31 season. Fly fishing only. Fishing from any floating device prohibited. Trout: Daily limit two.

Big Lake (Skagit County): Crappie: Daily limit ten, minimum length nine inches. Salmon: Landlocked salmon rules apply.

Big Meadow Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Big Quilcene River (Jefferson County):

From mouth to upper boundary of Falls View Campground: June 1 through last day in February season. Closed

waters: August 16 through October 31 from mouth to Rodgers Street. Rodgers Street to the Highway 101 Bridge: Selective gear rules June 1 through last day in February and night closure August 16 through December 31. From electric weir to upper boundary of Falls View Campground: Selective gear rules June 1 through last day in February. All game fish: Release all fish from mouth to campground. Salmon: Open only August 16 through October 31 from Rodgers Street to the Highway 101 Bridge. Daily limit 4 coho salmon.

From Highway 101 Bridge upstream to the electric weir at the Quilcene National Fish Hatchery: Closed waters.

Big River (Clallam County): June 1 through last day in February season. Selective gear rules. All species: Release all fish.

Big Twin Lake (Okanogan County): Last Saturday in April through October 31 season. Selective gear rules except electric motors permitted. Trout: Daily limit one.

Bird Creek (Klickitat County): Trout: Daily limit five.

Black Lake (Lower Wheeler Reservoir) (Chelan County): Last Saturday in April through October 31 season. July 5 through October 31, selective gear rules, and all species: Release all fish.

Black Lake (Okanogan County): Selective gear rules.

Black Lake (Pacific County): Last Saturday in April through October 31 season.

Black Lake (Stevens County): Last Saturday in April through October 31 season.

Black Lake (Thurston County): Crappie: Daily limit ten, minimum length nine inches.

Black River (Thurston County), from mouth to Black Lake and including all tributaries west of Interstate Highway 5, including Waddell Creek, Mima Creek, Dempsey Creek, Beaver Creek, Salmon Creek and Blooms Ditch: Selective gear rules. Trout: Minimum length fourteen inches.

Blockhouse Creek (Klickitat County): Trout: Daily limit five.

Bloodgood Creek (Klickitat County): Trout: Daily limit five.

Blue Creek (Lewis County), from mouth to Spencer Road: Closed waters except December 1 through December 31 season from mouth to posted sign at rearing pond outlet. Closed waters: Upstream from cable crossing to posted signs at fence. Nonbuoyant lure restriction and night closure. Only wheelchair-bound anglers may fish from posted signs above rearing pond to posted signs approximately 40 feet downstream at fence including the rearing pond outlet. Trout: Daily limit five. Minimum size 12 inches no more than two fish over 20 inches. Release wild cutthroat, wild steelhead and hatchery steelhead with missing right ventral fin.

Blue Lake (Columbia County): March 1 through October 31 season. Fishing from any floating device prohibited.

Blue Lake (Cowlitz County): Last Saturday in April through October 31 season. Selective gear rules. All species: Release all fish.

Blue Lake (Grant County): Last Saturday in April through September 30 season.

Blue Lake (near Sinlahekin) (Okanogan County): Last Saturday in April through October 31 season. Selective gear rules, except electric motors allowed. Trout: Daily limit one.

Blue Lake (near Wannacut Lake) (Okanogan County): Last Saturday in April through October 31 season. Selective gear rules, except electric motors allowed. Trout: Daily limit one.

Bobcat Creek and Ponds (Adams County): April 1 through September 30 season.

Bogachiel River (Clallam County), from mouth to Olympic National Park boundary: June 1 through April 30 season. December 1 through April 30, selective gear rules from Highway 101 to Olympic National Park boundary. Trout: Minimum length fourteen inches. December 1 through April 30, mouth to Highway 101, one wild steelhead per day may be retained. Salmon: Open only July 1 through November 30 from mouth to Highway 101 Bridge. Daily limit 6 fish of which no more than 2 may be adult salmon July 1 through August 31 and of which no more than 3 may be adult salmon September 1 through November 30. July 1 through August 31 release wild adult coho and (~~[[wild]]~~) unmarked adult chinook. September 1 through November 30 the daily limit may contain no more than 2 adult chinook or 2 adult wild coho or a combination of adult chinook and adult wild coho.

Bonaparte Lake (Okanogan County): Trout: No more than one over twenty inches in length may be retained.

Bosworth Lake (Snohomish County): Last Saturday in April through October 31 season.

Boundary Creek (Clallam County): Closed waters.

Bowman Creek (Klickitat County): Trout: Daily limit five.

Box Canyon Creek (Kittitas County), from mouth to waterfall approximately 2 miles upstream: Closed waters. From waterfall approximately 2 miles upstream of mouth to USFS Road #4930 Bridge: Selective gear rules.

Boxley Creek (North Bend) (King County), from its mouth to the falls located at approximately river mile 0.9: Closed waters.

Boyle Lake (King County): Last Saturday in April through October 31 season. The inlet and outlet streams to Boyle Lake are closed waters.

Bradley Lake (Pierce County): Salmon: Landlocked salmon rules apply.

Bridges Lake (King County): Last Saturday in April through October 31 season. The inlet and outlet streams to Bridges Lake are closed waters.

Brookies Lake (Grant County): Selective gear rules. Trout: Daily limit one fish.

Browns Creek (Pend Oreille County): Fly fishing only.

Browns Lake (Pend Oreille County): Last Saturday in April through October 31 season. Fly fishing only. Fishing from a floating device equipped with a motor prohibited. Trout: No more than one fish greater than 11 inches in length may be retained.

Buck Lake (Kitsap County): Last Saturday in April through October 31 season.

Buckskin Creek and tributaries (Yakima County), from mouth to the west boundary of Suntides Golf Course: Closed waters.

Bumping Lake (Reservoir) (Yakima County): Chumming permitted. Trout: Kokanee not counted in daily trout limit. Kokanee daily limit sixteen.

Bumping River (Yakima County):

From mouth to Bumping Reservoir: Lawful to fish to base of Bumping Dam. Selective gear rules June 1 through October 31. Whitefish: Additional December 1 through March 31 season. Whitefish gear rules apply.

Burbank Slough (Walla Walla County): Fishing from any floating device prohibited.

Burke Lake (Grant County): March 1 through July 31 season.

Burley Creek (Kitsap County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Butter Creek (Lewis County): Selective gear rules. Trout: Minimum length ten inches.

Buttermilk Creek, mouth to confluence of East and West Forks (Okanogan County): Closed waters.

Cady Lake (Mason County): Fly fishing only. Fishing from a floating device equipped with an internal combustion motor prohibited. All species: Release all fish.

Cain Lake (Whatcom County): Last Saturday in April through October 31 season.

Calawah River (Clallam County), from mouth to forks: June 1 through April 30 season. December 1 through April 30, selective gear rules from Highway 101 to forks. Trout: Minimum length fourteen inches. December 1 through April 30, mouth to Highway 101, one wild steelhead per day may be retained. Salmon: Open only July 1 through November 30 from mouth to Highway 101 Bridge. Daily limit 6 fish of which no more than 2 may be adult salmon July 1 through August 31 and of which no more than 3 may be adult salmon September 1 through November 30. July 1 through August 31 release wild adult coho and ~~((wild}) {unmarked})~~ unmarked adult chinook. September 1 through November 30 the daily limit may contain no more than 2 adult chinook or 2 adult wild coho or a combination of adult chinook and adult wild coho.

Calawah River, South Fork (Clallam County) from mouth to Olympic National Park boundary: June 1 through last day in February season. December 1 through last day in February, selective gear rules. Trout: Minimum length fourteen inches.

Caldwell Lake (Pend Oreille County): Last Saturday in April through October 31 season. Fishing from a floating device equipped with an internal combustion motor prohibited. Trout: Daily limit two, minimum length twelve inches.

Caliche Lakes, Lower, Upper and West (Grant County): March 1 through July 31 season.

Calispell Creek (Calispell River) (Pend Oreille County):

From mouth to Calispell Lake: Year around season.

From Calispell Lake upstream to source: Selective gear rules.

Calligan Lake (King County): June 1 through October 31 season. All tributary streams, and the upper third of the outlet are closed waters.

Campbell Creek (Mason County): Closed waters.

Campbell Lake (Okanogan County): April 1 through August 31: Selective gear rules and all species: Release all fish.

Campbell Lake (Skagit County): Crappie: Daily limit ten, minimum length nine inches.

Canyon Creek (Clark County): Trout: Daily limit five.

Canyon River (Mason County and Grays Harbor County): Closed waters.

Canyon Creek (S.F. Stillaguamish River) (Snohomish County), mouth to forks: June 1 through last day in February season. Trout: Minimum length fourteen inches.

Capitol Lake (Thurston County), from its outlet to a point four hundred feet below the lowest Tumwater Falls (Deschutes River) fish ladder: Closed waters: Percival Cove, west of a set of markers on the western shoreline of the south basin of Capitol Lake. June 1 through March 31 season. Nonbuoyant lure restriction and night closure August 1 through November 30. Trout: June 1 through July 31 daily limit five, minimum length eight inches. August 1 through March 31 daily limit two, minimum length fourteen inches. Salmon: Open only July 1 through November 30. Daily limit 6 fish of which no more than 2 may be adult salmon. Release coho.

Carbon River (Pierce County), from its mouth to Voight Creek: June 1 through last day in February season. Nonbuoyant lure restriction, night closure and single barbless hooks August 1 through November 30. Trout: Minimum length fourteen inches. Voight Creek to Highway 162 Bridge: June 1 through August 15 and December 1 through last day in February season: Trout: Minimum length 14 inches. Salmon: Open only September 1 through November 30 mouth to Voight Creek. Daily limit 6 fish of which no more than 4 may be adult salmon and of these 4 fish no more than 2 may be adult hatchery chinook. Release ~~((chum and})~~ chum and wild adult chinook ~~((and chum})~~ salmon.

Carlisle Lake (Lewis County): Last Saturday in April through last day in February season. Fishing from a floating device equipped with an internal combustion motor prohibited. Salmon: Landlocked salmon rules apply.

Carl's Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Carney Lake (Pierce County): Last Saturday in April through June 30 and September 1 through November 30 seasons. Fishing from a floating device equipped with an internal combustion motor prohibited. Salmon: Landlocked salmon rules apply.

Carson Lake (Mason County): Last Saturday in April through October 31 season.

Cascade Lake (Grant County): March 1 through July 31 season.

Cascade Lake (San Juan County): Last Saturday in April through October 31 season.

Cascade River (Skagit County):

From the mouth to the Rockport-Cascade Road Bridge: October 1 through last day in February season. Trout: Trout except Dolly Varden/Bull Trout, minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of the trout daily limit, minimum length twenty inches. Salmon: Open only September 16 through November 30. Daily limit 4 (~~hatchery~~) coho salmon.

From the Rockport-Cascade Road Bridge upstream: June 1 through last day in February season. Trout: Trout except Dolly Varden/Bull Trout, minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of the trout daily limit, minimum length twenty inches.

Cases Pond (Pacific County): Last Saturday in April through November 30 season. Juveniles only. Salmon: Landlocked salmon rules apply.

Cassidy Lake (Snohomish County): Crappie: Daily limit ten, minimum length nine inches.

Castle Lake (Cowlitz County): Selective gear rules. Trout: Daily limit one, minimum length sixteen inches.

Cattail Lake (Grant County): April 1 through September 30 season.

Cavanaugh Lake (Skagit County): Chumming permitted.

Cedar Creek (tributary of N.F. Lewis) (Clark County), from mouth to 100 feet upstream of the falls: From the Grist Mill Bridge to 100 feet upstream of the falls: Closed waters. June 1 through March 15 season. Trout: Release all fish except up to two hatchery steelhead may be retained per day.

Cedar Creek (Jefferson County): June 1 through last day in February season. Selective gear rules. Trout: Minimum length fourteen inches.

Cedar Creek (Okanogan County), from mouth to Cedar Falls: Closed waters.

Cedar Lake (Stevens County): Last Saturday in April through October 31 season.

Cedar River (King County), from mouth to Landsburg Road: June 1 through August 31 season. (~~Selective gear rules~~) Selective gear rules and night closure. All species: Release all fish. Landsburg Road to Cedar Falls: Closed waters.

Chain Lake (Pend Oreille County): Last Saturday in April through October 31 season. Release kokanee.

Chambers Creek Estuary (downstream from markers 400 feet below the Boise-Cascade Dam to the Burlington Northern Railroad Bridge) (Pierce County): July 1 through November 15 season. Trout: Minimum length fourteen inches. Salmon: Open only July 1 through November 15. Daily limit 6 fish of which no more than 2 may be adult salmon. Release wild coho.

Chambers Lake (within Ft. Lewis Military Reservation) (Pierce County): Selective gear rules, except electric motors allowed. Trout: Release all trout.

Chaplain Lake (Snohomish County): Closed waters.

Chapman Lake (Spokane County): Last Saturday in April through October 31 season. Chumming permitted. Trout: Kokanee not counted in daily trout limit. Kokanee daily limit ten.

Chehalis River (Grays Harbor County), from Highway 101 Bridge in Aberdeen to high bridge on Weyerhaeuser 1000 line (approximately 400 yards downstream from Roger Creek): June 1 through April 15 season. Single point barbless hooks required August 16 through November 30. Trout: Minimum length fourteen inches. Salmon: Open only April 16 through July 31 from mouth to high bridge, October 1 through January 31 from mouth to Porter Bridge, and October 16 through last day in February from Porter Bridge to high bridge. Daily limit 6 fish of which no more than 2 may be adult salmon. October 1 through November 30, mouth to Porter Bridge, (~~release~~) the daily limit may contain not more than 1) the daily limit may contain not more than 1 adult chinook. October 16 through November 30, Porter Bridge to High Bridge, release adult chinook. December 1 through January 31, mouth to Porter Bridge, the daily limit may contain no more than one wild adult coho, and release adult chinook. December 1 through last day in February, Porter Bridge to High Bridge, release adult chinook and wild adult coho. Sturgeon: Open year-round (~~and no night closure~~) and no night closure from mouth to high bridge on Weyerhaeuser 1000 line.

Chehalis River, South Fork (Lewis County), from mouth to Highway Bridge at Boistfort School: June 1 through April 15 season. Trout: Minimum length fourteen inches.

Chehalis River Potholes (adjacent to the Chehalis River south of Highway 12 in Grays Harbor County, this does not include sloughs or beaver ponds): Last Saturday in April through October 31 season.

Chelan Hatchery Creek (Chelan County): Closed waters.

Chelan Lake (Chelan County): Closed waters: Within 400 feet of all tributaries south of a line from Purple Point at Stehekin and Painted Rocks. Trout except kokanee and lake trout: Daily limit 5. Release wild cutthroat. Lake trout not counted in daily trout limit. Lake trout no minimum size, no daily limit. Kokanee not counted in daily trout limit. Kokanee daily limit five, no minimum length. Burbot: Set line gear allowed. North of a line between Purple Point at Stehekin and Painted Rocks: April 1 through July 31: All species: Release all fish. Salmon: Open only May 1 through May 31

south of a line from Purple Point to Painted Rocks: Daily limit 1, minimum length 15 inches.

Chelan Lake Tributaries (Chelan County), from mouths upstream one mile except Stehekin River: August 1 through September 30 season. Selective gear rules. Trout: Release wild cutthroat.

Chelan River (Chelan County): From the railroad bridge to the Chelan P.U.D. safety barrier below the power house: May 15 through August 31 season. Nonbuoyant lure restriction. Trout: Release all trout.

Chewuch River (Chewack River) (Okanogan County), from mouth to Eight Mile Creek: June 1 through September 30 season. Selective gear rules. All species: Release all fish.

Upstream from Eight Mile Creek to Pasayten Wilderness boundary: Closed waters June 1 through October 31.

From mouth to Pasayten Wilderness boundary: Additional December 1 through March 31 season. Whitefish gear rules apply.

Chikamin Creek (Chelan County): Selective gear rules.

Chimacum Creek (Jefferson County):

From mouth to Ness's Corner Road: June 1 through August 31 season. Trout: Minimum length fourteen inches.

From Ness's Corner Road to headwaters: Trout: Minimum length fourteen inches.

Chiwaukum Creek (Chelan County): Mouth to Fool Hen Creek: Closed waters.

Chiwawa River (Chelan County): Mouth to Buck Creek: Closed waters.

Chopaka Lake (Okanogan County): Last Saturday in April through October 31 season. Fly fishing only. Fishing from a floating device equipped with a motor prohibited. Trout: Daily limit one.

Cispus River (Lewis County), from mouth to North Fork: Trout: Release all cutthroat. Additional season November 1 through May 31, release all game fish other than steelhead. Salmon: Open year around. Daily limit 6 fish, of which no more than 2 fish may be adult salmon. Salmon minimum size 8 inches. Release wild coho at all times and release wild chinook January 1 through July 31.

Cispus River, North Fork (Lewis County): Trout: No more than one over twelve inches in length. Release cutthroat.

Clallam River (Clallam County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Clara Lake (Mason County): Last Saturday in April through October 31 season.

Clear Creek (Chelan County): Closed waters.

Clear Lake (Chelan County): Last Saturday in April through October 31 season. From July 5 through October 31, selective gear rules and all species: Release all fish.

Clear Lake (Pierce County): Last Saturday in April through October 31 season. Chumming permitted. Salmon: Landlocked salmon rules apply.

Clear Lake (Spokane County): Last Saturday in April through October 31 season.

Clear Lake (Thurston County): Last Saturday in April through October 31 season.

Clearwater River (Jefferson County):

From mouth to Snahapish River: June 1 through April 15 season. Trout: Minimum length fourteen inches. December 1 through April 15, one wild steelhead per day may be retained. Salmon: Open only September 1 through November 30. Daily limit 6 fish of which no more than 2 may be adult salmon.

From Snahapish River upstream: Trout, minimum length fourteen inches.

Cle Elum Lake (Reservoir) (Kittitas County): Trout except kokanee: Daily limit two, minimum length twelve inches. Kokanee not counted in daily trout limit. Kokanee daily limit sixteen, no minimum size. Burbot: Set line gear allowed.

Cle Elum River (Kittitas County), from mouth to Cle Elum Dam: Lawful to fish to base of Cle Elum Dam. Year-round season. Selective gear rules, except December 1 through March 31 bait and one single point barbed hook three-sixteenths or smaller point to shank may be used. Trout: Release all trout. Above Cle Elum Lake to outlet of Hyas Lake except Tucquala Lake: Selective gear rules.

Cliff Lake (Grant County): March 1 through July 31 season.

Cloquallum Creek (Grays Harbor County):

From mouth to second bridge on Cloquallum Road: June 1 through last day in February season. Trout: Minimum length fourteen inches.

From mouth to Highway 8 Bridge: Additional March 1 through March 31 season. Trout: Minimum length fourteen inches.

Clough Creek (North Bend) (King County): Closed waters.

Clover Creek (Pierce County), within the boundaries of McChord Air Force Base: Selective gear rules. Trout: Daily limit two, minimum length twelve inches.

Coal Creek (Cowlitz County), from mouth to four hundred feet below falls: June 1 through August 31 and November 1 through last day in February season. Trout: Release all fish except up to two hatchery steelhead may be retained per day.

Coal Creek (tributary of Lake Washington) (King County): Closed waters.

Coal Creek (near Snoqualmie) (King County), from mouth to Highway I-90: Last Saturday in April through October 31 season. Juveniles only. Trout: No minimum length.

Coffee Pot Lake (Lincoln County): March 1 through September 15 season. Selective gear rules except motors allowed. Trout: Daily limit two. Bass: Daily limit two, maximum length fourteen inches. Crappie: Daily limit ten, minimum length nine inches.

Coldwater Lake (Cowlitz County): Selective gear rules except use of electric motors allowed. Trout: Daily limit one, minimum length sixteen inches.

Coldwater Lake inlet and outlet streams (Cowlitz County): Closed waters.

Collins Lake (Mason County): Last Saturday in April through October 31 season.

Columbia Basin Hatchery Creek (Grant County): Hatchery outflow to confluence with mainstem Hatchery Creek: April 1 through September 30 season. Juveniles and holders of reduced fee disability licenses only. Mainstem Hatchery Creek: April 1 through September 30 season. Juveniles and holders of reduced fee disability licenses only.

Columbia Park Pond (Benton County): Juveniles and holders of reduced fee disability licenses only. All species: Daily limit of five fish combined.

Columbia River, including impoundments and all connecting sloughs, except Wells Ponds: Year-round season unless otherwise provided. General species provisions (unless otherwise provided for in this section): Bass: Below Priest Rapids Dam: Daily limit five fish, not more than three of which may be over 15 inches. Trout: Daily limit two fish, minimum length 12 inches, except release all Dolly Varden/Bull Trout. Walleye: Daily limit five fish of which not more than one may be over 24 inches, minimum length 18 inches. Whitefish: Daily limit 15 fish. All other game fish: No daily limit, except release all grass carp.

In the Columbia River between Washington and Oregon, the license of either state is valid. Anglers must comply with the fishing regulations of the state in which they are fishing. This provision does not allow an angler licensed in Oregon to fish on the Washington shore, or in the sloughs or tributaries in Washington.

Anglers fishing the Columbia River are restricted to one daily limit, as defined by the laws of the state in which they are fishing, even if they are licensed by both states.

From a true north-south line through Buoy 10 to a line between Rocky Point in Washington to Tongue Point in Oregon: Trout: Release wild cutthroat. Release all trout April 1 through July 31. Walleye: No minimum size. Daily limit ten, of which no more than five may be greater than eighteen inches in length and one greater than twenty-four inches in length. Fishing from the north jetty is allowed during salmon season openings. Salmon: Open only August 1 through March 31. August 1 through ~~((August 15)-(September 30))~~ September 30, daily limit 2 salmon of which not more than one may be a chinook salmon. Release chum, sockeye, wild coho, chinook less than 24 inches in length, and coho less than 16 inches in length. ~~((August 16 through September 30, daily limit 3 salmon of which not more than one may be a chinook salmon. Release sockeye, chum, wild coho, chinook less than 24 inches in length and coho less than 16 inches in length.))~~ October 1 through December 31, daily limit 6 fish of which no more than ~~((3)-(2))~~ 2 may be adult salmon and not more than one of which may be a chinook salmon. Release chum, sockeye, and wild coho. January 1 through March 31, daily limit 6 fish of which no more than 2 may be adult salmon. Release chum, sockeye, wild coho and wild chinook. Fishing from the north jetty for salmon open during both Area 1 and Buoy 10 fishery openings ~~((with barbed hooks allowed and the daily limit is the more liberal if both~~

~~areas are open. Sturgeon: Release sturgeon May 1 through May 14 and July 24 through December 31. Minimum size when open to retain sturgeon is 45 inches.)) with barbed hooks allowed and the daily limit is the more liberal if both areas are open. Sturgeon: Release sturgeon May 1 through May 14 and July 24 through December 31. Minimum size when open to retain sturgeon is 45 inches.~~

From the Rocky Point - Tongue Point line to the I-5 Bridge: Trout: Release wild cutthroat. Release all trout April 1 through May 15. Walleye: No minimum size. Daily limit ten, of which no more than five may be greater than eighteen inches in length and one greater than twenty-four inches in length. Salmon: Open only May 16 through March 31. May 16 through ~~((July 31)-(June 15))~~ June 15 daily limit 6 hatchery jack chinook. ~~((June 16 through July 31, daily limit 6 fish of which no more than 2 may be adult chinook. Release wild chinook and sockeye.))~~ June 16 through July 31, daily limit 6 fish of which no more than 2 may be adult salmon. Release wild chinook and sockeye. August 1 through March 31, daily limit 6 fish of which no more than 2 may be adult salmon. Release chum, sockeye, and wild coho. ~~((August 1 through December 31 the daily limit may contain not more than 1 adult chinook.))~~ August 1 through December 31 the daily limit may contain not more than 1 adult chinook. Release wild chinook January 1 through March 31. Sturgeon: (1) Release sturgeon May 1 through May 14 and July 24 through December 31 downstream from the Wauna powerlines. Minimum size when open to retain sturgeon is 45 inches; (2) I-5 Bridge downstream to Wauna powerlines, lawful to retain sturgeon only on Thursdays, Fridays, and Saturdays from February 1 through July 31, and October 1 through December 31. Release sturgeon on other days and during other time periods.

From the I-5 Bridge to the Highway 395 Bridge at Pasco: Closed waters: (1) From the upstream line of Bonneville Dam to boundary markers located six hundred feet below the fish ladder, and closed to fishing from a floating device or fishing by any method except hand-casted gear from shore from Bonneville Dam downstream to a line from the Hamilton Island boat ramp to an Oregon boundary marker on Robins Island. (2) Waters from the upstream side of the Interstate Bridge at The Dalles to upper line of The Dalles Dam except that bank fishing is permitted up to the downstream navigation lock wall on the Washington shore. (3) From John Day Dam downstream about three thousand feet except that bank fishing is permitted up to four hundred feet below the fishway entrance on the Washington shore. (4) From McNary Dam downstream to a line across the river from the red and white marker on the Oregon shore on a line that intersects the downstream end of the wing wall of the boat lock near the Washington shore. August 1 through October 15: Nonbuoyant lure restriction and night closure from Bonneville Dam to The Dalles Dam. Trout: Release wild cutthroat from I-5 Bridge to Bonneville Dam and release all cutthroat in the waters of Drano Lake. Release all trout April 1 through June 15. Walleye: No minimum size. Daily limit ten, of which no more than five may be greater than eighteen inches in length and one greater than twenty-four inches in length. Sturgeon: (1) Sturgeon fishing is closed from Bonneville Dam to a line from a boundary marker on the Washington shore approxi-

mately 4,000 feet below the fish ladder to the downstream end of Cascade Island to an Oregon angling boundary on Bradford Island (the Cascade Island - Bradford Island line). (2) It is unlawful to fish for sturgeon from May 1 through July 31 from Cascade Island - Bradford Island line downstream to ~~((a line from Navigation Marker 85 on the Washington shore at a right angle to the thread of the river to [markers on] the [Washington and] Oregon shores at Beacon Rock))~~ markers on the Washington and Oregon shores at Beacon Rock. (3) Cascade Island - Bradford Island line downstream to I-5 Bridge, lawful to retain sturgeon only on Thursdays, Fridays, and Saturdays from February 1 through July 31 and October 1 through December 31, except for May 1 - July 31 closure to ~~((Navigation Marker 85 [Beacon Rock]))~~ Beacon Rock. Release sturgeon on other days and during other time periods. (4) Release sturgeon September 1 through December 31 from the upstream line of Bonneville Dam and 400 feet below McNary Dam. Salmon: Open only June 16 through December 31 except closed November 1 through December 31 from Beacon Rock to Bonneville Dam. June 16 through July 31, daily limit 6 ~~((hatchery jack) fish of which no more than 2 may be adult salmon. Release wild))~~ fish of which no more than 2 may be adult salmon. Release wild chinook ((and sockeye) chinook) and sockeye. August 1 through December 31, daily limit 6 fish of which no more than 2 may be adult salmon. Release chum and sockeye. Release wild coho downstream of Bonneville Dam. ~~((August 1 through December 31, daily limit may contain not more than 1 adult chinook downstream of Bonneville Dam.))~~ August 1 through December 31, daily limit may contain not more than 1 adult chinook downstream from Bonneville Dam.

From the Highway 395 Bridge at Pasco to the old Hanford townsite (wooden towers) powerline crossing, in Sec. 30, T13N, R28E except Ringold Hatchery waters: Closed waters: Ringold Springs Creek (Hatchery Creek). Trout: Release all trout except hatchery steelhead having both adipose and ventral fin clips may be retained October 1 through March 31. Release hatchery steelhead having only adipose fin clips. Salmon: Open only ~~((August [June]))~~ June 16 ((through July 31 and August 16)) through July 31 and August 16 through December 31. Daily limit 6 fish of which no more than 2 may be adult salmon. ~~((Release wild chinook and sockeye June 16 through July 31.))~~ Release wild chinook and sockeye June 16 through July 31. Walleye: Daily limit 10 fish. No minimum size, no more than 5 fish over 18 inches in length. No more than 1 fish over 24 inches in length. Ringold Springs Rearing Facility waters (from WDFW markers 1/4 mile downstream from the Ringold wasteway outlet to WDFW markers 1/2 mile upstream from Spring Creek): Open only April 1 through April 15 to fishing from the bank on the hatchery side of the river. Trout: Release all fish except hatchery steelhead having both adipose and ventral fin clips. Release hatchery steelhead having only adipose fin clips.

From the old Hanford townsite (wooden towers) powerline crossing in Sec. 30, T13N, R28E, to Vernita Bridge, (Highway 24): All species: February 1 through October 22 season. Trout: Release all trout. Walleye: Daily limit 10 fish. No minimum size, no more than 5 fish over 18 inches in length. No more than 1 fish over 24 inches in length. Salmon:

Open only ~~((August [June]))~~ June 16 ((through July 31 and August 16)) through July 31 and August 16 through October 22. Daily limit 6 fish of which no more than 2 fish may be adult salmon. ~~((Release wild chinook and sockeye June 16 through July 31.))~~ Release wild chinook and sockeye June 16 through July 31.

From Vernita Bridge (Highway 24) to Priest Rapids Dam: Closed waters: (1) Priest Rapids Dam - waters between the upstream line of Priest Rapids Dam downstream to the boundary markers six hundred fifty feet below the fish ladders. (2) Jackson (Moran Creek or Priest Rapids Hatchery outlet) Creek - all waters of the Priest Rapids Hatchery system to the outlet on the Columbia River, extending to mid-stream Columbia between boundary markers located one hundred feet upstream and four hundred feet downstream of the mouth. Trout: Release all trout. Walleye: Daily limit 10 fish. No minimum size, no more than 5 fish over 18 inches in length. No more than 1 fish over 24 inches in length. Salmon: Open only ~~((August [June]))~~ June 16 ((through July 31 and August 16)) through July 31 and August 16 through October 22. Daily limit 6 fish of which no more than 2 may be adult salmon. ~~((Release wild chinook and sockeye June 16 through July 31.))~~ Release wild chinook and sockeye June 16 through July 31.

From Priest Rapids Dam to Chief Joseph Dam, including up to base of Washburn Pond outlet structure: Closed waters: (1) Wanapum Dam - waters between the upstream line of Wanapum Dam to the boundary markers seven hundred fifty feet downstream of the east fish ladder and five hundred feet downstream of the west fish ladder. (2) Rock Island Dam to boundary markers four hundred feet downstream of the fish ladders. (3) Rocky Reach Dam - waters between the upstream line of Rocky Reach Dam to boundary markers four hundred feet downstream of the fish ladders. (4) Wells Dam - waters between the upstream line of Wells Dam to boundary markers four hundred feet downstream of the spawning channel discharge (Chelan County) and fish ladder (Douglas County). (5) Chief Joseph Dam - closed to fishing from the Okanogan County shore between the dam and the Highway 17 Bridge. Closed to fishing from a floating device from the boundary marker to the Corps of Engineers safety zone marker. Trout: Release all trout. ~~((Salmon: Open only July 16 through October 15. Daily limit 6 fish of which no more than 2 may be adult salmon. Release coho and sockeye. From Wells Dam to Chief Joseph Dam, open only from Highway 173 Bridge at Brewster to Highway 17 Bridge at Bridgeport.))~~ Salmon: Open only July 16 through October 15. Daily limit 6 fish of which no more than 2 may be adult salmon. Release coho and sockeye. From Wells Dam to Chief Joseph Dam, open only from Highway 173 Bridge at Brewster to Highway 17 Bridge at Bridgeport. Sturgeon: Release all sturgeon.

Above Chief Joseph Dam: See Lake Roosevelt and Rufus Woods Lake.

Colville River (Stevens County):

From mouth to bridge at Town of Valley: Year-round season. Trout: Daily limit five fish, not more than two of which may be brown trout October 1 through November 30. Walleye: No minimum size. Daily limit five fish not more than one of which may be longer than 18 inches. Sturgeon: Unlawful to fish for or retain sturgeon.

From bridge at Valley upstream and tributaries: Selective gear rules.

Conconully Lake (Okanogan County): Last Saturday in April through October 31 season.

Conconully Reservoir (Okanogan County): Last Saturday in April through October 31 season.

Conger Pond (Pend Oreille County): Last Saturday in April through October 31 season.

Connelly Creek and tributaries (Lewis County), from four hundred feet below the city of Morton Dam to its source: Closed waters.

Conner Lake (Okanogan County): Last Saturday in April through October 31 season.

Cooper River (Kittitas County): Mouth to Cooper Lake: Selective gear rules.

Coot Lake (Grant County): April 1 through September 30 season.

Copalis River (Grays Harbor County): June 1 through last day in February season. Trout: Minimum length fourteen inches. Salmon: Open only September 1 through January 31 from mouth to Carlisle Bridge. Daily limit 6 fish of which no more than 2 may be adult salmon. Release adult chinook.

Cottage Lake (King County): Last Saturday in April through October 31 season.

Cottonwood Creek (Lincoln County): Year-round season.

Cougar Creek (tributary to Yale Reservoir) (Cowlitz County): June 1 through August 31 season.

Cougar Lake (near Winthrop) (Okanogan County): September 1 through March 31 season.

Coulter Creek (Kitsap/Mason counties): Trout: Minimum length fourteen inches.

County Line Ponds (Skagit County): Closed waters.

Coweeman River (Cowlitz County), from mouth to Mulhol-land Creek: June 1 through March 15 season. Trout: Release all fish except up to two hatchery steelhead may be retained per day.

Cowiche Creek (Yakima County): Selective gear rules.

Cowlitz Falls Reservoir (Lake Scanewa) (Lewis County): June 1 through last day in February season. The upstream boundary of the reservoir in the Cowlitz arm is the posted PUD sign on Peters Road. The upstream boundary of the reservoir in the Cispus arm is the posted markers at the Lewis County PUD kayak launch, approximately 1.5 miles upstream from the confluence of the Cowlitz and Cispus arms. Trout and salmon: Minimum length eight inches. Trout: Release cutthroat. Salmon: Daily limit 6 fish, of which not more than 2 may be adult salmon. Release wild coho. Release wild chinook June 1 through July 31.

Cowlitz River (Lewis County):

From mouth to Mayfield Dam: Closed waters: Barrier Dam to boundary marker at Cowlitz salmon hatchery water intake approximately 1,700 feet upstream from dam. Year-round season except closed to fishing from south bank May 1 through June 15 from Mill Creek to the barrier dam. Lawful to fish up to four hundred feet or the posted deadline at barrier dam. Lawful to fish up to Tacoma Power safety signs at Onion Rock below Mossyrock Dam. Lawful to fish up to Lewis County P.U.D. safety signs below Cowlitz Falls Dam. From the barrier dam downstream to a line from the mouth of Mill Creek to a boundary marker on the opposite shore, it is unlawful to fish from any floating device. Nonbuoyant lure restriction and night closure April 1 through October 31 from mouth of Mill Creek to the barrier dam. All game fish: Release all fish except steelhead April 1 through May 31. Trout: Daily limit five, minimum length twelve inches, no more than two over twenty inches. Release wild cutthroat. Release all steelhead missing right ventral fin. Salmon: Open year-round. Daily limit 6 fish of which no more than ~~((3}{2}))~~ 2 may be adult salmon ~~((and of the adult salmon not more than 2 may be adult chinook salmon, except January 1 through April 30 the daily limit may contain no more than 2 adult salmon and May 1 through July 31 the daily limit may contain no more than one adult salmon))~~. Release chum and wild coho ~~((August 1 through April 30))~~. Release wild chinook January 1 through July 31. Mill Creek to Blue Creek - release all chinook October 1 through December 31. Sturgeon: Lawful to retain sturgeon on Thursdays, Fridays and Saturdays, February 1 through July 31 and October 1 through December 31. Release sturgeon on other days and during other time periods.

From posted PUD sign on Peters Road to mouth of Ohanepecosh River and mouth of Muddy Fork: Trout: Release cutthroat. Additional November 1 through May 31 season. Trout: Release all fish except up to two hatchery steelhead may be retained per day. Salmon: Open year-round from upstream boundary of Lake Scanewa. Daily limit 6 fish of which no more than 2 may be adult salmon. Salmon minimum size ~~((8}{12}))~~ 12 inches. Release wild coho. Release wild chinook January 1 through July 31.

Cowlitz River, Clear and Muddy Forks (Lewis County): Trout: Release cutthroat.

Coyote Creek and Ponds (Adams County): April 1 through September 30 season.

Crab Creek (Adams/Grant counties):

From Highway 26 to Morgan Lake Road in Section 36: March 1 through September 30 season.

From Morgan Lake Road in Section 36 to O'Sullivan Dam (including Marsh Unit I and II impoundments): Closed waters.

Crab Creek (Lincoln/Grant counties) and tributaries: Year-round season. March 1 through May 31 terminal gear restricted to one single hook measuring 3/4 inch or less point to shank in those waters from Grant County Road 7 to the fountain buoy and shoreline markers or 150 feet downstream of the Alder Street fill, and from Moses Lake downstream to the confluence of the outlet streams.

Crabapple Lake (Snohomish County): Last Saturday in April through October 31 season.

Cranberry Creek (Mason County), mouth to Lake Limerick: Closed waters.

Crawfish Lake (Okanogan County): Last Saturday in April through October 31 season. Fishing from a floating device equipped with an internal combustion engine prohibited.

Crescent Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Crescent Lake (Pierce County): Last Saturday in April through October 31 season.

Crocker Lake (Jefferson County): Closed waters.

Crystal Lake (Grant County): March 1 through July 31 season.

Cup Lake (Grant County): March 1 through July 31 season.

Curl Lake (Columbia County): Last Saturday in April through October 31 season. Fishing from any floating device prohibited.

Curley Creek (Kitsap County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Cushman Reservoir (Mason County): Salmon: Landlocked salmon rules apply.

Dakota Creek (Whatcom County): Salmon: Open only October 1 through December 31 from mouth to Giles Road Bridge. Daily limit 2 salmon.

Damon Lake (Grays Harbor County): June 1 through October 31 season.

Davis Lake (Ferry County): Last Saturday in April through October 31 season.

Davis Lake (Lewis County): Last Saturday in April to last day in February season.

Davis Lake (Okanogan County): April 1 through August 31: Selective gear rules except electric motors allowed, and all species: Release all fish.

Davis Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Dayton Pond (Columbia County): Juveniles only.

Deadman Lake (Adams County): April 1 through September 30 season.

De Coursey Pond (Pierce County): Last Saturday in April through November 30 season. Juveniles only. Salmon: Landlocked salmon rules apply.

Deep Creek (Clallam County): December 1 through last day in February season. All species: Release all fish except up to two hatchery steelhead may be retained.

Deep Creek (tributary to Bumping Lake) (Yakima County): Mouth to second bridge crossing on USFS Rd. 1808 (approximately 3.7 miles from junction of USFS Rds. 1800 and 1808): Closed waters.

Deep Lake (Grant County): Last Saturday in April through September 30 season.

Deep Lake (Stevens County): Last Saturday in April through October 31 season.

Deep Lake (Thurston County): Last Saturday in April through October 31 season.

Deep River (Wahkiakum County): Year-round season. Trout: Release all fish except up to two hatchery steelhead may be retained per day. Salmon: Open year-round only from mouth to town bridge. Daily limit 6 fish of which no more than 2 may be adult salmon. Release chum and wild coho. Release wild chinook January 1 through July 31. Sturgeon: Release sturgeon May 1 through May 14 and July 24 through December 31. Minimum size when open is 45 inches.

Deer Creek (Mason County): Closed waters.

Deer Creek and Little Deer Creek (tributaries to North Fork Stillaguamish) (Skagit County): Closed waters.

Deer Lake (Columbia County): March 1 through October 31 season. Fishing from any floating device prohibited.

Deer Lake (Island County): Last Saturday in April through October 31 season.

Deer (Deer Springs) Lake (Lincoln County): Last Saturday in April through September 30 season.

Deer Lake (Mason County): Last Saturday in April through October 31 season.

Deer Lake (Stevens County): Last Saturday in April through October 31 season. Trout: No more than two over twenty inches in length may be retained.

De Roux Creek (Yakima County): Selective gear rules.

Deschutes River (Thurston County): Closed waters: From 400 feet below lowest Tumwater Falls fish ladder to Old Highway 99 Bridge. From old U.S. Highway 99 Bridge near Tumwater to Henderson Boulevard Bridge near Pioneer Park: June 1 through March 31 season. Nonbuoyant lure restriction and night closure August 1 through November 30. Trout: Minimum length fourteen inches. Salmon: Open only July 1 through November 30. Daily limit 6 fish of which no more than 2 may be adult salmon. Release coho.

From Henderson Boulevard Bridge upstream: Year-round season. Selective gear rules. All game fish: Release all fish except hatchery steelhead. Salmon: Open only July 1 through November 30. Daily limit 6 fish of which no more than 2 may be adult salmon. Release coho.

Devereaux Lake (Mason County): Last Saturday in April through October 31 season.

Devil's Lake (Jefferson County): Last Saturday in April through October 31 season.

Dewatto River (Mason County): ~~((Mouth to Bear Creek - Dewatto Road))~~ Selective gear rules. Game fish: Release all fish. Salmon: Open only September 16 through October

31 mouth to Dewatto-Holly Road Bridge. Daily limit two coho. Release all salmon other than coho.

~~((Upstream from Bear Creek Dewatto Road: Selective gear rules. Game fish. Release all fish.))~~

Diamond Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Dickey River (includes all forks) (Clallam County): June 1 through April 30 season. Trout: Minimum length fourteen inches. December 1 through April 30, one wild steelhead per day may be retained. Salmon: Open only July 1 through November 30 from mouth to East Fork Dickey(~~(including Olympic National Park)~~) including Olympic National Park. Daily limit 6 fish of which no more than 2 may be adult salmon July 1 through August 31 and of which no more than 3 may be adult salmon September 1 through November 30. July 1 through August 31 release wild adult coho and (~~{wild}~~ ~~{unmarked}~~) unmarked adult chinook. September 1 through November 30 the daily limit may contain no more than 2 adult chinook or 2 adult wild coho or a combination of adult chinook and adult wild coho.

Dillacort Creek (Klickitat County): Trout: Release all trout.

Dog Lake (Yakima County): Trout: Daily limit may contain not more than 1 fish over 14 inches in length.

Dosewallips River (Jefferson County), from mouth to Olympic National Park boundary about three-quarters mile downstream of falls: June 1 through last day in February season except closed September 1 through October 31 from mouth to Mason County P.U.D. No. 1 overhead electrical distribution line. All game fish: Release all fish except that up to two hatchery steelhead per day may be retained. Salmon: Open only November 1 through December 15 from mouth to Highway 101 Bridge. Daily limit 2 chum salmon.

Dot Lake (Grant County): March 1 through July 31 season.

Downs Lake (Lincoln/Spokane counties): Last Saturday in April through September 30 season. Crappie: Daily limit ten, minimum length nine inches.

Dry Falls Lake (Grant County): April 1 through November 30 season. Selective gear rules. Trout: Daily limit one.

Duck Lake (Grays Harbor County): Crappie: Daily limit ten, minimum length nine inches.

Duckabush River (Jefferson County), from mouth to the Olympic National Park Boundary: June 1 through last day in February season except closed September 1 through October 31 from mouth to Mason County P.U.D. No. 1 overhead electrical distribution line. All game fish: Release all fish except that up to two hatchery steelhead per day may be retained. Salmon: Open only November 1 through December 15 from mouth to Mason County P.U.D. No. 1 overhead electrical distribution line. Daily limit 2 chum salmon.

Dungeness River (Clallam County):

From mouth to junction of Gray Wolf and Dungeness rivers: October 16 through last day in February season. Trout: Minimum length fourteen inches. Salmon: Open only October 16 through December 31 from mouth to the hatchery

intake pipe at river mile 11.3. Daily limit 4 (~~{hatchery}~~) coho salmon.

From junction of Gray Wolf River upstream to Gold Creek - Closed waters.

From junction of Gold Creek upstream to headwaters: Trout: Minimum length fourteen inches.

Dusty Lake (Grant County): March 1 through November 30 season. Selective gear rules. Trout: Daily limit one fish.

Early Winters Creek (Okanogan County): Closed waters.

East Twin River (Clallam County): Trout: Minimum length fourteen inches.

Easton Lake (Kittitas County): Saturday before Memorial Day through October 31 season. Trout: Daily limit five fish of which no more than 2 may be trout other than Eastern brook trout. Minimum length 8 inches.

Ebey Lake (Little Lake) (Snohomish County): Fly fishing only. Fishing from a floating device equipped with a motor prohibited. Trout: Daily limit one, minimum length eighteen inches.

Echo Lake (Snohomish County): Last Saturday in April through October 31 season.

Eightmile Lake (Chelan County): Trout: Daily limit five, not more than two mackinaw may be retained.

Elbow Lake (Stevens County): Last Saturday in April through October 31 season.

Elk River (Grays Harbor County), from the Highway 105 Bridge upstream: June 1 through last day in February season. Single point barbless hooks required August 16 through November 30 downstream of the confluence of the east and middle branches. Trout: Minimum length fourteen inches. Salmon: Open only October 1 through November 30 from Highway 105 Bridge to the confluence of the East and Middle Branches. Daily limit 6 fish of which no more than 2 may be adult salmon. Release adult chinook.

Ell Lake (Okanogan County): Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit one.

Ellen Lake (Ferry County): Last Saturday in April through October 31 season.

Elochoman River (Wahkiakum County): Closed waters: Waters from 100 feet above the upper hatchery rack downstream to the Elochoman Hatchery Bridge located 400 feet below the upper hatchery rack; waters from a point 50 feet above to 100 feet below the outlet pipes from the most downstream Elochoman Hatchery rearing pond and extending 30 feet out from the south bank of the river; waters between the department of fish and wildlife temporary rack downstream to Foster (Risk) Road Bridge while rack is installed in the river; mainstem waters from the confluence of the west fork to source.

From mouth to West Fork: June 1 through March 15 season. Nonbuoyant lure restriction and night closure September 1 through October 31. Stationary gear restriction September 1 through October 31. Trout: Release all fish except

up to two hatchery steelhead may be retained per day. Salmon: Open only September 1 through December 31. Daily limit 6 fish of which no more than 2 may be adult chinook. Release chum and wild coho. October 1 through December 31 release chinook upstream of Highway 4 Bridge.

Eloika Lake (Spokane County): Crappie: Daily limit ten, minimum length nine inches.

Elwha River (Clallam County): Closed waters: From south spillway on Aldwell Lake Dam downstream two hundred feet and from approximately fifty yards upstream to fifty yards downstream of Elwha Tribal Hatchery outfall as posted.

From mouth to two hundred feet below the south spillway on the Aldwell Lake Dam: June 1 through last day in February season, except closed June 1 through September 30 mouth to marker at outfall of rearing channel at about river mile 3.2. Fishing from any floating device prohibited. (~~[[August 1 through September 30, fly fishing only from mouth to the marker at the outfall of the WDFW rearing channel.]]~~) Trout: Minimum length fourteen inches. Salmon: Open only October 1 through November 15. Daily limit 6 coho salmon of which no more than 4 may be adult coho salmon.

From Lake Aldwell upstream to Olympic National Park boundary, including all tributaries except Indian Creek: Selective gear rules. Trout: Minimum length twelve inches.

Empire Lake (Ferry County): Last Saturday in April through October 31 season.

Enchantment Park Ponds (Chelan County): Juveniles only.

Entiat River (Chelan County), from mouth to Entiat Falls: December 1 through March 31 season. Whitefish gear rules apply.

Ephrata Lake (Grant County): Closed waters.

Erie Lake (Skagit County): Last Saturday in April through October 31 season.

Failor Lake (Grays Harbor County): Last Saturday in April through October 31 season.

Fan Lake (Pend Oreille County): Last Saturday in April through September 30 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Fazon Lake (Whatcom County): Fishing from any floating device prohibited from first Friday in October through January 15. Channel catfish: Daily and possession limit two.

Fio Rito Lakes (Kittitas County): Fishing from a floating device equipped with an internal combustion engine prohibited.

Fish Lake (Chelan County): Trout: No more than two over fifteen inches in length may be retained.

Fish Lake (Ferry County): Last Saturday in April through October 31 season.

Fish Lake (Okanogan County): Last Saturday in April through October 31 season.

Fish Lake (Spokane County): Last Saturday in April through September 30 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Fisher Slough (Snohomish County):

From mouth to Highway 530 Bridge: Year-round season. Trout: Minimum length fourteen inches.

Upstream from Highway 530 Bridge: Trout: Minimum length fourteen inches.

Fishhook Pond (Walla Walla County): March 1 through October 31 season. Fishing from any floating device prohibited.

Fishtrap Creek (Whatcom County): From Koh Road to Bender Road: June 1 through October 31 season. Juveniles only.

Fishtrap Lake (Lincoln/Spokane counties): Last Saturday in April through September 30 season.

Forde Lake (Okanogan County): Last Saturday in April through October 31 season.

Fort Borst Park Pond (Lewis County): Last Saturday in April through last day in February season. Juveniles only.

Fortson Mill Pond # 2 (Snohomish County): Last Saturday in April through October 31 season. Juveniles only.

Fourth of July Lake (Adams/Lincoln counties): December 1 through March 31 season. Fishing from a floating device equipped with an internal combustion motor prohibited. Trout: No more than two over fourteen inches in length may be retained.

Franz Lake (Skamania County): Closed waters.

Frater Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Frenchman Hills Lake (Grant County): February 1 through September 30 season.

Gadwall Lake (Grant County): April 1 through September 30 season.

Garfield Juvenile Pond (Whitman County): Juveniles only.

George Lake (Grant County): March 1 through July 31 season.

Geneva Lake (King County): Last Saturday in April through October 31 season.

Germany Creek (Cowlitz County), from mouth to end of Germany Creek Road (approximately five miles): June 1 through August 31 and November 1 through March 15 season. Trout: Release all fish except up to two hatchery steelhead may be retained per day.

Gibbs Lake (Jefferson County): Selective gear rules except electric motors allowed. Trout: Release all trout.

Gillette Lake (Stevens County): Last Saturday in April through October 31 season.

Gissberg Pond, North (Snohomish County): Juveniles only.

Gissberg Ponds (Snohomish County): Channel catfish: Daily limit 2, no minimum size.

Goat Creek (Okanogan County): Closed waters.

Gobar Creek (tributary to Kalama River) (Cowlitz County): June 1 through March 15 season. Trout: Release all fish except up to two hatchery steelhead may be retained per day.

Gold Creek, Gold Creek Pond and Outlet Channel (tributary to Keechelus Lake) (Kittitas County): Closed waters.

Gold Creek (Okanogan County): From mouth to confluence north fork Gold Creek: Closed waters.

Goldsborough Creek (Mason County): Trout: Minimum length fourteen inches.

Goodman Creek (Jefferson County) outside Olympic National Park: June 1 through last day in February season. Trout, minimum length fourteen inches. December 1 through last day in February, one wild steelhead per day may be retained.

Goodwin Lake (Snohomish County): Chumming permitted.

Goose Creek (Lincoln County), within the city limits of Wilbur: Year around season. Juveniles and holders of disability licenses only.

Goose Lake, Lower (Adams County): Crappie: Daily limit ten, minimum length nine inches. Bluegill: Not more than five over six inches in length.

Gorst Creek (Kitsap County): Closed waters: From lower bridge on the old Belfair Highway upstream to source (including tributaries). From mouth upstream to lower bridge: Trout: Minimum length fourteen inches.

Gosnell Creek and tributaries (tributary to Lake Isabella) (Mason County): Trout: Minimum length fourteen inches.

Goss Lake (Island County): Last Saturday in April through October 31 season.

Grande Ronde River (Asotin County):

From mouth to County Road Bridge about two and one-half miles upstream: Year-round season. Selective gear rules September 1 through May 31. Trout: Minimum length ten inches, maximum length twenty inches.

From County Road Bridge upstream to Oregon state line and all tributaries: June 1 through October 31 season. Selective gear rules, June 1 through August 31 and barbless hooks required September 1 through October 31. Additional season November 1 through April 15: Barbless hooks required. All tributaries: Closed waters. All species: Release all fish except whitefish and hatchery steelhead. Trout: Daily limit three hatchery steelhead.

Granite Creek and tributaries (Pend Oreille County): Closed waters.

Granite Lakes (near Marblemount) (Skagit County): Grayling: Release all grayling.

Grass Lake (Mason County): Last Saturday in April through October 31 season.

Gray Wolf River (Clallam County): From junction with Dungeness River to bridge at river mile 1.0 - Closed waters.

From bridge at river mile 1.0 upstream - selective gear rules. Trout: Minimum length fourteen inches.

Grays River (Wahkiakum County), from mouth to Highway 4 Bridge: September 1 through October 15 and November 15 through March 15 season; and from Highway 4 Bridge to mouth of South Fork: September 1 through October 15 and December 15 through March 15 season. Nonbuoyant lure restriction, night closure and stationary gear restriction September 1 through October 15. All game fish: Release all fish except hatchery steelhead. Salmon: Open only September 1 through October 15 from mouth to South Fork. Daily limit 6 fish of which no more than two may be adult salmon. Release chinook, chum, and wild coho.

Grays River, East Fork (Wahkiakum County): Selective gear rules. Trout: Release all fish except up to two hatchery steelhead may be retained per day.

Grays River, West Fork (Wahkiakum County), downstream from hatchery intake footbridge: June 1 - August 31 season. Trout: Additional December 15 through March 15 season downstream from hatchery intake footbridge. Release all fish other than hatchery steelhead.

Green Lake (Okanogan County): April 1 through November 30: Selective gear rules except electric motors allowed, and all species: Release all fish.

Green Lake (Lower) (Okanogan County): April 1 through November 30: Selective gear rules, and all species: Release all fish.

Green River (Cowlitz County): Closed waters: All tributaries.

From mouth to 2800 Bridge: April 1 through November 30 season except closed from 400 feet above to 400 feet below the water intake at the upper end of the hatchery grounds during the period September 1 through November 30 and from 400 feet or posted signs above and below the salmon hatchery rack when the rack is installed in the river. Nonbuoyant lure restriction and night closure September 1 through October 31 from mouth to 400 feet below salmon hatchery rack. (~~(((All species: When nonbuoyant lure restriction in effect, only fish hooked inside the mouth may be retained.)))~~) All species: When nonbuoyant lure restriction in effect, only fish hooked inside the mouth may be retained. All game fish: Release all fish except steelhead. Salmon: Open only April 1 through May 31 from mouth to 400 feet below the water intake at the upper end of the hatchery grounds and June 1 through November 30 from mouth to 2800 Bridge. April 1 through July 31: Daily limit 6 fish of which no more than 2 may be adult salmon. Release wild chinook. August 1 through November 30: Daily limit 6 salmon not more than ~~(((3-2)))~~ 2 of which may be adult salmon (~~(((and of the adult salmon not more than 2 may be adult chinook salmon)))~~). Release chum and wild coho. October 1 through November 30 release chinook.

From 2800 Bridge to source: Closed waters.

Green (Duwamish) River (King County):

From the First Avenue South Bridge to SW 43rd Street/South 180th Street Bridge: June 1 through July 31 and September 16 through ~~((last day in))~~ February ~~((15))~~ 15 season. Nonbuoyant lure restriction and night closure September ~~((16-11))~~ 1 through November 30 ~~((First Avenue South Bridge to Pacific Highway South Bridge and September 16 through November 30 from Pacific Highway South Bridge to SW 43rd Street/180th Street Bridge))~~ First Avenue South Bridge to Pacific Highway South Bridge and September 16 through November 30 from Pacific Highway South Bridge to SW 43rd Street/180th Street Bridge. Fishing from any floating device prohibited November 1 through last day in February. Trout: Minimum length fourteen inches. July 1 through July 31 and September 16 through November 30, one wild steelhead per day may be retained. Salmon: ~~((Open only September 1 through December 31 First Avenue Bridge to Pacific Highway South Bridge. Daily limit 6 fish of which no more than 3 may be adult salmon. Release chinook.))~~ Open only September 1 through December 31 First Avenue Bridge to Pacific Highway South Bridge. Daily limit 6 fish of which no more than 3 may be adult salmon. Release chinook. Open only September 16 through December 31 ~~((Pacific Highway South Bridge to SE 43rd Street/South 180th Street Bridge))~~ Pacific Highway South Bridge to SE 43rd Street/South 180th Street Bridge. Daily limit 6 fish of which not more than ~~((2-3))~~ 3 may be adult salmon. Release chinook salmon.

From the SW 43rd Street/South 180th Street Bridge to South 277th Street Bridge in Auburn: ~~((Open only))~~ Open only June 1 through July 31 and October 1 through ~~((last day in))~~ February ~~((season-15))~~ 15. Nonbuoyant lure restriction and night closure October 1 through November 30. Fishing from any floating device prohibited November 1 through ~~((last day in))~~ February ~~((15))~~ 15. Trout: Minimum length fourteen inches. July 1 through July 31 and October 1 through November 30, one wild steelhead per day may be retained. Salmon: Open only October 1 through December 31. Daily limit 6 fish of which not more than ~~((2-3))~~ 3 may be adult salmon. Release chinook salmon.

From the 277th Street Bridge to Auburn-Black Diamond Road Bridge: ~~((Open only))~~ Open only June 1 through July 31 and October 16 through ~~((March 15 season- last day in February))~~ last day in February. Nonbuoyant lure restriction and night closure October 16 through November 30. Fishing from a floating device prohibited November 1 through ~~((March 15- last day in February))~~ last day in February. Trout, minimum length fourteen inches. July 1 through July 31 and October 16 through November 30, one wild steelhead per day may be retained. Salmon: Open only October 16 through December 31. Daily limit 6 fish of which no more than ~~((2-3))~~ 3 may be adult salmon. Release chinook.

From the Auburn-Black Diamond Road Bridge to the Tacoma Headworks Dam: June 1 through ~~((March 15- last day in February))~~ last day in February season. Nonbuoyant lure restriction and night closure August 1 through November 30. Closed waters: Within 150 feet of the Palmer Pond outlet rack and within 150 feet of the mouth of Keta Creek. Trout: Minimum length 14 inches. July 1 through November 30, one wild steelhead per day may be retained. Salmon: Open only

November 1 through December 31. Daily limit 2 chum salmon.

Greenwater River (King County), from mouth to Greenwater Lakes: Selective gear rules. Trout: Minimum length twelve inches.

Grimes Lake (Douglas County): June 1 through August 31 season. Selective gear rules, except fishing from a floating device equipped with an electric motor allowed. Trout: Daily limit one.

Grizzly Lake (Skamania County): Closed waters.

Halfmoon Lake (Adams County): April 1 through September 30 season.

Halfmoon Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Hamilton Creek (Skamania County): Trout: Release all fish except up to two hatchery steelhead may be retained per day. All tributaries downstream from the Highway 14 Bridge: Closed waters.

Hamma Hamma River (Mason County):

From mouth to four hundred feet below falls: June 1 through August 31 and November 1 through last day in February season. Selective gear rules. All species: Release all fish.

Hammersley Inlet Freshwater Tributaries (Mason County), except Mill Creek: Closed waters.

Hampton Lakes, Lower and Upper (Grant County): April 1 through September 30 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Hancock Lake (King County): June 1 through October 31 season. All tributary streams and the upper third of the outlet are closed waters.

Harrison Pond (Skagit County): Closed waters.

Harvey Creek (tributary to Sullivan Lake) (Pend Oreille County):

From mouth to Bridge 4830 on county road (about one and one-half miles): Closed waters.

From Bridge 4830 upstream: Selective gear rules.

Harvey Creek (tributary to Stillaguamish River) (Snohomish County): Closed waters.

Hatch Lake (Stevens County): December 1 through March 31 season.

Hatchery Lake (Mason County): Last Saturday in April through October 31 season.

Haven Lake (Mason County): Last Saturday in April through October 31 season.

Hawk Creek and tributaries (Lincoln County): Year-round season.

Hays Creek and Ponds (Adams County): April 1 through September 30 season.

Headgate Pond (Asotin County): Last Saturday in April through October 31 season. Juveniles, seniors and holders of disability licenses only.

Heart Lake (near Anacortes) (Skagit County): Last Saturday in April through October 31 season.

Heins Lake (Kitsap County): Closed waters.

Hemlock Lake (Trout Creek Reservoir) (Skamania County): Closed waters.

Hen Lake (Grant County): April 1 through September 30 season.

Heritage Lake (Stevens County): Last Saturday in April through October 31 season.

Herman Lake (Adams County): April 1 through September 30 season.

Hicks Lake (Thurston County): Last Saturday in April through October 31 season.

Hog Canyon Creek (Spokane County): Hog Canyon Dam to Scroggie Road: Year-round season.

Hog Canyon Lake (Spokane County): December 1 through March 31 season. Trout: No more than two over fourteen inches in length may be retained.

Hoh River (Jefferson County), from mouth to Olympic National Park boundary below mouth of South Fork: June 1 through April 15 season. Selective gear rules June 1 through October 15 from Willoughby Creek to Morgan's Crossing Boat Launch, June 1 through November 30 from Morgan's Crossing Boat Launch to the mouth of south fork, and December 1 through April 15 from DNR Oxbow Campground Boat Launch to mouth of south fork. Trout: Minimum length fourteen inches. December 1 through April 15, from mouth to DNR Oxbow Campground Boat Launch, one wild steelhead per day may be retained. Salmon: Open only May 16 through November 30 mouth to Willoughby Creek and October 16 through November 30 Willoughby Creek to Morgan's Crossing Boat Launch. Daily limit 6 fish of which no more than 2 may be adult salmon except May 16 through August 31 from mouth to Willoughby Creek open Wednesday through Sunday only of each week and daily limit may contain no more than one adult salmon.

Hoh River South Fork (Jefferson County), outside Olympic National Park: June 1 through April 15 season. Selective gear rules. Trout: Minimum length fourteen inches.

Hoko River (Clallam County): From mouth to upper Hoko Bridge: Fly fishing only September 1 through October 31. Additional November 1 through March 15 season. Trout: Minimum length fourteen inches. December 1 through March 15, one wild steelhead per day may be retained.

From upper Hoko Bridge to Ellis Creek Bridge (river mile 18.5): June 1 through March 31 season. Fly fishing only. All species: Release all fish except that up to two hatchery steelhead per day may be retained.

Homestead Lake (Grant County): Selective gear rules. Trout: Daily limit one fish.

Hoquiam River, including all forks (Grays Harbor County): June 1 through March 31 season. Single point barbless hooks required August 16 through November 30. Selective gear and all species: Release all fish except up to two hatchery steelhead may be retained per day, from March 1 through March 31. Trout: Minimum length fourteen inches. Salmon: Open only October 1 through November 30 from mouth to bridge on Dekay Road on mainstem and East Fork mouth to ~~((the abandoned flat ear bridge downstream of the))~~ mouth of Berryman Creek. Daily limit 6 fish of which no more than 2 may be adult salmon, except release adult chinook.

Horseshoe Lake (Clark/Cowlitz counties): Trout: No more than 2 trout 20 inches or greater in length may be retained. Salmon: Landlocked salmon rules apply.

Horseshoe Lake (Jefferson County): Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit 1.

Horseshoe Lake (Kitsap County): Last Saturday in April through October 31 season. Salmon: Landlocked salmon rules apply.

Horseshoe Lake (Pend Oreille County): Last Saturday in April through October 31 season. Trout except kokanee: Daily limit five. Kokanee not counted in daily trout limit. Kokanee daily limit five.

Horsethief Lake (Klickitat County): Last Saturday in April through October 31 season.

Hourglass Lake (Grant County): April 1 through September 30 season.

Howard Lake (Snohomish County): Last Saturday in April through October 31 season.

Howell Lake (Mason County): Last Saturday in April through October 31 season.

Hozomeen Lake (Whatcom County): July 1 through October 31 season.

Huff Lake (Pend Oreille County): Closed waters.

Humptulips River (Grays Harbor County), from mouth to forks: June 1 through March 31 season except closed March 1 through March 31 from Highway 101 Bridge to forks. Night closure and single point barbless hooks required August 16 through November 30. Trout: Minimum length fourteen inches. Salmon: Open only October 16 through January 31 from mouth to Highway 101 Bridge. Daily limit 6 fish of which no more than 2 may be adult salmon. Release wild adult coho. October 16 through ~~((October 31))~~ ~~November 30~~ the daily limit may contain no more than 1 adult chinook. ~~((November-December))~~ December 1 through January 31 release adult chinook.

Humptulips River, East Fork (Grays Harbor County), from mouth to concrete bridge on Forest Service Road between Humptulips Guard Station and Grisdale: Nonbuoyant lure restriction and night closure August 16 through November 30. Trout: Minimum length fourteen inches.

Humptulips River, West Fork (Grays Harbor County), from mouth to Donkey Creek: June 1 through last day in February season. Nonbuoyant lure restriction and night closure August 16 through November 30. Trout: Minimum length fourteen inches.

Hutchinson Lake (Adams County): April 1 through September 30 season. Fishing from a floating device equipped with an internal combustion engine prohibited.

I-82 Ponds, 1 through 7 (Yakima County): Fishing from vessels equipped with internal combustion engines prohibited.

Icehouse Lake (Skamania County): Trout: No more than 2 trout 20 inches or greater in length may be retained.

Icicle River (Creek) (Chelan County):

From mouth to four hundred feet below Leavenworth National Fish Hatchery rack: Closed waters. From Leavenworth National Fish Hatchery rack upstream to Leland Creek: Selective gear rules.

Indian Creek (tributary to Elwha River) (Clallam County), from mouth upstream to first Highway 101 crossing: Selective gear rules. Trout: Minimum length twelve inches.

Indian Creek (Yakima County): From mouth to waterfall approximately 5 and three-quarters miles upstream: Closed waters. Upstream of waterfall: Eastern brook trout do not count as part of trout daily limit. Eastern brook trout: No minimum size and no daily limit.

Indian Heaven Wilderness Lakes (Skamania County): Trout: Daily limit three.

Ingall's Creek (Chelan County): Mouth to Wilderness boundary: Closed waters.

Issaquah Creek (King County): Closed waters.

Jackson Lake (Pierce County): Last Saturday in April through October 31 season.

Jameson Lake (Douglas County): Last Saturday in April through July 4 and October 1 through October 31 seasons.

Jasmine Creek (Okanogan County): Year-round season. Juveniles only.

Jefferson Park Pond (Walla Walla County): Juveniles only.

Jennings Park Pond (Snohomish County): Last Saturday in April through October 31 season. Juveniles only.

Jewitt Creek (Klickitat County): Juveniles only. Trout: Daily limit five, no minimum length.

Jimmy-Come-Lately Creek (Clallam County): June 1 through August 31 season. Trout: Minimum length fourteen inches.

Joe Creek (Grays Harbor County): Upstream from State Highway 109 Bridge to Ocean Beach Road Bridge: June 1 through November 30 season. Single point barbless hooks required August 16 through November 30. Trout: Minimum length fourteen inches. Salmon: Open only September 1 through November 30. Daily limit 6 fish of which no more than 2 may be adult salmon. Release adult chinook.

Johns Creek (Mason County): Closed waters.

~~Johns River(([, mouth to Ballon Creek including North and South Forks] (Grays Harbor County)))~~ Grays Harbor County: (([, Mouth to Ballon Creek:])) Mouth to Ballon Creek: June 1 through last day in February season. ~~(([, Waters above Ballon Creek, including North and South Forks, are closed.]])~~ Single point barbless hooks required August 16 through November 30 from mouth to Ballon Creek. Trout: Minimum length fourteen inches. Salmon: Open only October 1 through November 30. Daily limit 6 fish of which no more than 2 may be adult salmon~~(([, except] [.]])~~. Release adult chinook.

~~(([, Ballon Creek upstream, including North and South Forks: June 1 through September 30 and December 1 through last day in February season. Trout: Minimum length 14 inches.]])~~ Ballon Creek upstream, including North and South Forks: June 1 through September 30 and December 1 through last day in February season. Trout: Minimum length 14 inches.

Johnson Creek (tributary to Cowlitz River) (Lewis County): Selective gear rules. Trout: Minimum length ten inches.

Johnson Creek (Whatcom County), from Northern Pacific Railroad tracks to the Lawson Street footbridge in Sumas: Juveniles only.

Jump-Off Joe Lake (Stevens County): Last Saturday in April through October 31 season.

Kachess Lake (Reservoir) (Kittitas County): Chumming permitted. Trout except kokanee: Daily limit two, minimum length twelve inches. Kokanee not counted in daily trout limit. Kokanee daily limit sixteen. Burbot: Set line gear allowed.

Kachess River (Kittitas County): Lawful to fish to base of Kachess Dam. Selective gear rules. From Kachess Lake (Reservoir) upstream to waterfall approximately one-half mile above Mineral Creek: Closed waters.

Kalaloch Creek (Jefferson County), outside Olympic National Park: Closed waters: Those waters within the section posted as the Olympic National Park water supply June 1 through last day in February season. Selective gear rules. Trout: Minimum length fourteen inches.

Kalama River (Cowlitz County): Release wild cutthroat.

From mouth upstream to one thousand feet below fishway at upper salmon hatchery: Year-round season except during the period the temporary fish rack is installed. Waters from ~~(([, two hundred feet above] [Modrow Bridge downstream] [.]])~~ Modrow Bridge downstream to one thousand five hundred feet below the rack are closed waters. Nonbuoyant lure restriction, night closure, and stationary gear restriction September 1 through October 31 from mouth to one thousand five hundred feet below the rack. ~~(([, All species: When nonbuoyant lure restriction in effect only fish hooked inside the mouth may be retained.]])~~ All species: When nonbuoyant lure restriction in effect only fish hooked inside the mouth may be retained. Fishing from a floating device equipped with a motor prohibited upstream of Modrow Bridge. September 1 through October 31: Fly fishing only from the pipeline crossing to the posted deadline at the intake to the lower

salmon hatchery. Trout: Release all trout except up to two hatchery steelhead may be retained per day. Salmon: Open year-round. Daily limit 6 fish of which no more than 2 may be adult salmon. Release chum and wild coho. Release wild chinook January 1 through July 31. October 1 through December 31 release chinook upstream from natural gas pipeline crossing.

From one thousand feet below to one thousand feet above the fishway at upper salmon hatchery: Closed waters.

From one thousand feet above the fishway at the upper salmon hatchery to Summers Creek: Year-round season. Fishing from a floating device equipped with a motor prohibited. Selective gear rules. Trout: Minimum length 14 inches. Release steelhead in mainstem and tributaries.

From Summers Creek upstream to the 6420 Road at about one mile above the gate at the end of the county road: June 1 through March 31 season. Fishing from a floating device equipped with a motor prohibited. Fly fishing only. Trout: Minimum length 14 inches. Release steelhead in mainstem and tributaries.

From 6420 Road to Kalama Falls: Closed waters.

Kalispell Creek and tributaries (Pend Oreille County): Last Saturday in April through October 31 season. Selective gear rules.

Keechelus Lake (Reservoir) (Kittitas County): Chumming permitted. Trout except kokanee: Daily limit two, minimum length twelve inches, additionally up to sixteen kokanee may be retained. Burbot: Set line gear allowed.

Kelsey Creek (tributary of Lake Washington) (King County): Closed waters.

Kennedy Creek (Thurston County), from mouth to four hundred feet below falls: June 1 through last day in February season. Nonbuoyant lure restriction and night closure October 1 through December 31. Trout: Minimum length fourteen inches. Salmon: Open only October 1 through November 30 from mouth to northbound Highway 101 Bridge. Barbless hooks required. Daily limit 6 fish of which no more than 2 may be adult salmon. Release coho.

Kennedy Creek Pond (Thurston County): Last Saturday in April through October 31 season.

Kettle River (Stevens County):

June 1 through October 31 season. All species: Selective gear rules. Trout: Minimum length 12 inches. Sturgeon: Unlawful to fish for or retain sturgeon.

Additional season: November 1 through May 31. Whitefish gear rules apply.

Ki Lake (Snohomish County): Last Saturday in April through October 31 season.

Kidney Lake (Skamania County): Last Saturday in April through last day in February season.

Kimball Creek (near Snoqualmie) (King County): Last Saturday in April through October 31 season. Juveniles only. Trout: No minimum length.

Kings Lake and tributaries (Pend Oreille County): Closed waters.

Kings Lake Bog (King County): Closed waters.

Kiwanis Pond (Kittitas County): Juveniles and holders of disability licenses only.

Klaus Lake (King County): Last Saturday in April through October 31 season. Closed waters: The inlet and outlet to first Weyerhaeuser spur.

Klickitat River (Klickitat County):

From mouth to Fisher Hill Bridge: (~~May~~ ~~April~~) April 1 through January 31 season. Nonbuoyant lure restriction and night closure May 1 through May 31. Nonbuoyant lure restriction August 1 through January 31. Game fish: Closed December 1 through January 31. Release game fish other than steelhead (~~May~~ ~~April~~) April 1 through May 31. Trout: Minimum length twelve inches. Steelhead and salmon: (~~May~~) April 1 through (~~May~~ ~~April~~) May 31 Mondays, Wednesdays and Saturdays only, daily limit 2 hatchery steelhead or 2 salmon or one of each. Salmon: June 1 through January 31 daily limit 6 fish of which no more than 2 may be adult salmon.

From Fisher Hill Bridge to four hundred feet above # 5 fishway: Closed waters.

From four hundred feet above # 5 fishway to the Yakama Indian Reservation boundary: June 1 through November 30 season, except waters from boundary markers above Klickitat salmon hatchery to boundary markers below hatchery are closed waters. Trout: Minimum length twelve inches. Salmon: Open only June 1 through November 30 from 400 feet above No. 5 Fishway to boundary markers below Klickitat Salmon Hatchery. June 1 through July 31: Daily limit 6 salmon. Release adult salmon. August 1 through November 30: Daily limit 6 fish of which no more than 2 may be adult salmon. Release chinook November 1 through November 30. Additional December 1 through March 31 season. Whitefish gear rules apply.

From the Yakama Indian Reservation boundary upstream to source, including all tributaries: Closed waters.

Klineline Ponds (Clark County): Trout: No more than 2 trout 20 inches in length or greater may be retained.

Koeneman Lake (Fern Lake) (Kitsap County): Last Saturday in April through October 31 season. Selective gear rules. All species: Release all fish.

Kress Lake (Cowlitz County): Fishing from a floating device equipped with an internal combustion motor prohibited. Trout: No more than 2 trout 20 inches in length or greater may be retained. Salmon: Landlocked salmon rules apply.

Lacamas Creek (Clark County): Lawful to fish upstream to the base of Lacamas Lake Dam.

Lacamas Creek, tributary of Cowlitz River (Lewis County): June 1 through last day in February season. Trout: Release all fish except up to two hatchery steelhead may be retained per day.

Lake Creek (Okanogan County): Mouth to Black Lake: Closed waters. Black Lake to Three Prong Creek: Selective gear rules.

Langlois Lake (King County): Last Saturday in April through October 31 season.

Latah (Hangman) Creek (Spokane County): Year-round season.

Leader Lake (Okanogan County): Last Saturday in April through September 30 season.

Ledbetter Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Ledking Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Leech Lake (White Pass area) (Yakima County): Fly fishing only. Fishing prohibited from floating devices equipped with motors. Trout: No more than one over 14 inches in length.

Lemna Lake (Grant County): April 1 through September 30 season.

Lenice Lake (Grant County): March 1 through November 30 season. Selective gear rules. Trout: Daily limit one.

Lena Lake, Lower (Jefferson County): Closed waters: Inlet stream from mouth upstream to footbridge (about one hundred feet).

Lenore Lake (Grant County): Closed waters: Area within two hundred yard radius of trash rack leading to the irrigation pumping station (south end of lake) and area approximately one hundred yards beyond the mouth of inlet stream to State Highway 17. March 1 through May 31 season: Selective gear rules, except fishing from a floating device equipped with an electric motor permitted. All species: Release all fish. Additional season June 1 through November 30: Selective gear rules, except fishing from a floating device equipped with an electric motor permitted. Trout: Daily limit one.

Leo Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Lewis River (Clark County), from mouth to forks: Year-round season. Trout: Release all fish except up to two hatchery steelhead may be retained per day. Salmon: Open year-round. (~~January 1 through July 31~~) Daily limit six fish of which not more than 2 may be adult salmon. (~~August 1 through December 31, daily limit 6 fish of which no more than 3 may be adult salmon and of the adult salmon not more than 2 may be adult chinook salmon.~~) Release chum and wild coho (~~August 1 through April 30~~). Release wild chinook January 1 through July 31. Sturgeon: Lawful to retain sturgeon on Thursdays, Fridays and Saturdays, February 1 through July 31 and October 1 through December 31. Release sturgeon on other days and during other time periods.

Lewis River, East Fork (Clark/Skamania counties): Closed waters: From the posted markers at the lower end of Big Eddy to one hundred feet above Lucia Falls; from four hundred feet below to four hundred feet above Molton Falls; from four hundred feet below Horseshoe Falls upstream including all tributaries above Horseshoe Falls.

Mouth to 400 feet below Horseshoe Falls: June 1 through March 15 season. Trout: Release all trout except up to two hatchery steelhead per day may be retained. Mouth to

top boat ramp at Lewisville Park: Additional April 16 through May 31 season. Selective gear rules. Release all fish except up to two hatchery steelhead may be retained per day.

Lewis River, North Fork (Clark/Skamania counties):

From mouth to Colvin Creek: Year-round season except those waters shoreward of the cable buoy and corkline at the mouth of the Lewis River Salmon Hatchery fish ladder are closed waters. (~~Fishing from a floating device prohibited from May 1 through July 31 from Johnson Creek to Colvin Creek.~~) Nonbuoyant lure restriction and night closure April 1 through November 30 from Johnson Creek to Colvin Creek. Trout: Release all fish except up to two hatchery steelhead may be retained per day. Salmon: Open year-round. (~~January 1 through July 31~~) Daily limit six fish of which not more than 2 may be adult salmon. (~~August 1 through December 31 daily limit 6 fish of which no more than 3 may be adult salmon and of the adult salmon not more than 2 may be adult chinook salmon.~~) Release chum and wild coho (~~August 1 through April 30~~). Release wild chinook January 1 through July 31.

From mouth of Colvin Creek to overhead powerlines at Merwin Dam: (~~June 16~~ ~~May 1~~) May 1 through September 30 and December 16 through April 30 season. Nonbuoyant lure restriction and night closure April 1 through September 30. Trout: Release all fish except up to two hatchery steelhead may be retained per day. Salmon: Open only (~~August~~ ~~January~~) January 1 through September 30 (~~and January 1 through April 30~~). (~~August 1 through September 30~~) Daily limit 6 fish of which no more than (~~3~~ ~~2~~) 2 may be adult salmon (~~and of the adult salmon not more than 2 may be adult chinook salmon.~~). (~~January 1 through April 30: Daily limit 6 salmon not more than 2 of which may be adult salmon.~~) Release chum and wild coho. Release wild chinook January 1 through (~~April 30~~ July 31).

From overhead powerlines at Merwin Dam to Merwin Dam: Closed waters.

From the cable crossing 1,300 feet below Yale Dam to Yale Dam: Closed waters.

Within Lewis River Power Canal: Closed waters.

From Eagle Cliff Bridge to lower falls including all tributaries: Selective gear rules. All species: Release all fish.

Liberty Lake (Spokane County): Last Saturday in April through September 30 season.

Lilliwaup River (Mason County): Mouth to 200 feet below falls: June 1 through August 31 season. Selective gear rules. All species: Release all fish.

Lilly Lake (Chelan County): Last Saturday in April through October 31 season. July 5 through October 31, selective gear rules, and all species: Release all fish.

Limerick Lake (Mason County): Last Saturday in April through October 31 season.

Lincoln Pond (Clallam County): Juveniles only. Salmon: Landlocked salmon rules apply.

Lions Park Pond (Walla Walla County): Juveniles only.

Little Ash Lake (Skamania County): Trout: No more than 2 trout 20 inches in length or greater may be retained.

Little Bear Creek (tributary of Sammamish River) (Snohomish/King counties): Closed waters.

Little Hoko River (Clallam County): Selective gear rules. All species: Release all fish.

Little Klickitat River (Klickitat County), within Goldendale city limits: Last Saturday in April through October 31 season. Juveniles only. Trout: Daily limit five, no minimum length.

Little Lost Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Little Naches River (Yakima County): Selective gear rules.

Little Nisqually River (Lewis County): Selective gear rules. Trout: Minimum length ten inches.

Little Pend Oreille River (Stevens County) from the Little Pend Oreille wildlife refuge boundary about 1 mile downstream from the refuge headquarters office to Crystal Falls: Selective gear rules, and all species: Release all fish except up to five Eastern brook trout may be retained.

Little Quilcene River (Jefferson County), from mouth to the Little Quilcene River Bridge on Penny Creek Road, June 1 through last day in February season. Closed waters: Mouth to Highway 101 Bridge September 1 through October 31. Trout: Minimum length fourteen inches.

Little Spokane River (Spokane County):

From mouth to SR 291 Bridge: Year-round season.

From SR 291 Bridge upstream to the West Branch: Last Saturday in April through October 31 season. Additional December 1 through March 31 season. Whitefish gear rules apply.

Upstream from bridge at Friderger Road: Closed waters: From the inlet to Chain Lake upstream one-quarter mile to the railroad crossing culvert. Trout: Release kokanee taken upstream from bridge.

Little Twin Lake (Okanogan County): April 1 through November 30: Selective gear rules and all species: Release all fish.

Little Twin Lake (Stevens County): Last Saturday in April through October 31.

Little Wenatchee River (Chelan County): From Lake Wenatchee to the falls below U.S. Forest Service Road 6700 Bridge at Riverside Campground: Closed waters.

Little White Salmon River (Skamania County): Closed waters: From the orange fishing boundary markers at Drano Lake upstream to the intake near the Little White Salmon National Fish Hatchery north boundary. Trout: Daily limit five. Drano Lake (waters downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery): May 1 through March ~~((15) (31))~~ 31 season, ~~((except for hatchery steelhead and chinook season in April, and))~~ except for hatchery steelhead and chinook season in April, and except closed Wednesdays ~~((May~~

~~1) (second Wednesday in April))~~ second Wednesday in April through May 31 ~~((and October 1 through October 31))~~ and October 1 through October 31. Night closure and nonbuoyant lure restriction May 1 through June 30. Nonbuoyant lure restriction August 1 through December 31. ~~((May 1) (March 16))~~ March 16 through June 30 daily limit of two fish, of which two fish one or both may be hatchery steelhead or one or both may be chinook salmon. Trout and salmon: May 1 through June 30 release all fish except hatchery steelhead and chinook salmon. Trout: July 1 through March 15 release all fish except up to two hatchery steelhead may be retained per day. Salmon: Open only August 1 through December 31. Daily limit six fish of which no more than two may be adult salmon.

Lone Lake (Island County): Selective gear rules, except electric motors allowed. Trout: Daily limit one, minimum length 18 inches.

Long Lake (Ferry County): Last Saturday in April through October 31 season. Fly fishing only. Unlawful to fish from floating devices equipped with motors.

Long Lake (Okanogan County): Last Saturday in April through September 30 season.

Long Lake (Spokane River Reservoir) (Spokane County): Bass: Release all bass May 1 through June 30.

Long Lake (Thurston County): Last Saturday in April through October 31 season.

Long's Pond (Thurston County): Juveniles only.

Loomis Lake (Pacific County): Last Saturday in April through October 31 season.

Loomis Pond (Grays Harbor County): Closed waters.

Loon Lake (Stevens County): Last Saturday in April through October 31 season. Trout except kokanee: Daily limit five, except no more than two over twenty inches in length may be retained. Kokanee not counted in daily trout limit. Kokanee daily limit ten.

Lost Lake (Kittitas County): Trout: Not more than 1 fish over 14 inches in length.

Lost Lake (Okanogan County): Unlawful to fish from a floating device equipped with an internal combustion engine.

Lost River (Okanogan County):

From mouth to mouth of Monument Creek: Closed waters.

From mouth of Monument Creek to outlet of Cougar Lake: Selective gear rules. Trout: Legal to retain Dolly Varden/Bull Trout as part of trout daily limit. Dolly Varden/Bull Trout daily limit two, minimum length fourteen inches.

Love Lake (Clark County): Closed waters.

Lucas Slough (Skagit County): Closed waters.

Lucky Duck Pond (Stevens County): Juveniles only.

Ludlow Lake (Jefferson County): Last Saturday in April through October 31 season.

Lyle Lake (Adams County): April 1 through September 30 season.

Lyre River (Clallam County):

From mouth to falls near river mile 3: June 1 through last day in February season. Trout: Minimum length fourteen inches.

From falls to source: Selective gear rules. All species: Release all fish.

Mad River (Chelan County), from mouth upstream to Jimmy Creek: Closed waters.

Maggie Lake (Mason County): Last Saturday in April through November 30 season. Salmon: Landlocked salmon rules apply.

Margaret Lake (King County): Last Saturday in April through October 31 season.

Marshal Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Martha Lake (Grant County): March 1 through July 31 season.

Martha Lake (Snohomish County): Last Saturday in April through October 31 season.

Mattoon Lake (Kittitas County): Fishing from a floating device equipped with an internal combustion engine prohibited.

May Creek (tributary of Lake Washington) (King County): Closed waters.

Mayfield Lake (Reservoir) (Lewis County): Mayfield Dam to 400 feet below Mossyrock Dam: Closed waters: Tacoma Power safety signs at Onion Rock Bridge to Mossyrock Dam. Trout and salmon: Minimum length eight inches. Trout: Release cutthroat. Salmon: Open only September 1 through December 31. Daily limit 6 fish of which no more than 2 may be adult salmon. Release wild coho.

McAllister Creek (Thurston County): Nonbuoyant lure restriction and night closure August 1 through November 30. Trout: Minimum length fourteen inches. Salmon: Open only July 1 through November 30 from mouth to Olympia - Steilacoom Road Bridge. Daily limit 6 fish of which no more than 4 may be adult salmon.

McCabe Pond (Kittitas County): Fishing from any floating device prohibited. All species: Five fish daily limit for all species combined.

McDonald Creek (Clallam County): Trout: Minimum length fourteen inches.

McDowell Lake (Stevens County): Last Saturday in April through October 31 season. Fly fishing only. Fishing from a floating device equipped with a motor prohibited. All species: Release all fish.

McIntosh Lake (Thurston County): Last Saturday in April through October 31 season.

McLane Creek (Thurston County), from a line 50 feet north of and parallel to the Mud Bay Road Bridge to a line 100 feet upstream and parallel to the south bridge on Highway 101: June 1 through November 30 season. Nonbuoyant lure restriction and night closure August 1 through November 30. Game fish: Release game fish November 1 through November 30. Trout: Minimum length fourteen inches upstream from the south bridge. Salmon: Open only July 1 through November 30. Closed to salmon fishing: Waters within 400 feet of Allison Springs Pond outfall. Daily limit 6 fish of which no more than 2 may be adult salmon. Release coho.

From a line 100 feet upstream and parallel to the south bridge on Highway 101 upstream: Nonbuoyant lure restrictions and night closure August 1 through October 31. Trout: Minimum length fourteen inches.

McLane Creek Ponds (Thurston County): Last Saturday in April through October 31 season.

McManaman Lake (Adams County): April 1 through September 30 season.

McMurray Lake (Skagit County): Last Saturday in April through October 31. Salmon: Landlocked salmon rules apply.

Medical Lake (Spokane County): Last Saturday in April through September 30 season. Selective gear rules. Trout: Daily limit two, minimum length fourteen inches.

Medical Lake, West (Spokane County): Last Saturday in April through September 30 season.

Melaney Creek (Mason County): Closed waters.

Melbourne Lake (Mason County): Last Saturday in April through October 31 season.

Mercer Creek (Kittitas County), that portion within Ellensburg city limits: Juveniles only. Trout: Daily limit five, no minimum length.

Mercer Slough (tributary of Lake Washington) (King County): Closed waters.

Merrill Lake (Cowlitz County): Fly fishing only. Unlawful to fish from a floating device equipped with an internal combustion engine. Trout: Daily limit two, maximum length twelve inches.

Merritt Lake (Chelan County): Trout: Daily limit sixteen.

Merry Lake (Grant County): March 1 through November 30 season. Selective gear rules. Trout: Daily limit one.

Merwin Lake (Reservoir) (Clark/Cowlitz County): Salmon: Landlocked salmon rules apply.

Methow River (Okanogan County):

Mouth to Gold Creek: Closed waters June 1 through October 31. Gold Creek to Weeman Bridge: June 1 through September 30 season: Selective gear rules. All species: Release all fish. Upstream from Weeman Bridge to the falls above Brush Creek: Closed waters June 1 through October 31: From mouth upstream to the falls above Brush Creek. Additional season: December 1 through March 31. Whitefish gear rules apply.

Methow River tributaries not otherwise provided for: Selective gear rules. Trout: Maximum length twenty inches.

Middle Nemah Pond (Pacific County): June 1 through October 31 season.

Mill Creek (Chelan County): Closed waters.

Mill Creek (Cowlitz County): June 1 through August 31 and November 1 through March 15 seasons. Trout: Release all fish except up to two hatchery steelhead may be retained per day.

Mill Creek (Lewis County): Additional season December 1 through December 31, mouth to hatchery road crossing culvert. Nonbuoyant lure restriction and night closure. All species: Release all fish except that up to two hatchery steelhead with intact ventral fins may be retained per day.

Mill Creek (Mason County): Trout: Minimum length fourteen inches.

Mill Creek (Walla Walla County):

From mouth to Gose St. Bridge: June 1 through April 15 season. All species: Barbless hooks required and release all fish except hatchery steelhead September 1 through April 15. Trout: Daily limit three hatchery steelhead.

From Gose St. Bridge to Roosevelt St. Bridge, within city limits of Walla Walla: Closed waters.

From Roosevelt St. Bridge upstream, including all tributaries: All tributaries: Closed waters. Selective gear rules. Trout: Maximum length twenty inches.

Mill Creek Pond (Grays Harbor County): Juveniles only.

Mill Pond (Auburn) (King County): Last Saturday in April through October 31 season. Juveniles only.

Mill Pond (Pend Oreille County): Last Saturday in April through October 31 season.

Mineral Creek (tributary to upper Kachess River) (Kittitas County), from mouth to Wilderness Boundary: Closed waters.

Mineral Creek (tributary to Nisqually River), and Mineral Creek, North Fork (Lewis County): Selective gear rules. Trout: Minimum length twelve inches.

Mineral Lake (Lewis County): Last Saturday in April through September 30 season.

Minter Creek (Pierce/Kitsap counties): Closed waters: Area from department intake dam downstream to mouth June 1 through October 31. Trout: Minimum length fourteen inches. Salmon: Open only November 1 through December 31 from mouth to 50 feet downstream of the hatchery rack. Daily limit 4 chum.

Mirror Lake (Grant County): Last Saturday in April through September 30 season.

Mission Lake (Kitsap County): Last Saturday in April through October 31 season.

Moclips River (Grays Harbor County), from mouth to the Quinault Indian Reservation: June 1 through last day in February season. Trout: Minimum length fourteen inches.

Molson Lake (Okanogan County): Fishing from a floating device equipped with an internal combustion engine prohibited.

Monte Christo Lake (Snohomish County): June 1 through October 31 season. Selective gear rules.

Mooses Pond (Pacific County): June 1 through October 31 season.

Moran Slough (including inlet and outlet streams) (Grant County): Closed waters.

Morgan Lake (Adams County): April 1 through September 30 season.

Morse Creek (Clallam County), from mouth to Port Angeles Dam: June 1 through last day in February season. Trout: Minimum length fourteen inches.

Moses Lake (Grant County): Crappie: Daily limit five, only crappie more than ten inches in length may be retained. Bluegill: Daily limit five, only bluegill more than eight inches in length may be retained. Bass: Fish twelve to seventeen inches in length may be retained as part of the daily limit. No more than 3 bass over fifteen inches in length may be retained. Walleye: Minimum length eighteen inches. Up to five fish eighteen to twenty-four inches in length may be retained in the daily limit. No more than one walleye over 24 inches in length may be retained.

Mosquito Creek (Jefferson County), outside Olympic National Park: June 1 through last day in February season. Selective gear rules. Trout: Minimum length fourteen inches.

Muck Creek and tributaries (within Ft. Lewis Military Reservation) (Pierce County): Selective gear rules. Trout: Release all trout.

Mud Lake (Mason County): Last Saturday in April through October 31 season.

Mud Lake (Yakima County): Selective gear rules. Trout: Daily limit one.

Mudget Lake (Stevens County): Last Saturday in April through October 31 season.

Munn Lake (Thurston County): Last Saturday in April through October 31 season.

Muskegon Lake (Pend Oreille County): Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit two.

Myron Lake (Yakima County): Selective gear rules. Trout: Daily limit one.

Mystic Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Naches River (Yakima/Kittitas counties):

From the mouth to Little Naches River: Selective gear rules. Trout: Minimum length twelve inches, maximum length twenty inches. Release trout June 1 through October 31 from confluence with Tieton River to mouth of Rattle Snake Creek. Additional December 1 through March 31 season. Whitefish gear rules apply.

Naneum Creek (Kittitas County): Selective gear rules.

Naneum Pond (Kittitas County): Juveniles only.

Napeequa River (Chelan County): Mouth to Twin Lakes Creek: Closed waters.

Naselle River (Pacific/Wahkiakum counties), from Highway 101 Bridge upstream including all forks: Closed waters: Area from four hundred feet below falls in Sec. 6, T10N, R8W (Wahkiakum County) to falls, and waters ~~((within four) [from two])~~ from two hundred feet ((both)) upstream ~~((and) [of the Naselle Salmon Hatchery water supply intake barrier to four hundred feet])~~ of the Naselle Salmon Hatchery water supply intake barrier to four hundred feet downstream of the entrance to the Naselle Salmon Hatchery attraction channel.

Mainstem: June 1 through April 15 season, except sturgeon. Single point barbless hooks required August 16 through November 30 upstream from Highway 4 Bridge to Crown Main Line (Salme) Bridge. Nonbuoyant lure restriction and night closure August 16 through November 30 downstream from North Fork. Stationary gear restrictions downstream from the Crown Main Line Bridge August 16 through November 30. Selective gear rules March 1 through April 15 from mouth to North Fork. All game fish: Release all fish except up to two hatchery steelhead per day may be retained. Salmon: Open only August 1 through January 31 from Highway 101 Bridge to Highway 4 Bridge and October 16 through January 31 from the Highway 4 Bridge to the Crown Main Line Bridge. Daily limit 6 fish of which no more than 3 may be adult salmon and of these 3 adult fish no more than 1 may be a wild adult coho and not more than 2 may be adult chinook~~((-))~~. No more than 2 chum may be retained.

Sturgeon: Open year-round from mouth to Highway 4 Bridge.

From mouth of North Fork to source: Selective gear rules. All species: Release all fish.

South Fork, from mouth to Bean Creek: June 1 through last day in February season, except sturgeon. Game fish: Selective gear rules except nonbuoyant lure restriction and night closure August 16 through November 30. Release game fish. Sturgeon: Open year-round.

Nason Creek (Chelan County): From the mouth upstream to Smith Brook: Closed waters.

From Smith Brook to Stevens Creek: Selective gear rules.

Negro Creek (Lincoln County): Year-round season from mouth at Sprague Lake to the fish barrier dam at Fishtrap Lake.

Negro Creek (Whitman County): Last Saturday in April through July 15 season.

Nemah River, North, Middle, and South: June 1 through March 31 season. Single point barbless hooks required on North Nemah upstream to the lower bridge on dead end lower Nemah Road October 1 through November 30, on Middle Nemah upstream to the Department of Natural Resources Bridge on Middle Nemah A-line Road August 16 through November 30, and on South Nemah upstream to confluence with Middle Nemah August 16 through November 30. Selective gear rules on Middle Nemah above DNR Bridge. Night closure August 16 through November 30 on South and Middle Nemah and October 1 through November 30 on North Nemah. Nonbuoyant lure restriction on North Nemah upstream from bridge on dead end lower Nemah Road August 16 through November 30. On the North Nemah from the mouth to the lower bridge on dead end lower Nemah Road, fishers may not allow their line, lures or bait to remain stationary in the water during the period August 16 through November 30. All game fish: Release all fish except up to two hatchery steelhead per day may be retained in the North Nemah. Salmon: Open only August 1 through January 31 on Middle Nemah from mouth to DNR Bridge and South Nemah from mouth to confluence with Middle Nemah and October 1 through January 31 on North Nemah from mouth to the lower bridge on dead end Lower Nemah Road. Middle and South Nemah: Daily limit 6 fish of which no more than 2 may be adult salmon and of the two adult fish no more than one may be a wild adult coho. North Nemah: Daily limit 6 salmon of which not more than 3 may be adult salmon and of the adult fish no more than one may be a wild adult coho and no more than two may be adult chinook. No more than two chum may be retained.

Newhalem Ponds (Whatcom County): Closed waters.

Newaukum River, main river and South Fork upstream to Highway 508 Bridge near Kearny Creek (Lewis County): June 1 through March 31 season. Night closure and single point barbless hooks required August 16 through November 30 from mouth to ~~((Cheer Creek) [Leonard Road])~~ Leonard Road. Trout: Minimum length fourteen inches mouth to Highway 508 Bridge near Kearny Creek. Salmon: Open only October 16 through last day in February from mouth to ~~((Cheer Creek) [Leonard Road])~~ Leonard Road. Daily limit 6 fish of which no more than 2 may be adult salmon. Release adult chinook. Release wild adult coho December 1 through last day in February.

Newaukum River, Middle Fork, mouth to Taucher Road Bridge (Lewis County): June 1 to March 31 season. Trout: Minimum length fourteen inches.

Newaukum River, North Fork (Lewis County):

From mouth to four hundred feet below Chehalis city water intake: June 1 through March 31 season. Trout: Minimum length fourteen inches.

From 400 feet below Chehalis city water intake upstream: Closed waters.

Niawiakum River (Pacific County): From Highway 101 Bridge to the South Bend/Palix Road Bridge: Night closure

and single point barbless hooks required August 16 through November 30. All game fish: Release all fish. Salmon: Open only September 1 through November 30 from Highway 101 Bridge to South Bend/Palix Road Bridge. Daily limit 6 fish of which no more than 2 may be adult salmon and of the adult fish not more than one may be a wild adult coho. Release adult chinook.

Nile Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Nisqually River (Pierce County), from mouth to four hundred feet below LaGrande Powerhouse: June 1 through January 31 season. Nonbuoyant lure restriction and night closure August 1 through November 30. Game fish: Closed December 1 through January 31. Trout: Minimum length fourteen inches. Salmon: Open only July 1 through January 31 from mouth to Military Tank Crossing Bridge. Daily limit 6 fish of which no more than 2 may be adult salmon.

Nooksack River (Whatcom County), from mouth to forks, Middle Fork to Dam and North Fork to Nooksack Falls: June 1 through last day in February season except closed June 1 through September 30 in mainstem from ~~((Mount Baker yellow marker at the FFA))~~ yellow marker at the FFA High School ~~((bus))~~ barn at Deming to confluence of the North and South Forks. Fishing from floating devices equipped with motors prohibited on the North and Middle Forks November 1 through last day in February. Nonbuoyant lure restriction and night closure August 1 through November 30 on mainstem and North Fork to Maple Creek. Trout: Minimum length fourteen inches. Salmon: Open only September 1 through December 31 in mainstem from Lummi Indian Reservation boundary to ~~((Mount Baker yellow marker at FFA))~~ yellow marker at the FFA High School ~~((bus))~~ barn ~~((in Deming))~~ in Deming. Open only October 16 through December 31 in mainstem from the ~~((bus FFA))~~ FFA barn to the confluence of the North and South Forks, and October 1 through October 31 on the North Fork from confluence to Maple Creek. Daily limit 2 salmon, except release ~~((chinook and))~~ wild coho ~~((, release wild chinook from mouth to FFA barn, and release chinook from FFA barn to forks and in North Fork))~~, release wild chinook from mouth to FFA barn, and release chinook from FFA barn to forks and in North Fork.

Nooksack River, South Fork (Skagit/Whatcom counties): From mouth to Skookum Creek: June 1 through last day in February season. Selective gear rules. Night closure August 1 through October 31. Trout: Minimum length fourteen inches. Salmon: Open only October 16 through December 31. Daily limit 2 salmon, except release chinook and wild coho.

From Skookum Creek upstream: Closed waters.

No Name Lake (Pend Oreille County): Last Saturday in April through October 31 season.

North Creek (Okanogan County): From mouth to falls at river mile 0.8: Selective gear rules.

North Creek (tributary of Sammamish River) (Snohomish/King counties): Closed waters.

North Elton Ponds (Yakima County): December 1 through March 31 season. Fishing from a floating device equipped with an internal combustion engine prohibited. Trout: Daily limit two.

North Lake (King County): Last Saturday in April through October 31 season.

North Potholes Reserve Ponds (Grant County): February 1 through the day before opening of waterfowl season. Fishing from any floating device prohibited, except float tubes permitted.

North River (Grays Harbor/Pacific counties), from Highway 105 Bridge upstream to Falls River: June 1 through last day in February season, except sturgeon. Night closure August 16 through November 30. Single point barbless hooks required August 16 through November 30 upstream to Salmon Creek. Nonbuoyant lure restriction from Salmon Creek to Falls River August 16 through November 30. All game fish: Release all fish except that up to two hatchery steelhead per day may be retained. Salmon: Open only September 1 through November 30 from Highway 105 Bridge to Salmon Creek. Daily limit 6 fish of which no more than 2 may be adult salmon and of the adult fish not more than one may be a wild adult coho. Release adult chinook. Sturgeon: Open year-round from Highway 105 Bridge to Salmon Creek.

Upstream from Falls River: Selective gear rules. All species: Release all fish.

Northern State Hospital Pond (Skagit County): Last Saturday in April through October 31 season. Juveniles only.

Northwestern Reservoir (Klickitat/Skamania counties): Last Saturday in April through last day in February season.

Nunnally Lake (Grant County): March 1 through November 30 season. Closed waters: Outlet stream of Nunnally Lake. Selective gear rules. Trout: Daily limit one.

Oakland Bay freshwater tributaries (Mason County), except Goldsborough Creek (including Shelton Creek, Canyon Creek, Uncle John Creek, Campbell Creek, Melaney Creek, Deer Creek, John's Creek, and Cranberry Creek to Lake Limerick): Closed waters.

Oasis Park Pond (Grant County): Third Saturday in April through Labor Day season. Juveniles and holders of reduced fee disability licenses only.

Ohanapcosh Creek (tributary to Cowlitz River) (Lewis/Pierce counties): Selective gear rules. Trout: Minimum length twelve inches.

Ohop Lake (Pierce County): Last Saturday in April through October 31 season.

Okanogan River (Okanogan County):

From the mouth to the highway bridge at Malott: Year-round season. Trout: Release all trout. Upstream from the highway bridge at Malott: June 1 through August 31 season. Trout: Release all trout. ~~((Salmon: Open only July 16 through October 15 from mouth to Highway 97 Bridge immediately upstream of mouth. Daily limit 6 fish of which no more than 2 may be adult salmon. Release coho and sock-~~

eye-)) Salmon: Open only July 16 through October 15 from mouth to Highway 97 Bridge immediately upstream of mouth. Daily limit 6 fish of which no more than 2 may be adult salmon. Release coho and sockeye.

Closed waters: From Zosel Dam downstream to one-quarter mile below the railroad trestle.

Old Fishing Hole Pond (Kent) (King County): Last Saturday in April through October 31 season. Juveniles only.

Olequa Creek (Lewis County): June 1 through last day in February season. Trout: Release all fish except up to two hatchery steelhead may be retained per day.

Osborne Lake (Mason County): Last Saturday in April through October 31 season.

Outlet Creek (Klickitat County): Trout: Daily limit five.

Owens Pond (Pacific County): June 1 through October 31 season.

Packwood Lake (Lewis County): Closed waters: All inlet streams and outlet from log boom to dam. Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit five, minimum length ten inches.

Padden Lake (Whatcom County): Last Saturday in April through October 31 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Palix River, including all forks (Pacific County): June 1 through March 31 season, except sturgeon. Single point barbless hooks and night closure August 16 through November 30 upstream to the confluence of the South and Middle Forks. Above the confluence of the South and Middle Forks: Selective gear rules. Nonbuoyant lure restriction and night closure August 16 through November 30. All game fish: Release all fish. Salmon: Open only September 1 through November 30 from the Highway 101 Bridge to the confluence of the South and Middle Forks. Daily limit 6 fish of which no more than 2 may be adult salmon and of the adult salmon not more than one may be a wild adult coho. Release adult chinook. Sturgeon: Open year-round from the Highway 101 Bridge to the confluence of the South and Middle Forks.

Palouse River and tributaries, except Rock Creek (Whitman County): Year around season.

Palmer Lake (Okanogan County): Burbot: Set line gear allowed.

Pampa Pond (Whitman County): March 1 through September 30 season. Fishing from any floating device prohibited.

Panhandle Lake (Mason County): Last Saturday in April through October 31 season.

Panther Creek (Chelan County): Closed waters.

Panther Creek (tributary to Wind River) (Skamania County): Closed waters.

Panther Lake (Kitsap/Mason counties): Last Saturday in April through October 31 season.

Para-Juvenile Lake (Adams/Grant counties): April 1 through September 30 season. Juveniles only.

Park Lake (Grant County): Last Saturday in April through September 30 season.

Parker Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Pass Lake (Skagit County): Fly fishing only. Fishing from a floating device equipped with a motor prohibited. All species: Release all fish.

Pataha Creek (Garfield County):

Within the city limits of Pomeroy: Juveniles only.

From city limits of Pomeroy upstream: Selective gear rules.

Patterson Lake (Okanogan County): Last Saturday in April through October 31 season.

Pattison Lake (Thurston County): Last Saturday in April through October 31 season.

Peabody Creek (Clallam County): Juveniles only.

Pearrygin Lake (Okanogan County): Last Saturday in April through September 30 season.

Pend Oreille River (Pend Oreille County): Year-round season. All sloughs within the boundaries of the Kalispell Reservation except Calispell Slough: Closed waters.

Perch Lake (Grant County): Last Saturday in April through September 30 season.

Percival Creek (Thurston County): Trout: Minimum length fourteen inches.

Peshastin Creek (Chelan County): Mouth to Ruby Creek: Closed waters.

Petit Lake (Pend Oreille County): Last Saturday in April through October 31 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Phalon Lake (Stevens County): Closed waters.

Pheasant Lake (Jefferson County): Last Saturday in April to October 31 season.

Phelps Creek (Chelan County): From mouth to falls at river mile 1: Selective gear rules.

Philippa Creek (tributary to N.F. Snoqualmie River) (King County): Closed waters.

Phillips Lake (Mason County): Last Saturday in April through October 31 season.

Phillips Lake (Stevens County): Last Saturday in April through October 31 season.

Pilchuck Creek (Snohomish County), mouth to Highway 9 Bridge: June 1 through November 30 season. Selective gear rules. Trout: Minimum length fourteen inches. Additional December 1 through last day in February season. Trout: Minimum length fourteen inches.

Pilchuck River (Snohomish County)

From its mouth to five hundred feet downstream from the Snohomish City diversion dam: December 1 through last day in February season. Fishing from any floating device prohibited. Trout: Minimum length fourteen inches.

From 500 feet below diversion dam upstream: Closed waters.

Pillar Lake (Grant County): April 1 through September 30 season.

Pine Lake (King County): Last Saturday in April through October 31 season.

Pine Lake (Mason County): Last Saturday in April through October 31 season.

Pioneer Ponds (tributary to Stillaguamish River) (Snohomish County): Closed waters.

Pipers (Carkeek) Creek (King County), from its mouth to its source, including tributaries: Closed waters.

Pit Lake (Douglas County): Juveniles only.

Pleasant Lake (Clallam County): Trout: Kokanee minimum length eight inches, maximum length twenty inches.

Plummer Lake (Lewis County): Last Saturday in April through last day in February season.

Poacher Lake (Grant County): April 1 through September 30 season.

Portage Creek (tributary to Stillaguamish River) (Snohomish County): Closed waters.

Potholes Reservoir (Grant County): Crappie: Minimum length nine inches. Crappie and bluegill: Combined daily limit twenty-five fish. Perch: Daily limit twenty-five fish.

Potter's Pond (Stevens County): Last Saturday in April through October 31 season.

Pratt River (tributary to Middle Fork Snoqualmie) (King County): Selective gear rules. All species: Release all fish.

Prices Lake (Mason County): Last Saturday in April through October 31 season. Selective gear rules. All species: Release all fish.

Promised Land Pond (Grays Harbor County): June 1 through October 31 season.

Purdy Creek (Mason County): June 1 through August 15 season. Selective gear rules. All species: Release all fish.

Puyallup River (Pierce County):

From mouth to the Electron power plant outlet: June 1 through January 31 season. Nonbuoyant lure restriction and night closure August 1 through November 30 from the mouth to the Carbon River. Trout: Minimum length fourteen inches. Salmon: Open only (~~August~~ ~~September~~) September 1 through December 31 from mouth to Carbon River. Daily limit 6 fish of which no more than 2 may be adult salmon. (~~Release wild adult chinook.~~) Release wild adult chinook.

From mouth to the Soldier's Home Bridge in Orting: Additional February 1 through last day in February season. Trout: Minimum length fourteen inches.

Pysht River (Clallam County): June 1 through last day in February season. Trout: Minimum length fourteen inches. December 1 through last day in February, one wild steelhead per day may be retained.

Pysht River South Fork (Clallam County): Trout: Minimum length fourteen inches.

Quail Lake (Adams County): Fly fishing only. Fishing from any floating device equipped with a motor prohibited. All species: Release all fish.

Quarry Pond (Walla Walla County): Fishing from any floating device prohibited.

Quigg Lake (Grays Harbor County): June 1 through April 15 season. Trout: Daily limit 2. Minimum length fourteen inches. Salmon: Open only October 1 through January 31. Daily limit 6 hatchery coho salmon of which no more than 4 may be adult hatchery coho.

Quillayute River (Clallam County): Open year-round. May 1 through May 31 release all fish except up to two hatchery steelhead per day may be retained. Trout: Minimum length fourteen inches. December 1 through April 30, one wild steelhead per day may be retained. Salmon: Open only March 1 through November 30. Daily limit 6 fish of which no more than 2 may be adult salmon March 1 through August 31 and 3 may be adult salmon September 1 through November 30. September 1 through November 30 the 3 adult salmon may contain no more than 2 adult chinook or 2 adult wild coho or 1 adult chinook and 1 adult wild coho. March 1 through August 31 release wild adult coho and (~~wild~~ ~~unmarked~~) unmarked adult chinook.

Quinault River, Upper (Jefferson County), from mouth at upper end of Quinault Lake to the National Park boundary: June 1 through April 15 season. Trout: Minimum length fourteen inches. December 1 through April 15, one wild steelhead per day may be retained. Salmon: Open only July 1 through October 31. Daily limit 6 fish except release adult salmon.

Quincy Lake (Grant County): March 1 through July 31 season.

Radar Ponds (Pacific County): Salmon: Landlocked salmon rules apply.

Raging River (King County), from its mouth to the Highway 18 Bridge: June 1 through last day in February season. Trout: Minimum length fourteen inches.

Railroad Pond (Franklin County): Selective gear rules. Trout: Daily limit two.

Rainbow Lake (Columbia County): March 1 through October 31 season. Fishing from any floating device prohibited.

Rapjohn Lake (Pierce County): Last Saturday in April through October 31 season.

Rat Lake (Okanogan County): April 1 through November 30: Selective gear rules except electric motors allowed, and all species: Release all fish.

Rattlesnake Creek (Yakima County): Selective gear rules. All species: Release all fish.

Rattlesnake Lake (King County): Last Saturday in April through October 31 season. Selective gear rules, except fishing from a floating device equipped with an electric motor allowed.

Ravensdale Lake (King County): Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit two, minimum length twelve inches.

Reflection Pond (Okanogan County): Last Saturday in April through October 31 season.

Renner Lake (Ferry County): Last Saturday in April through October 31 season.

Riffe Lake (Reservoir) (Lewis County): Mossyrock Dam to 400 feet below Cowlitz Falls Dam. Closed waters: Lewis County PUD safety signs approximately 800 feet below Cowlitz Falls Dam to Dam. Lawful to fish up to the base of Swofford Pond Dam. Salmon: Landlocked salmon rules apply.

Rigley Lake (Stevens County): Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit two, minimum length twelve inches.

Riley Lake (Snohomish County): Last Saturday in April through October 31 season.

Rimrock Lake (Reservoir) (Yakima County): Chumming permitted. Trout except kokanee: Daily limit five. Kokanee not counted in daily trout limit. Kokanee daily limit sixteen.

Ringold Springs Creek (Hatchery Creek) (Franklin County): Closed waters.

Robbins Lake (Mason County): Last Saturday in April through October 31 season.

Rock Creek (Adams/Whitman counties): Mouth to Endicott Road year-round season.

Endicott Road to bridge on George Knott Road at Revere: Selective gear rules. All species: Release all fish.

Upstream from bridge on George Knott Road: Year-round season.

Rock Creek (Chelan County): Selective gear rules.

Rock Creek (Cedar River tributary below Landsburg Dam) (King County): Closed waters.

Rock Creek (Skamania County): Mouth to falls: June 1 through March 15 season. Trout: Release all fish except up to two hatchery steelhead may be retained per day. Above falls, additional November 1 through March 15 season.

Rocky Ford Creek and Ponds (Grant County): Fly fishing only. Fishing from bank only (no wading). All species: Release all fish.

Rocky Lake (Stevens County): Last Saturday in April through October 31 season. June 1 through October 31 selective gear rules and all species: Release all fish.

Roesiger Lake (Snohomish County): Crappie: Daily limit ten, minimum length nine inches.

Roosevelt Lake (Ferry/Lincoln/Stevens counties): Chumming allowed. All species: Closed February 1 through May 31 in San Poil arm upstream from outlet of French Johns Lake, and April 1 through May 31 in Kettle arm upstream to Barstow Bridge. Trout except kokanee: Daily limit five. No more than two over twenty inches in length. Kokanee daily limit two. Walleye: No minimum size. Daily limit 5 fish not more than one of which may be longer than 18 inches. Salmon: Landlocked salmon rules apply. Sturgeon: Unlawful to fish for or retain sturgeon from Roosevelt Lake and tributaries.

Rose Lake (Mason County): Last Saturday in April through October 31 season.

Ross Lake (Reservoir) (Whatcom County): July 1 through October 31 season. Selective gear rules, except fishing from a floating device equipped with a motor allowed. Trout: Daily limit three, possession limit six, minimum length thirteen inches.

Ross Lake tributary streams (Whatcom County), except Big Beaver Creek and Ruby Creek: Closed waters: From closed water markers near mouth upstream for one mile. Above closed water marker in tributaries not listed as closed: July 1 through October 31 season.

Round Lake (Okanogan County): Last Saturday in April through September 30 season.

Rowland Lakes (Klickitat County): Last Saturday in April through last day in February season.

Royal Lake (Adams County): Closed waters.

Royal Slough (including Marsh Unit IV impoundments) (Adams County): Closed waters.

Ruby Creek (tributary to Ross Lake) (Whatcom County): Closed waters.

Rufus Woods Lake (Douglas County): Chumming allowed. Trout: Daily limit two. Sturgeon: Unlawful to fish for or retain sturgeon from Rufus Woods Lake and tributaries.

Sacheen Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Saddle Mountain Lake (Grant County): Closed waters.

Sago Lake (Grant County): April 1 through September 30 season.

Salmon Creek (Clark County), from mouth to 72nd Avenue N.E.: June 1 through March 15 season. Trout: Release all fish except up to two hatchery steelhead may be retained per day.

Salmon Creek, including all forks (Jefferson County): Closed waters.

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Salmon Creek, mainstem (Okanogan County): Closed waters.

Salmon Creek, North Fork and West Fork from mouth to South Fork (Okanogan County): Selective gear rules.

Salmon Creek (tributary of Naselle River) (Pacific County): June 1 through last day in February season. Selective gear rules. All species: Release all fish.

Salmon River (Jefferson County) ~~((outside of Olympic National Park and Quinault Indian Reservation))~~ outside of Olympic National Park and Quinault Indian Reservation: June 1 through last day in February season. Trout: Minimum length fourteen inches. Hatchery steelhead in this river are steelhead with a dorsal fin height of less than 2-1/8 inches or with an adipose or ventral fin clip. Salmon: Open only September 1 through November 30 ~~((from mouth to Q-1000 Bridge))~~. Daily limit 6 fish of which no more than 3 may be adult salmon and of the adult salmon not more than 2 may be adult chinook salmon.

Salt Creek (Clallam County): Trout: Minimum length fourteen inches.

From mouth to bridge on Highway 112: Additional November 1 through last day in February season. Trout: Minimum length fourteen inches.

Samish Lake (Whatcom County): Trout: Cutthroat trout daily limit two, minimum length fourteen inches.

Samish River (Whatcom County):

From its mouth to the Hickox Bridge: June 1 through March 15 season. From Highway 99 Bridge to department salmon rack: Closed waters. Nonbuoyant lure restriction and night closure August 1 through December 31.

Trout: Minimum length fourteen inches. Salmon: Open only July 1 through December 31 from mouth to Thomas Road Bridge and October 1 through December 31 from Thomas Road Bridge to I-5 Bridge. Daily limit two salmon.

Sammamish Lake (King County): Trout: Release all kokanee. Kokanee/sockeye under fifteen inches are kokanee while those fifteen inches and over are sockeye salmon. December 1 through June 30: Release all steelhead and rainbow trout over twenty inches in length. Salmon: Closed to salmon fishing within 100 yards of the mouth of Issaquah Creek. Open only August 16 through November 30. Daily limit two salmon. Release sockeye.

Sammamish River (Slough) (King County), from the 68th Avenue N.E. Bridge to Lake Sammamish: Closed waters: All tributaries. January 1 through August 31 season. Selective gear rules. Trout: Release all trout.

Sandyshore Lake (Jefferson County): Last Saturday in April to October 31 season.

San Poil River (Ferry County): Unlawful to fish for or retain sturgeon.

Sarge Hubbard Park Pond (Yakima County): Juveniles and holders of disability licenses only.

Satsop Lakes (Grays Harbor County): Last Saturday in April through October 31 season.

Satsop River, (Grays Harbor County): Trout: Minimum length 14 inches in mainstem and all forks. Mainstem and East Fork, single point barbless hooks and night closure August 16 through November 30 except only August 16 through October 31 on East Fork upstream from bridge at Schafer State Park. Middle and West forks downstream from Cougar Smith Road nonbuoyant lure restriction and night closure August 16 through November 30. Middle and West Forks upstream from Cougar Smith Road night closure and nonbuoyant lure restriction August 16 through October 31.

From mouth to bridge at Schafer Park: Additional November 1 through March 31 season. Salmon: Open only October 1 through January 31. Daily limit 6 fish of which no more than 2 may be adult salmon, except release adult chinook.

Middle Fork (Turnow Branch), from mouth to Cougar Smith Road: Additional November 1 through last day in February season.

West Fork, from mouth to Cougar Smith Road: Additional November 1 through last day in February season.

Sauk River (Skagit/Snohomish counties):

From mouth to the mouth of the White Chuck River: June 1 through last day in February season. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches.

From the mouth of the White Chuck River to headwaters, including North Fork and South Fork upstream to Elliot Creek: Selective gear rules. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches.

South Fork upstream from Elliot Creek: June 1 through August 31 season. Selective gear rules.

From mouth to the Darrington Bridge: Additional March 1 through April 30 season. Selective gear rules. All species: Release all fish.

Sawyer, Lake (King County): Chumming permitted. Crappie: Daily limit ten, minimum length nine inches.

Schaefer Lake (Chelan County): Trout: Daily limit sixteen.

Sekiu River (Clallam County): All open periods: Trout: Minimum length fourteen inches.

From mouth to forks: Additional November 1 through last day in February season.

Serene Lake (Snohomish County): Last Saturday in April through October 31 season.

Shady Lake (King County): June 1 through October 31 season. Trout: No more than one over fourteen inches in length.

Shannon, Lake (Skagit County): Last Saturday in April through October 31 season. Chumming permitted. Trout: Minimum length six inches and maximum length eighteen inches.

Shellneck Creek (Yakima County): Closed waters.

Shelton Creek (Mason County): Closed waters.

Sherman Creek (Ferry County):

From the mouth at Lake Roosevelt upstream to four hundred feet above the water diversion dam for the hatchery: Closed waters, except December 1 through August 31 season from the mouth upstream to the hatchery boat dock.

Sherry Lake (Stevens County): Last Saturday in April through October 31 season.

Sherwood Creek (Mason County): Trout: Minimum length fourteen inches.

Sherwood Creek Mill Pond (Mason County): June 1 through October 31 season. Trout: Minimum length 14 inches, daily limit 2 fish.

Shiner Lake (Adams County): April 1 through September 30 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Shoe Lake (Mason County): Last Saturday in April through October 31 season.

Shoveler Lake (Grant County): April 1 through September 30 season.

Shye Lake (Grays Harbor County): June 1 through October 31 season.

Sidley Lake (Okanogan County): Trout: Daily limit two.

Siebert Creek (Clallam County): Trout: Minimum length fourteen inches.

Silent Lake (Jefferson County): Last Saturday in April through October 31 season. Fishing from a floating device equipped with an internal combustion engine prohibited.

Silvas Creek (Klickitat County): Trout: Release all trout.

Silver Creek (tributary to Cowlitz River) (Lewis County), mouth to USFS Road 4778: Selective gear rules. Trout: Minimum length twelve inches.

Silver Lake (Pierce County): Last Saturday in April through October 31 season.

Silver Lake (Spokane County): Crappie: Daily limit ten, minimum length nine inches.

Silver Lake, North (Spokane County): March 1 through September 30 and November 1 through December 31 season. Selective gear rules. March 1 through September 30: Trout: Daily limit 2 fish, minimum length 14 inches, except release fish with clipped adipose fin. November 1 through December 31: All species: Release all fish.

Silver Lake (Whatcom County): Last Saturday in April through October 31 season.

Silvernail Lake (Okanogan County): Juveniles only.

Similkameen River (Okanogan County):

From mouth to Enloe Dam: December 1 through March 31 season. Whitefish gear rules apply.

From Enloe Dam to Canadian border: Additional December 1 through March 31 season. Whitefish gear rules apply.

Sinlahekin Creek (Okanogan County), from Palmer Lake to Cecile Creek bridge: June 1 through August 31 season. Selective gear rules. Additional December 1 through March 31 season. Whitefish gear rules apply.

Sixteen Lake (Skagit County): Last Saturday in April through October 31 season.

Skagit River (Skagit/Whatcom counties):

From mouth to the Memorial Highway Bridge (Highway 536 at Mt. Vernon): Year-round season. Selective gear rules March 1 through May 31 except lawful to fish from a floating device equipped with a motor. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Salmon: Open only (~~August 16 through September 1~~) September 1 through December 31. (~~August 16 through October 31~~) Daily limit (~~four~~ three) three salmon (~~of which not more than three may be coho salmon or two may be~~, except release) except release chum (~~salmon~~) and release chinook. (~~November 1 through December 31~~: Daily limit 2 salmon and release chinook.)

From Memorial Highway Bridge (Highway 536 at Mt. Vernon) upstream to Gilligan Creek: June 1 through March 31 season. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Salmon: Open only (~~August 16 through September 1~~) September 1 through December 31. (~~August 16 through October 31~~) Daily limit (~~four~~ three) three salmon (~~of which not more than three may be coho salmon or two may be~~, except release) except release chum (~~salmon~~) and release chinook. (~~November 1 through December 31~~: Daily limit 2 salmon and release chinook.)

From Gilligan Creek to Bacon Creek: June 1 through March 15 season except closed June (~~16~~ 1) through June 30 and August 1 through August 31 between a line 200 feet above the east bank of the Baker River to a line 200 feet below the west bank of the Baker River. Nonbuoyant lure restriction and night closure July 1 through November 30. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of the trout daily limit, minimum length twenty inches. Salmon: Open only September 16 through December 31 Gilligan Creek to the Dalles Bridge at Concrete. (~~September 16 through October 31~~) Daily limit (~~four~~ three) three salmon (~~of which not more than three may be coho salmon or two may be~~, except release) except release chum (~~salmon~~) and release chinook. (~~November 1 through December 31~~: Daily limit two salmon and release chinook.)

From the Dalles Bridge at Concrete to the Cascade River - Salmon open July 1 through July 31, except closed from 200 feet above the mouth of the Baker River to the Cascade River. Daily limit two sockeye salmon. Release all salmon except sockeye salmon. Salmon open September 16 through December 31. (~~September 16 through October 31~~) Daily limit (~~four~~ three) three salmon (~~of which not more than three may be coho salmon or two may be~~, except release) except release chum (~~salmon~~) and release chinook.

~~((November 1 through December 31: Daily limit two salmon and release chinook.))~~

From Bacon Creek to Gorge Powerhouse: June 1 through last day in February season. Nonbuoyant lure restriction and night closure July 1 through November 30. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of the trout daily limit, minimum length twenty inches.

From the Gorge Powerhouse to Gorge Dam: Closed waters.

From the Dalles Bridge at Concrete to the mouth of Bacon Creek: Additional March 16 through April 30 season. Selective gear rules, except lawful to fish from a floating device equipped with a motor but not while under power. All species: Release all fish.

Skamokawa Creek (Wahkiakum County), mouth to forks just below Oatfield and Middle Valley Road: November 1 through March 15 season. All species: Release all fish other than steelhead. Trout: Minimum length twenty inches.

Skate Creek (tributary to Cowlitz River) (Lewis County): Trout: Daily limit five, no more than one over twelve inches in length.

Skokomish River (Mason County), mouth to forks: Night closure, nonbuoyant lure restriction and single point barbless hooks required ~~((August))~~ September 1 through November 30 mouth to Highway 101. June 1 through ~~((July 31 and September 1 through))~~ July 31 and September 1 through last day in February season. All game fish: Release all fish except that up to two hatchery steelhead per day may be retained. Salmon: Open only ~~((August))~~ September 1 through December 15 mouth to Highway 101 Bridge. Daily limit 1 salmon ~~((August))~~ September 1 through September 30. Release chum salmon. Daily limit 6 salmon October 1 through December 15, except daily limit may contain no more than 4 adult fish and of these adults not more than one may be an adult chinook. October 1 through October 15 release chum salmon.

Skokomish River, North Fork (Mason County):

From mouth to lower dam: June 1 through last day in February season. All species: Release all fish except up to two hatchery steelhead per day may be retained.

Above Lake Cushman, mouth to Olympic National Park boundary: June 1 through August 31 season. Selective gear rules. Trout: Release all fish.

Skokomish River, South Fork (Mason County):

From mouth to mouth of Church Creek: June 1 through last day in February season. All species: Release all fish except up to two hatchery steelhead per day may be retained.

From mouth of Church Creek to mouth of Rule Creek: Closed waters.

From mouth of Rule Creek to headwaters: Selective gear rules. Trout: Minimum length twelve inches.

Skookum Creek (Mason County): Trout: Minimum length fourteen inches.

Skookum Lakes, North and South (Pend Oreille County): Last Saturday in April through October 31 season.

Skookumchuck Creek (Klickitat County): Trout: Release all trout.

Skookumchuck Reservoir (Thurston County): June 1 through October 31 season. Trout: Daily limit two, minimum length twelve inches.

Skookumchuck River (Thurston County):

From mouth to four hundred feet below the outlet of the PP&L/WDFW steelhead rearing pond located at the base of the Skookumchuck Dam: June 1 through April 30 season. Single point barbless hooks and night closure August 16 through November 30. Trout: Minimum length fourteen inches. Salmon: Open only October 16 through last day in February. Daily limit 6 fish of which no more than 2 may be adult salmon, except December 1 through the last day in February release adult wild coho. Release adult chinook.

From Skookumchuck Reservoir upstream and all tributaries: Selective gear rules. Trout: Minimum length twelve inches.

Skykomish River (Snohomish County):

From mouth to mouth of Wallace River: June 1 through last day in February season. Nonbuoyant lure restriction and night closure August 1 through November 30 mouth to Lewis Street Bridge in Monroe and June 1 through November 30 from Lewis Street Bridge in Monroe to Wallace River. Fishing from any floating device prohibited November 1 through last day in February from the boat ramp below Lewis Street Bridge at Monroe downstream two thousand five hundred feet. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Additional season March 1 through April 30 mouth to Sultan River: Selective gear rules and all species - Release all fish. Salmon: ~~((Open September 1 through December 31 mouth to Lewis Street Bridge in Monroe. Daily limit 2 salmon. Release chinook and pink salmon.))~~ Open September 1 through December 31 mouth to Lewis Street Bridge in Monroe. Daily limit 2 salmon. Release chinook and pink salmon. Open June ~~((1-16))~~ 16 through July 31 Lewis Street Bridge in Monroe to Wallace River. Daily limit ~~((1-2))~~ 2 hatchery chinook. Open September 1 through December 31 ~~((Lewis Street Bridge to Wallace River))~~ Lewis Street Bridge to Wallace River. Daily limit ~~((four))~~ 2 salmon ~~((of which a total of not more than two may be coho and chum salmon.))~~ and pink salmon.

From the mouth of the Wallace River to the forks: June 1 through last day in February season, except closed June 1 to 8:00 a.m. August 1 in those waters one thousand five hundred feet upstream and one thousand feet downstream of the outlet at Skykomish Rearing Ponds. Nonbuoyant lure restriction and night closure August 1 through November 30. Fishing from any floating device prohibited in the area one thousand five hundred feet upstream and one thousand feet downstream of the outlet at Skykomish Rearing Ponds August 1 through last day in February. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Salmon: Open only September 1 through December 31. Daily limit ~~((four))~~ 2 salmon

~~((of which a total of not more than two may be coho and chum salmon))). Release chinook ~~((and pink salmon))~~ and pink salmon.~~

Skykomish River, North Fork (Snohomish County):

From mouth to one thousand feet downstream from Bear Creek Falls: June 1 through last day in February season. Nonbuoyant lure restriction and night closure August 1 through November 30. Trout: Minimum length fourteen inches.

From one thousand feet below Bear Creek Falls to Deer Falls: Closed waters.

Skykomish River, South Fork (King/Snohomish counties):

From mouth to six hundred feet downstream from the Sunset Falls Fishway: June 1 through last day in February season. Nonbuoyant lure restriction and night closure August 1 through November 30. Trout: Minimum length fourteen inches.

From a point six hundred feet downstream of the Sunset Falls Fishway to the Sunset Falls Fishway: Closed waters.

From Sunset Falls to source: June 1 through November 30 season. Selective gear rules. Trout: Minimum length fourteen inches. Whitefish: Additional December 1 through last day in February season. Release all fish other than whitefish.

Smith Creek (near North River) (Pacific County): June 1 through last day in February season, except sturgeon. Single point barbless hooks, and night closure August 16 through November 30 upstream to the Highway 101 Bridge. All game fish: Release all fish except up to two hatchery steelhead per day may be retained. Salmon: Open only September 1 through November 30 from mouth to Highway 101 Bridge. Daily limit 6 fish of which no more than 2 may be adult salmon and of the adult salmon not more than one may be an adult wild coho. Release adult chinook. Sturgeon: Open year-round from mouth to Highway 101 Bridge.

Snake River: Year-round season. Closed to the taking of all trout April 1 through June 15. Trout: Daily limit six, minimum length ten inches, no more than three over twenty inches. Release all steelhead June 16 through August 31. Barbless hooks required when fishing for steelhead. Sturgeon: Unlawful to retain sturgeon in mainstem and tributaries upstream from Lower Granite Dam. Bass: Fish twelve to seventeen inches in length may be retained as part of the daily limit. No more than 3 bass over fifteen inches in length may be retained. Walleye: Daily limit 10 fish. No minimum size. No more than 5 fish over 18 inches in length. No more than 1 fish over 24 inches in length. Channel catfish: No daily limit.

Closed waters: Within four hundred feet of the base of any dam and within a four hundred foot radius around the fish ladder entrance at Lyons Ferry Hatchery, within a two hundred foot radius upstream of the fish ladder exit above Lower Granite Dam, and within an area one thousand two hundred feet downstream from the base of the west lock gate at Little Goose Dam on the south bank of the Snake River and one hundred feet out into the river from said river bank.

Snipe Lake (Grant County): April 1 through September 30 season.

Snohomish River (Snohomish County), including all channels, sloughs, and interconnected waterways, but excluding all tributaries: June 1 through last day in February season, except sturgeon. ~~((Selective gear rules August 1 through August 31.))~~ Selective gear rules August 1 through August 31. Nonbuoyant lure restriction and night closure August 1 through November 30. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Salmon: Open only August ~~((16-1))~~ 1 through December 31. Daily limit ~~((four-))~~ 2 salmon ~~((of which no more than a total of two salmon may be coho and chum salmon))).~~ ~~((August 1 to August 31 release all salmon except pink salmon. September 1 through December 31 release chinook (and pink salmon)))~~ August 1 through August 31 release all salmon except pink salmon. September 1 through December 31 release chinook and pink salmon. Sturgeon: Open year-round from mouth to Highway 2 Bridge.

Snoqualmie River (King County):

From mouth to the falls: June 1 through last day in February season, except waters within the Puget Power tunnel at the falls and within fifty feet of any point on Puget Power's lower Plant # 2 building (north bank) are closed waters. June 1 through November 30 selective gear rules, except fishing from a floating device equipped with a motor allowed. Fishing from any floating device prohibited November 1 through last day in February from the mouth of Tokul Creek downstream to the boat ramp at Plumb access, about one-quarter mile. Night closure September 1 through November 30. Trout: Minimum length fourteen inches. Salmon: Open only September 1 through December 31. Daily limit 2 fish. Release chinook and pink.

From Snoqualmie Falls upstream, including the North and South Forks: Selective gear rules. Trout: Minimum length ten inches. Additional November 1 through May 31 season. Selective gear rules. All species: Release all fish.

Snoqualmie Middle Fork from mouth to source including all tributaries except Pratt and Taylor rivers: Year-round season. Selective gear rules. All species: Release all fish.

Snow Creek (Jefferson County), including all tributaries: Closed waters.

Snyder Creek (Klickitat County): Trout: Release all trout.

~~((Sol Duc River))~~ Sol Duc River (Clallam County): Open year-round. May 1 through May 31 release all fish except up to two hatchery steelhead per day may be retained. Selective gear rules from the concrete pump station at the Sol Duc Hatchery to the Highway 101 Bridge downstream of Snider Creek November 1 through April 30, and from the Highway 101 Bridge to Olympic National Park June 1 through October 31. Trout: Minimum length fourteen inches. December 1 through April 30, from mouth to the concrete pump station at the Sol Duc Hatchery, one wild steelhead per day may be retained. Salmon: Open only March 1 through November 30 from mouth to concrete pump station. Daily limit 6 fish of which no more than 2 may be adult salmon ~~((July-))~~ March 1 through August 31 and of which no more than 3 may be adult salmon September 1 through November 30. ~~((July-))~~

~~March~~) March 1 through August 31 release wild adult coho and ~~((wild-unmarked))~~ unmarked adult chinook. September 1 through November 30 the daily limit may contain no more than 2 adult chinook or 2 adult wild coho or ~~((a combination of one))~~ 1 adult chinook and 1 adult wild coho.

Sooes River (Suez River) (Clallam County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Soos Creek (King County), from mouth to bridge near hatchery residence: June 1 through August 31 season except salmon. Trout: Minimum length fourteen inches. Salmon: Open only October ~~((11-19))~~ 9 through ~~((November 2-October 31))~~ October 31 to fishing by juveniles only. Night closure October ~~((11-19))~~ 9 through October 31. Terminal gear restricted to one single hook. Daily limit two coho salmon.

Bridge near hatchery residence to Salmon hatchery rack: June 1 through August 31 season. Trout: Minimum length fourteen inches.

South Bend Mill Pond (Pacific County): Juveniles only.

South Prairie Creek (Pierce County), mouth to Page Creek: Closed waters.

Spada Lake (Reservoir) (Snohomish County): Last Saturday in April through October 31 season. Selective gear rules except fishing from a floating device equipped with an electric motor permitted. Trout: Maximum length twelve inches.

Spada Lake (Reservoir) tributaries (Snohomish County): Closed waters.

Spanaway Lake and Spanaway Lake outlet downstream to the dam (approximately 800 feet) (Pierce County): Year-round season. Bass: Release fish 12 to 17 inches in length. Only one fish over 17 inches in length may be retained.

Spearfish Lake (Klickitat County): Last Saturday in April through last day in February season.

Spectacle Lake (Okanogan County): March 1 through July 31 season.

Spirit Lake (Skamania County): Closed waters.

Spokane River (Spokane County):

From SR 25 Bridge upstream to the Seven Mile Bridge, except Long Lake, formed by Long Lake Dam (see also Long Lake): Year-round season except walleye. Trout: Daily limit five, no more than two over twenty inches in length. Walleye: Daily limit five, no minimum length, no more than one over eighteen inches in length. April 1 through May 31 release all walleye. Salmon: Landlocked salmon rules apply. Sturgeon: Unlawful to fish for or retain sturgeon.

From Seven Mile Bridge upstream to the Monroe Street Dam: Year-round season. Selective gear rules. Trout: Daily limit one. Release wild trout. Salmon: Landlocked salmon rules apply. Sturgeon: Unlawful to fish for or retain sturgeon.

From Monroe Street Dam upstream to Upriver Dam: Year-round season. Salmon: Landlocked salmon rules apply.

From Upriver Dam upstream to the Idaho/Washington state line: Selective gear rules, except fishing from a floating device equipped with a motor permitted. All species: Release all fish.

Sprague Lake (Adams/Lincoln counties):

Waters south of the lakeside edge of the reeds and waters of Cow Creek south to Danekas Road: July 1 through September 15 season. Crappie: Daily limit ten, minimum length nine inches.

Spring Creek (Klickitat County): Trout: Daily limit five.

Spring Lake (Columbia County): March 1 through October 31 season. Fishing from any floating device prohibited.

Spring Lakes (Grant County): March 1 through July 31 season.

Squalicum Lake (Whatcom County): Fly fishing only. Fishing from a floating device equipped with a motor prohibited. Trout: Daily limit two.

Stan Coffin Lake (Grant County): Bass: Release all bass.

Starvation Lake (Stevens County): Last Saturday in April through May 31 season. Additional June 1 through October 31 season. Selective gear rules. All species: Release all fish.

Steel Lake (King County): Last Saturday in April through October 31 season.

Stehekin River (Chelan County), from the mouth to Agnes Creek: July 1 through October 31 season. Selective gear rules. Trout: Minimum length fifteen inches. Release cutthroat. Additional March 1 through June 30 season. Selective gear rules. All species: Release all fish.

Stetattle Creek (Whatcom County), from its mouth to mouth of Bucket Creek (one and one-half miles upstream): Closed waters.

Stevens Creek (Grays Harbor County), mouth to Highway 101 Bridge: June 1 through last day in February season. Trout: Minimum length fourteen inches.

Stevens, Lake (Snohomish County): Chumming permitted. Kokanee: Kokanee not included in trout daily limit. Kokanee daily limit ten fish.

Steves Lake (Mason County): Last Saturday in April through October 31 season.

Stickney Lake (Snohomish County): Last Saturday in April through October 31 season.

Stillaguamish River (Snohomish County):

From mouth to Marine Drive, including all sloughs: Year-round season. Nonbuoyant lure restriction and night closure August 1 through November 30. Trout: Minimum length fourteen inches. Salmon: Open only September 1 through December 31. Daily limit ~~((four-two))~~ 2 salmon ~~((of which a total of not more than two may be coho and chum salmon))~~. Release chinook ~~((and pink salmon))~~ and pink salmon.

From Marine Drive to the forks, except from the barrier dam (downstream of I-5) downstream two hundred feet

which is closed waters: June 1 through last day in February season. Night closure August 1 through November 30. Selective gear rules June 1 through November 30 except fishing from a floating device equipped with a motor allowed. Game fish: June 1 through November 30 release all fish except hatchery steelhead. Trout: Minimum length fourteen inches December 1 through last day in February. Salmon: Open only September 1 through December 31. Daily limit (~~four~~ ~~two~~) 2 salmon (~~of which a total of not more than two may be coho and chum salmon~~). Release chinook (~~and pink salmon~~) and pink salmon.

Stillaguamish River, North Fork (Snohomish County), from mouth to Swede Heaven Bridge: Year-round season. Non-buoyant lure restriction and night closure August 1 through November 30. Fishing from any floating device prohibited upstream of the Highway 530 Bridge at mile post 28.8 (Cicero Bridge). Fishing from any floating device equipped with a motor prohibited downstream from the Highway 530 Bridge. March 1 through November 30: All species: Release all fish except hatchery steelhead. April 16 through November 30 fly fishing only. December 1 through last day in February: Trout: Minimum length fourteen inches.

Stillaguamish River, South Fork (Snohomish County):

From mouth to four hundred feet downstream of the outlet to fishway at Granite Falls: June 1 through last day in February season. Nonbuoyant lure restriction and night closure August 1 through November 30. Trout: Minimum length fourteen inches.

From four hundred feet below the outlet of the end of the fishway to Mt. Loop Highway bridge above Granite Falls: Closed waters.

From Mt. Loop Highway Bridge above Granite Falls to source: June 1 through November 30 season. Nonbuoyant lure restriction and night closure August 1 through November 30.

Storm Lake (Snohomish County): Last Saturday in April through October 31 season.

Stratford/Brook Lake (Grant County): February 1 through September 30 season.

Stump Lake (Mason County): Last Saturday in April through October 31 season. Fishing from a floating device equipped with an internal combustion engine prohibited.

Suiattle River (Skagit County): Trout: Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches.

Sullivan Creek (Pend Oreille County), from Mill Pond upstream: Selective gear rules.

Sultan River (Snohomish County), from its mouth to a point four hundred feet downstream from the diversion dam at river mile 9.7: June 1 through last day in February season. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches.

Sultan River, North and South Forks (Snohomish County): Closed waters.

Summit Lake (Stevens County): Last Saturday in April through October 31 season.

Summit Lake (Thurston County): Last Saturday in April through October 31 season.

Sunday Creek (tributary to N.F. Snoqualmie River) (King County): Closed waters.

Sutherland Lake (Clallam County): Chumming permitted.

Swale Creek (Klickitat County): Trout: Release all trout.

Swamp Creek (tributary to Sammamish River) (Snohomish/King counties): Closed waters.

Swan Lake (Ferry County): Last Saturday in April through October 31 season.

Swan's Mill Pond (Stossel Creek) (King County): June 1 through October 31 season.

Swauk Creek (Kittitas County): Selective gear rules.

Swift Reservoir (Skamania County): Last Saturday in April through October 31 season. From posted markers below Eagle Cliff Bridge to Bridge: Selective gear rules except fishing from a floating device equipped with a motor is allowed. Salmon: Landlocked salmon rules apply.

Swofford Pond (Lewis County): Fishing from a floating device equipped with an internal combustion motor prohibited.

Tahuya River (Mason County): (~~Mouth to Bear Creek Dewatto Road crossing~~) Selective gear rules and release all fish except salmon. Salmon: Open only September 16 through October 31 mouth to marker one mile above North Shore Road Bridge. Daily limit 2 coho salmon.

(~~Bear Creek Dewatto Road crossing upstream~~ Selective gear rules and release all fish.)

Taneum Creek (Kittitas County): Selective gear rules.

Tanwax Lake (Pierce County): Last Saturday in April through October 31 season. Crappie: Daily limit ten, minimum length nine inches.

Tapps Lake (Reservoir) and Tapps Lake (Reservoir) intake canal (Pierce County), to within four hundred feet of the screen at Dingle Basin: Year-round season.

Tarboo Lake (Jefferson County): Last Saturday in April through November 30 season. Fishing from a floating device equipped with an internal combustion engine prohibited. Salmon: Landlocked salmon rules apply.

Tate Creek (tributary to N.F. Snoqualmie River) (King County): Closed waters.

Taylor River (tributary to the Middle Fork Snoqualmie) (King County): Selective gear rules. All species: Release all fish.

Teal Lakes (North and South) (Grant County): April 1 through September 30 season.

Teal Lake (Jefferson County): Last Saturday in April to August 31 season. Fishing from a floating device equipped

with an internal combustion engine prohibited. Additional September 1 through March 30 season. Selective gear rules. All species: Release all fish.

Teaway River, including North Fork (Kittitas County): Selective gear rules.

Tenas Lake (Mason County): Last Saturday in April through October 31 season.

Tennant Lake (Whatcom County): Fishing from any floating device prohibited from first Friday in October through January 15.

Terrell, Lake (Whatcom County): Fishing from any floating device prohibited the first Saturday after Labor Day through the following Friday and from October 1 through January 31 except fishing from floating dock permitted.

Thomas Lake (Stevens County): Last Saturday in April through October 31 season.

Thornton Creek (tributary to Lake Washington) (King County): Closed waters.

Thread Lake (Adams County): April 1 through September 30 season.

Tibbetts Creek (tributary to Lake Sammamish) (King County): Closed waters.

Tieton River (Yakima County): Lawful to fish to base of Tieton (Rimrock) Dam. Additional December 1 through March 31 season: Whitefish gear rules apply.

Tieton River, North Fork (Yakima County), upstream from Rimrock Lake: Closed waters: Spillway channel. June 1 through August 15 season.

Tieton River, South Fork (Yakima County): From mouth to bridge on USFS Rd. 1070 (approximately 12.5 miles): Closed waters.

Tiger Lake (Kitsap/Mason counties): Last Saturday in April through October 31 season.

Tilton River (Lewis County), from mouth to West Fork: June 1 through March 31 season. Trout: Daily limit five, no more than one over twelve inches in length. Release cutthroat. Salmon: Open only June 1 through December 31. Daily limit 6 fish of which no more than 2 may be adult fish. Release wild coho.

Tilton River, East, North, South and West Forks (Lewis County): Selective gear rules. Trout: Minimum length twelve inches.

Toad Lake (Whatcom County): Last Saturday in April through October 31 season.

Tokul Creek (King County):

From mouth to the posted cable boundary marker located approximately seven hundred feet upstream of the mouth: December 1 through last day in February season, closed 5:00 p.m. to 7:00 a.m. daily. Nonbuoyant lure restriction. Trout: Minimum length fourteen inches.

From the posted cable boundary marker located approximately seven hundred feet upstream of the mouth to the railroad trestle: Closed waters.

Tolt River (King County):

From mouth to the USGS trolley cable near the confluence of the North and South Forks: June 1 through last day in February season. June 1 through November 30, selective gear rules. Trout: Minimum length fourteen inches.

From the USGS trolley cable to the falls in Sec. 21, Twp 26N., R 8 E. on the North Fork, and to the dam on the South Fork: Closed waters.

From falls upstream on North Fork: Selective gear rules. All species: Release all fish.

From dam upstream on South Fork: Selective gear rules. Trout: Minimum length ten inches.

Touchet River (Columbia/Walla Walla counties):

From confluence of north and south forks upstream, including Robinson and Wolf Forks: Selective gear rules. Trout: Release all steelhead. Bass: No minimum or maximum size. No more than three bass over fifteen inches in length may be retained. Tributaries other than North Fork, South Fork, Robinson Fork, and Wolf Fork: Closed waters.

North Fork: Upstream of Spangler Creek June 1 through August 31 season.

South Fork: Upstream from Griffin Creek June 1 through August 31 season.

Wolf Fork: Upstream from Coates Creek June 1 through August 31 season.

From mouth to confluence of north and south forks: Additional season: November 1 through April 15. Barbless hooks required. All species: Release all fish except hatchery steelhead and brown trout. Trout: Daily limit three fish.

Toutle River (Cowlitz County):

From mouth to forks, and North Fork from the mouth to the posted deadline below the fish collection facility: June 1 through November 30 season. Nonbuoyant lure restriction and night closure September 1 through October 15 on North Fork from confluence with South Fork to mouth of Green River. All game fish: Release all fish except hatchery steelhead. Salmon: Open only August 1 through November 30. Daily limit 6 fish of which no more than ~~2~~ 2 may be adult salmon (~~and of the adult salmon not more than 2 may be adult chinook salmon~~). Release chum and wild coho. Release all chinook October 1 through November 30 in North Fork upstream from Kidd Valley Bridge.

From the posted deadline below the fish collection facility upstream to the headwaters, including all tributaries, but excepting Castle and Coldwater Lakes: Closed waters.

Toutle River, South Fork (Cowlitz County), mouth to source: Closed waters: All tributaries. June 1 through November 30 season. All species: Release all fish except hatchery steelhead. Trout: Minimum length twenty inches. Mouth to 4100 Road Bridge: Additional December 1 through March 31 season. Selective gear rules. All species: Release all fish except hatchery steelhead.

Trapper Lake (Chelan County): Trout: Daily limit two.

Trout Creek (tributary to Wind River) (Skamania County): Closed waters.

Trout Lake (Ferry County): Last Saturday in April through October 31 season.

Trout Lake (tributary to Big White Salmon River) (Klickitat County): June 1 through October 31 season.

Tucannon River (Columbia/Walla Walla counties): Closed waters: All tributaries.

From the mouth upstream to Turner Road Bridge: Additional November 1 through April 15 season. Barbless hooks required. All species: Release all fish except hatchery steelhead and whitefish. Trout: Daily limit three hatchery steelhead.

From the Turner Road Bridge upstream to the Tucannon Hatchery Bridge: Selective gear rules June 1 through October 31. Additional season November 1 through April 15. Barbless hooks required. All species: Release all fish except hatchery steelhead and whitefish. Trout: Daily limit three hatchery steelhead.

From the Tucannon Hatchery Bridge upstream to 500 feet above the Rainbow Lake intake: Closed waters.

From 500 feet above the Rainbow Lake intake to the Cow Camp Bridge: Selective gear rules. Release steelhead.

From Cow Camp Bridge upstream: Closed waters.

Tucquala Lake (Kittitas County): June 1 through October 31 season.

Tunnel Lake (Skamania County): Trout: No more than 2 trout 20 inches in length or greater may be retained.

Twin Lake (Jefferson County): Last Saturday in April through October 31 season.

Twin Lakes (Chelan County) and tributaries and outlet stream to junction with the Napeequa River: Closed waters.

Twisp River (Okanogan County), from mouth to War Creek: June 1 through September 30 season. Selective gear rules. All species: Release all fish. War Creek to South Fork Twisp River: Closed waters.

Tye River (King County): Foss River to Alpine Falls June 1 through October 31 season: Selective gear rules. Trout: Minimum length fourteen inches. Whitefish: Additional November 1 through last day in February season. Release all fish other than whitefish. From Alpine falls upstream: Trout: Minimum size ten inches.

U Lake (Mason County): Last Saturday in April through October 31 season.

Umtanum Creek (Kittitas County): Selective gear rules.

Uncle John Creek (Mason County): Closed waters.

Union Creek (Yakima County): From mouth upstream to falls (approximately 1/4 mile): Closed waters.

Union River (Mason County): Mouth to North Shore Road Bridge. All species: Release all fish except sturgeon.

From North Shore Road Bridge to lower bridge on Old Belfair Highway: June 1 through August 15 season. Selective gear rules. All species: Release all fish except sturgeon.

From lower bridge on Old Belfair Highway upstream to watershed boundary: Selective gear rules. All species: Release all fish except sturgeon.

From watershed boundary to source, including all tributaries: Closed waters.

Upper Wheeler Reservoir (Chelan County): Closed waters.

Valley Creek (Clallam County): Juveniles only.

Vance Creek (Mason County): Trout: Minimum length fourteen inches.

Vance Creek/Elma Ponds (Grays Harbor County): Pond One: Last Saturday in April through November 30 season. Juveniles, holders of a senior license and holders of a department disability license only. Salmon: Landlocked salmon rules apply. Pond Two: Last Saturday in April through November 30 season. Salmon: Landlocked salmon rules apply.

Vancouver Lake and all other waters west of Burlington-Northern Railroad from Columbia River drawbridge near Vancouver downstream to Lewis River (Clark County): Closed waters: April 1 through May 30 the Vancouver Lake flushing channel is closed and it is closed to fishing from the lake shoreline within 400 feet east and west of the channel exit. Chumming permitted. Trout: Daily limit two, minimum length twelve inches.

Vanes Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Van Winkle Creek (Grays Harbor County): Mouth to 400 feet below outlet of Lake Aberdeen Hatchery: Game fish: Minimum length 14 inches. Salmon: Open only September 1 through January 31. Daily limit 6 fish of which not more than 2 may be adult fish. Release chum, adult chinook and wild adult coho.

Vic Meyers (Rainbow) Lake (Grant County): Last Saturday in April through September 30 season.

Vogler Lake (Skagit County): Last Saturday in April through October 31 season. Fly fishing only. All species: Release all fish.

Voight Creek (Pierce County): From mouth to Highway 162 Bridge: Closed waters.

Wagners Lake (Snohomish County): Last Saturday in April through October 31 season.

Wahkiacus Creek (Klickitat County): Trout: Release all trout.

Waitts Lake (Stevens County): Last Saturday in April through last day in February season.

Walker Lake (King County): Last Saturday in April through October 31 season.

Wallace River (Snohomish County):

From its mouth to 200 feet upstream of the water intake of the salmon hatchery: June 1 through last day in February season. Closed waters: From the first Burlington-Northern Railroad bridge (below Highway 2) to a point two hundred

feet upstream of the water intake of the salmon hatchery during the period June 1 through August 31. Fishing from any floating device prohibited November 1 through last day in February. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Salmon: Open only September 1 through November 30. Daily limit 2 coho.

From 200 feet upstream of the water intake of the salmon hatchery to mouth of Olney Creek: November 1 through last day in February season. Fishing from any floating device prohibited. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches.

Walla Walla River (Walla Walla County):

From mouth to the Touchet River: Year-round season. Trout: Barbless hooks required when fishing for steelhead. Trout: Release trout April 1 through May 31. Daily limit three hatchery steelhead. Bass: No minimum or maximum size. No more than three fish over fifteen inches in length may be retained.

From the Touchet River upstream to state line: Trout: All tributaries except Mill Creek, maximum length twenty inches. Bass: No minimum or maximum size. No more than three fish over fifteen inches in length may be retained. Additional season November 1 through April 15. All species: Barbless hooks required and release all fish except hatchery steelhead. Trout: Daily limit three hatchery steelhead.

Walupt Lake (Lewis County): Closed waters: All inlet streams. Last Saturday in April through October 31 season. Selective gear rules except fishing from devices equipped with motors permitted. Trout: Minimum length ten inches.

Wannacut Lake (Okanogan County): Last Saturday in April through October 31 season.

Wapato Lake (Chelan County): Last Saturday in April through October 31 season. Trout: Release all trout. From August 1 through October 31: Selective gear rules except fishing from a device equipped with an internal combustion engine permitted.

Wapato Lake (Pierce County): Juveniles only.

Ward Lake (Ferry County): Last Saturday in April through October 31 season.

Ward Lake (Thurston County): Last Saturday in April through October 31 season.

Warden Lake and Warden Lake, South (Grant County): Last Saturday in April through September 30 season.

Washburn Island Pond (Okanogan County): April 1 through September 30 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Washburn Lake (Okanogan County): Last Saturday in April through October 31 season. Trout: Daily limit two.

Washington, Lake, including that portion of the Sammamish River from the 68th Avenue N.E. Bridge downstream (King

County): Fishing from floating device prohibited one hundred yards either side of the floating bridges. Chumming permitted. Trout: December 1 through last day in February, daily limit 5, no minimum length. Release steelhead and rainbow trout over twenty inches in length. March 1 through June 30, daily limit 5, minimum length twelve inches. Release steelhead and rainbow trout over twenty inches in length. Kokanee/sockeye under fifteen inches are kokanee while those fifteen inches and over are sockeye salmon. Salmon: Open only September 16 through October 31 north of Highway 520 Bridge and east of Montlake Bridge. Daily limit two coho salmon.

Washington, Lake, Ship Canal (King County) (waters east of a north-south line 400 feet west of the fish ladder at the Chittenden Locks and west of a north-south line at the eastern ends of the concrete abutments east of the Montlake Bridge): West of Fremont Bridge: Fishing from floating device prohibited. East of Fremont Bridge: Chumming permitted.

From west boundary to a north-south line 400 feet east of the eastern end of the northern wing wall of Chittenden Locks: Closed waters.

From 400 feet east of the eastern end of the northern wing wall of Chittenden Locks to the east boundary: Open year-round. Trout: December 1 through last day in February daily limit five, no minimum length. Release steelhead and rainbow trout over twenty inches in length. March 1 through June 30, daily limit five, minimum length twelve inches. Release steelhead and rainbow trout over twenty inches in length. July 1 through November 30, daily limit five, no minimum length. Kokanee/sockeye less than fifteen inches in length are kokanee and fifteen inches and over in length are sockeye salmon.

Washougal River (Clark County):

From mouth to bridge at Salmon Falls: June 1 through March 15 season. Nonbuoyant lure restriction, night closure and stationary gear restriction September 1 through October 31. Trout: Release all trout except up to 2 hatchery steelhead per day may be retained. Salmon: Open only August 1 through March 15. Daily limit 6 fish of which no more than ~~((3-2))~~ 2 may be adult salmon ~~((and of the adult salmon not more than 2 may be adult chinook salmon))~~. Release chum and wild coho. Upstream of Little Washougal River, release chinook October 1 through ~~((December 31))~~ November 30.

From mouth to Mt. Norway Bridge: Additional April 16 through May 31 season. Selective gear rules. Trout: Release all trout except up to 2 hatchery steelhead per day may be retained.

From bridge at Salmon Falls to its source, including tributaries: Closed waters.

Washougal River, West (North) Fork (Clark/Skamania counties):

From mouth to the water intake at the department hatchery: Closed waters.

From intake at department hatchery to source: June 1 through March 15 season. Trout: Release all trout except up to 2 hatchery steelhead per day may be retained.

Watson Lake (Columbia County): March 1 through October 31 season. Fishing from any floating device prohibited.

Waughop Lake (Pierce County): Salmon: Landlocked salmon rules apply.

Wenas Lake (Yakima County): Trout: Daily limit five, of which not more than two may be brown trout.

Wenaha River tributaries within Washington: June 1 through August 31 season.

Wenatchee Lake (Chelan County): Selective gear rules except fishing from a floating device equipped with a motor allowed. Trout except kokanee: Daily limit two, minimum length twelve inches. Release kokanee. Kokanee/sockeye under sixteen inches will be considered kokanee while those sixteen inches and over will be considered sockeye salmon.

Wenatchee River (Chelan County):

December 1 through March 31 season, from mouth to Highway 2 Bridge at Leavenworth only. Whitefish gear rules apply.

West Twin River (Clallam County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Whatcom Creek (Whatcom County):

From mouth to stone bridge at Whatcom Falls Park: June 1 through last day in February season. Nonbuoyant lure restriction and night closure August 1 through December 31. Closed waters: Woburn Street Bridge upstream to the stone bridge. Trout: Minimum length fourteen inches. Salmon: Open only August 1 through December 31 from mouth to markers below Dupont Street. Daily limit 6 fish of which not more than 2 may be adult salmon.

From stone bridge at Whatcom Falls Park upstream to Lake Whatcom: Last Saturday in April through October 31 season. Juveniles only. Nonbuoyant lure restriction and night closure August 1 through October 31. Trout: No minimum length.

Whatcom, Lake (Whatcom County): Last Saturday in April through October 31 season, except those waters between the Electric Avenue Bridge and the outlet dam are closed waters: Trout: Release cutthroat trout.

Whatcom, Lake, tributaries (Whatcom County): Closed waters.

Wheeler Creek (Klickitat County): Trout: Release all trout.

White River (Chelan County), from mouth upstream to White River Falls: Closed waters.

White (Stuck) River (Pierce County):

From mouth to R Street Bridge in Auburn: October 1 through last day in February season: Nonbuoyant lure restriction and night closure October 1 through November 30. Trout: Minimum length fourteen inches.

From R Street Bridge to Highway 410 Bridge at Buckley: October 1 through October 31 season. Closed waters: Puget Power canal, including the screen bypass channel, above the screen at Dingle Basin. Nonbuoyant lure restriction and night closure. Trout: 14 inch minimum size.

From the Weyerhaeuser 6000 Road Bridge (Bridge Camp) to its source: Nonbuoyant lure restriction and night closure October 1 through November 30. Whitefish: Additional November 1 through January 31 season. Release all fish except whitefish.

Whitechuck River (Snohomish County): Trout: Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches.

White Salmon River (Klickitat/Skamania counties):

From mouth to powerhouse: Open year-round. Bank fishing only downstream from the Highway 14 Bridge. August 1 through December 31: Nonbuoyant lure restriction. Trout: Minimum length fourteen inches. Salmon and steelhead: Open April 1 through June 30, daily limit two fish, one or both of which may be salmon or hatchery steelhead. Release all fish except salmon or hatchery steelhead. Salmon: Open July 1 through March 31. Daily limit 6 fish of which no more than 2 may be adult salmon. October 1 through December 31 release chinook upstream from posted markers upstream of Highway 14 Bridge.

From powerhouse to within four hundred feet of Northwestern Dam: November 16 to April 30 season except salmon and steelhead. Trout: Minimum length fourteen inches. ~~((Release trout April 1 through April 30.))~~ Release trout April 1 through April 30. Salmon: Open November 16 through March 31. Daily limit 6 fish of which no more than 2 may be adult salmon. November 16 through December 31 release chinook. Salmon and steelhead: Open April 1 through June 15, daily limit two fish, one or both of which may be salmon or hatchery steelhead. Release all fish except salmon or hatchery steelhead.

From gas pipeline crossing above Northwestern Lake to Gilmer Creek: Selective gear rules. Trout: Minimum length twelve inches.

Wide Hollow Creek (Yakima County): Trout: Daily limit five, no minimum length.

Widgeon Lake (Grant County): April 1 through September 30 season.

Wildberry Lake (Mason County): Last Saturday in April through October 31 season.

Wildcat Lake (Kitsap County): Last Saturday in April through October 31 season.

Wilderness Lake (King County): Last Saturday in April through October 31 season. Salmon: Landlocked salmon rules apply.

Willame Lake (Lewis County): Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit two, minimum length fifteen inches.

Willapa River (Pacific County): Mouth to Fork Creek: June 1 through March 31 season, except sturgeon. Night closure, single point barbless hooks, and stationary gear restriction August 16 through November 30 mouth to Fork Creek. November 1 through March 31 fishing from any floating device prohibited from the bridge on Willapa Road to Fork Creek.

All game fish: Release all fish except that up to two hatchery steelhead may be retained. Salmon: Open only August 1 through January 31 from mouth to Highway 6 Bridge approximately 2 miles below mouth of Trap Creek and open October 16 through January 31 from Highway 6 Bridge to Fork Creek. Daily limit 6 fish of which no more than 3 may be adult salmon and of the adult salmon not more than one may be a wild adult coho and not more than two may be adult chinook and not more than two may be chum.

Sturgeon: Open year-round from mouth to Highway 6 Bridge.

Upstream from Fork Creek: Selective gear rules. August 16 through October 31, nonbuoyant lure restriction and night closure. All species: Release all fish.

South Fork: June 1 through last day in February season. Nonbuoyant lure restriction and night closure August 16 through November 30. All species: Release all fish except up to two hatchery steelhead may be retained.

Williams Creek (Pacific County): June 1 through last day in February season. Selective gear rules. All species: Release all fish.

Williams Lake (Spokane County): Last Saturday in April through September 30 season.

Williams Lake (Stevens County): December 1 through March 31 season.

Wilson Creek (two branches within Ellensburg city limits) (Kittitas County): Open year-round. Juveniles only. Trout: Daily limit five, no minimum length.

Winchester Wasteway (Grant County): Within Winchester Game Reserve: February 1 through September 30 season.

Wind River (Skamania County):

Mouth to four hundred feet below Shipherd Falls: July 1 through March 15 season, except salmon and steelhead. May 1 through June 30: Nonbuoyant lure restriction and night closure. August 1 through October 31: Nonbuoyant lure restriction. Salmon and steelhead: Open (~~May 1~~ ~~March 16~~) March 16 through June 30 daily limit 2 fish, one or both of which may be a salmon or hatchery steelhead. Release all fish except salmon and hatchery steelhead. Trout: Minimum length fourteen inches. Salmon: Open August 1 through October 31. Daily limit 6 fish of which no more than 2 may be adult salmon. Release chinook from Burlington-Northern Railroad Bridge upstream.

From four hundred feet below to one hundred feet above Shipherd Falls fish ladder: Closed waters.

From one hundred feet above Shipherd Falls to source, including all tributaries: May 1 through June 30 season. Closed waters: From 400 feet below to 100 feet above the Coffey Dam and from a boundary marker approximately 800 yards downstream from Carson National Fish Hatchery upstream, including all tributaries. Night closure and nonbuoyant lure restriction. Salmon and steelhead: Daily limit 2 fish, one or both of which may be a salmon or hatchery steelhead. Release all fish except salmon and hatchery steelhead.

Winston Creek (tributary to Cowlitz River) (Lewis County): Selective gear rules. Trout: Minimum length ten inches.

Wishkah River (Grays Harbor County), including all forks: Closed waters: Mainstem from four hundred feet below outlet of dam at Wishkah Rearing Ponds (formerly Mayr Bros.) to dam. Trout: Minimum length fourteen inches. Release wild cutthroat. Mouth to West Fork: June 1 through March 31 season. Single point barbless hooks required August 16 through November 30. Selective gear and all species: Release all fish except up to two hatchery steelhead may be retained per day, March 1 through March 31. Salmon: Open only October 1 through November 30 from mouth to West Fork. Daily limit 6 fish of which no more than 2 may be adult salmon. Release adult chinook.

From the West Fork to four hundred feet below outlet: June 1 through March 31 season. Trout: Minimum length fourteen inches.

Wolf Creek, mouth to mouth of south fork (Okanogan County): Closed waters.

Wood Lake (Mason County): Last Saturday in April through October 31 season.

Woodland Creek (Thurston County): Trout: Minimum length fourteen inches.

Wooten Lake (Mason County): Last Saturday in April through October 31 season.

Wye Lake (Kitsap County): Last Saturday in April through October 31 season.

Wynoochee River (Grays Harbor County): Trout: Minimum length fourteen inches. Mouth to 7400 line bridge above mouth of Schafer Creek: June 1 through March 31 season. Single point barbless hooks required August 16 through November 30. Salmon: Open only October 1 through January 31. Daily limit 6 fish of which no more than 2 may be adult salmon, except daily limit may contain no more than 1 wild adult coho December 1 through January 31. Release adult chinook.

7400 line bridge upstream: (~~Selective gear rules.~~) Selective gear rules. Additional December 1 through March 31 season. (~~Selective gear rules.~~) Fishing from a floating device prohibited. All species: Release all fish except up to two hatchery steelhead may be retained.

Wynoochee Reservoir (Grays Harbor County): June 1 through October 31 season. Trout: Daily limit two, minimum length twelve inches. Salmon: Landlocked salmon rules apply.

Yakima River (Yakima County): Release all steelhead in mainstem and tributaries. Channel catfish: No daily limit.

From mouth to Prosser Dam: Chumming permitted. Salmon: Open only September 1 through October 22. Daily limit 6 fish of which not more than 2 may be adult salmon. Nonbuoyant lure restriction and night closure.

From mouth to Highway 223 Bridge: Bass: No daily limit of bass under 12 inches in length. Release bass 12 to 17 inches in length. Unlawful to retain more than one bass per day greater than 17 inches in length.

From Highway 223 Bridge to 400 feet below Sunnyside Dam: Salmon: Open only September 1 through October 22.

Daily limit 6 fish of which not more than 2 may be adult salmon. Nonbuoyant lure restriction and night closure.

From mouth to thirty-five hundred feet below Roza Dam: Year-round season. Closed waters: From Yakima Avenue-Terrace Heights Bridge upstream 400 feet. March 1 through November 30, closed from thirty-five hundred feet below Roza Dam to Roza Dam. Trout: Minimum length twelve inches and maximum length twenty inches. Release all trout April 1 through May 31. Thirty-five hundred feet below Roza Dam to four hundred feet below Roza Dam: December 1 through last day in February season. Whitefish gear rules apply.

From Roza Dam to four hundred feet below Easton Dam and from Lake Easton to the base of Keechelus Dam: Year-round season. Fishing from floating devices equipped with motors allowed only from the U.S. Bureau of Reclamation restricted area signs at Roza Dam upstream to the boat launch ramp on the Roza Access Area (approximately one-half mile). Selective gear rules except bait and one single point barbed hook three-sixteenths or smaller point to shank may be used December 1 through last day in February. Trout: From Roza Dam to 400 feet below Easton Dam: Release all trout. Lake Easton to the base of Keechelus Dam. Release all trout except eastern brook trout. Eastern brook trout: No daily limit and no minimum size.

Yakima Sportsmen's Park Ponds (Yakima County): Juveniles only.

Yale Reservoir (Cowlitz County): Trout: Kokanee not counted in daily trout limit. Kokanee daily limit sixteen.

Yellowjacket Creek (tributary to Cispus River) (Lewis County): Selective gear rules. Trout: Minimum length twelve inches.

Yellowjacket Ponds (Lewis County): Last Saturday in April through last day in February season. Trout: No more than one over twelve inches in length.

Yokum Lake (Pend Oreille County): Last Saturday in April through October 31 season.

WSR 05-03-006

PERMANENT RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed January 6, 2005, 9:16 a.m., effective February 6, 2005]

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

Purpose: To eliminate any confusion regarding the use of the term "school year."

Citation of Existing Rules Affected by this Order: Amending WAC 415-112-541.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.32.570.

Adopted under notice filed as WSR 04-18-062 on August 27, 2004.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 4, 2005.

John Charles

Director

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-112-541 How will returning to work affect my TRS Plan 1 monthly pension? This section implements RCW 41.32.570, which limits employment for TRS Plan 1 retirees with public educational institutions to fifteen hundred hours regardless of the nature of service.

(1) You may return to any type of service with a public education institution for up to fifteen hundred hours per ((school)) fiscal year as defined in ((WAC 415-112-015)) RCW 41.32.010(12) without affecting your TRS Plan 1 monthly pension under RCW 41.32.570, provided you have been retired from service for one full calendar month (see WAC 415-112-520 and 415-112-525 for more information).

(a) Your employer must notify the department when you return to work. Your employer must report hours and compensation.

(b) If you are a TRS Plan 1 retiree and you work more than fifteen hundred hours during a fiscal year, the department will suspend your monthly pension. The pension is suspended until the first of the next fiscal year or termination of your employment, whichever comes first.

(c) The TRS Plan 1 limits will be applied to retirees from both TRS Plan 1 and a Plan 2 or 3 in another pension plan.

(d) The TRS Plan 1 limits will be applied to retirees from both TRS Plan 1 and PERS Plan 1.

(e) If you are a TRS Plan 1 retiree working for a public education institution as a bona fide independent contractor as determined under WAC 415-02-110, you are not considered an employee of the institution and are not subject to the work limitations.

(2) If the department suspends your benefit because of your reemployment, the department will reinstate the original amount of your pension, less deductions to recover any overpayment, effective the day following your termination of employment, or at the beginning of the next fiscal year, whichever comes first.

(3) You must repay any monthly pension payment that you receive in excess of the amounts allowed under this section.

(4) You may choose to return to membership if you are employed by a public education institution and are otherwise

eligible. Membership will be prospective from the month in which you opt into membership.

(5) Defined terms used. Definitions for the following term used in this section may be found in the section listed.

Public educational institution: WAC 415-112-015.

WSR 05-03-009
PERMANENT RULES
DEPARTMENT OF HEALTH
 (Board of Physical Therapy)

[Filed January 6, 2005, 10:57 a.m., effective February 6, 2005]

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

Purpose: The proposed rule allows the board to waive reexamination and to impose any other requirements necessary to ensure professional competence before allowing the practitioner to reinstate their license to practice. In addition, the proposed rule changes the current title of the rule from "Expired license" to "Reinstatement." The change better describes the intent of the section.

Citation of Existing Rules Affected by this Order: Amending WAC 246-915-050 Reinstatement.

Statutory Authority for Adoption: RCW 18.74.023.

Adopted under notice filed as WSR 04-20-068 on October 4, 2004.

A final cost-benefit analysis is available by contacting Kris Waidely, P.O. Box 47868, Tumwater, WA 98501, phone (360) 236-4847, fax (360) 664-9077, e-mail kris.waidely@doh.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: November 16, 2004.

Sam Stockton, PT, Chair
 Board of Physical Therapy

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-915-050 ((Expired license.)) Reinstatement. (1) If the license has expired for three years or less, the practitioner must meet the requirements of chapter 246-12 WAC, Part 2.

(2) If the license has expired for over three years, and the practitioner has been in active practice in another United States jurisdiction, the practitioner must:

(a) Submit verification of active practice from any other United States jurisdiction;

(b) Meet the requirements of chapter 246-12 WAC, Part 2.

(3) If the license has expired for over three years, and the practitioner has not been in active practice in another United States jurisdiction, the practitioner must:

~~(a) Successfully pass the examination as provided in RCW 18.74.035. The board may waive reexamination in favor of evidence of continuing competency satisfactory to the board;~~

~~(b) Must meet the requirements of chapter 246-12 WAC, Part 2))~~ meet the requirements of chapter 246-12 WAC, Part 2. Before recommending reinstatement, the board may require reexamination and may impose any other requirements necessary to ensure professional competence and protect the public.

WSR 05-03-031
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket No. UT 040015, General Order No. R-516—Filed January 10, 2005, 10:36 a.m., effective February 10, 2005]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-04 issue of the Register.

WSR 05-03-033
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 03-07—Filed January 10, 2005, 1:35 p.m., effective February 10, 2005]

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

Purpose: The purpose of the rule is to update the state rule to conform to recent federal regulatory changes with respect to new source review (NSR) and to fix problems, including problems identified as deficiencies in the state [state] implementation plan, found with our existing rules.

Citation of Existing Rules Affected by this Order: Repealing 1 [WAC 173-400-141]; and amending 15 [WAC 173-400-030, 173-400-040, 173-400-050, 173-400-060, 173-400-070, 173-400-075, 173-400-099, 173-400-100, 173-400-102, 173-400-104, 173-400-105, 173-400-110, 173-400-112, 173-400-113, 173-400-115, 173-400-116, 173-400-117, 173-400-118, 173-400-120, 173-400-131, 173-400-136, 173-400-151, 173-400-171, and 173-400-200].

Statutory Authority for Adoption: RCW 70.94.152.

Adopted under notice filed as WSR 04-20-105 on October 5, 2004.

Changes Other than Editing from Proposed to Adopted Version: Besides editing changes there are two differences

between the proposal and the final rule. These are the repeal of the proposal in WAC 173-400-035 and 173-400-107. Both of these sections will retain the existing text.

A final cost-benefit analysis is available by contacting Tom Todd, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7528, fax (360) 407-7534, e-mail ttod461@ecy.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 15, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 15, Repealed 1.

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

Date Adopted: January 10, 2005.

Linda Hoffman
Director

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-030 Definitions. Except as provided elsewhere in this chapter, the following definitions apply throughout the chapter:

(1) **"Actual emissions"** means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. Ecology or an authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) Ecology or an authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

(2) **"Adverse impact on visibility"** is defined in WAC 173-400-117.

(3) **"Air contaminant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

(4) **"Air pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

(5) **"Allowable emissions"** means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as in 40 CFR Part 60 ((~~60~~)), 61, 62, or 63;

(b) Any applicable SIP emissions limitation including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable ((~~permit~~)) approval condition, including those with a future compliance date.

(6) **"Ambient air"** means the surrounding outside air.

(7) **"Ambient air quality standard"** means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air which shall not be exceeded.

(8) **"Approval order"** is defined in "order of approval."

(9) **"Attainment area"** means a geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

(10) **"Authority"** means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(11) **"Begin actual construction"** means, in general, initiation of physical on-site construction activities on an emission unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(12) **"Best available control technology (BACT)"** means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR

Part 60 and Part 61. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

(13) **"Best available retrofit technology (BART)"** means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(14) **"Bubble"** means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70.94.155 and WAC 173-400-120.

(15) **"Capacity factor"** means the ratio of the average load on equipment or a machine for the period of time considered, to the manufacturer's capacity rating of the machine or equipment.

(16) **"Class I area"** means any area designated under section 162 or 164 of the Federal Clean Air Act as a Class I area. The following areas are the Class I areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park;
- (h) Pasayten Wilderness; and
- (i) Spokane Indian Reservation.

(17) **"Combustion and incineration units"** means units using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes ~~((open))~~ outdoor burning.

(18)(a) ~~((Commenced))~~ **"Commence"** as applied to construction, means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

- (i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- (ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(b) For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and

regulations, including state, local and federal regulations and orders contained in the SIP.

(19) **"Concealment"** means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

(20) **"Criteria pollutant"** means a pollutant for which there is established a National Ambient Air Quality Standard at 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O₃) sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

(21) **"Director"** means director of the Washington state department of ecology or duly authorized representative.

(22) **"Dispersion technique"** means a method which attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

(23) **"Ecology"** means the Washington state department of ecology.

(24) **"Emission"** means a release of air contaminants into the ambient air.

(25) **"Emission reduction credit (ERC)"** means a credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in emissions.

(26) **"Emission standard"** and **"emission limitation"** means a requirement established under the Federal Clean Air Act or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment work practice, or operational standard adopted under the Federal Clean Air Act or chapter 70.94 RCW.

(27) **"Emission threshold"** means an emission of a listed air contaminant at or above the following rates:

<u>Air Contaminant</u>	<u>Annual Emission Rate</u>
<u>Carbon monoxide:</u>	<u>100 tons per year (tpy)</u>
<u>Nitrogen oxides:</u>	<u>40 tpy</u>
<u>Sulfur dioxide:</u>	<u>40 tpy</u>
<u>Particulate matter (PM):</u>	<u>25 tpy of PM emissions</u>
	<u>15 tpy of PM-10 emissions</u>
<u>Volatile organic compounds:</u>	<u>40 tpy</u>
<u>Fluorides:</u>	<u>3 tpy</u>
<u>Lead:</u>	<u>0.6 tpy</u>
<u>Sulfuric acid mist:</u>	<u>7 tpy</u>
<u>Hydrogen sulfide (H₂S):</u>	<u>10 tpy</u>
<u>Total reduced sulfur (including H₂S):</u>	<u>10 tpy</u>
<u>Reduced sulfur compounds (including H₂S):</u>	<u>10 tpy</u>

(28) **"Emissions unit" or "emission unit"** means any part of a stationary source or source which emits or would have the potential to emit any pollutant subject to regulation

under the Federal Clean Air Act, chapter 70.94 or 70.98 RCW.

((28)) (29) "Excess emissions" means emissions of an air pollutant in excess of any applicable emission standard.

((29)) (30) "Excess stack height" means that portion of a stack which exceeds the greater of sixty-five meters or the calculated stack height described in WAC 173-400-200(2).

((30)) (31) "Existing stationary facility (FACILITY)" is defined in WAC 173-400-151.

((31)) (32) "Federal Clean Air Act (FCAA)" means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

((32)) (33) "Federal Class I area" means any federal land that is classified or reclassified Class I. The following areas are federal Class I areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park; and
- (h) Pasayten Wilderness.

((33)) (34) "Federal land manager" means the secretary of the department with authority over federal lands in the United States. This includes, but is not limited to, the U.S. Department of the Interior - National Park Service, the U.S. Department of the Interior - U.S. Fish and Wildlife Service, the U.S. Department of Agriculture - Forest Service, and/or the U.S. Department of the Interior - Bureau of Land Management.

((34)) (35) "Federally enforceable" means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61, 62 and ((61)) 63, requirements established within the Washington SIP, requirements within any approval or order established under 40 CFR 52.21 or under a SIP approved new source review regulation, ((including operating permits issued under chapter 173-401 WAC and expressly requires adherence to any permit issued under these programs)) and emissions limitation orders issued under WAC 173-400-091.

((35)) (36) "Fossil fuel-fired steam generator" means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

((36)) (37) "Fugitive dust" means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

((37)) (38) "Fugitive emissions" means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

((38)) (39) "General process unit" means an emissions unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

((39)) (40) "Good engineering practice (GEP)" refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

((40)) (41) "Incinerator" means a furnace used primarily for the thermal destruction of waste.

((41)) (42) "In operation" means engaged in activity related to the primary design function of the source.

((42)) (43) "Lowest achievable emission rate (LAER)" means for any source that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source.

In no event shall the application of this term ((permit)) allow a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable New Source Performance Standards.

((43)) (44) "Mandatory Class I federal area" means any area defined in Section 162(a) of the Federal Clean Air Act. The following areas are the mandatory Class I federal areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park; and
- (h) Pasayten Wilderness;

((44)(a)) "Major modification," as it applies to sources subject to requirements for new sources in nonattainment areas, is defined in WAC 173-400-112.

(b) "Major modification," as it applies to sources subject to requirements for new sources in attainment or unclassified areas, is defined in WAC 173-400-113.

((45)(a)) "Major stationary source," as it applies to sources subject to requirements for new sources in nonattainment areas, is defined in WAC 173-400-112.

(b) "Major stationary source," as it applies to sources subject to requirements for new sources in attainment or unclassified areas, is defined in WAC 173-400-113.

((46)) (45) "Masking" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

((47)) (46) "Materials handling" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

((48)) (47) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition((s)) of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

~~((49))~~ (48) "**National Ambient Air Quality Standard (NAAQS)**" means an ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

~~((50))~~ (49) "**National Emission Standards for Hazardous Air Pollutants (NESHAPS)**" means the federal rules in 40 CFR Part 61.

~~((51))~~ (50) "**National Emission Standards for Hazardous Air Pollutants for Source Categories**" means the federal rules in 40 CFR Part 63.

~~((52))~~ (51) "**Natural conditions**" means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

~~((53)(a))~~ "**Net emissions increase**," as it applies to sources subject to requirements for new sources in nonattainment areas, is defined in WAC 173-400-112.

~~((53)(b))~~ "**Net emissions increase**," as it applies to sources subject to requirements for new sources in attainment or unclassified areas, is defined in WAC 173-400-113.

~~((54))~~ (52) "**New source**" means:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted; and

(b) Any other project that constitutes a new source under the Federal Clean Air Act.

~~((55))~~ (53) "**New Source Performance Standards (NSPS)**" means the federal rules in 40 CFR Part 60.

~~((56))~~ (54) "**Nonattainment area**" means a geographic area designated by EPA at 40 CFR Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

~~((57))~~ (55) "**Nonroad engine**" means:

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Federal Clean Air Act; or

(ii) The engine is regulated by a New Source Performance Standard promulgated under section 111 of the Federal Clean Air Act; or

(iii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than

twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

~~((58))~~ (56) "**Notice of construction application**" means a written application to ~~((permit))~~ allow construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source.

~~((59))~~ (57) "**Opacity**" means the degree to which an object seen through a plume is obscured, stated as a percentage.

~~((60))~~ (58) "~~((Open))~~ **Outdoor burning**" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Wood waste disposal in wigwam burners is not considered ~~((open))~~ outdoor burning.

~~((61))~~ (59) "**Order**" means any order issued by ecology or a local air authority pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, 70.94.154, and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

~~((62))~~ (60) "**Order of approval**" or "**approval order**" means a regulatory order issued by ~~((ecology or the))~~ a permitting authority to approve the notice of construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

~~((63))~~ (61) "**Ozone depleting substance**" means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

~~((64))~~ (62) "**Particulate matter**" or "**particulates**" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

~~((65))~~ (63) "**Particulate matter emissions**" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40, chapter I of the Code of Federal Regulations or by a test method specified in the SIP.

~~((66))~~ (64) "**Parts per million (ppm)**" means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

~~((67))~~ (65) "**Permitting ~~((agency))~~ authority**" means ecology or the local air pollution control authority with jurisdiction over the source.

~~((68))~~ (66) **"Person"** means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

~~((69))~~ (67) **"PM-10"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~((70))~~ (68) **"PM-10 emissions"** means finely divided solid or liquid material, including condensible particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

~~((71))~~ (69) **"Potential to emit"** means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

~~((72))~~ (70) **"Prevention of significant deterioration (PSD)"** means the program in WAC ~~((173-400-141))~~ 173-400-700 to 173-400-750.

~~((73))~~ (71) **"Projected width"** means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

~~((74))~~ (72) **"Reasonably attributable"** means attributable by visual observation or any other technique the state deems appropriate.

~~((75))~~ (73) **"Reasonably available control technology (RACT)"** means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

~~((76))~~ (74) **"Regulatory order"** means an order issued by ecology or ~~((an))~~ permitting authority to an air contaminant source which applies to that source, any applicable provision of chapter 70.94 RCW, or the rules adopted thereunder, or, for sources regulated by a local air authority, the regulations of that authority.

~~((77)(a))~~ (75) **"Significant,"** as it applies to sources subject to requirements for new sources in nonattainment areas, is defined in WAC 173-400-112.

~~(b)~~ **"Significant,"** as it applies to sources subject to requirements for new sources in attainment or unclassified areas, is defined in WAC 173-400-113.

~~(78))~~ (75) **"Secondary emissions"** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships or trains located at the new or modified major stationary source; and

(b) Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

(76) **"Source"** means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products. ~~((Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended.~~

~~(79))~~ (77) **"Source category"** means all sources of the same type or classification.

~~((80))~~ (78) **"Stack"** means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

~~((81))~~ (79) **"Stack height"** means the height of an emission point measured from the ground-level elevation at the base of the stack.

~~((82))~~ (80) **"Standard conditions"** means a temperature of 20° (68° F) and a pressure of 760 mm (29.92 inches) of mercury.

~~((83))~~ (81) **"State implementation plan (SIP)"** or **"Washington SIP"** means the Washington SIP in 40 CFR Part 52, subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

~~((84))~~ (82) **"Stationary source"** means any building, structure, facility, or installation which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216(11) of the Federal Clean Air Act.

~~((85))~~ (83) **"Sulfuric acid plant"** means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

~~((86))~~ (84) **"Synthetic minor"** means any source whose potential to emit has been limited below applicable

thresholds by means of a federally enforceable order, rule, or ((~~permit~~)) approval condition.

((~~87~~)) (85) "**Temporary source**" is a source of emissions (such as a nonroad engine) which is operated at a particular site for a limited period of time. A temporary source may or may not be a stationary source or a source as defined in subsections (78) and (83) of this section, respectively.

(86) "**Total reduced sulfur (TRS)**" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 in Appendix A to 40 CFR Part 60 or an approved equivalent method and expressed as hydrogen sulfide.

((~~88~~)) (87) "**Total suspended particulate**" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

((~~89~~)) (88) "**Toxic air pollutant (TAP)**" or "**toxic air contaminant**" means any Class A or B toxic air pollutant listed in WAC 173-460-150 and 173-460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 and/or 173-460-160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

((~~90~~)) (89) "**Unclassifiable area**" means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA at 40 CFR Part 81.

((~~91~~)) (90) "**United States Environmental Protection Agency (USEPA)**" shall be referred to as EPA.

((~~92~~)) (91) "**Visibility impairment**" means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

((~~93~~)) (92) "**Volatile organic compound (VOC)**" means any carbon compound that participates in atmospheric photochemical reactions.

(a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate; methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); perchlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); dif-

luoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4-nonafluorobutane (C₄F₉OC₂H₅); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane((CF₃)₂CFCF₂OC₂H₅); methyl acetate and perfluorocarbon compounds that fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by ecology, the authority, or EPA.

(c) As a precondition to excluding these negligibly-reactive compounds as VOC or at any time thereafter, ecology or the authority may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of ecology or the authority, the amount of negligibly-reactive compounds in the source's emissions.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-040 General standards for maximum emissions. All sources and emissions units are required to meet the emission standards of this chapter. Where an emission standard listed in another chapter is applicable to a specific emissions unit, such standard will take precedent over a general emission standard listed in this chapter. When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units. Further, all emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, ecology or the authority shall, as pro-

vided in RCW 70.194.154 [RCW 70.94.154], define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(1) **Visible emissions.** No person shall cause or (~~permit~~) allow the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity except:

(a) When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to (~~permit~~) allow the soot blowing and grate cleaning necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and ecology or the authority be advised of the schedule.

(b) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent.

(c) When two or more emission units are connected to a common stack, ecology or the authority may allow or require the use of an alternate time period if it is more representative of normal operations.

(d) When an alternate opacity limit has been established per RCW 70.94.331 (2)(c).

(e) Exemptions from twenty percent opacity standard.

(i) Visible emissions reader certification testing. Visible emissions from the "smoke generator" used for testing and certification of visible emissions readers per the requirements of 40 CFR Part 60, Appendix A, Reference Method 9 and ecology methods 9A and 9B shall be exempt from compliance with the twenty percent opacity limitation while being used for certifying visible emission readers.

(ii) Visible emissions resulting from military obscurant training exercises is exempt from compliance with the twenty percent opacity limitation provided the following criteria are met:

(A) No visible emissions shall cross the boundary of the military training site/reservation.

(B) The operation shall have in place methods, which have been reviewed and approved by the permitting authority, to detect changes in weather that would cause the obscurant to cross the site boundary either during the course of the exercise or prior to the start of the exercise. The approved methods shall include provisions that result in cancellation of the training exercise, cease the use of obscurants during the exercise until weather conditions would allow such training to occur without causing obscurant to leave the site boundary of the military site/reservation.

(iii) Visible emissions from fixed and mobile fire fighter training facilities while being used to train fire fighters and while complying with the requirements of chapter 173-425 WAC.

(2) **Fallout.** No person shall cause or (~~permit~~) allow the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(3) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or (~~any~~) other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, the owner or operator shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

(4) **Odors.** Any person who shall cause or allow the generation of any odor from any source which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(5) **Emissions detrimental to persons or property.** No person shall cause or (~~permit~~) allow the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(6) **Sulfur dioxide.**

No person shall cause or (~~permit~~) allow the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes, except:

When the owner or operator of an emissions unit supplies emission data and can demonstrate to ecology or the authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality standards for sulfur dioxide will not be exceeded. In such cases, ecology or the authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations. All sampling results will be made available upon request and a monthly summary will be submitted to ecology or the authority.

(7) **Concealment and masking.** No person shall cause or (~~permit~~) allow the installation or use of any means which conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(8) **Fugitive dust (~~sources~~).**

(a) The owner or operator of a source of fugitive dust shall take reasonable precautions to prevent fugitive dust from becoming airborne and shall maintain and operate the source to minimize emissions.

(b) The owner or operator of any existing source of fugitive dust that has been identified as a significant contributor to a PM-10 nonattainment area shall be required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113 (2)(c).

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-050 Emission standards for combustion and incineration units. (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or (~~per-~~~~mit~~) allow emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit combusting wood derived fuels for the production of steam. No person shall allow (~~or permit~~) the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by EPA method 5 in Appendix A to 40 CFR Part 60, (in effect on (~~February 20, 2001~~) July 1, 2004) or approved procedures contained in "Source Test Manual - Procedures For Compliance Testing," state of Washington, department of ecology, as of July 12, 1990, on file at ecology.

(2) For any incinerator, no person shall cause or (~~per-~~~~mit~~) allow emissions in excess of one hundred ppm of total carbonyls as measured by (~~applicable EPA methods or acceptable~~) Source Test Method 14 procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, as of July 12, 1990, on file at ecology. An applicable EPA reference method or other procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority or ecology prior to its use.

(a) Incinerators not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements adopted by reference in WAC 173-400-075 (40 CFR 63 subpart EEE) and WAC 173-400-115 (40 CFR 60 subparts E, Ea, Eb, Ec, AAAA, and CCCC) shall be operated only during daylight hours unless written permission to operate at other times is received from (~~ecology or~~) the permitting authority.

(b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by the Ecology Source Test Method 14 contained in "Source Test Manual - Procedures For Compliance Testing," state of Washington, department of ecology, as of July 12, 1990, on file at ecology.

(3) Measured concentrations for combustion and incineration units shall be adjusted for volumes corrected to seven percent oxygen, except when ecology or the authority determines that an alternate oxygen correction factor is more representative of normal operations.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999. (See WAC 173-400-115(2) for the requirements for a commercial and industrial solid waste incineration unit constructed after November 30, 1999, or modified or reconstructed after June 1, 2001.)

(a) Definitions.

(i) "**Commercial and industrial solid waste incineration (CISWI) unit**" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel

feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas: (A) The combustion unit flue gas system, which ends immediately after the last combustion chamber. (B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "**Commercial and industrial solid waste**" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (c) of this subsection.

(c) The following types of incineration units are exempt from this subsection:

(i) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR 60.2265 (in effect on January 30, 2001) are not subject to this section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting (~~agency~~) authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 CFR 60.2265 (in effect on January 30, 2001) are not subject to this subpart if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting (~~agency~~) authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units are regulated under 40 CFR Part 60, subpart Ea or subpart Eb (in effect on July 1, 2000); Spokane County Air

Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 CFR Part 60, subpart AAAA (adopted on December 6, 2000 and in effect on June 1, 2001); or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR Part 60, subparts Ea (in effect on July 1, 2000), Eb (in effect on July 1, 2000), and AAAA (adopted on December 6, 2000 and in effect on June 1, 2001), and WAC 173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting ((agency)) authority that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(iv) *Medical waste incineration units.* Incineration units regulated under 40 CFR Part 60, subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on July 1, 2000);

(v) *Small power production facilities.* Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) You notify the permitting ((agency)) authority that the unit meets all of these criteria.

(vi) *Cogeneration facilities.* Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) You notify the permitting ((agency)) authority that the unit meets all of these criteria.

(vii) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under subpart EEE of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on July 1, 2000).

(viii) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements

under "Air Curtain Incinerators" in 40 CFR 60.2245 through 60.2260 (in effect on January 30, 2001).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(x) *Cyclonic barrel burners.* See 40 CFR 60.2265 (in effect on January 30, 2001).

(xi) *Rack, part, and drum reclamation units.* See 40 CFR 60.2265 (in effect on January 30, 2001).

(xii) *Cement kilns.* Kilns regulated under subpart LLL of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on July 1, 2000).

(xiii) *Sewage sludge incinerators.* Incineration units regulated under 40 CFR Part 60, (Standards of Performance for Sewage Treatment Plants) (in effect on July 1, 2000).

(xiv) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (H) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) *Laboratory analysis units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 CFR 60.2815, in effect on January 30, 2001).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 CFR 60.2815 (in effect on January 30, 2001) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115(2), which adopts 40 CFR Part 60, subpart CCCC by reference.

(e) A CISWI unit must comply with 40 CFR 60.2575 through 60.2875, in effect on January 30, 2001, which is adopted by reference. The federal rule contains these major components:

- Increments of progress towards compliance in 60.2575 through 60.2630;
- Waste management plan requirements in 60.2620 through 60.2630;
- Operator training and qualification requirements in 60.2635 through 60.2665;
- Emission limitations and operating limits in 60.2670 through 60.2685;
- Performance testing requirements in 60.2690 through 60.2725;
- Initial compliance requirements in 60.2700 through 60.2725;
- Continuous compliance requirements in 60.2710 through 60.2725;
- Monitoring requirements in 60.2730 through 60.2735;
- Recordkeeping and reporting requirements in 60.2740 through 60.2800;
- Title V operating permits requirements in 60.2805;
- Air curtain incinerator requirements in 60.2810 through 60.2870;
- Definitions in 60.2875; and
- Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting ((agency)) authority.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 CFR 2805(a) are not adopted by reference. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999. (See WAC 173-400-115(2) for the requirements for a municipal waste combustion unit constructed after August 30, 1999, or reconstructed or modified after June 6, 2001.)

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in (d)(viii) and (ix) of this subsection.

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in (d)(x) of this subsection.

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable ((~~permit~~)) order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting ((agency)) authority that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable ((~~permit~~)) order or order of approval to the permitting ((agency)) authority.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) *Small power production units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting ((agency)) authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting ((agency)) authority that the unit qualifies for the exemption.

(iii) *Cogeneration units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting ((agency)) authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting ((agency)) authority that the unit qualifies for the exemption.

(iv) *Municipal waste combustion units that combust only tires.* Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting ((agency)) authority that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting ((agency)) authority that the unit qualifies for the exemption.

(v) *Hazardous waste combustion units.* Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) *Materials recovery units.* Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable ((permit)) order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting ((agency)) authority that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable ((permit)) order or order of approval to the permitting ((agency)) authority.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) *Plastics/rubber recycling units.* Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 CFR 60.1940 (in effect on February 5, 2001).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt.

(xi) *Air curtain incinerators.* If an air curtain incinerator as defined under 40 CFR 60.1910 (in effect on February 5, 2001) combusts 100 percent yard waste, then those units must only meet the requirements under 40 CFR 60.1910 through 60.1930 (in effect on February 5, 2001).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on February 5, 2001).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on February 5, 2001), mean the unit is considered a new unit and subject to WAC 173-400-115(2), which adopts 40 CFR Part 60, subpart AAAA (in effect on June 6, 2001).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on February 5, 2001) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on February 5, 2001) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 CFR 60.1610 (in effect on February 5, 2001).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on February 5, 2001) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) ~~(A permit)~~ An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on February 5, 2001) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 CFR 60.1585 through 60.1905, and 60.1935 (in effect on February 5, 2001), which is adopted by reference.

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - operator training in 60.1645 through 60.1670;

(C) Good combustion practices - operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935;

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means WAC 173-400-050(5).

(B) "You" in the federal rule means the owner or operator.

(C) "Administrator" includes the permitting ~~(agency)~~ authority.

(D) Table 1 in (h)(ii) of this subsection substitutes for Table 1 in the federal rule.

(E) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must comply with Table 1.

Table 1 Compliance Schedules and Increments of Progress

Affected units	Increment 1 (Submit final control plan)	Increment 2 (Award contracts)	Increment 3 (Begin on-site construction)	Increment 4 (Complete on-site construction)	Increment 5 (Final compliance)
All Class I units	August 6, 2003	April 6, 2004	October 6, 2004	October 6, 2005	November 6, 2005
All Class II units	September 6, 2003	Not applicable	Not applicable	Not applicable	May 6, 2005

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 CFR 60.1790 (in effect on February 5, 2001).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 CFR Part 60, subpart BBBB (in effect on February 5, 2001) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction ~~(permit)~~ approval or operation permit) if ~~(a permit)~~ an order or order of approval or operation modification is required.

(i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-060 Emission standards for general process units. General process units are required to meet all applicable provisions of WAC 173-400-040 and, no person shall cause or ~~(permit)~~ allow the emission of particulate material from any general process operation in excess of 0.23 grams per dry cubic meter at standard conditions (0.1 grain/dscf) of exhaust gas. EPA test methods (in effect on February 20, 2001) from 40 CFR Parts 51, 60, 61, and 63 and any other approved test procedures which are contained in ecology's "Source Test Manual - Procedures For Compli-

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ance Testing" as of July 12, 1990, will be used to determine compliance.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-070 Emission standards for certain source categories. Ecology finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) Wigwam burners.

(a) All wigwam burners shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), ~~((and)) (7), and WAC 173-400-050(4) or 173-400-115 (40 CFR 60 subpart DDDD)~~ as applicable.

(b) All wigwam burners shall use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) Ecology may establish additional requirements for wigwam burners located in sensitive areas as defined by chapter 173-440 WAC. These requirements may include but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(1). An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.

(ii) A requirement to apply BACT.

(iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) Hog fuel boilers.

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1), except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to ~~((permit the))~~ allow soot blowing and grate cleaning necessary to the operation of these units. This practice is to be scheduled for the same specific times each day and ~~((ecology or))~~ the permitting authority shall be notified of the schedule or any changes.

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) Orchard heating.

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(4) Grain elevators.

Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

(5) Catalytic cracking units.

(a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and:

(i) No person shall cause or ~~((permit))~~ allow the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds forty percent opacity.

(ii) No person shall cause or ~~((permit))~~ allow the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.

(b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.

(6) Other wood waste burners.

(a) Wood waste burners not specifically provided for in this section shall meet all applicable provisions of WAC 173-400-040. In addition, wood waste burners subject to WAC 173-400-050(4) or 173-400-115 (40 CFR 60 subpart DDDD) must meet all applicable provisions of those sections.

(b) Such wood waste burners shall utilize RACT and shall be operated and maintained to minimize emissions.

(7) Sulfuric acid plants.

No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H₂SO₄, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H₂SO₄.

(8) **Sewage sludge incinerators.** Standards for the incineration of sewage sludge found in 40 CFR Part 503 subparts A (General Provisions) and E (Incineration) in effect on July 1, ~~((1997))~~ 2004, are adopted by reference.

(9) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Resource Conservation and Recovery Act including the following: Commercial solid waste, non-hazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 CFR Part 60 rules mean those rules in effect on July 1, 2000.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115(2) for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 CFR 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the "permitting ((agency)) authority."

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) A MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(a) in addition to the applicable requirements specified in this section.

(ii) A MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752 (b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. A MSW landfill must follow the recordkeeping and reporting requirements in 40 CFR 60.757 (submission of an initial design capacity report) and 40 CFR 60.758 (recordkeeping requirements), as applicable, except as provided for under (d)(i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures.

(i) A MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 CFR 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b)(2)(ii) through the following procedures:

(A) The systems must follow the operational standards in 40 CFR 60.753.

(B) The systems must follow the compliance provisions in 40 CFR 60.755 (a)(1) through (a)(6) to determine whether the system is in compliance with 40 CFR 60.752 (b)(2)(ii).

(C) The system must follow the applicable monitoring provisions in 40 CFR 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any

density conversions shall be documented and submitted with the report; and

(iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems.

(i) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b)(2)(ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the permitting ((agency)) authority within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 CFR 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.

(i) Air operating permit.

(i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 CFR 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting ((agency)) authority was able to determine that it was timely and complete. Under 40 CFR 70.7(b), no source may operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 CFR 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 CFR 60.752 (b)(2)(v).

AMENDATORY SECTION (Amending Order 02-09, filed 7/11/02, effective 8/11/02)

WAC 173-400-075 Emission standards for sources emitting hazardous air pollutants. (1) National emission standards for hazardous air pollutants (NESHAPs). 40 CFR Part 61 and Appendices in effect on ~~((May 15, 2002))~~ July 1, 2004, is adopted by reference. The term "administrator" in 40 CFR Part 61 includes the permitting ~~((agency))~~ authority.

(2) The permitting ~~((agency))~~ authority may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 CFR Parts 61, 62, 63 and/or 65 in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Source testing, monitoring, and analytical methods for sources of hazardous air pollutants must conform with the requirements of 40 CFR Parts 61, 62, 63 and/or 65.

(4) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(5) Where EPA has delegated to the permitting authority, the authority to receive reports under 40 CFR Parts 61 or 63, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.

(6) Maximum achievable control technology (MACT) standards. MACT standards are officially known as National Emission Standards for Hazardous Air Pollutants for Source Categories.

(a) Adopt by reference.

40 CFR Part 63 and Appendices in effect on ~~((May 15, 2002))~~ October 1, 2004, is adopted by reference. Exceptions are listed in ~~((5))~~ (6)(b) of this section.

The following list of subparts to 40 CFR 63 which are shown as blank or reserved as of the date listed above, is provided for informational purposes only: Subparts K, P, V, Z, FF, NN, ZZ, AAA, BBB, FFF, KKK, SSS, WWW, YYY, ZZZ, BBBB, DDDDD, NNNNN, and QOOOO.

((Subpart A	General Provisions
Subpart B	Requirements for Control Technology Determinations for Major Sources in accordance with Clean Air Act Sections 112(g) and 112(j)
Subpart D	Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants
Subpart F	National Emissions Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry

Subpart G	National Emissions Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater
Subpart H	National Emissions Standards for Organic Hazardous Air Pollutants for the Equipment Leaks
Subpart I	National Emissions Standards for Organic Hazardous Air Pollutants for certain Processes Subject to the Negotiated Regulation for Equipment Leaks
Subpart L	National Emissions Standards for Coke Oven Batteries
Subpart M	National Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities (as applicable to major sources)
Subpart N	National Emissions Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
Subpart O	Ethylene Oxide Emissions Standards for Sterilization Facilities
Subpart Q	National Emissions Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
Subpart R	Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
Subpart S	National Emissions Standards for Hazardous Air Pollutants from Pulp and Paper Industry
Subpart T	National Emissions Standards for Hazardous Air Pollutants: Halogenated Solvent-Cleaning Machines
Subpart U	National Emissions Standards for Hazardous Air Pollutants: Group I Polymers and Resins
Subpart W	National Emissions Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production
Subpart X	National Emissions Standards for Hazardous Air Pollutants for Secondary Lead Smelting
Subpart Y	National Emissions Standards for Marine Tank Vessel Loading Operations
Subpart AA	National Emissions Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants
Subpart BB	National Emissions Standards for Hazardous Air Pollutants from Phosphate Fertilizers Production Plants

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Subpart CC	National Emissions Standards for Hazardous Air Pollutants from Petroleum Refineries	Subpart CCC	National Emissions Standards for Hazardous Air Pollutants for Steel Pickling—HCL Process Facilities and Hydrochloric Acid-Regeneration Plants
Subpart DD	National Emissions Standards for Hazardous Air Pollutants from Off-site Waste and Recovery Treatment Operations	Subpart DDD	National Emissions Standards for Hazardous Air Pollutants for Mineral Wool Production
Subpart EE	National Emissions Standards for Magnetic Tape Manufacturing Operations	Subpart EEE	National Emissions Standards for Hazardous Air Pollutants from Hazardous Waste Combustors
Subpart GG	National Emissions Standards for the Aerospace Manufacturing and Rework Facilities	Subpart GGG	National Emissions Standards for Pharmaceuticals Production
Subpart HH	National Emissions Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities	Subpart HHH	National Emissions Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities
Subpart II	Shipbuilding and Ship Repair (surface-coating)	Subpart III	National Emissions Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production
Subpart JJ	National Emissions Standards for Wood Furniture Manufacturing Operations	Subpart JJJ	National Emissions Standards for Hazardous Air Pollutants—Group IV Polymers and Resins
Subpart KK	National Emissions Standards for Printing and Publishing Industry	Subpart LLL	National Emissions Standards for Hazardous Air Pollutants from the Portland-Cement Manufacturing Industry
Subpart LL	National Emissions Standards for Hazardous Air Pollutants for Primary Aluminum-Reduction Plants	Subpart MMM	National Emissions Standards for Hazardous Air Pollutants for Pesticide Active-Ingredient Production
Subpart MM	National Emissions Standards for Hazardous Air Pollutants from Chemical Recovery Combustion Sources at Kraft, Soda-, Sulfite-, and Stand-Alone Semi-chemical Pulp Mills	Subpart NNN	National Emissions Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing
Subpart OO	National Emissions Standards for Tanks—Level 1	Subpart OOO	National Emissions Standards for Hazardous Air Pollutants for Manufacture of Amino/Phenolic Resins
Subpart PP	National Emissions Standards for Containers	Subpart PPP	National Emissions Standards for Hazardous Air Pollutants for Polyether Polyols Production
Subpart QQ	National Emissions Standards for Surface Impoundments	Subpart RRR	National Emissions Standards for Hazardous Air Pollutants for Secondary Aluminum Production. Under WAC 173-401-300 (1)(d), area sources are deferred from the air operating permit regulation until December 4, 2004
Subpart RR	National Emissions Standards for Individual Drain Systems	Subpart TTT	National Emissions Standards for Hazardous Air Pollutants for Primary Lead Smelting
Subpart SS	National Emissions Standards for Closed-Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process	Subpart UUU	National Emissions Standards for Hazardous Air Pollutants from Petroleum Refineries—Catalytic Cracking Units, Catalytic-Reforming Units, and Sulfur Recovery Units
Subpart TT	National Emissions Standards for Equipment Leaks—Control Level 1	Subpart VVV	National Emissions Standards for Hazardous Air Pollutants from Publicly Owned Treatment Works
Subpart UU	National Emissions Standards for Equipment Leaks—Control Level 2 Standards		
Subpart VV	National Emissions Standards for Oil-Water Separators and Organic Water Separators		
Subpart WW	National Emissions Standards for Storage Vessels (Tanks)—Control Level 2		
Subpart YY	National Emissions Standards for Hazardous Air Pollutants—Generic Maximum-Achievable Control Technology Standards		

- Subpart XXX National Emissions Standards for Hazardous Air Pollutants for Ferrous Alloys Production: Ferromanganese and Silicomanganese
- Subpart CCCC National Emissions Standards for Hazardous Air Pollutants for Manufacturing of Nutritional Yeast
- Subpart GGGG National Emissions Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production
- Subpart HHHH National Emissions Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production
- Subpart TTTT National Emissions Standards for Hazardous Air Pollutants for Leather Finishing Operations
- Subpart VVVV National Emissions Standards for Hazardous Air Pollutants for Boat Manufacturing
- Appendix A Test Methods
- Appendix B Sources Defined for Early Reduction Provisions
- Appendix C Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit
- Appendix D Alternative Validation Procedure for EPA Waste and Wastewater Methods
- Appendix E Monitoring Procedures for Nonthoroughly Mixed-Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions))

- (b) Exceptions to adopting 40 CFR Part 63 by reference.
 - (i) The term "administrator" in 40 CFR Part 63 includes the permitting ((agency)) authority.
 - (ii) The following subparts of 40 CFR Part 63 are not adopted by reference:
 - (A) Subpart C: List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, source Category List.
 - (B) Subpart E: Approval of State Programs and Delegation of Federal Authorities.
 - (C) Subpart M: National Perchloroethylene Emission Standards for Dry Cleaning Facilities as it applies to nonmajor sources.
 - (6) Consolidated requirements for the synthetic organic chemical manufacturing industry. 40 CFR Part 65, in effect on July 1, 2001, is adopted by reference.
 - (7) Emission Standards for Perchloroethylene Dry Cleaners.
 - (a) Applicability.
 - (i) This section applies to all dry cleaning systems that use perchloroethylene (PCE). Table 1 divides dry cleaning facilities into 3 regulatory source categories by the type of equipment they use and the volume of PCE purchased. Each dry cleaning system must follow the applicable requirements in Table 1:

TABLE 1. PCE Dry Cleaner Source Categories

Dry cleaning facilities with:	Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
(1) Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr
(2) Only Transfer Machines	200 gallons PCE/yr	200-1,800 gallons PCE/yr	1,800 gallons PCE/yr
(3) Both Dry-to-Dry and Transfer Machines	140 gallons PCE/yr	140-1,800 gallons PCE/yr	1,800 gallons PCE/yr

(ii) Major sources. In addition to the requirements in this section, a dry cleaning system that is considered a major source according to Table 1 must follow the federal requirements for major sources in 40 CFR Part 63, Subpart M (in effect on July 1, 2001).

(b) Operations and maintenance record.

(i) Each dry cleaning facility must keep an operations and maintenance record that is available upon request.

(ii) The information in the operations and maintenance record must be kept on-site for five years.

(iii) The operations and maintenance record must contain the following information:

(A) Inspection: The date and result of each inspection of the dry cleaning system. The inspection must note the condition of the system and the time any leaks were observed.

(B) Repair: The date, time, and result of each repair of the dry cleaning system.

(C) Refrigerated condenser information. If you have a refrigerated condenser, enter this information:

(I) The air temperature at the inlet of the refrigerated condenser;

(II) The air temperature at the outlet of the refrigerated condenser;

(III) The difference between the inlet and outlet temperature readings; and

(IV) The date the temperature was taken.

(D) Carbon adsorber information. If you have a carbon adsorber, enter this information:

(I) The concentration of PCE in the exhaust of the carbon adsorber; and

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- (II) The date the concentration was measured.
- (E) A record of the volume of PCE purchased each month must be entered by the first of the following month;
- (F) A record of the total amount of PCE purchased over the previous twelve months must be entered by the first of each month;
- (G) All receipts of PCE purchases; and
- (H) A record of any pollution prevention activities that have been accomplished.

(c) General operations and maintenance requirements.

- (i) Drain cartridge filters in their housing or other sealed container for at least twenty-four hours before discarding the cartridges.
- (ii) Close the door of each dry cleaning machine except when transferring articles to or from the machine.
- (iii) Store all PCE, and wastes containing PCE, in a closed container with no perceptible leaks.
- (iv) Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.
- (v) Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.
- (vi) Keep a copy on-site of the design specifications and operating manuals for all emissions control devices.
- (vii) Route the PCE gas-vapor stream from the dry cleaning system through the applicable equipment in Table 2:

TABLE 2. Minimum PCE Vapor Vent Control Requirements

Small area source	Large area source	Major source
Refrigerated condenser for all machines installed after September 21, 1993.	Refrigerated condenser for all machines.	Refrigerated condenser with a carbon adsorber for all machines installed after September 21, 1993.

(d) Inspection.

- (i) The owner or operator must inspect the dry cleaning system at a minimum following the requirements in Table 3:

TABLE 3. Minimum Inspection Frequency

Small area source	Large area source	Major source
Once every 2 weeks.	Once every week.	Once every week.

- (ii) An inspection must include an examination of these components for condition and perceptible leaks:
 - (A) Hose and pipe connections, fittings, couplings, and valves;
 - (B) Door gaskets and seatings;
 - (C) Filter gaskets and seatings;
 - (D) Pumps;
 - (E) Solvent tanks and containers;
 - (F) Water separators;
 - (G) Muck cookers;

- (H) Stills;
- (I) Exhaust dampers; and
- (J) Cartridge filter housings.
- (iii) The dry cleaning system must be inspected while it is operating.
- (iv) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.

(e) Repair.

- (i) Leaks must be repaired within twenty-four hours of detection if repair parts are available.
- (ii) If repair parts are unavailable, they must be ordered within two working days of detecting the leak.
- (iii) Repair parts must be installed as soon as possible, and no later than five working days after arrival.
- (iv) The date and time each leak was discovered must be entered in the operations and maintenance record.
- (v) The date, time, and result of each repair must be entered in the operations and maintenance record at the time of the repair.

(f) Requirements for systems with refrigerated condensers. A dry cleaning system using a refrigerated condenser must meet all of the following requirements:

- (i) Outlet air temperature.
 - (A) Each week the air temperature sensor at the outlet of the refrigerated condenser must be checked.
 - (B) The air temperature at the outlet of the refrigerated condenser must be less than or equal to 45°F (7.2°C) during the cool-down period.
 - (C) The air temperature must be entered in the operations and maintenance record manual at the time it is checked.
 - (D) The air temperature sensor must meet these requirements:
 - (I) An air temperature sensor must be permanently installed on a dry-to-dry machine, dryer or reclaimer at the outlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.
 - (II) The air temperature sensor must be accurate to within 2°F (1.1°C).
 - (III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and
 - (IV) The air temperature sensor must be labeled "RC outlet."

(ii) Inlet air temperature.

- (A) Each week the air temperature sensor at the inlet of the refrigerated condenser installed on a washer must be checked.
 - (B) The inlet air temperature must be entered in the operations and maintenance record at the time it is checked.
 - (C) The air temperature sensor must meet these requirements:
 - (I) An air temperature sensor must be permanently installed on a washer at the inlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.
 - (II) The air temperature sensor must be accurate to within 2°F (1.1°C).

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(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C).

(IV) The air temperature sensor must be labeled "RC inlet."

(iii) For a refrigerated condenser used on the washer unit of a transfer system, the following are additional requirements:

(A) Each week the difference between the air temperature at the inlet and outlet of the refrigerated condenser must be calculated.

(B) The difference between the air temperature at the inlet and outlet of a refrigerated condenser installed on a washer must be greater than or equal to 20°F (11.1°C).

(C) The difference between the inlet and outlet air temperature must be entered in the operations and maintenance record each time it is checked.

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

(v) The refrigerated condenser must not vent the air-PCE gas-vapor stream while the dry cleaning machine drum is rotating or, if installed on a washer, until the washer door is opened; and

(vi) The refrigerated condenser in a transfer machine may not be coupled with any other equipment.

(g) Requirements for systems with carbon adsorbers. A dry cleaning system using a carbon adsorber must meet all of the following requirements:

(i) Each week the concentration of PCE in the exhaust of the carbon adsorber must be measured at the outlet of the carbon adsorber using a colorimetric detector tube.

(ii) The concentration of PCE must be written in the operations and maintenance record each time the concentration is checked.

(iii) If the dry cleaning system was constructed before December 9, 1991, monitoring must begin by September 23, 1996.

(iv) The colorimetric tube must meet these requirements:

(A) The colorimetric tube must be able to measure a concentration of 100 parts per million of PCE in air.

(B) The colorimetric tube must be accurate to within 25 parts per million.

(C) The concentration of PCE in the exhaust of the carbon adsorber must not exceed 100 ppm while the dry cleaning machine is venting to the carbon adsorber at the end of the last dry cleaning cycle prior to desorption of the carbon adsorber.

(v) If the dry cleaning system does not have a permanently fixed colorimetric tube, a sampling port must be provided within the exhaust outlet of the carbon adsorber. The sampling port must meet all of these requirements:

(A) The sampling port must be easily accessible;

(B) The sampling port must be located 8 stack or duct diameters downstream from a bend, expansion, contraction or outlet; and

(C) The sampling port must be 2 stack or duct diameters upstream from a bend, expansion, contraction, inlet or outlet.

AMENDATORY SECTION (Amending Order 93-40, filed 3/22/95, effective 4/22/95)

WAC 173-400-099 Registration program. (1) Program purpose.

(a) The registration program is a program to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

(b) Permit program sources, as defined in RCW 70.94.-030(17), are not required to comply with the registration requirements of WAC 173-400-100 through 173-400-104.

(2) Program components. The components of the registration program consist of:

(a) Initial registration and annual or other periodic reports from stationary source owners providing information on location, size, height of contaminant outlets, processes employed, nature and quantity of the air contaminant emissions, and other information that is relevant to air pollution and available or reasonably capable of being assembled. For purposes of this chapter, information relevant to air pollution may include air pollution requirements established by rule, regulatory order, or ordinance pursuant to chapter 70.94 RCW.

(b) On-site inspections necessary to verify compliance with registration requirements.

(c) Data storage and retrieval systems necessary for support of the registration program.

(d) Emission inventory reports and emission reduction credits computed from information provided by source owners pursuant to registration requirements.

(e) Staff review, including engineering analysis for accuracy and currentness of information provided by source owners pursuant to registration program requirements.

(f) Clerical and other office support in direct furtherance of the registration program.

(g) Administrative support provided in directly carrying out the registration program.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-100 Source classifications. (1) **Source classification list.** In counties without a local authority, or for sources under the jurisdiction of ecology, the owner or operator of each source within the following source categories shall register the source with ecology:

(a) Agricultural chemical facilities engaging in the manufacturing of liquid or dry fertilizers or pesticides;

(b) Agricultural drying and dehydrating operations;

(c) Any category of stationary source(s) that includes an emissions unit subject to a new source performance standard (NSPS) under 40 CFR Part 60, other than Subpart AAA (Standards of Performance for New Residential Wood Heaters);

(d) Any stationary source, that includes an emissions unit subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) under 40 CFR Part 61, other than:

(i) Subpart M (National Emission Standard for Asbestos); or

(ii) Sources or emission units emitting only radionuclides, which are required to obtain a license under WAC 246-247-060, and are subject to 40 CFR Part 61, subparts H and/or I, and that are not subject to any other part of 40 CFR 61, 62, or 63, or any other parts of this section;

(e) Any source, or emissions unit subject to a National Emission Standard for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technology (MACT) standard) under 40 CFR Part 63;

(f) Any source, stationary source or emission unit with an emission rate of one or more pollutants equal to or greater than an "emission threshold" defined ((as "significant")) in WAC ((173-400-112 and/or 173-400-113, as applicable)) 173-400-030;

(g) Asphalt and asphalt products production facilities;

(h) Brick and clay manufacturing plants, including tiles and ceramics;

(i) Casting facilities and foundries, ferrous and nonferrous;

(j) Cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1 and October 1, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season;

(k) Chemical manufacturing plants;

(l) Composting operations, including commercial, industrial and municipal, but exempting residential composting activities;

(m) Concrete product manufacturers and ready mix and premix concrete plants;

(n) Crematoria or animal carcass incinerators;

(o) Dry cleaning plants;

(p) Materials handling and transfer facilities that generate fine particulate, which may include pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems that exhaust to the atmosphere;

(q) Flexible vinyl and urethane coating and printing operations;

(r) Grain, seed, animal feed, legume, and flour processing operations, and handling facilities;

(s) Hay cubers and pelletizers;

(t) Hazardous waste treatment and disposal facilities;

(u) Ink manufacturers;

(v) Insulation fiber manufacturers;

(w) Landfills, active and inactive, including covers, gas collections systems or flares;

(x) Metal plating and anodizing operations;

(y) Metallic and nonmetallic mineral processing plants, including rock crushing plants;

(z) Mills such as lumber, plywood, shake, shingle, wood-chip, veneer operations, dry kilns, pulpwood insulating board, or any combination thereof;

(aa) Mineralogical processing plants;

(bb) Other metallurgical processing plants;

(cc) Paper manufacturers;

(dd) Petroleum refineries;

(ee) Petroleum product blending operations;

(ff) Plastics and fiberglass product fabrication facilities;

((ff)) (gg) Rendering plants;

((gg)) (hh) Soil and ground water remediation projects;

((hh)) (ii) Surface coating manufacturers;

((ii)) (jj) Surface coating operations including: Automotive, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper and other substrates;

((jj)) (kk) Synthetic fiber production facilities;

((kk)) (ll) Synthetic organic chemical manufacturing industries;

((ll)) (mm) Tire recapping facilities;

((mm)) (nn) Wastewater treatment plants;

((nn)) (oo) Any source that has elected to opt-out of the operating permit program by limiting its potential-to-emit (synthetic minor) or is required to report periodically to demonstrate nonapplicability to EPA requirements under Sections 111 or 112 of Federal Clean Air Act.

(2) **Equipment classification list.** In counties without a local authority, the owner or operator of the following equipment shall register the source with ecology:

(a) Boilers, all solid and liquid fuel burning boilers with the exception of those utilized for residential heating;

(b) Boilers, all gas fired boilers above 10 million British thermal units per hour input;

(c) Chemical concentration evaporators;

(d) Degreasers of the cold or vapor type in which more than five percent of the solvent is comprised of halogens or such aromatic hydrocarbons as benzene, ethylbenzene, toluene or xylene;

(e) Ethylene oxide (ETO) sterilizers;

(f) Flares utilized to combust any gaseous material;

(g) Fuel burning equipment with a heat input of more than 1 million Btu per hour; except heating, air conditioning systems, or ventilating systems not designed to remove contaminants generated by or released from equipment;

(h) Incinerators designed for a capacity of one hundred pounds per hour or more;

(i) Ovens, burn-out and heat-treat;

(j) Stationary internal combustion engines and turbines rated at five hundred horsepower or more;

(k) Storage tanks for organic liquids associated with commercial or industrial facilities with capacities equal to or greater than 40,000 gallons;

(l) Vapor collection systems within commercial or industrial facilities;

(m) Waste oil burners above 0.5 mm Btu heat output;

(n) Woodwaste incinerators;

(o) Commercial and industrial solid waste incineration units subject to WAC 173-400-050(4);

(p) Small municipal waste combustion units subject to WAC 173-400-050(5).

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-102 Scope of registration and reporting requirements. (1) **Administrative options.** A source in a listed source category that is located in a county without an active local authority will be addressed in one of several ways:

(a) The source will be required to register and report once each year. The criteria for identifying these sources are listed in subsection (2) of this section.

(b) The source will be required to register and report once every three years. The criteria for identifying these sources are listed in subsection (3) of this section.

(c) The source will be exempted from registration program requirements. The criteria for identifying these sources are listed in subsection (4) of this section.

(2) Sources requiring annual registration and inspections. An owner or operator of a source in a listed source category that meets any of the following criteria shall register and report once each year:

(a) The source emits one or more air pollutants at rates greater than the "emission threshold" rates (~~listed in the definition of "significant"~~) defined in WAC (~~(173-400-112 and/or 173-400-113, as applicable)~~) 173-400-030;

(b) Annual registration and reporting is necessary to comply with federal reporting requirements or emission standards; or

(c) Annual registration and reporting is required in a reasonably available control technology determination for the source category; or

(d) The director of ecology determines that the source poses a potential threat to human health and the environment.

(3) Sources requiring periodic registration and inspections. An owner or operator of a source in a listed source category that meets any of the following criteria shall register and report once every three years:

(a) The source emits one or more air pollutants at rates greater than the emission rates listed in subsection (5) of this section and all air pollutants at rates less than the "emission threshold" rates (~~listed in the definition of "significant"~~) defined in WAC (~~(173-400-112 and/or 173-400-113, as applicable)~~) 173-400-030; or

(b) The source emits measurable amounts of one or more Class A or Class B toxic air pollutants listed in WAC 173-460-150 and 173-460-160.

(4) Sources exempt from registration program requirements. Any source included in a listed source category that is located in a county without an active local air authority shall not be required to register if ecology determines the following:

(a) The source emits pollutants below emission rates specified in subsection (5) of this section; and

(b) The source or emission unit does not emit measurable amounts of Class A or Class B toxic air pollutants specified in WAC 173-460-150 and 173-460-160.

(5) Criteria for defining exempt sources. The following emission rates will be used to identify listed sources that are exempt from registration program requirements:

Pollutant	Tons/Year
Carbon Monoxide.....	5.0
Nitrogen oxides	2.0
Sulfur dioxide	2.0
Particulate Matter (PM)	1.25
Fine Particulate (PM10).....	0.75

Pollutant	Tons/Year
Volatile organic compounds (VOC)	2.0
Lead	0.005

AMENDATORY SECTION (Amending Order 98-27, filed 11/22/00, effective 12/23/00)

WAC 173-400-104 Registration fees. (1) Registration fee determination. In counties without an active local air pollution control authority, ecology shall establish registration fees based on workload using the process outlined below. The fees collected shall be sufficient to cover the direct and indirect costs of administering the registration program within ecology's jurisdiction.

(2) Budget preparation. Ecology shall conduct a workload analysis projecting resource requirements for administering the registration program. Workload estimates shall be prepared on a biennial basis and shall estimate the resources required to perform registration program activities listed in WAC 173-400-099(2). Ecology shall prepare a budget for administering the registration program using workload estimates identified in the workload analysis for the biennium.

(3) Registration fee schedule. Ecology's registration program budget shall be distributed to sources located in its jurisdiction according to the following:

(a) Sources requiring periodic registration and inspections shall pay an annual registration fee of four hundred dollars.

(b) Sources requiring annual registration and inspections shall pay a registration fee comprised of the following three components:

(i) Flat component. This portion of a source's fee shall be calculated by the equal division of thirty-five percent of the budget amount allocated to annual registration sources by the total number of sources requiring annual registration.

(ii) Complexity component. Each source is assigned a complexity rating of 1, 3, or 5 which is based on the estimated amount of time needed to review and inspect the source. This portion of the fee is calculated by dividing forty percent of the budget amount allocated to annually registered sources by the total complexity of sources located in ecology's jurisdiction. The quotient is then multiplied by an individual source's complexity rating to determine that source's complexity portion of the fee.

(iii) Emissions component. This portion of a source's fee is calculated by dividing twenty-five percent of the budget amount allocated to annually registered sources by the total billable emissions from those sources. The quotient is then multiplied by an individual source's billable emissions to determine that source's emissions portion of the fee. Billable emissions include all air pollutants except carbon monoxide and total suspended particulate.

(4) Regulatory orders. Owners or operators registering a source as a synthetic minor must obtain a regulatory order which limits the source's emissions. The owner will be required to pay a fee based on the amount of time required to research and write the order multiplied by an hourly rate of sixty dollars.

(5) Fee reductions for pollution prevention initiatives. Ecology may reduce registration fees for an individual source

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if that source demonstrates the use of approved pollution prevention measures or best management practices beyond those required of the source.

(6) **Fee reductions for economic hardships.** If a small business owner believes the registration fee results in an extreme economic hardship, the small business owner may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the registration fee through to customers; average annual profits, and cumulative effects of multiple site ownership. In no case will a registration fee be reduced below two hundred dollars.

(7) **Fee payments.** Fees specified in this section shall be paid within thirty days of receipt of ecology's billing statement. All fees collected under this regulation shall be made payable to the Washington department of ecology. A late fee surcharge of fifty dollars or ten percent of the fee, whichever is more, may be assessed for any fee not received after the thirty-day period.

(8) **Dedicated account.** All registration fees collected by ecology shall be deposited in the air pollution control account.

(9) **Tracking revenues, time, and expenditures.** Ecology shall track revenues collected under this subsection on a source-specific basis. Ecology shall track time and expenditures on the basis of ecology budget functions.

(10) Additional registration fee for fossil fueled electric generating facilities. A fossil fueled electric generating facility subject to the provisions of chapter 80.70 RCW and RCW 70.94.892, is subject to additional fees pursuant to that chapter.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-105 Records, monitoring, and reporting. The owner or operator of a source shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

(1) **Emission inventory.** The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory ~~((may))~~ will include stack and fugitive emissions of particulate matter, PM-10, PM-2.5, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, ammonia, and other contaminants~~((, and))~~. The format for the submittal of these inventories will be specified by the permitting authority or ecology. When submittal of emission inventory information is requested, the emissions inventory shall be submitted ((when required)) no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information

necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards. Emission estimates used in the inventory may be based on the most recent published EPA emission factors for a source category, or other information available to the owner(s) or operator(s), whichever is the better estimate.

(2) **Monitoring.** Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from ecology or an authority shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

(4) **Source testing.** To demonstrate compliance, ecology or the authority may conduct or require that a test be conducted of the source using approved EPA methods from 40 CFR parts 51, 60, 61 and 63 (in effect on ~~((February 20, 2004))~~ July 1, 2004), or ~~((approved))~~ procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, as of July 12, 1990, on file at ecology. The operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(5) **Continuous monitoring and recording.** Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million BTU per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to ecology or the authority by the owner(s) or operator(s).

(b) **Sulfuric acid plants.** Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as

a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than one hundred million BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection shall be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this subsection shall demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (in effect on ~~October 17, 2000~~) July 1, 2004).

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (5) does not apply to any ~~((source which is))~~ equipment subject to:

~~((i) Subject to a new source performance standard. These sources will be governed by WAC 173-400-115.~~

~~((ii) Not subject to an applicable emission standard))~~ continuous emissions monitoring requirement imposed by standard or requirement under 40 CFR Parts 60, 61, 62, 63, or 75 or a permitting authority's adoption by reference of such federal standards.

(h) Monitoring system malfunctions. A source may be temporarily exempted from the monitoring and reporting requirements of this chapter during periods of monitoring system malfunctions provided that the source owner(s) or operator(s) shows to the satisfaction of ~~((ecology or))~~ the permitting authority that the malfunction was unavoidable and is being repaired as expeditiously as practicable.

(6) Change in raw materials or fuels for sources not subject to requirements of the operating permit program. Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by subsection (1) of this section shall require the submittal of sufficient information to ecology or the authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. Ecology or the authority may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.

(7) No person shall make any false material statement, representation or certification in any form, notice or report

required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(8) No person shall render inaccurate any monitoring device or method required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-110 New source review (NSR). In lieu of filing a notice of construction application under this section, the owner or operator may apply for coverage under an applicable general order of approval issued under WAC 173-400-560. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.

(1) Applicability.

(a) This section, WAC 173-400-112 and 173-400-113 apply statewide except where an authority has adopted its own new source review rule.

(b) This section applies to sources as defined in RCW 70.94.030(21), but does not include nonroad engines. Nonroad engines are regulated under WAC 173-400-035.

(2) Projects subject to NSR - notice of construction application.

(a) A notice of construction application must be filed by the owner or operator and an order of approval issued by the permitting ~~((agency))~~ authority prior to the establishment of any new source, except for the following:

(i) Those sources exempt under subsection (4) or (5) of this section; and

(ii) A source regulated under WAC 173-400-035.

For purposes of this section "establishment" shall mean to begin actual construction, as that term is defined in WAC 173-400-030, and "new source" shall include any modification to an existing stationary source, as defined in WAC 173-400-030.

(b) Regardless of any other subsection of this section, a notice of construction application must be filed and an order of approval issued by the permitting ~~((agency))~~ authority prior to establishment of any of the following new sources:

(i) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except Part AAA, Wood stoves (in effect on February 20, 2001);

(ii) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants) (in effect on ~~((February 20, 2001))~~ July 1, 2004), except for asbestos demolition and renovation projects subject to 40 CFR 61.145, and except from sources or emission units emitting only radionuclides, which are required to obtain a license under WAC 246-247-060, and are subject to 40 CFR Part 61, subparts H and/or I;

(iii) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 (National Emission Standards for

Hazardous Air Pollutants for Source Categories) (in effect on ~~(February 20, 2001)~~ July 1, 2004);

(iv) Any project that qualifies as a new major stationary source, or a major modification to a major stationary source subject to the requirements of WAC 173-400-112;

(v) Any modification to a stationary source that requires an increase either in a plant-wide cap or in a unit specific emission limit.

(c) An applicant filing a notice of construction application for a project described in WAC 173-400-117(2), Special protection requirements for Class I areas, must send a copy of the application to the responsible federal land manager.

(3) **Modifications.** New source review of a modification shall be limited to the emission unit or units proposed to be added to an existing source or modified and the air contaminants whose emissions would increase as a result of the modification; provided, however, that review of a major modification must comply with WAC 173-400-112 and/or ~~((173-400-113))~~ 173-400-720, as applicable.

(4) **Emission unit and activity exemptions.**

Except as provided in subsection (2) of this section, establishment of a new emission unit that falls within one of the categories listed below is exempt from new source review. Modification of any emission unit listed below is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The installation or modification of a unit exempt under this subsection does not require the filing of a notice of construction application.

(a) Maintenance/construction:

(i) Cleaning and sweeping of streets and paved surfaces;

(ii) Concrete application, and installation;

(iii) Dredging wet spoils handling and placement;

(iv) Paving application and maintenance, excluding asphalt plants;

(v) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine house keeping, routine plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

(vi) Plumbing installation, plumbing protective coating application and maintenance activities;

(vii) Roofing application;

(viii) Insulation application and maintenance, excluding products for resale;

(ix) Janitorial services and consumer use of janitorial products.

(b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks. Ecology strongly recommends that an owner or operator contact the permitting ~~((agency))~~ authority to determine the exemption status of storage tanks prior to their installation.

(i) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils;

(ii) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

(iii) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

(iv) Process and white water storage tanks;

(v) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity (35 cft);

(vi) Operation, loading and unloading of storage tanks, ≤ 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as defined in chapter 173-460 WAC, max. VP 550 mm Hg @ 21°C;

(vii) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;

(viii) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

(c) A project with combined aggregate heat inputs of combustion units, ≤ all of the following:

(i) ≤ 500,000 Btu/hr using coal with ≤ 0.5% sulfur or other fuels with ≤ 0.5% sulfur;

(ii) ≤ 500,000 Btu/hr used oil, per the requirements of RCW 70.94.610;

(iii) ≤ 400,000 Btu/hr wood waste or paper;

(iv) < 1,000,000 Btu/hr using kerosene, #1, or #2 fuel oil and with ≤ 0.05% sulfur;

(v) ≤ 4,000,000 Btu/hr using natural gas, propane, or LPG.

(d) Material handling:

(i) Continuous digester chip feeders;

(ii) Grain elevators not licensed as warehouses or dealers by either the Washington state department of agriculture or the U.S. Department of Agriculture;

(iii) Storage and handling of water based lubricants for metal working where organic content of the lubricant is ≤ 10%;

(iv) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm Hg @ 21°C, with lids or other appropriate closure.

(e) Water treatment:

(i) Septic sewer systems, not including active wastewater treatment facilities;

(ii) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;

(iii) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(iv) Process water filtration system and demineralizer vents;

(v) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

(vi) Demineralizer tanks;

(vii) Alum tanks;

(viii) Clean water condensate tanks.

(f) Environmental chambers and laboratory equipment:

(i) Environmental chambers and humidity chambers not using toxic air pollutant gases, as regulated under chapter 173-460 WAC;

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- (ii) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;
- (iii) Installation or modification of a single laboratory fume hood;
- (iv) Laboratory calibration and maintenance equipment.
- (g) Monitoring/quality assurance/testing:
- (i) Equipment and instrumentation used for quality control/assurance or inspection purpose;
- (ii) Hydraulic and hydrostatic testing equipment;
- (iii) Sample gathering, preparation and management;
- (iv) Vents from continuous emission monitors and other analyzers.
- (h) Miscellaneous:
 - (i) Single-family residences and duplexes;
 - (ii) Plastic pipe welding;
 - (iii) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;
 - (iv) Comfort air conditioning;
 - (v) Flares used to indicate danger to the public;
 - (vi) Natural and forced air vents and stacks for bathroom/toilet activities;
 - (vii) Personal care activities;
 - (viii) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;
 - (ix) Tobacco smoking rooms and areas;
 - (x) Noncommercial smokehouses;
 - (xi) Blacksmith forges for single forges;
 - (xii) Vehicle maintenance activities, not including vehicle surface coating;
 - (xiii) Vehicle or equipment washing (see (c) of this subsection for threshold for boilers);
 - (xiv) Wax application;
 - (xv) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;
 - (xvi) Ozone generators and ozonation equipment;
 - (xvii) Solar simulators;
 - (xviii) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;
 - (xix) Electrical circuit breakers, transformers, or switching equipment installation or operation;
 - (xx) Pulse capacitors;
 - (xxi) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;
 - (xxii) Fire suppression equipment;
 - (xxiii) Recovery boiler blow-down tank;
 - (xxiv) Screw press vents;
 - (xxv) Drop hammers or hydraulic presses for forging or metal working;
 - (xxvi) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
 - (xxvii) Kraft lime mud storage tanks and process vessels;
 - (xxviii) Lime grits washers, filters and handling;
 - (xxix) Lime mud filtrate tanks;
 - (xxx) Lime mud water;
 - (xxxi) Stock cleaning and pressurized pulp washing down process of the brown stock washer;

(xxxii) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;

(xxxiii) Nontoxic air pollutant, as defined in chapter 173-460 WAC, solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm Hg @21°C;

(xxxiv) Surface coating, aqueous solution or suspension containing ≤ 1% (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;

(xxxv) Cleaning and stripping activities and equipment using solutions having ≤ 1% VOCs (by weight); on metallic substances, acid solutions are not exempt;

(xxxvi) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC.

(5) Exemptions based on emissions ((thresholds)).

(a) Except as provided in subsection (2) of this section and in this subsection:

(i) A new emissions unit that has a potential to emit below each of the ((threshold)) levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.

(ii) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.

(b) The owner or operator seeking to exempt a project from new source review under this section shall notify, and upon request, file a brief project summary with the permitting ((agency)) authority prior to beginning actual construction on the project. If the permitting ((agency)) authority determines that the project will have more than a de minimus impact on air quality, the permitting ((agency)) authority may require the filing of a notice of construction application. The permitting ((agency)) authority may require the owner or operator to demonstrate that the emissions increase from the new emissions unit is smaller than all of the ((thresholds)) levels listed below.

(c) The owner/operator may begin actual construction on the project thirty-one days after the permitting ((agency)) authority receives the summary, unless the permitting ((agency)) authority notifies the owner/operator within thirty days that the proposed new source requires a notice of construction application.

(d) Exemption ((threshold)) level table:

POLLUTANT	((THRESHOLD)) LEVEL (TONS PER YEAR)
(a) Total Suspended Particulates	1.25
(b) PM-10	0.75
(c) Sulfur Oxides	2.0
(d) Nitrogen Oxides	2.0
(e) Volatile Organic Compounds, total	2.0
(f) Carbon Monoxide	5.0

POLLUTANT	((THRESHOLD)) LEVEL (TONS PER YEAR)
(g) Lead	0.005
(h) Ozone Depleting Substances (in effect on July 1, 2000), total	1.0
(i) Toxic Air Pollutants	As specified in chapter 173-460 WAC.

(6) Application processing - completeness determination.

(a) Within thirty days after receiving a notice of construction application (~~((or PSD permit application))~~), the permitting (~~(agency))~~ authority shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(b) ~~((For a project subject to PSD review under WAC 173-400-141, a completeness determination includes a determination that the application provides all information required to conduct PSD review.~~

~~((e))~~ For a project subject to the Special protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).

(7) Final determination.

(a) Within sixty days of receipt of a complete notice of construction (~~((or PSD permit))~~) application, the permitting (~~(agency))~~ authority shall either issue a final decision on the application or for those projects subject to public notice under WAC 173-400-171(1), initiate ((public)) notice ((under WAC 173-400-171)) and comment on a proposed decision, followed as promptly as possible by a final decision.

(b) A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under ~~((RCW 70.94.161))~~ chapter 173-401 WAC and the notice of construction application required by this section. A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC ~~((A PSD permit application under WAC 173-400-141, a notice of nonattainment area construction application for a major modification in a nonattainment area, or a notice of construction application for a major stationary source in a nonattainment area))~~ and must also comply with WAC 173-400-171.

(c) Every final determination on a notice of construction application shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting (~~(agency))~~ authority.

(d) If the new source is a major stationary source or the change is a major modification subject to the requirements of WAC 173-400-112, the permitting (~~(agency))~~ authority shall:

(i) Submit any control technology determination included in a final order of approval (~~((or PSD permit))~~) for a major source or a major modification to a major stationary source in a nonattainment area to the RACT/BACT/LAER clearinghouse maintained by EPA; and

(ii) Send a copy of the final approval order (~~((or PSD permit))~~) to EPA.

(8) **Appeals.** ~~((An order of approval or a PSD permit,))~~ Any conditions contained in an order of approval (~~((or PSD permit))~~), or the denial of a notice of construction application (~~((or PSD permit))~~) may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. The permitting (~~(agency))~~ authority shall promptly mail copies of each order approving or denying a notice of construction application (~~((or PSD permit))~~) to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.

(9) **Construction time limitations.** Approval to construct or modify a stationary source becomes invalid if the applicant does not begin construction (~~((is not commenced))~~) within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The permitting (~~(agency))~~ authority may extend the eighteen-month period upon a satisfactory showing that an extension is justified. ~~((An extension for a project operating under a PSD permit must also comply with public notice requirements in WAC 173-400-171.))~~ The extension of a project that is either a major stationary source in a nonattainment area or a major modification in a nonattainment area must also require LAER as it exists at the time of the extension. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved (~~((commencement))~~) commence construction date.

(10) Change of conditions.

(a) The owner or operator may request, at any time, a change in conditions of an approval order (~~((or PSD permit))~~) and the permitting (~~(agency))~~ authority may approve the request provided the permitting (~~(agency))~~ authority finds that:

(i) The change in conditions will not cause the source to exceed an emissions standard;

(ii) No ambient air quality standard (~~((or PSD increment))~~) will be exceeded as a result of the change;

(iii) The change will not adversely impact the ability of ecology or the authority to determine compliance with an emissions standard;

(iv) The revised order will continue to require BACT, as defined at the time of the original approval, for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

(v) The revised order meets the requirements of WAC 173-400-110, 173-400-112, 173-400-113 and ~~((173-400-141))~~ 173-400-720, as applicable.

(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171.

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(c) This rule does not prescribe the exact form such requests must take. However, if the request is filed as a notice of construction application, that application must be acted upon using the timelines found in subsections (6) and (7) of this section. The fee schedule found in WAC 173-400-116 shall also apply to requests filed as notice of construction applications.

(11) Enforcement. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-112 Requirements for new sources in nonattainment areas. (1) Definitions. The following definitions apply to this section:

(a) **"Major modification,"** for the purposes of WAC 173-400-112, means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

(i) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(ii) A physical change or change in the method of operation shall not include:

(A) Routine maintenance, repair and replacement;

(B) Use of an alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(C) Use of an alternative fuel by reason of an order or rule under section 125 of the Federal Clean Air Act;

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste; (E) Use of an alternative fuel or raw material by a source which:

(I) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit or approval order condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or

(II) The source is approved to use under any permit or approval order issued under WAC 173-400-112;

(iii) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit or approval order condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation.

(iv) Any change in ownership at a source.

(v) The addition, replacement, or use of a pollution control project (as defined in 40 CFR 51.165 (a)(1)(xxv), in effect on July 1, 2001) at an existing electric utility steam generating unit, unless the permitting ((agency)) authority determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(A) When the permitting ((agency)) authority has reason to believe that the pollution control project would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the Federal Clean Air Act, if any; and

(B) The permitting ((agency)) authority determines that the increase will cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or visibility limitation.

(vi) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The SIP; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(b) **"Major stationary source,"** for the purposes of WAC 173-400-112, means:

(i) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act, except that lower emissions thresholds shall apply as follows:

(A) 70 tons per year of PM-10 in any "serious" nonattainment area for PM-10.

(B) 50 tons per year of carbon monoxide in any "serious" nonattainment area for carbon monoxide where stationary sources contribute significantly to carbon monoxide levels in the area.

(ii) Any physical change that would occur at a stationary source not qualifying under (b)(i) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(iii) A major stationary source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

(iv) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources or the source is a major stationary source due to (b)(i)(A) or (b)(i)(B) of this subsection:

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

- (P) Primary lead smelters;
- (Q) Fuel conversion plants;
- (R) Sintering plants;
- (S) Secondary metal production plants;
- (T) Chemical process plants;
- (U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

(Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

~~((v) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, facility, or installation" means all the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, as amended.))~~

(c) "Net emissions increase," for the purposes of WAC 173-400-112, means:

(i) The amount by which the sum of the following exceeds zero:

(A) Any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(B) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if:

(A) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC.

(B) The permitting ((agency)) authority has not relied on it in issuing any permit or order of approval for the source under this section or a previous SIP approved nonattainment area new source review regulation, which order or permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(v) A decrease in actual emissions is creditable only to the extent that:

(A) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(B) It is federally enforceable at and after the time that actual construction on the particular change begins;

(C) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(D) The permitting ((agency)) authority has not relied on it in issuing any permit or order of approval under this section or a SIP approved nonattainment area new source review regulation; or the permitting ((agency)) authority has not relied on it in demonstrating attainment or reasonable further progress.

(vi) An increase that results from a physical change at a source occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(d) "Significant," for purposes of WAC 173-400-112, means, in reference to a net emissions increase or the potential of a major stationary source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Volatile organic compounds:	40 tpy
Lead:	0.6 tpy
PM-10:	15 tpy

(e) "Stationary source" and "source" for the purposes of WAC 173-400-112 means any building, structure, facility or installation which emits or may emit a regulated NSR pollutant. A stationary source (or source) does not include emissions resulting directly for an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 216 of the Federal Clean Air Act.

(f) "Building, structure facility or installation" means for the purposes of WAC 173-400-112, all the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, as amended by the 1977 supplement.

(2) The permitting ((agency)) authority that is reviewing an application to establish a new source in a nonattainment

area shall issue the order of approval if it determines that the proposed project satisfies each of the following requirements:

(a) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

(b) The proposed new source will employ BACT for all air contaminants, except that if the new source is a major stationary source or the proposed modification is a major modification it will achieve LAER for the air contaminants for which the area has been designated nonattainment and for which the proposed new source or modification is major.

(c) The proposed new source will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the SIP and will comply with WAC 173-400-113 ~~((2)(e))~~ (3) for all air contaminants for which the area has not been designated nonattainment.

(d) If the proposed new source is a major stationary source or the proposed modification is a major modification, the permitting ~~((agency))~~ authority has determined, based on review of an analysis performed by the source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(e) If the proposed new source or the proposed modification is major for the air contaminant for which the area is designated nonattainment, allowable emissions from the proposed new source or modification of that air contaminant are offset by reductions in actual emissions from existing sources in the nonattainment area. Emission offsets must be sufficient to ensure that total allowable emissions from existing major stationary sources in the nonattainment area, new or modified sources which are not major stationary sources, and the proposed new or modified source will be less than total actual emissions from existing sources (before submitting the application) so as to represent (when considered together with the nonattainment provisions of section 172 of the Federal Clean Air Act) reasonable further progress. All offsetting emission reductions must satisfy the following requirements:

(i) The proposed new level of allowable emissions of the source or emissions unit(s) providing the reduction must be less than the current level of actual emissions of that source or emissions unit(s). No emission reduction can be credited for actual emissions which exceed the current allowable emissions of the source or emissions unit(s) providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders, or permits required by the Federal Clean Air Act, including the SIP, cannot be credited.

(ii) The emission reductions must provide for a net air quality benefit. For marginal ozone nonattainment areas, the total emissions of volatile organic compounds or total emissions of nitrogen oxides are reduced by a ratio of 1.1 to 1 for the area in which the new source is located. For any other nonattainment area, the emissions offsets must provide a positive

net air quality benefit in the nonattainment area. Determinations on whether emissions offsets provide a positive net air quality benefit will be made in accordance with the guidelines contained in 40 CFR 51 Appendix S (in effect on July 1, ~~((2000))~~ 2004).

(iii) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the order of approval for the new or modified source is effective. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(f) If the proposed new source is a major stationary source or the proposed modification is a major modification, the owner or operator has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules in the SIP.

(g) If the proposed new source is a major stationary source within the meaning of WAC ~~((173-400-113(1)))~~ 173-400-720, or the proposed modification is a major modification within the meaning of WAC ~~((173-400-113(1)))~~ 173-400-720, it meets the requirements of the PSD program in WAC ~~((173-400-141))~~ 173-400-720 for all air contaminants for which the area has not been designated nonattainment.

(h) If the proposed new source or modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements of that chapter.

(i) If the proposed new source is a major stationary source within the meaning of WAC ~~((173-400-113(1)))~~ 173-400-720, or the proposed modification is a major modification within the meaning of WAC ~~((173-400-113(1)))~~ 173-400-720, the project meets the special protection requirements for federal Class I areas in WAC 173-400-117.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-113 Requirements for new sources in attainment or unclassifiable areas. ~~((1))~~ Definitions. The following definitions apply to this section:

(a) "Major modification" for purposes of WAC 173-400-113, means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

(i) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(ii) A physical change or change in the method of operation shall not include:

(A) Routine maintenance, repair and replacement;

(B) Use of an alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any super-

seding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(C) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(E) Use of an alternative fuel or raw material by a source which:

(I) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition or approval order which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or

(II) The source is approved to use under any PSD permit;

(F) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition or an approval order which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation.

(G) Any change in ownership at a source.

(H) The addition, replacement, or use of a pollution control project at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(I) When the permitting agency has reason to believe that the pollution control project (as defined in 40 CFR 51.166, in effect on July 1, 2001) would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of title I of the Federal Clean Air Act, if any; and

(II) The permitting agency determines that the increase will cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or visibility limitation.

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the SIP, and other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(b) "Major stationary source," for purposes of WAC 173-400-113, means:

(i) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act:

(A) Fossil fuel fired steam electric plants of more than 50 million British thermal units per hour heat input;

(B) Coal cleaning plants (with thermal dryers);

(C) Kraft pulp mills;

(D) Portland cement plants;

(E) Primary zinc smelters;

(F) Iron and steel mill plants;

(G) Primary aluminum ore reduction plants;

(H) Primary copper smelters;

(I) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(J) Hydrofluoric, sulfuric, and nitric acid plants;

(K) Petroleum refineries;

(L) Lime plants;

(M) Phosphate rock processing plants;

(N) Coke oven batteries;

(O) Sulfur recovery plants;

(P) Carbon black plants (furnace process);

(Q) Primary lead smelters;

(R) Fuel conversion plants;

(S) Sintering plants;

(T) Secondary metal production plants;

(U) Chemical process plants;

(V) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;

(W) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(X) Taconite ore processing plants;

(Y) Glass fiber processing plants; and

(Z) Charcoal production plants.

(ii) Regardless of the stationary source size specified in (b)(i) of this subsection, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Federal Clean Air Act; or

(iii) Any physical change that would occur at a stationary source not otherwise qualifying under (b)(i) or (ii) of this subsection, as a major stationary source if the change would constitute a major stationary source by itself.

(iv) A major stationary source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

(v) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants;

(U) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

(Z) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;

(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

(vi) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, facility, or installation" means all the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended.

(e) "Net emissions increase" for purposes of WAC 173-400-113, means:

(i) The amount by which the sum of the following exceeds zero:

(A) Any increase in actual emissions from a particular physical change or change in the method of operation at a source; and

(B) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within five years before the date that the increase from the particular change occurs.

(iii) An increase or decrease in actual emissions is creditable only if ecology or EPA has not relied on it in issuing a PSD permit for the source, which permit is in effect when the increase in actual emissions from the particular change occurs.

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM-10 emissions can be used to evaluate the net emissions increase for PM-10.

(v) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(vi) A decrease in actual emissions is creditable only to the extent that:

(A) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(B) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(C) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(vii) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(d) "Significant," for purposes of WAC 173-400-113, means:

(i) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate	
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter (PM):	25 tpy of PM emissions 15 tpy of PM-10 emissions
Volatile organic compounds:	40 tpy
Fluorides:	3 tpy
Lead:	0.6 tpy
Sulfuric acid mist:	7 tpy
Hydrogen sulfide (H ₂ S):	10 tpy
Total reduced sulfur (including H ₂ S):	10 tpy
Reduced sulfur compounds (including H ₂ S):	10 tpy
Municipal waste combustor organics: (measured as total tetra through octa chlorinated dibenzo-p-dioxins and dibenzofurans)	3.2 grams per year (0.112 oz. per year or 49 grains per year)
Municipal waste combustor metals: (measured as particulate matter)	14 megagrams per year (15 tpy)
Municipal waste combustor acid gases: (measured as sulfur dioxide and hydrogen chloride)	36 megagrams per year (40 tpy)
Municipal solid waste landfill emissions: (measured as non-methane organic compounds)	45 megagrams per year (50 tpy)
Ozone depleting substances (in effect on July 1, 2000):	100 tpy

(ii) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Federal Clean Air Act that the definition in (d)(i) of this subsection does not list, any emissions rate. However, for

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purposes of the applicability of this section, the hazardous air pollutants listed under section 112(b) of the Federal Clean Air Act, including the hazardous air pollutants that may have been added to the list, are not considered subject to regulation.

~~((iii))~~ Regardless of the definition in (d)(i) of this subsection, significant means any emissions rate or any net emissions increase associated with a major stationary source or major modification which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 microgram per cubic meter (twenty-four-hour average).

~~((2))~~ The permitting ((agency)) authority that is reviewing an application to establish a new source or modification in an attainment or unclassifiable area shall issue an order of approval if it determines that the proposed project satisfies each of the following requirements:

~~((a))~~ (1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

~~((b))~~ (2) The proposed new source or modification will employ BACT for all pollutants not previously emitted or whose emissions would increase as a result of the new source or modification.

~~((c))~~ (3) Allowable emissions from the proposed new source or modification will not delay the attainment date for an area not in attainment nor cause or contribute to a violation of any ambient air quality standard. This requirement will be considered to be met if the projected impact of the allowable emissions from the proposed new source or the projected impact of the increase in allowable emissions from the proposed modification at any location within a nonattainment area does not exceed the following levels for the pollutants for which the area has been designated nonattainment:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO-	-	-	0.5 mg/m ³	-	2 mg/m ³
SO ₂	1.0 µg/m ³	5 µg/m ³	-	25 µg/m ³	30 µg/m ³
PM ₁₀	1.0 µg/m ³	5 µg/m ³	-	-	-
NO ₂	1.0 µg/m ³	-	-	-	-

An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.

~~((d))~~ (4) If the proposed new source is a major stationary source or the proposed modification is a major modification, it meets all applicable requirements of WAC ~~((173-400-141))~~ 173-400-720 through 173-400-750.

~~((e))~~ (5) If the proposed new source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements of that program.

~~((f))~~ (6) If the proposed new source is a major stationary source or the proposed modification is a major modification, the project meets the special protection requirements for federal Class I areas of WAC 173-400-117.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-115 Standards of performance for new sources. NSPS. Standards of performance for new sources are called New Source Performance Standards, or NSPS.

(1) Adoption by reference.

(a) 40 CFR Part 60 and Appendices in effect on ~~((February 20, 2001))~~ July 1, 2004, is adopted by reference. Exceptions are listed in subsection (1)~~((d))~~(b) of this section.

~~((b))~~ 40 CFR Part 60, subpart AAAA (new small municipal waste combustion units) in effect on June 6, 2001, is adopted by reference.

~~((c))~~ 40 CFR Part 60, subpart CCCC (commercial and industrial solid waste incineration units) in effect on June 1, 2001, is adopted by reference.

The following list is provided for informational purposes:

- Subpart A General Provisions, except 40 CFR 60.5 and 60.6
- Subpart D Fossil fuel fired steam generators for which construction commenced after August 17, 1971, and prior to September 19, 1978, which have a heat input greater than 73 megawatts but not greater than 350 megawatts
- Subpart Da Electric utility steam generating units for which construction commenced after September 18, 1978, which have a heat input greater than 73 megawatts but not greater than 350 megawatts
- Subpart Db Industrial commercial institutional steam generating units for which construction commenced after June 19, 1984, and prior to June 19, 1986, which have a heat input greater than 29 megawatts but less than 73 megawatts
- Subpart De Small industrial commercial institutional steam generating units
- Subpart E Incinerators
- Subpart Ea Municipal waste combustors
- Subpart Eb Large municipal waste combustors constructed after September 20, 1964, or modified or reconstructed after June 19, 1964
- Subpart Ee Hospital/Medical/Infectious Waste Incinerators Constructed after June 20, 1996
- Subpart F Portland cement plants
- Subpart G Nitric acid plants
- Subpart H Sulfuric acid plants
- Subpart I Asphalt concrete plants
- Subpart J Petroleum refineries which produce less than 25,000 barrels per day of refined products

Subpart K	Storage vessels for petroleum liquid constructed after June 11, 1973, and prior to May 19, 1978, which have a capacity greater than 40,000 gallons	Subpart RR	Pressure sensitive tape and label surface coating operations
Subpart Ka	Storage vessels for petroleum liquids constructed after May 18, 1978, which have a capacity greater than 40,000 gallons	Subpart SS	Industrial surface coating: Large appliances
Subpart Kb	Volatile organic liquid storage vessels (including petroleum liquid storage vessels) constructed, reconstructed, or modified after July 23, 1984	Subpart TT	Industrial surface coating: Metal coils
Subpart L	Secondary lead smelters	Subpart UU	Asphalt processing and asphalt roofing manufacture
Subpart M	Brass and bronze ingot production plants	Subpart VV	SOCMI equipment leaks (VOC)
Subpart N	Iron and steel plants	Subpart WW	Beverage can surface coating operations
Subpart Na	Secondary emissions from basic oxygen process steel making facilities	Subpart XX	Bulk gasoline terminals
Subpart O	Sewage treatment plants	Subpart AAA	New residential wood heaters
Subpart P	Primary copper smelters	Subpart BBB	Rubber tire manufacturing industry
Subpart Q	Primary zinc smelters	Subpart DDD	VOC emissions from the polymer manufacturing industry
Subpart R	Primary lead smelters	Subpart FFF	Flexible vinyl and urethane coating and printing
Subpart S	Primary aluminum reduction plants	Subpart GGG	Petroleum refineries—compressors and fugitive emission sources
Subpart T	Phosphate fertilizer industry: Wet process phosphoric acid plants	Subpart HHH	Synthetic fiber production facilities
Subpart U	Phosphate fertilizer industry: Superphosphoric acid plants	Subpart III	VOC emissions from SOCMI air oxidation unit processes
Subpart V	Phosphate fertilizer industry: Diammonium phosphate plants	Subpart JJJ	Petroleum dry cleaners
Subpart W	Phosphate fertilizer industry: Triple superphosphate plants	Subpart KKK	Equipment leaks of VOC from onshore natural gas processing plants
Subpart X	Phosphate fertilizer industry: Granular triple superphosphate storage facilities	Subpart LLL	Onshore natural gas processing; SO ₂ emissions
Subpart Y	Coal preparation plants	Subpart NNN	VOC emissions from SOCMI distillation operations
Subpart Z	Ferroalloy production facilities	Subpart OOO	Nonmetallic mineral processing plants
Subpart AA	Steel plants: Electric arc furnaces	Subpart PPP	Wool fiberglass insulation manufacturing plants
Subpart AAa	Steel plants: Electric arc furnaces and argon oxygen decarburization vessels	Subpart QQQ	VOC emissions from petroleum refinery wastewater emissions
Subpart BB	Kraft pulp mills	Subpart RRR	VOC emissions from synthetic organic chemical manufacturing industry
Subpart CC	Glass manufacturing plants	Subpart SSS	Magnetic tape coating facilities
Subpart DD	Grain elevators	Subpart TTT	Industrial surface coating: Surface coating of plastic parts for business machines
Subpart EE	Industrial surface coating: Metal furniture	Subpart UUU	Caleiners and dryers in mineral industries
Subpart GG	Stationary gas turbines	Subpart VVV	Polymeric coating of supporting substrates facilities
Subpart HH	Lime manufacturing plants	Subpart WWW	Municipal Solid Waste Landfills constructed, reconstructed or modified on or after May 30, 1991 (See WAC 173-400-070(9) for rules regulating MSW landfills constructed or modified before May 30, 1991.)
Subpart KK	Lead acid battery plants		
Subpart LL	Metallurgical mineral processing plants		
Subpart MM	Automobile and light duty truck surface coating operations		
Subpart NN	Phosphate rock plants		
Subpart PP	Ammonium sulfate manufacture		
Subpart QQ	Publication rotogravure printing		

Subpart AAAAA Small municipal waste combustion units constructed after August 30, 1999, or modified or reconstructed after June 6, 2001 (See WAC 173-400-050(5) for rules regulating small municipal waste combustion units constructed on or before August 30, 1999.)

Subpart CCCC Commercial and industrial solid waste incinerators constructed after November 30, 1999, or modified or reconstructed on or after June 1, 2001 (See WAC 173-400-050(4) for rules regulating commercial and industrial solid waste incinerators constructed on or before November 30, 1999.)

Appendix A Test Methods
Appendix B Performance Specifications
Appendix C Determination of Emission Rate Change
Appendix D Required Emission Inventory Information
Appendix F Quality Assurance Procedures
Appendix I Removable Label and Owner's Manual

(d)) The following list of subparts to 40 CFR Part 60 which are shown as blank or reserved in the Code of Federal Regulations as of the date listed above, is provided for informational purposes only:

40 CFR Part 60, subparts FF, II, JJ, OO, YY, ZZ, CCC, EEE, MMM, XXX, YYY, ZZZ, Appendix E, and Appendix H.

(b) Exceptions to adopting 40 CFR Part 60 by reference.

(i) The term "administrator" in 40 CFR Part 60 includes the permitting ((agency)) authority.

(ii) The following sections and subparts of 40 CFR Part 60 are not adopted by reference:

(A) 40 CFR 60.5 (determination of construction or modification);

(B) 40 CFR 60.6 (review of plans); ((and))

(C) 40 CFR Part 60, subpart((s-C, Cb, Ce, Cd, and Ce (emission guidelines)).

(iii) Effective June 6, 2001, 40 CFR 60.17 (subpart A) is amended by revising paragraphs (h)(1), (h)(2), and (h)(3) to read as follows:

(h)(1) ASME QRO-1-1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators approved for Section 60.56a, 60.54b(a), 60.54b(b), 60.1185(a), 60.1185 (e)(2), 60.1675(a), and 60.1675 (e)(2).

(h)(2) ASME PTC 4.1-1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda), IBR approved for Section 60.46b, 60.58a (h)(6)(ii), 60.58b (i)(6)(ii), 60.1320 (a)(3) and 60.1810 (a)(3).

(h)(3) ASME interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971), IBR approved for Section 60.58a (h)(6)(ii), 60.58b (i)(6)(ii), 60.1320 (a)(4) and 60.1810 (a)(4).

(2) Note that under RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC) under WAC 463-39-115)) B (Adop-

tion and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, BBBB, and DDDD (emission guidelines); and

(D) 40 CFR Part 60, Appendix G, Provisions for an Alternative Method of Demonstrating Compliance With 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company.

(2) Where EPA has delegated to the permitting authority, the authority to receive reports under 40 CFR Part 60, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.

Note: Under RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC).

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-116 New source review fees. (1) **Applicability.** Every person required to submit a notice of construction application to the department of ecology as authorized in RCW 70.94.152 for establishment of any proposed new source or emissions unit(s) shall pay fees as set forth in subsections (2) and (3) of this section. Persons required to submit a notice of construction application to a local air authority may be required to pay a fee as required by the local permitting authority. Persons required to submit a notice of construction application to a local air authority may be required to pay a fee to ecology to cover the costs of review pursuant to WAC ((173-400-141)) 173-400-720, second tier analysis pursuant to WAC 173-460-090, and risk management decisions pursuant to WAC 173-460-100 as set forth in subsection (3) of this section. Fees assessed under this section shall apply without regard to whether an order of approval is issued or denied.

(2) **Basic review fees.** All owners or operators of proposed new sources are required to pay a basic review fee. The basic review fee covers the costs associated with preapplication assistance, completeness determination, BACT determination, technical review, public involvement and approval/denial orders. Complexity determination shall be based on the project described in the notice of construction application. The basic review fees are ((shown)) either (a) or (b) below:

(a) ((Low-complexity new source or emission unit (emissions of individual criteria pollutants are all less than one-half of the levels established in the definition of "significant" in WAC 173-400-112 and/or 173-400-113, as applicable, or emissions of individual toxic air pollutants are all less than 2.0 tons/year) one thousand dollars;

(b) Moderate-complexity new source or emission unit (emissions of one or more individual criteria pollutants are greater than one-half of the levels established in the definition of "significant" in WAC 173-400-112 and/or 173-400-113, as applicable, or emissions of one or more toxic air pol-

lutants are greater than 2.0 tons/year and less than ten tons/year) five thousand dollars; or

(e) High complexity new source or emissions unit (emissions of one or more criteria pollutants are greater than the levels established in the definition of "significant" in WAC 173-400-112 and/or 173-400-113, as applicable, or emissions of one or more toxic air pollutants are greater than ten tons/year) fifteen thousand dollars.

(d) Exceptions. The following fees for new source review shall be charged instead of the applicable fees listed in (a) through (c) of this subsection and in subsection (3) of this section:

- (i) Dry cleaners \$200
- (ii) Gasoline stations \$200
- (iii) Storage tanks
 - (A) <20,000 gallons \$200
 - (B) 20,000-100,000 gallons \$500
 - (C) >100,000 \$700
- (iv) Chromic acid plating and anodizing identified in WAC 173-460-060 \$200
- (v) Solvent metal cleaners identified in WAC 173-460-060 \$200
- (vi) Abrasive blasting identified in WAC 173-460-060 \$200
- (vii) New emission units or activities that qualify as insignificant emission units under WAC 173-401-530 whether located at a chapter 401 source or nonchapter 401 source \$200

(e)) Basic new source review fees.

Source type	Clarifying criteria	Fee
<u>Basic Review Fees</u>		
Low complexity source	Emissions increase of individual pollutants are all less than one-half of the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of individual toxic air pollutants are all less than 2.0 tons/year	\$1250
Moderate complexity	Emissions increase of one or more individual pollutants are greater than one-half of, and less than the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of one or more toxic air pollutants are greater than 2.0 tons/year and less than ten tons/year	\$8000

Source type	Clarifying criteria	Fee
High complexity	Emissions increase of one or more pollutants are greater than the levels established in the definition of "emission threshold" in WAC 173-400-030, or emissions increase of one or more toxic air pollutants are greater than ten tons/year	\$18,000

(b) New source review fees for specific source categories.

Source type	Clarifying criteria	Fee
Dry cleaners		\$250
Gasoline stations		\$250
Storage tanks		
	< 20,000 gallons	\$250
	20,000 - 100,000 gallons	\$650
	> 100,000 gallons	\$900
Chromic acid plating and anodizing identified in WAC 173-460-060		\$250
Solvent metal cleaners identified in WAC 173-460-060		\$250
Abrasive blasting identified in WAC 173-460-060		\$250
New emission units or activities that qualify as insignificant emission units under WAC 173-401-530 whether located at a chapter 173-401 WAC source or nonchapter 173-401 WAC source		\$250
Application for coverage under a general order of approval	WAC 173-400-560 and criteria included in a specific general order of approval	\$500
Nonroad engines		
	Less than a total of 500 installed horsepower	\$500
	More than 500 horsepower and less than a total of 2000 installed horsepower	\$900

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Source type	Clarifying criteria	Fee
More than 2000 horse-power and less than a total of 5000 installed horse-power		\$2000
More than 5000 horse-power and less than a total of 10,000 installed horse-power		\$4000
More than a total of 10,000 installed horse-power		\$7500

(c) Additional units. An owner or operator proposing to build more than one identical emission unit shall be charged a fee for the additional units equal to one-third the basic review fee of the first unit.

(3) **Additional charges.** In addition to those fees required under subsection (2)(a) through (c) of this section, the following fees will be required as applicable:

(a) ~~((Prevention of significant deterioration review (includes ecology review of local air authority sources) ten thousand dollars;~~

~~(b) Establishing LAER and offset requirements for a major stationary source or major modification proposing to locate in a nonattainment area ten thousand dollars;~~

~~(c) Tier II toxics review as required under WAC 173-460-090 seven thousand five hundred dollars;~~

~~(d) Tier III review as required under WAC 173-460-100 five thousand dollars;~~

~~(e) State Environmental Policy Act review (where ecology is the lead agency);~~

~~(i) Determination of nonsignificance (DNS) and environmental checklist review two hundred dollars; or~~

~~(ii) Environmental impact statement (EIS) review two thousand dollars;~~

~~(iii) Where more than one ecology program is charging a fee for reviewing or preparing SEPA documents, ecology will not charge a SEPA review fee as part of the new source review fees;~~

~~(f) Case by case MACT determinations required for a new source or modification under Section 112(g) or Section 112(j) of the FCAA five thousand dollars.)) Major NSR actions under WAC 173-400-720 and 173-400-112.~~

Activity	Clarifying criteria	Fee
Prevention of significant deterioration review or increase in a PAL limitation	WAC 173-400-720	\$15,000
Establishing LAER and offset requirements	WAC 173-400-112	\$10,000
Establishing or renewal of clean unit status	Per 40 CFR 52.21(y)	\$1500

Activity	Clarifying criteria	Fee
Pollution control project approval	Per 40 CFR 52.21(z)	\$1500
Establishment of a PAL	Per 40 CFR 52.21(aa)	\$4000
Renewal of a PAL	Per 40 CFR 52.21(aa)	\$4000
Expiration of a PAL	Per 40 CFR 52.21(aa)	\$12,000
PSD permit revisions		
All except administrative	WAC 173-400-750	\$10,000
Administrative revisions	WAC 173-400-750	\$1500

(b) Other actions.

Activity	Clarifying criteria	Fee
Tier II toxic air pollutant impact review		\$10,000
Tier III toxic air pollutant impact review		\$10,000
Case-by-case MACT determinations		\$12,500
Fossil fueled electric generating unit	Applicability criteria found in chapter 80.70 RCW	Fees listed in rule implementing RCW 70.94.892 and chapter 80.70 RCW
<u>Changes to existing orders of approval, Tier I review, Tier II review, or other action identified above.</u>		
Activity	Clarifying criteria	Fee
Modification to order of approval		50% of the fee charged in WAC 173-400-116 (2)(a)
Modification of Tier II approval		50% of the fee charged in WAC 173-400-116 (2)(b)

(4) **Small business fee reduction.** The new source review fee identified in subsections (2) and (3) of this section may be reduced for a small business.

(a) To qualify for the small business new source review fee reduction, a business must meet the requirements of "small business" as defined in RCW 19.85.020. In RCW 19.85.020, "small business" means any business entity,

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including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.

(b) To receive a fee reduction, the owner or operator of a small business must include information in the application demonstrating that the conditions of (a) of this subsection have been met. The application must be signed:

(i) By an authorized corporate officer in the case of a corporation;

(ii) By an authorized partner in the case of a limited or general partnership; or

(iii) By the proprietor in the case of a sole proprietorship.

(c) Ecology may verify the application information and if the owner or operator has made false statements, deny the fee reduction request and revoke previously granted fee reductions.

(d) For small businesses determined to be eligible under (a) of this subsection, the new source review fee shall be reduced to the greater of:

(i) Fifty percent of the new source review fee; or

(ii) Two hundred fifty dollars.

(e) If due to special economic circumstances, the fee reduction determined under (d) of this subsection imposes an extreme hardship on a small business, the small business may request an extreme hardship fee reduction. The owner or operator must provide sufficient evidence to support a claim of an extreme hardship. The factors which ecology may consider in determining whether an owner or operator has special economic circumstances and in setting the extreme hardship fee include: Annual sales; labor force size; market conditions which affect the owner's or operator's ability to pass the cost of the new source review fees through to customers; and average annual profits. In no case will a new source review fee be reduced below one hundred dollars.

(5) Fee reductions for pollution prevention initiatives. Ecology may reduce the fees defined in subsections (2) and (3) of this section where the owner or operator of the proposed source demonstrates that approved pollution prevention measures will be used.

(6) Fee payments. Fees specified in subsections (2) through (5) of this section shall be paid at the time a notice of construction application is submitted to the department. A notice of construction application is considered incomplete until ecology has received the appropriate new source review payment. Additional charges assessed pursuant to subsection (3) of this section shall be due thirty days after receipt of an ecology billing statement. All fees collected under this regulation shall be made payable to the Washington department of ecology.

(7) Dedicated account. All new source review fees collected by the department (~~from permit program sources shall be deposited in the air operating permit account created under RCW 70.94.015. All new source review fees collected by the department from nonpermit program sources~~) shall be deposited in the air pollution control account.

(8) Tracking revenues, time, and expenditures. Ecology shall track revenues collected under this subsection on a source-specific basis. Ecology shall track time and expenditures on the basis of complexity categories.

(9) Periodic review. Ecology shall review and, as appropriate, update this section at least once every two years.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-117 Special protection requirements for federal Class I areas. (1) **Definitions.** The following definitions (~~applies~~) apply to this section:

(a) "**Adverse impact on visibility**" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with:

~~((a))~~ (i) Times of visitor use of the federal Class I area; and

~~((b))~~ (ii) The frequency and timing of natural conditions that reduce visibility.

(b) The terms "**major stationary source**," "**major modification**," and "**net emissions increase**" are as provided in WAC 173-400-720.

(2) **Applicability.** The requirements of this section apply to all of the following (~~sources~~) **permitting actions**:

(a) A (~~source that is submitting a~~) PSD permit application for a new major stationary source or a major modification; or

(b) (~~A source in a nonattainment area that is submitting~~) Submittal of a notice of construction application for a major stationary source or a major modification to a stationary source in a nonattainment area, as either of those terms are defined in WAC (~~173-400-113, Requirements for new sources in attainment or unclassifiable areas~~) 173-400-720.

(3) **Contents and distribution of application.**

(a) The application shall include an analysis of the anticipated impacts of the project on visibility in any federal Class I area.

(b) The applicant must mail a copy of the application for the project and all amendments to the application to the permitting (~~agency~~) authority, EPA and to the responsible federal land managers. Ecology will provide a list of the names and addresses of the federal land manager.

(4) **Notice to federal land manager.**

(a) The permitting (~~agency~~) authority shall send a copy of the completeness determination to the responsible federal land manager.

(b) If, prior to receiving a notice of construction application or a PSD permit application, the permitting (~~agency~~) authority receives notice of a project described in subsection (2) of this section that may affect visibility in a federal Class I area, the permitting (~~agency~~) authority shall notify the responsible federal land manager within thirty days of the notification.

(5) **Analysis by federal land manager.**

(a) The permitting (~~agency~~) authority will consider any demonstration presented by the responsible federal land manager that emissions from a proposed new major stationary source or the net emissions increase from a proposed major modification described in subsection (2) of this section would

have an adverse impact on visibility in any federal Class I area, provided that the demonstration is received by the permitting ((agency)) authority within thirty days of the federal land manager's receipt of the complete application.

(b) If the permitting ((agency)) authority concurs with the federal land manager's demonstration, the PSD permit or approval order for the project either shall be denied, or conditions shall be included in the ((permit or)) approval order to prevent the adverse impact.

(c) If the permitting ((agency)) authority finds that the federal land manager's analysis does not demonstrate that the project will have an adverse impact on visibility in a federal Class I area, the permitting ((agency)) authority either shall explain its decision in the public notice required by WAC ((173-400-171(2))) 173-400-730, or, in the case of public notice of proposed action on a PSD permit application, state that an explanation of the decision appears in the ((Fact Sheet)) Technical Support Document for the proposed permit.

(6) Additional requirements for projects that require a PSD permit.

(a) For sources impacting federal Class I areas, the permitting ((agency)) authority shall provide notice to EPA of every action related to consideration of the PSD permit.

(b) The permitting ((agency)) authority shall consider any demonstration received from the responsible federal land manager prior to the close of the public comment period on a proposed PSD permit that emissions from the proposed new major stationary source or the net emissions increase from a proposed major modification would have an adverse impact on the air quality-related values (including visibility) of any mandatory Class I federal area.

(c) If the permitting ((agency)) authority concurs with the demonstration, the PSD permit either shall be denied, or conditions shall be included in the PSD permit to prevent the adverse impact.

(7) Additional requirements for projects located in nonattainment areas. In reviewing a PSD permit application or notice of construction application for a ((project)) new major stationary source or major modification proposed for construction in an area classified as nonattainment, the permitting ((agency)) authority must ensure that the source's emissions will be consistent with making reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, impairment of visibility by human-caused air pollution in mandatory Class I federal areas. In determining the need for approval order conditions to meet this requirement, the permitting ((agency)) authority may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(8) Monitoring. The permitting ((agency)) authority may require post-construction monitoring of the impact from the project. The monitoring shall be limited to the impacts on visibility in any federal Class I area near the proposed project.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-118 Designation of Class I, II, and III areas. (1) Designation.

(a) Lands within the exterior boundaries of Indian reservations may be ((redesignated only by the appropriate Indian governing body)) proposed for redesignation by an Indian governing body or EPA. This restriction does not apply to nontrust lands within the 1873 Survey Area of the Puyallup Indian Reservation.

(b) All areas of the state must be designated either Class I, II or III.

(i) The following areas are the Class I areas in Washington state:

- (A) Alpine Lakes Wilderness;
- (B) Glacier Peak Wilderness;
- (C) Goat Rocks Wilderness;
- (D) Adams Wilderness;
- (E) Mount Rainier National Park;
- (F) North Cascades National Park;
- (G) Olympic National Park;
- (H) Pasayten Wilderness; and
- (I) Spokane Indian Reservation.¹

(ii) All other areas of the state are Class II, but may be redesignated as provided in subsections (2) and (3) of this section.

¹ EPA redesignated this land based on a request from the Spokane Tribal Council. See 40 CFR 52.2497 and 56 FR 14862, April 12, 1991, for details.

(2) Restrictions on area classifications.

(a) Except for the Spokane Indian Reservation, the Class I areas listed in subsection (1) of this section may not be redesignated.

(b) Except as provided in (a) of this subsection, the following areas that exceed 10,000 acres in size may be redesignated as Class I or II:

- (i) Areas in existence on August 7, 1977:
 - (A) A national monument;
 - (B) A national primitive area;
 - (C) A national preserve;
 - (D) A national wild and scenic river;
 - (E) A national wildlife refuge; ((or))
 - (F) A national lakeshore or seashore; or
 - (G) A national recreation area.

(ii) Areas established after August 7, 1977:

- (A) A national park; ((or))
- (B) A national wilderness area; or
- (C) Areas proposed by ecology for designation or redesignation.

(3) Redesignation of area classifications.

(a) Ecology shall propose the redesignation of an area classification as a revision to the SIP.

(b) Ecology may submit to EPA a proposal to redesignate areas of the state as Class I or II if:

(i) Ecology followed the public involvement procedures in WAC 173-400-171;

(ii) Ecology explained the reasons for the proposed redesignation, including a description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation;

(iii) Ecology made available for public inspection at least thirty days before the hearing the explanation of the reasons for the proposed redesignation;

(iv) Ecology notified other states, tribal governing bodies, and federal land managers (as defined in 40 CFR 52.21(b)(24)) whose lands may be affected by the proposed redesignation at least thirty days prior to the public hearing;

(v) Ecology consulted with the elected leadership of local governments in the area covered by the proposed redesignation before proposing the redesignation; and

(vi) Ecology followed these procedures when a redesignation includes any federal lands:

(A) Ecology notified in writing the appropriate federal land manager on the proposed redesignation. Ecology allowed forty-five days for the federal land manager to confer with ecology and to submit written comments.

(B) Ecology responded to any written comments from the federal land manager that were received within forty-five days of notification. Ecology's response was available to the public in advance of the notice of the hearing.

(I) Ecology sent the written comments of the federal land manager, along with ecology's response to those comments, to the public location as required in WAC 173-400-171(2)(a).

(II) If ecology disagreed with the federal land manager's written comments, ecology published a list of any inconsistency between the redesignation and the comments of the federal land manager, together with the reasons for making the redesignation against the recommendation of the federal land manager.

(c) Ecology may submit to EPA a proposal to redesignate any area other than an area to which subsection (1) of this section applies as Class III if:

(i) The redesignation followed the public involvement requirements of WAC 173-400-171 and 173-400-118(3);

(ii) The redesignation has been specifically approved by the governor of Washington state, after consultation with the appropriate committees of the legislature if it is in session, or with the leadership of the legislature, if it is not in session;

(iii) The redesignation has been approved by local governments representing a majority of the residents of the area to be redesignated. The local governments enacted legislation or passed resolutions concurring in the redesignation;

(iv) The redesignation would not cause, or contribute to, a concentration of any air contaminant which would exceed any maximum allowable increase permitted under the classification of any other area or any National Ambient Air Quality Standard; and

(v) A PSD permit under WAC (~~(173-400-141)~~) 173-400-720 for a new major stationary source or major modification could be issued only if the area in question were redesignated as Class III, and material submitted as part of that application was available for public inspection prior to any public hearing on redesignation of the area as Class III.

AMENDATORY SECTION (Amending Order 93-03, filed 8/20/93, effective 9/20/93)

WAC 173-400-120 Bubble rules. (1) Applicability. The owner(s) or operator(s) of any source(s) may apply for a

bubble for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions units involved.

(2) Conditions. A bubble may be authorized provided the following conditions have been demonstrated to the satisfaction of ~~((ecology or))~~ the permitting authority.

(a) The contaminants exchanged must be of the same type, that is, PM₁₀ for PM₁₀, sulfur dioxide for sulfur dioxide, etc.

(b) The bubble will not interfere with the attainment and maintenance of air quality standards. No bubble shall be authorized in a nonattainment area unless there is an EPA-approved SIP which demonstrates attainment for that area.

(c) The bubble will not result in a delay in compliance by any source, nor a delay in any existing enforcement action.

(d) The bubble will not supersede NSPS, NESHAPS, BACT, or LAER. The emissions of hazardous contaminants shall not be increased.

(e) The bubble will not result in an increase in the sum of actual emission rates of the contaminant involved from the emissions units involved.

(f) A bubble may not be authorized only for opacity limits. However, if the emission limit for particulates for a given emissions unit is increased as part of a bubble, the opacity limit for the given emissions unit may be increased subject to the following limitations:

(i) The new opacity limit shall be specific for the given emissions unit;

(ii) The new opacity limit shall be consistent with the new particulates limit;

(iii) An opacity greater than sixty percent shall never be authorized;

(iv) If the given emissions unit emits or has the potential to emit one hundred tons per year or more of particulate matter, the opacity shall be monitored continuously.

(g) The emission limits of the bubble are equivalent to existing limits in enforceability.

(h) Concurrent with or prior to the authorization of a bubble, each emission unit involved in a bubble shall receive or have received a regulatory order or permit that establishes total allowable emissions from the source ~~((of))~~ for the contaminant being bubbled, expressed as weight of the contaminant per unit time.

(i) There will be no net adverse impact upon air quality from the establishment of new emission requirements for a specific source or emissions unit. Determination of net adverse impact shall include but not be limited to public perception of opacity and public perception of odorous contaminants.

(j) Specific situations may require additional demonstration as requested by ~~((ecology or))~~ the permitting authority.

(3) Jurisdiction. Whenever a bubble application involves emissions units, some of which are under the jurisdiction of an authority, approval will require concurrence by both authorities. The new emission limits for each emissions unit will be enforced by the authority of original jurisdiction.

(4) Additional information. Within thirty days, after the receipt of a bubble application and all supporting data and documentation, ~~((ecology or))~~ the permitting authority may

require the submission of additional information needed to review the application.

(5) **Approval.** Within thirty days after all the required information has been received, ~~((ecology or))~~ the permitting authority shall approve or deny the application, based on a finding that conditions in subsection (2)(a) through (j) of this section have been satisfied or not. If the application is approved, a regulatory order or equivalent document shall be issued which includes new allowable emissions limits expressed in weight of pollutant per unit time for each emissions unit affected by the bubble. The regulatory order or equivalent document shall include any conditions required to assure that subsection (2)(a) through (j) of this section will be satisfied. If the bubble depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit operation of the affected equipment. The regulatory order establishing the bubble is subject to the public involvement requirements of WAC 173-400-171.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-131 Issuance of emission reduction credits. (1) **Applicability.** The owner or operator of any source may apply to the permitting ((agency)) authority for an emission reduction credit (ERC) if the source proposes to reduce its actual emissions rate for any contaminant regulated by state or federal law for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emissions units involved.

(2) **Time of application.** The application for an ERC must be made prior to or within one hundred eighty days after the emission reduction has been accomplished.

(3) **Conditions.** An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of the permitting ((agency)) authority.

(a) The quantity of emissions in the ERC shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate.

(b) The ERC application must include a description of all the changes that are required to accomplish the claimed emissions reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices, etc.

(c) The ERC must be large enough to be readily quantifiable relative to the source strength of the emissions unit(s) involved.

(d) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under WAC 173-400-112 (2)(d), nor as part of a bubble transaction under WAC 173-400-120, nor to satisfy NSPS, NESHAPS, for Source Categories, BACT, or LAER.

(e) Concurrent with or prior to the authorization of an ERC, the applicant shall receive (have received) a regulatory order or permit that establishes total allowable emissions from the source or emissions unit of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time.

(f) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(4) **Additional information.** Within thirty days after the receipt of an ERC application and all supporting data and documentation, the permitting ((agency)) authority may require the submission of additional information needed to review the application.

(5) **Approval.** Within thirty days after all required information has been received, the permitting ((agency)) authority shall approve or deny the application, based on a finding that conditions in subsection (3)(a) through (e) of this section have been satisfied or not. If the application is approved, the permitting ((agency)) authority shall:

(a) Issue a regulatory order or equivalent document to assure that the emissions from the source will not exceed the allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The regulatory order or equivalent document shall include any conditions required to assure that subsection (3)(a) through (e) of this section will be satisfied. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order or equivalent document must prohibit operation of the affected equipment; and

(b) Issue a certificate of emission reduction credit. The certificate shall specify the issue date, the contaminants involved, the emission decrease expressed as weight of pollutant per unit time, the nonattainment area involved, if applicable, and the person to whom the certificate is issued.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-136 Use of emission reduction credits (ERC). (1) **Permissible use.** An ERC may be used to satisfy the requirements for authorization of a bubble under WAC 173-400-120; as a part of a determination of "net emissions increase;" or as an offsetting reduction to satisfy the requirements for new source review in WAC 173-400-112 or 173-400-113 ~~((2)(e))~~ (3).

(2) **Surrender of ERC certificate.** When an ERC is used under subsection (1) of this section, the certificate for the ERC must be surrendered to the permitting ((agency)) authority. If only a portion of the ERC is used, the amended certificate will be returned to the owner.

(3) **Conditions of use.**

(a) An ERC may be used only for the air contaminants for which it was issued.

(b) The permitting ((agency)) authority may impose additional conditions of use to account for temporal and spatial differences between the emissions units that generated the ERC and the emissions units that use the ERC.

(4) **Sale of an ERC.** An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. Within thirty days after the transfer of ownership, the certificate must be surrendered to the issuing authority. After receiving the certificate, the issuing authority shall reissue the certificate to the new owner.

(5) **Redemption period.** An unused ERC expires ten years after date of original issue.

(6) **Discount due to change in SIP.** If reductions in emissions beyond those identified in the SIP are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating sources, and if the plan must be revised, an ERC may be discounted by ~~((ecology or))~~ the permitting authority after public involvement according to WAC 173-400-171. This discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-151 Retrofit requirements for visibility protection. (1) The requirements of this section apply to an existing stationary facility. An "existing stationary facility" means a stationary source of air contaminants that meets all of these conditions:

(a) The stationary source must have the potential to emit 250 tons per year or more of any air contaminant. Fugitive emissions, to the extent quantifiable, must be counted in determining the potential to emit; and

(b) The stationary source was not in operation prior to August 7, 1962, and was in existence on August 7, 1977~~((:))~~; and

(c) Is in one of the following 26 source categories:

<u>Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input,</u>	<u>Coke oven batteries,</u>
<u>Coal cleaning plants (thermal dryers),</u>	<u>Sulfur recovery plants,</u>
<u>Kraft pulp mills,</u>	<u>Carbon black plants (furnace process),</u>
<u>Portland cement plants,</u>	<u>Primary lead smelters,</u>
<u>Primary zinc smelters,</u>	<u>Fuel conversion plants,</u>
<u>Iron and steel mill plants,</u>	<u>Sintering plants,</u>
<u>Primary aluminum ore reduction plants,</u>	<u>Secondary metal production facilities,</u>
<u>Primary copper smelters,</u>	<u>Chemical process plants,</u>
<u>Municipal incinerators capable of charging more than 250 tons of refuse per day,</u>	<u>Fossil-fuel boilers of more than 250 million British thermal units per hour heat input,</u>
<u>Hydrofluoric, sulfuric, and nitric acid plants,</u>	<u>Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels,</u>
<u>Petroleum refineries,</u>	<u>Taconite ore processing facilities,</u>
<u>Lime plants,</u>	<u>Glass fiber processing plants, and</u>
<u>Phosphate rock processing plants,</u>	<u>Charcoal production facilities.</u>

~~((e))~~ (d) For purposes of determining whether a stationary source is an existing stationary facility, the term "building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual, 1972*, as amended in the 1977 supplement.

(2) Ecology shall identify each existing stationary facility which may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Class 1 federal area in Washington and any adjacent state.

(3) For each existing stationary facility identified under subsection (2) of this section, ecology, in consultation with the permitting ~~((agency))~~ authority shall determine BART for ~~((the))~~ each air contaminant of concern and any additional air pollution control technologies that are to be required to reduce impairment from the existing stationary facility.

(4) Each existing stationary facility shall apply BART as new technology for control of the air contaminant becomes reasonably available if:

(a) The existing stationary facility emits the air contaminant contributing to visibility impairment;

(b) Controls representing BART for that air contaminant have not previously been required under this section; and

(c) The impairment of visibility in any mandatory Class 1 federal area is reasonably attributable to the emissions of the air contaminant.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-171 Public involvement. (1) ~~((Applicability-))~~ **Internet notification of receipt of an application.**

(a) For applications and actions not subject to a mandatory public notice and comment period per subsection (2)(a) of this section, the permitting authority will either:

(i) Post on the permitting authority's internet website an announcement of the receipt of notice of construction applications and other proposed actions; or

(ii) Follow the public involvement process found in subsection (3) of this section.

(b) For internet notification, notice shall remain on the permitting authority's website for a minimum of fifteen consecutive days. The internet posting shall include notice of the receipt of the application, the type of proposed action, and a statement that the public may request a public comment period on the proposed action.

(c) Requests for a public comment period shall be submitted to the permitting authority in writing via letter, fax, or electronic mail within fifteen days of its internet posting. A public notice and comment period shall be provided pursuant to subsections (3) and (4) of this section for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement at the end of the fifteen-day comment period.

PERMANENT

(d) Any application or proposed action that automatically requires a public comment period pursuant to subsection (2) of this section or for which the agency proposes to have a public comment period does not have to be announced on the permitting authorities' internet website.

(2) Actions subject to public notice and comment.

(a) ~~(Ecology or)~~ The permitting authority must provide public notice and a public comment period before approving or denying any of the following types of applications or other actions:

(i) Notice of construction application for any new or modified source ~~(or emissions unit, if a significant net increase in emissions of any air pollutant regulated by state or federal law would result; or~~

~~(ii) Any preliminary determination to approve or disapprove a PSD permit application, except an administrative amendment to an existing permit; or~~

~~(iii) An extension of the deadline to begin construction in a PSD permit; or~~

~~(iv)~~, including the initial application for operation of a portable source, if an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC 173-400-030) or any increase in a pollutant regulated under chapter 173-460 WAC which will increase above the small quantity emission rate listed in WAC 173-460-080 (2)(e) would result; or

~~(ii)~~ Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (in effect on July 1, ~~(2000)~~ 2004) as part of review under WAC ~~((173-400-112, 173-400-141, or)) 173-400-110, 173-400-112, 173-400-113, 173-400-117, or 173-400-120; or~~

~~((v)) (iii)~~ Any order to determine RACT; or

~~((vi)) (iv)~~ An order to establish a compliance schedule or a variance; or

~~((vii)) (v)~~ An order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation; or

~~((viii)) (vi)~~ An order to authorize a bubble; or

~~(vii)~~ Any action to discount the value of an ERC issued to a source per WAC 173-400-136(6); or

~~(viii)~~ Any regulatory order to establish BART for an existing stationary facility; or

(ix) Notice of construction application or regulatory order used to establish a creditable emission reduction; or

(x) An order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit; or

~~(xi) ((Any application or other proposed action made under this chapter in which ecology or the authority determines there is substantial public interest)) The original issuance and the issuance of all revisions to a general order of approval issued under WAC 173-400-560; or~~

~~(xii) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or~~

~~(xiii) Exception. PSD actions, including actions taken to avoid PSD applicability, under WAC 173-400-730 and 173-400-740 are not required to follow the procedures in this sec-~~

tion. The public involvement for these projects shall follow the procedures in WAC 173-400-730(4) and 173-400-740.

(b) Ecology must provide notice on the following ecology only actions:

(i) A Washington state recommendation that will be submitted by the director of ecology to EPA for approval of a SIP revision, including plans for attainment, maintenance, and visibility protection; or

(ii) A Washington state recommendation to EPA for designation or redesignation of an area as attainment, nonattainment, or unclassifiable; or

(iii) A Washington state recommendation to EPA for a change of boundaries of an attainment or nonattainment area; or

(iv) A Washington state recommendation to EPA for redesignation of an area under WAC 173-400-118.

(c) The permitting authority will provide public notice before approving or denying any application or other action for which the permitting authority determines there is substantial public interest.

(d) A notice of construction application designated for integrated review with an application to issue or modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines. A project designated for integrated review that includes ~~((a PSD permit application;))~~ a notice of construction application for a major modification in a nonattainment area, or a notice of construction application for a major stationary source in a nonattainment area must also comply with public notice requirements in ~~((WAC 173-400-171))~~ this section. A project designated for integrated review that includes a PSD permit application must also comply with the requirements in WAC 173-400-730 and 173-400-740.

~~((2)) (3) Public notice.~~ Public notice shall be made only after all information required by ~~((ecology or))~~ the permitting authority has been submitted and after applicable preliminary determinations, if any, have been made. The applicant or other initiator of the action must pay the cost of providing public notice. Public notice shall include:

(a) Availability for public inspection. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

~~(i) ((For PSD permit determinations, ecology must include a copy or summary of other materials considered in making the preliminary determination.~~

~~(ii))~~ For a redesignation of a class II area under WAC 173-400-118, ecology must make available for public inspection at least thirty days before the hearing the explanation of the reasons for the proposed redesignation.

~~((iii)) (ii)~~ For a revision of the SIP subject to subsection ~~((4)) (2)(b)(iii)~~ of this section, ecology must make available for public inspection the information related to the action at least thirty days before the hearing.

(b) Newspaper publication. Public notice of the proposed project must be published in a newspaper of general circulation in the area of the proposed project and must include:

(i) The name and address of the owner or operator and the facility;

(ii) A brief description of the proposal;

(iii) The location of the documents made available for public inspection;

(iv) A thirty-day period for submitting written comment to ~~((ecology or))~~ the permitting authority;

(v) A statement that a public hearing may be held if ~~((ecology or))~~ the permitting authority determines within a thirty-day period that significant public interest exists or for those actions listed in WAC 173-400-171 (5)(b) with a mandatory public hearing requirement, the time, date, and location of the public hearing.

(vi) The length of the public comment period in the event of a public hearing;

(vii) For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117 (5)(c), public notice shall either explain the permitting ~~((agency's))~~ authority's decision or state that an explanation of the decision appears in the ~~((Fact Sheet))~~ support document for the proposed ~~((PSD permit))~~ order of approval; and

(viii) For a redesignation of an area under WAC 173-400-118, public notice shall state that an explanation of the reasons for the proposed redesignation is available for review at the public location.

(c) Notifying EPA. A copy of the public notice will be sent to the EPA Region 10 regional administrator.

(d) ~~((Additional public notice requirements for PSD projects. For projects subject to the PSD program in WAC 173-400-141, the permitting agency shall meet the public notice requirements in subsection (2)(a), (b), and (c) of this section, WAC 173-400-117(6), and the following requirements:~~

(i) PSD Permit Fact Sheet. All PSD permit preliminary determinations and final permits will be accompanied by a fact sheet that includes the following information:

(A) A brief description of the type of facility or activity subject to permitting;

(B) ~~The type and quantity of pollutants proposed to be emitted into the air;~~

(C) ~~A brief summary of the BACT options considered and the reasons why the selected BACT level of control was selected;~~

~~(D) A brief summary of the basis for permit conditions;~~

~~(E) The degree of increment consumption expected to result from operation of the facility at the permitted levels;~~

~~(F) An analysis of the impacts on air quality related values in federal Class I areas affected by the project; and~~

~~(G) An analysis of the impacts of the proposed emissions on visibility following the requirements in WAC 173-400-117.~~

(ii) For PSD permit preliminary determinations, the public notice required by subsection (2)(b) of this section shall contain:

(A) The name and address of the applicant;

(B) The location of the proposed project;

(C) A brief description of the project proposal;

~~(D) The preliminary determination to approve or disapprove the application;~~

~~(E) How much increment is expected to be consumed by this project;~~

~~(F) The name, address, and telephone number of the person to contact for further information;~~

~~(G) A brief explanation of how to comment on the project; and~~

~~(H) An explanation on how to request a public hearing.~~

~~(iii) For PSD permit preliminary determinations, a copy of the public notice required by subsection (2)(b) of this section shall be sent to:~~

~~(A) The applicant;~~

~~(B) U.S. Department of the Interior—National Park Service;~~

~~(C) U.S. Department of Agriculture—Forest Service;~~

~~(D) EPA Region 10;~~

~~(E) Any tribal governing body whose lands may be affected by emissions from the project;~~

~~(F) The chief executive of the city where the project is located;~~

~~(G) The chief executive of the county where the project is located;~~

~~(H) The authority in whose territory the project is located;~~

~~(I) The comprehensive regional land use planning agency whose lands may be affected by emissions from the project;~~

~~(J) Individuals or organizations that requested notification of the specific project proposal;~~

~~(K) Other individuals who requested notification of PSD permits;~~

~~(L) Any state within 100 km of the proposed project; and~~

~~(M) The location for public inspection of material required under subsection (2)(a) of this section.~~

~~(iv) A copy of the PSD permit preliminary determination and the fact sheet must be sent to:~~

~~(A) The applicant;~~

~~(B) U.S. Department of the Interior—National Park Service;~~

~~(C) U.S. Department of Agriculture—Forest Service;~~

~~(D) EPA Region 10;~~

~~(E) The authority in whose territory the project is located;~~

~~(F) Individuals or organizations who request a copy; and~~

~~(G) The location for public inspection of material required under subsection (2)(a) of this section.~~

~~(v) The final PSD permit determination shall include the following:~~

~~(A) A copy of the final PSD permit or the determination to deny the permit;~~

~~(B) A summary of the comments received;~~

~~(C) The permitting agency's response to those comments;~~

~~(D) A description of what approval conditions changed from the preliminary determination; and~~

~~(E) A cover letter that includes an explanation of how the final determination may be appealed.~~

~~(vi) The permitting agency shall mail a copy of the cover letter that accompanies the final PSD permit determination to:~~

- ~~(A) The applicant;~~
- ~~(B) U.S. Department of the Interior—National Park Service;~~
- ~~(C) U.S. Department of Agriculture—Forest Service;~~
- ~~(D) EPA Region 10;~~
- ~~(E) Any tribal governing body whose lands may be affected by emissions from project;~~
- ~~(F) The chief executive of the city where the project is located;~~
- ~~(G) The chief executive of the county where the project is located;~~
- ~~(H) The authority in whose territory the project is located;~~
- ~~(I) The comprehensive regional land use planning agency whose lands may be affected by emissions from the project;~~
- ~~(J) Individuals or organizations that requested notification of the specific project proposal;~~
- ~~(K) Other individuals who requested notification of PSD permits;~~
- ~~(L) Any state within 100 km of the proposed project; and~~
- ~~(M) The location for public inspection of material required under subsection (2)(a) of this section.~~

~~(vii) The permitting agency shall mail a copy of the final PSD permit determination to:~~

- ~~(A) The applicant;~~
- ~~(B) U.S. Department of the Interior—National Park Service;~~
- ~~(C) U.S. Department of Agriculture—Forest Service;~~
- ~~(D) EPA Region 10;~~
- ~~(E) The authority in whose territory the project is located;~~
- ~~(F) Individuals or organizations who request a copy; and~~
- ~~(G) The location for public inspection of material required under subsection (2)(a) of this section.~~

~~(e)) Additional public notice requirements for a SIP revision. For a revision to the SIP that is submitted by the director of ecology, ecology must publish the public notice required by subsection ((2)) (3)(b) of this section in the *Washington State Register* in advance of the date of the public hearing.~~

~~((3)) (4) Public comment.~~

~~(a) The public comment period must be at least the thirty-day period for written comment specified in the public notice.~~

~~(b) If a public hearing is held, the public comment period must extend through the hearing date.~~

~~(c) ((Ecology or)) The permitting authority shall make no final decision on any application or action of any type described in subsection (1) of this section until the public comment period has ended and any comments received during the public comment period have been considered.~~

~~((4)) (5) Public hearings.~~

~~(a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. A request must indicate the interest of the entity filing it and why a hearing is~~

~~warranted. ((Ecology or)) The permitting authority may hold a public hearing if it determines significant public interest exists. ((Ecology or)) The permitting authority will determine the location, date, and time of the public hearing.~~

~~(b) Ecology must hold a hearing on the following ecology only actions:~~

~~(i) A Washington state recommendation to EPA that will be submitted by the director of ecology for approval of a SIP revision;~~

~~(ii) A Washington state recommendation to EPA for a change of boundaries of an attainment or nonattainment area;~~

~~(iii) A Washington state recommendation to EPA for designation of an area as attainment, nonattainment, or unclassifiable; and~~

~~(iv) A Washington state recommendation to EPA to redesignate an area under WAC 173-400-118.~~

~~(c) Ecology must provide at least thirty days prior notice of a hearing required under subsection (4)(b) of this section.~~

~~((5)) (6) Other requirements of law. Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section. ((This subsection does not apply to a PSD permit application, a notice of construction application for a major modification, a notice of construction application for a major stationary source, and any action in WAC 173-400-171 (1)(b).~~

~~(6) Public information. All information, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205, is available for public inspection at the issuing agency. This includes copies of notices of construction applications, orders, and modifications.))~~

NEW SECTION

WAC 173-400-175 Public information. All information, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205, is available for public inspection at the issuing agency. This includes copies of notice of construction applications, orders, and applications to modify orders.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

WAC 173-400-200 Creditable stack height and dispersion techniques. (1) Applicability. These provisions shall apply to all sources except:

(a) Stacks for which construction had commenced on or before December 31, 1970, except where pollutants are being emitted from such stacks used by sources which were constructed, or reconstructed, or for which major modifications were carried out after December 31, 1970;

(b) Coal-fired steam electric generating units subject to the provisions of Section 118 of the Federal Clean Air Act, which commenced operation before July 1, 1957, and for whose stacks construction commenced before February 8, 1974;

(c) Flares;

(d) (~~Open~~) Outdoor burning for agricultural or silvicultural purposes as covered under the smoke management plan;

(e) Residential wood combustion and open burning for which episodic restrictions apply.

These provisions shall not be construed to limit the actual stack height.

(2) Prohibitions. No source may use dispersion techniques or excess stack height to meet ambient air quality standards or PSD increment limitations.

(a) Excess stack height. Excess stack height is that portion of a stack which exceeds the greater of:

(i) Sixty-five meters, measured from the ground level elevation at the base of the stack; or

(ii) $H_g = H + 1.5L$

where: H_g = "good engineering practice" (GEP) stack height, measured from the ground level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s), subject to the proviso below.

"Nearby," as used in this subsection for purposes of applying the GEP formula means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometer (1/2 mile).

(b) Dispersion techniques. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include:

(i) The reheating of a gas stream, following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of gas streams where:

(A) The source was originally designed and constructed with such merged gas streams, as demonstrated by the source owner(s) or operator(s).

(B) Such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion shall apply only to the emission limitation for the pollutant affected by such change in operation.

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and not primarily motivated by an intent to gain emissions credit for greater dispersion.

(3) Exception. EPA, ecology, or (~~an~~) a permitting authority may require the use of a field study or fluid model to verify the creditable stack height for the source. This also applies to a source seeking credit after the effective date of this rule for an increase in existing stack height up to that established by the GEP formula. A fluid model or field study shall be performed according to the procedures described in the EPA Guideline for Determination of Good Engineering

Practice Height (Technical Support Document of the Stack Height Regulations). The creditable height demonstrated by a fluid model or field study shall ensure that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(a) "Nearby," as used in this subsection for conducting a field study or fluid model, means not greater than 0.8 km, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height of the feature, not to exceed two miles if such feature achieves a height 0.8 km from the stack that is at least forty percent of the GEP stack height or twenty-six meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(b) "Excessive concentration" is defined for the purpose of determining creditable stack height under this subsection and means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over an ambient air quality standard. For sources subject to PSD review (WAC (~~(173-400-141)~~) 173-400-720 and 40 CFR 52.21) an excessive concentration alternatively means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over a PSD increment. The emission rate used in this demonstration shall be the emission rate specified in the state implementation plan, or in the absence of such, the actual emission rate of the source. "Significant downwash effect" means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

NEW SECTION

WAC 173-400-560 General order of approval. In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may apply for coverage under a general order of approval issued under this section. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.

(1) **Issuance of general orders of approval.** A permitting authority may issue a general order of approval applicable to a specific type of emission unit or source, not including nonroad engines as defined in section 216 of the Federal Clean Air Act, subject to the conditions in this section. A general order of approval shall identify criteria by which an emission unit or source may qualify for coverage under the associated general order of approval and shall include terms and conditions under which the owner or operator agrees to install and/or operate the covered emission unit or source. At a minimum, these terms and conditions shall include:

(a) Applicable emissions limitations and/or control requirements;

(b) Best available control technology;

(c) Appropriate operational restrictions, such as:

(i) Criteria related to the physical size of the unit(s) covered;

(ii) Criteria related to raw materials and fuels used;

(iii) Criteria related to allowed or prohibited locations; and

(iv) Other similar criteria determined by a permitting authority;

(d) Monitoring, reporting and recordkeeping requirements to ensure compliance with the applicable emission limits and control requirements;

(e) Appropriate initial and periodic emission testing requirements;

(f) Compliance with chapter 173-460 WAC, and WAC 173-400-112 (2)(c) or 173-400-113(3) as applicable;

(g) Compliance with 40 CFR Parts 60, 61, 62, and 63; and

(h) The application and approval process to obtain coverage under the specific general order of approval.

(2) **Public comment.** A permitting authority shall provide an opportunity for public comment on a proposed new general order of approval or modification of an existing general order of approval in accordance with WAC 173-400-171.

(3) **Modification of general orders of approval.** A permitting authority may review and modify a general order of approval at any time. Only the permitting authority that issued a general order of approval may modify that general order of approval. Modifications to general orders of approval shall follow the procedures of this regulation and shall only take effect prospectively.

(4) **Application for coverage under a general order of approval.**

(a) In lieu of applying for an individual order of approval under WAC 173-400-110, an owner or operator of an emission unit or source may apply for and receive coverage from a permitting authority under a general order of approval if:

(i) The owner or operator of the emission unit or source applies for coverage under a general order of approval in accordance with this regulation and any conditions of the approval related to application for and granting coverage under the general order of approval;

(ii) The emission unit or source meets all the qualifications listed in the requested general order of approval;

(iii) The requested emission unit or source is not part of a new major stationary source or major modification subject to the requirements of WAC 173-400-112 or 173-400-720; and

(iv) The requested emission unit or source does not trigger applicability of the operating permit program under chapter 173-401 WAC or trigger a required modification of an existing operating permit.

(b) Owners or operators of emission units or sources applying for coverage under a general order of approval shall do so using the forms supplied by a permitting authority and include the required fee. The application must include all information necessary to determine qualification for, and to assure compliance with, a general order of approval.

(c) An application shall be incomplete until a permitting authority has received any required fees.

(d) The owner or operator of a new source or modification of an existing source that qualifies for coverage under a general order of approval may not begin actual construction of the new source or modification until its application for coverage has been approved or accepted under the procedures established in subsection (5) of this section.

(5) **Processing applications for coverage under a general order of approval.** Each general order of approval shall include a section on how an applicant is to request coverage and how the permitting authority will grant coverage. The section of the general order of approval will include either the method in (a) or (b) of this subsection to describe the process for the applicant to be granted coverage.

(a) Within thirty days of receipt of an application for coverage under a general order of approval, the permitting authority shall notify an applicant in writing that the application is incomplete, approved, or denied. If an application is incomplete, the permitting authority shall notify an applicant of the information needed to complete the application. If an application is denied, the permitting authority shall notify an applicant of the reasons why the application is denied. Coverage under a general order of approval is effective as of the date of issuance of approval by the permitting authority.

(b) The applicant is approved for coverage under the general order of approval thirty-one days after an application for coverage is received by the permitting authority, unless the owner or operator receives a letter from the permitting authority, postmarked within thirty days of when the application for coverage was received by the permitting authority, notifying the owner or operator that the emissions unit or source does not qualify for coverage under the general order of approval. The letter denying coverage shall notify the applicant of the disqualification and the reasons why coverage is denied.

(6) **Termination of coverage under a general order of approval.** An owner or operator who has received approval of an application for coverage under a general order of approval may later request to be excluded from coverage under that general order of approval by applying to the same permitting authority for an individual order of approval, under WAC 173-400-110, or for coverage under another general order of approval. If the same permitting authority issues an individual order of approval or other permit or order serving the same purpose as the original general order of approval, or approves coverage under a different general order of approval, coverage under the original general order of approval is automatically terminated, effective on the effective date of the individual order of approval, order or permit or new general order of approval.

(7) **Failure to qualify or comply.** An owner or operator who requests and is granted approval for coverage under a general order of approval shall be subject to enforcement action for establishment of a new source in violation of WAC 173-400-110 a decision to grant coverage under a general order of approval was based upon erroneous information submitted by the applicant.

PERMITTING OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS TO MAJOR STATIONARY SOURCES

NEW SECTION

WAC 173-400-700 Review of major stationary sources of air pollution. (1) The following sections are to be used by ecology when reviewing and permitting new major stationary sources and major modifications to major stationary sources located in attainment or unclassified areas in Washington.

(2) WAC 173-400-700 through 173-400-750 apply statewide except:

(a) Where the authority has received delegation of the federal PSD program from EPA or has a SIP approved PSD program.

(b) To projects under the jurisdiction of the energy facility site evaluation council site certification process pursuant to chapter 80.50 RCW.

(c) Applications or requests to designate an emissions unit as a Clean Unit under 40 CFR 52.21(y), to permit a Pollution Control Project under 40 CFR 52.21 (z)(5), or to establish an actual Plantwide Applicability Limit under 40 CFR 52.21(aa) shall be processed by the authority where the authority has received delegation from EPA to administer the relevant alternative PSD applicability tests.

(3) The construction of a major stationary source or major modification subject to the permitting requirements of the following section might also be subject to the permitting program in WAC 173-400-110.

NEW SECTION

WAC 173-400-710 Definitions. (1) The definitions in WAC 173-400-030 are to be used in WAC 173-400-700 through 173-400-750 unless:

(a) A term is defined differently in WAC 173-400-710 for use in the major source permitting requirements in WAC 173-400-700 through 173-400-750; or

(b) A term is defined differently in the federal program requirements adopted by reference in WAC 173-400-720.

(2) All usage of the term "source" in WAC 173-400-710 through 173-400-750 and in 40 CFR 52.21 as adopted by reference is to be interpreted to mean "stationary source" as defined in 40 CFR 52.21 (b)(5) as modified by section 302(z) of the Federal Clean Air Act. A stationary source (or source) does not include emissions resulting directly from an internal combustion engine for transportation purposes from a non-road engine or nonroad vehicle as defined in section 216 of the Federal Clean Air Act.

NEW SECTION

WAC 173-400-720 Prevention of significant deterioration (PSD). (1) No major stationary source or major modification to which the requirements of this section apply shall begin actual construction without having received a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available to any potential applicant.

(3) **Enforcement.** Ecology or the permitting authority with jurisdiction over the source under chapter 173-401 WAC, the Operating permit regulation, shall:

(a) Receive all reports required in the PSD permit;

(b) Enforce the requirement to apply for a PSD permit when one is required; and

(c) Enforce the conditions in the PSD permit.

(4) **Applicable requirements.**

(a) A PSD permit must assure compliance with the following requirements:

(i) Allowable emissions from the proposed major stationary source or major modification will not delay the attainment date for an area not in attainment nor cause or contribute to a violation of any ambient air quality standard. This requirement will be considered to be met if the projected impact of the allowable emissions from the proposed major stationary source or the projected impact of the increase in allowable emissions from the proposed major modification at any location within a nonattainment area does not exceed the following levels for the pollutants for which the area has been designated nonattainment:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO-	-	-	0.5 mg/m ³	-	2 mg/m ³
SO ₂	1.0 µg/m ³	5 µg/m ³	-	25 µg/m ³	30 µg/m ³
PM ₁₀	1.0 µg/m ³	5 µg/m ³	-	-	-
NO ₂	1.0 µg/m ³	-	-	-	-

An offsetting emission reduction may be used to satisfy some or all of the requirements of this subsection.

(ii) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(iii) WAC 173-400-730 - Prevention of significant deterioration application processing;

(iv) WAC 173-400-740 - Prevention of significant deterioration public involvement requirements; and

(v) The following subparts of 40 CFR 52.21, in effect on July 2, 2004, which are adopted by reference. Exceptions are listed in (b)(i), (ii), and (iii) of this subsection:

Section	Title
40 CFR 52.21(a)(2)	Applicability Procedures.
40 CFR 52.21 (b)	Definitions.
40 CFR 52.21 (c)	Ambient air increments.
40 CFR 52.21 (d)	Ambient air ceilings.
40 CFR 52.21 (h)	Stack heights.
40 CFR 52.21 (i)	Review of major stationary sources and major modifications - source applicability and exemptions.
40 CFR 52.21 (j)	Control technology review.
40 CFR 52.21 (k)	Source impact analysis.

PERMANENT

40 CFR 52.21 (l)	Air quality models.
40 CFR 52.21 (m)	Air quality analysis.
40 CFR 52.21 (n)	Source information.
40 CFR 52.21 (o)	Additional impact analysis.
40 CFR 52.21 (r)	Source obligation.
40 CFR 52.21 (v)	Innovative control technology.
40 CFR 52.21 (w)	Permit rescission.
40 CFR 52.21 (x)	Clean unit test for emission units subject to BACT or LAER.
40 CFR 52.21 (y)	Clean unit test for emission units that achieve an emission limitation comparable to BACT.
40 CFR 52.21 (z)	Pollution Control Project exclusion.
40 CFR 52.21 (aa)	Actuals Plantwide Applicability Limitation.
40 CFR 52.21 (bb)	Severability clause.
40 CFR 52.21 (cc)	Equipment replacement provisions.

(b) Exceptions to adopting 40 CFR 52.21 by reference.

(i) Every use of the word "administrator" in 40 CFR 52.21 means ecology except for the following:

(A) In 40 CFR 52.21 (b)(17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 CFR 52.21 (l)(2), air quality models, "administrator" means the EPA administrator.

(C) In 40 CFR 52.21 (b)(43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(D) In 40 CFR 52.21 (b)(48)(ii)(c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(E) In 40 CFR 52.21 (b)(50)(i) related to the definition of a regulated NSR pollutant, "administrator" means the EPA administrator.

(ii) Each reference in 40 CFR 52.21(i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (o) of this section, paragraph (r) of this section, WAC 173-400-117, 173-400-720, and 173-400-730."

(iii) The following paragraphs replace the designated paragraphs of 40 CFR 52.21:

(A) In 40 CFR 52.21 (b)(1)(i)(a) and (b)(1)(iii)(h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.

(B) 40 CFR 52.21 (b)(23)(i) After the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.

(C) 40 CFR 52.21 (r)(6) "The provisions of this paragraph (r)(6) apply to projects at an existing emissions unit at a major stationary source (other than projects at a Clean Unit or at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner or operator elects to use the method

specified in paragraphs 40 CFR 52.21 (b)(41)(ii)(a) through (c) for calculating projected actual emissions.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(A) A description of the project;

(B) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(C) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 40 CFR 52.21 (b)(41)(ii)(c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) The owner or operator shall submit a copy of the information set out in paragraph 40 CFR 52.21 (r)(6)(i) to the permitting authority before beginning actual construction. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any PSD determination from the permitting authority before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 40 CFR 52.21 (r)(6)(i)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

(iv) The owner or operator shall submit a report to the permitting authority within 60 days after the end of each year during which records must be generated under paragraph 40 CFR 52.21 (r)(6)(iii) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(v) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in paragraph 40 CFR 52.21 (r)(6)(i), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c)), by a significant amount (as defined in paragraph 40 CFR 52.21 (b)(23)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c). Such report shall be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:

(a) The name, address and telephone number of the major stationary source;

(b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and

(c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection)."

(D) 40 CFR 52.21 (r)(7) The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs 40 CFR 52.21 (r)(6)(iv) and (v) annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 CFR 70.4 (b)(3)(viii).

(E) 40 CFR 52.21 (y)(7) Procedures for designating emissions units as Clean Units. Ecology shall designate an emissions unit a Clean Unit only by issuing a regulatory order issued under the authority of WAC 173-400-091 or (when requested by the applicant as part of its NOC application) in an order of approval issued under WAC 173-400-110, including requirements for public notice of the proposed Clean Unit designation and opportunity for public comment and when WAC 173-400-091 is used to designate a Clean Unit, a demonstration that the ambient air quality impact limitations of WAC 173-400-113 (1) through (3) will be required. Such permit must also meet the requirements in paragraph 40 CFR 52.21 (y)(8).

(F) 40 CFR 52.21 (z)(5) Permit process for unlisted projects. Before an owner or operator may begin actual construction of a PCP project that is not listed in paragraphs 40 CFR 52.21 (b)(32)(i) through (vi), the project must be approved by ecology and included in an order of approval issued by ecology pursuant to the requirements in WAC 173-400-110, and/or WAC 173-400-091, following opportunity for public comment as provided for in those sections. When WAC 173-400-091 is used to approve a PCP, a demonstration that the ambient air quality impact limitations of WAC 173-400-112(2) and/or WAC 173-400-113 (1) through (3) will be required.

(G) 40 CFR 52.21 (z)(6)(iii) Permit requirements. The owner or operator must comply with any provisions in the order of approval or other order issued for the project related to use and approval of the PCP exclusion.

(H) 40 CFR 52.21 (aa)(2)(ix) PAL permit means the PSD permit, an ecology issued order of approval issued under WAC 173-400-110, or regulatory order issued under WAC 173-400-091 issued by ecology that establishes a PAL for a major stationary source.

(I) 40 CFR 52.21 (aa)(5) Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or expired through the public participation process in WAC 173-400-171. A request to increase a PAL shall be processed in accordance with the application processing and public participation process in WAC 173-400-730 and 173-400-740.

(J) 40 CFR 52.21 (aa)(9)(i)(b) Ecology, after consultation with the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology determines is appropriate.

(K) 40 CFR 52.21 (aa)(14) Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the permitting authority in accordance with the requirements in chapter 173-401 WAC. The reports shall meet the requirements in paragraphs 40 CFR 52.21 (aa)(14)(i) through (iii).

(L) 40 CFR 52.21 (aa)(14)(ii) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to WAC 173-401-615 (3)(b) and within the time limits prescribed shall satisfy this reporting requirement. The reports shall contain the information found at WAC 173-401-615(3).

NEW SECTION

WAC 173-400-730 Prevention of significant deterioration application processing procedures. (1) Application submittal.

(a) The applicant shall submit an application that provides complete information adequate for ecology to determine compliance with all PSD program requirements.

(b) The applicant shall submit complete copies of its PSD application or an application to increase a PAL, distributed in the following manner:

(i) Three copies to ecology: Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600.

(ii) One copy to each of the following federal land managers:

(A) U.S. Department of the Interior - National Park Service; and

(B) U.S. Department of Agriculture - U.S. Forest Service.

(iii) One copy to the permitting authority with authority over the source under chapter 173-401 WAC.

(iv) One copy to EPA.

(c) Application submittal and processing for requests for a Clean Unit designation under 40 CFR 52.21(y), a pollution control project exemption under 40 CFR 52.21(z) or the initial request, renewal or expiration of a PAL under 40 CFR 52.21(aa) shall be done as provided in WAC 173-400-720 (4)(b)(iii).

(2) Application processing.

(a) Completeness determination.

(i) Within thirty days after receiving a PSD permit application, ecology shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Ecology may request additional information clarifying aspects of the application after it has been determined to be complete.

(ii) The effective date of the application is the date on which ecology notifies the applicant that the application is complete pursuant to (a)(i) of this subsection.

(iii) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement action taken.

(iv) The permitting authority shall send a copy of the completeness determination to the responsible federal land manager.

(b) Preparation and issuance of the preliminary determination.

(i) When the application has been determined to be complete, ecology shall begin developing the preliminary determination to approve or deny the application.

(ii) Within one year after receipt of a complete application, ecology shall provide the applicant with a preliminary determination along with a technical support document and a public notice.

(c) Issuance of the final determination.

(i) Ecology shall make no final decision until the public comment period has ended and all comments received during the public comment period have been considered.

(ii) As expeditiously as possible after the close of the public comment period, or hearing if one is held, ecology shall prepare and issue the final determination.

(d) The effective date of a final determination is one of the following dates:

(i) If no comments on the preliminary determination were received, the date of issuance; or

(ii) If comments were received, thirty days after receipt of the final determination; or

(iii) A later date as specified within the PSD permit approval.

(3) **PSD technical support document.** Ecology shall develop a technical support document for each preliminary PSD determination. The preliminary technical support document will be updated prior to issuance of the final determination to reflect changes to the final determination based on comments received. The technical support document shall include the following information:

(a) A brief description of the major stationary source, major modification, or activity subject to review;

(b) The physical location, ownership, products and processes involved in the major stationary source or major modification subject to review;

(c) The type and quantity of pollutants proposed to be emitted into the air;

(d) A brief summary of the BACT options considered and the reasons why the selected BACT level of control was selected;

(e) A brief summary of the basis for the permit approval conditions;

(f) A statement on whether the emissions will or will not cause a state and national ambient air quality standard to be exceeded;

(g) The degree of increment consumption expected to result from the source or modification;

(h) An analysis of the impacts on air quality related values in federal Class I areas and other Class I areas affected by the project; and

(i) An analysis of the impacts of the proposed emissions on visibility in any federal Class I area following the requirements in WAC 173-400-117.

(4) **Appeals.** A PSD permit, any conditions contained in a PSD permit, or the denial of PSD permit may be appealed to the pollution control hearings board as provided in chapter

43.21B RCW. A PSD permit issued under the terms of a delegation agreement can be appealed to the EPA's environmental appeals board as provided in 40 CFR 124.13 and 40 CFR 124.19.

(5) **Construction time limitations.**

(a) Approval to construct or modify a major stationary source becomes invalid if construction is not commenced within eighteen months of the effective date of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The time period between construction of the approved phases of a phased construction project cannot be extended. Each phase must commence construction within eighteen months of the projected and approved commencement date.

(b) Ecology may extend the eighteen-month effective period of a PSD permit upon a satisfactory showing that an extension is justified. A request to extend the effective time to begin or complete actual construction under a PSD permit may be submitted. The request may result from the cessation of on-site construction before completion or failure to begin actual construction of the project(s) covered by the PSD permit.

(i) Request requirements.

(A) A written request for the extension, submitted by the PSD permit holder, as soon as possible prior to the expiration of the current PSD permit.

(B) An evaluation of BACT and an updated ambient impact, including an increment analysis, for all pollutants subject to the approval conditions in the PSD permit.

(ii) Duration of extensions.

(A) No single extension of time shall be longer than eighteen months.

(B) The cumulative time prior to beginning actual construction under the original PSD permit and all approved time extensions shall not exceed fifty-four months.

(iii) Issuance of an extension.

(A) Ecology may approve and issue an extension of the current PSD permit.

(B) The extension of approval shall reflect any revised BACT limitations based on the evaluation of BACT presented in the request for extension and other information available to ecology.

(C) The issuance of an extension is subject to the public involvement requirements in WAC 173-400-740.

(iv) For the extension of a PSD permit, ecology must prepare a technical support document consistent with WAC 173-400-730(3) only to the extent that those criteria apply to a request to extend the construction time limitation.

NEW SECTION

WAC 173-400-740 PSD permitting public involvement requirements. (1) **Actions requiring notification of the public.** Ecology must provide public notice before approving or denying any of the following types of actions related to implementation of the PSD program contained in WAC 173-400-720:

(a) Any preliminary determination to approve or disapprove a PSD permit application; or

(b) An extension of the time to begin construction or suspend construction under a PSD permit; or

(c) A revision to a PSD permit, except an administrative amendment to an existing permit.

(2) **Notification of the public.** Within one year of the receipt of a complete PSD application, and as expeditiously as possible after receipt of a request for extension of the construction time limit under WAC 173-400-730(6) or for a non-administrative revision to a PSD permit under WAC 173-400-750, ecology shall:

(a) Make available for public inspection in at least one location in the vicinity where the proposed source would be constructed, or for revisions to a PSD permit where the permittee exists, a copy of the information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality and air quality related values, considered in making the preliminary determination. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(b) Notify the public by:

(i) Causing to be published, in a newspaper of general circulation in the area of the proposed project, the public notice prepared in accordance with WAC 173-400-730(4). The date the public notice is published in the newspaper starts the required thirty-day comment period.

(ii) If ecology grants a request to extend the public comment period, the extension notice must also be published in a newspaper as noted above and a copy of the extension notice sent to the organizations and individuals listed in (c) and (d) of this subsection. The closing date of the extended comment period shall be as defined in the public comment period extension notification.

(iii) If a hearing is held, the public comment period must extend through the hearing date.

(iv) The applicant or other initiator of the action must pay the cost of providing public notice.

(c) Send a copy of the public notice to:

(i) Any Indian governing body whose lands may be affected by emissions from the project;

(ii) The chief executive of the city where the project is located;

(iii) The chief executive of the county where the project is located;

(iv) Individuals or organizations that requested notification of the specific project proposal;

(v) Other individuals who requested notification of PSD permits;

(vi) Any state within 100 km of the proposed project.

(d) Send a copy of the public notice, PSD preliminary determination, and the technical support document to:

(i) The applicant;

(ii) The affected federal land manager;

(iii) EPA Region 10;

(iv) The permitting authority with authority over the source under chapter 173-401 WAC;

(v) Individuals or organizations who request a copy; and

(vi) The location for public inspection of material required under (a) of this subsection.

(3) **Public notice content.** The public notice shall contain at least the following information:

(a) The name and address of the applicant;

(b) The location of the proposed project;

(c) A brief description of the project proposal;

(d) The preliminary determination to approve or disapprove the application;

(e) How much increment is expected to be consumed by this project;

(f) The name, address, and telephone number of the person to contact for further information;

(g) A brief explanation of how to comment on the project;

(h) An explanation on how to request a public hearing;

(i) The location of the documents made available for public inspection;

(j) There is a thirty-day period from the date of publication of the notice for submitting written comment to ecology;

(k) A statement that a public hearing may be held if ecology determines within a thirty-day period that significant public interest exists;

(l) The length of the public comment period in the event of a public hearing;

(m) For projects subject to special protection requirements for federal Class I areas, in WAC 173-400-117, and where ecology disagrees with the analysis done by the federal land manager, ecology shall explain its decision in the public notice or state that an explanation of the decision appears in the technical support document for the proposed approval or denial.

(4) **Public hearings.**

(a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. A request must indicate the interest of the entity filing it and why a hearing is warranted. Whether a request for a hearing is filed or not, ecology may hold a public hearing if it determines significant public interest exists. Ecology will determine the location, date, and time of the public hearing.

(b) Notification of a public hearing will be accomplished per the requirements of WAC 173-400-740(2).

(c) The public must be notified at least thirty days prior to the date of the hearing (or first of a series of hearings).

(5) **Consideration of public comments.** Ecology shall make no final decision on any application or action of any type described in subsection (1) of this section until the public comment period has ended and any comments received during the public comment period have been considered. Ecology shall make all public comments available for public inspection at the same locations where the preconstruction information on the proposed major source or major modification was made available.

(6) **Issuance of a final determination.**

(a) The final approval or disapproval determination shall include the following:

(i) A copy of the final PSD permit or the determination to deny the permit;

(ii) A summary of the comments received;

(iii) Ecology's response to those comments;

- (iv) A description of what approval conditions changed from the preliminary determination; and
- (v) A cover letter that includes an explanation of how the final determination may be appealed.
- (b) Ecology shall mail a copy of the cover letter that accompanies the final determination to:
 - (i) Individuals or organizations that requested notification of the specific project proposal;
 - (ii) Other individuals who requested notification of PSD permits.
- (c) A copy of the final determination shall be sent to:
 - (i) The applicant;
 - (ii) U.S. Department of the Interior - National Park Service;
 - (iii) U.S. Department of Agriculture - Forest Service;
 - (iv) EPA Region 10;
 - (v) The permitting authority with authority over the source under chapter 173-401 WAC;
 - (vi) Any person who commented on the preliminary determination; and
 - (vii) The location for public inspection of material required under subsection (2)(a) of this section.

NEW SECTION

WAC 173-400-750 Revisions to PSD permits. (1) The owner or operator may request, at any time, a change in conditions of a PSD permit and ecology may approve the request provided ecology finds that:

- (a) The change in conditions will not cause the source to exceed an emissions standard established by regulation;
 - (b) No ambient air quality standard or PSD increment will be exceeded as a result of the change;
 - (c) The change will not adversely impact the ability of ecology or the authority to determine compliance with an emissions standard;
 - (d) The revised PSD permit will continue to require BACT, as defined at the time of the original PSD permit, for each new or modified emission unit approved by the original PSD permit; and
 - (e) The revised PSD permit continues to meet the requirements of WAC 173-400-112(2), and 173-400-113, as applicable.
- (2) A request to revise a PSD permit must be acted upon using the timelines found in WAC 173-400-730. The fee schedule found in WAC 173-400-116 shall also apply.
- (3) All revisions to PSD permits are subject to public involvement except for the following administrative revisions:

- (a) Change of the owner or operator's business name and/or mailing address;
- (b) Corrections to typographical errors;
- (c) Revisions to compliance monitoring methods that do not reduce the permittee's or ecology's ability to determine compliance with the emission limitations; or
- (d) Any other revision that does not reduce the stringency of the emission limitations in the PSD permit or the ability of ecology, the permitting authority, EPA, or the public to determine compliance with the approval conditions in the PSD permit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-400-141 Prevention of significant deterioration (PSD).

WSR 05-03-034

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed January 10, 2005, 3:14 p.m., effective February 10, 2005]

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

Purpose: The revisions will increase the fees charged to the general public and private entities conducting criminal history background checks. The last fee study for background checks was conducted in 1993. Since then, the costs associated with conducting background checks have increased. The ways to obtain criminal history have expanded from mailed inquiries to include walk-in customers and internet access.

Citation of Existing Rules Affected by this Order: Amending WAC 446-20-600.

Statutory Authority for Adoption: RCW 10.97.100, 43.43.742.

Adopted under notice filed as WSR 04-17-068 on August 12, 2004.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 10, 2005.

Lowell Porter
Chief

AMENDATORY SECTION (Amending WSR 99-07-050, filed 3/15/99, effective 4/15/99)

WAC 446-20-600 Fees. (1) A nonrefundable fee of ~~((ten))~~ thirty-five dollars shall accompany each request for conviction records submitted for a name and date of birth background check or a ~~((twenty-five))~~ ten-dollar fee for a name and date of birth electronic request, thirty dollar fee if the request is submitted by fingerprint card at the state level pursuant to RCW 43.43.830 through 43.43.845, and chapter

10.97 RCW unless through prior arrangement, an account is authorized and established.

(2) A nonrefundable FBI fee of twenty-four dollars shall be charged for fingerprint cards submitted for federal searches. It shall be the responsibility of the Washington state patrol to collect all fees due and forward fingerprint cards and fees to the FBI.

(3) A nonrefundable fee of ~~((ten))~~ thirteen dollars shall be charged for taking ~~((inked))~~ fingerprint impressions by the Washington state patrol. Fees are to be deposited in the Washington state patrol fingerprint identification account.

(4) All fees are to be made payable to the Washington state patrol and are to be remitted by cash, cashier's check, money order or check written on a business account. Credit cards may be used only for payment of electronic requests and for any other fingerprint or conviction record services the state patrol has implemented credit card payment procedures. The Washington state patrol identification and criminal history section shall adjust the fee schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of these chapters are recovered.

(5) Pursuant to the provisions of RCW 43.43.838 and chapter 28A.410 RCW, no fees will be charged to a nonprofit organization, or volunteers in school districts and educational service districts for background checks.

WSR 05-03-037

PERMANENT RULES

DEPARTMENT OF

FINANCIAL INSTITUTIONS

[Filed January 10, 2005, 4:56 p.m., effective February 10, 2005]

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

Purpose: Amend WAC 208-680G-050 to implement RCW 18.44.121(5), which states that director "shall charge...an hourly audit fee." The amendment would clarify that both in-state and out-of-state escrow agents may be charged for examinations and investigations and provides detail of examination and investigation expenses. Upon adoption of this amendment, the Department of Financial Institutions plans to begin charging an hourly fee for its examinations.

Citation of Existing Rules Affected by this Order: Amending WAC 208-680G-050.

Statutory Authority for Adoption: RCW 18.44.121, [18.44].410.

Adopted under notice filed as WSR 04-22-086 on November 2, 2004.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 6, 2005.

Helen P. Howell

Director

AMENDATORY SECTION (Amending WSR 01-08-055, filed 4/2/01, effective 5/3/01)

WAC 208-680G-050 Examination and investigation fees and expense—Authority to retain specialists. (1) The director may retain attorneys, appraisers, independent certified public accountants, or other professionals and specialists as examiners, auditors, or investigators, the cost of which shall be borne by the person who is the subject of the examination, audit, or investigation.

(2) The expense of ~~((required travel and services related to))~~ an examination or investigation pursuant to WAC 208-680G-010 or 208-680G-020 inside or outside this state shall be borne by the person examined or investigated. ~~((Such expense includes, but is not limited to, travel, lodging, and per diem expense.))~~

(3) The expenses of an examination or investigation pursuant to this section may include, but are not limited to, staff time, travel, lodging, per diem, and any other expenses related to the examination or investigation. At a reasonable time following each examination or investigation performed, the director shall provide the person examined with an invoice for the expenses incurred during the examination or investigation. Payment of the invoiced amount is due within thirty days of the date of the invoice.

WSR 05-03-038

PERMANENT RULES

DEPARTMENT OF

FINANCIAL INSTITUTIONS

[Filed January 10, 2005, 5:01 p.m., effective February 10, 2005]

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

Purpose: A new rule concerning periodic reporting will help the division monitor compliance with chapter 18.44 RCW and the regulations adopted thereunder. Amendments to WAC 208-680F-020 and 208-680A-040 are needed to clarify the types of securities that may be substituted for the errors and omissions policy required by RCW 18.44.201.

Citation of Existing Rules Affected by this Order: Amending WAC 208-680F-020 and 208-680A-040.

Statutory Authority for Adoption: RCW 18.44.410.

Adopted under notice filed as WSR 04-22-087 on November 2, 2004.

Changes Other than Editing from Proposed to Adopted Version: WAC 208-680E-025 now has the following introductory clause to subsection (1): "For purposes of determin-

ing compliance with chapter 18.44 RCW and chapter 208-680 WAC." This language was added, in response to comments, to make explicit what the department believes was implicit in the proposed rule: That the new quarterly report should not request information that exceeds the department's authority.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: January 6, 2005.

Helen P. Howell
Director

NEW SECTION

WAC 208-680E-025 Quarterly reports. (1) For purposes of determining compliance with chapter 18.44 RCW and chapter 208-680 WAC, each escrow agent shall file with the director, within thirty days following the end of each fiscal quarter, a report concerning its operations and trust account administration and reconciliation. The report shall be on a form provided by the director and shall include exhibits as specified therein.

(2) As to trust account matters, the designated escrow officer of the escrow agent shall certify under penalty of perjury, in a manner consistent with RCW 9A.72.085, that he or she has reviewed the report and any exhibits filed with it and that the information contained in the report and in any exhibits is true and correct. The chief executive officer or chief financial officer of the escrow agent, or other knowledgeable person acceptable to the director, may certify the information on the report not related to trust account matters.

(3) Failure to file the report within the time period specified in this rule shall be considered a violation of RCW 18.44.430.

AMENDATORY SECTION (Amending WSR 01-08-055, filed 4/2/01, effective 5/3/01)

WAC 208-680F-020 Errors and omissions policy—Securities alternative. ~~((Each licensed escrow agent shall obtain and keep in effect an errors and omissions policy providing coverage in the minimum aggregate amount of \$50,000 or, alternatively, cash deposit or securities in the principal amount of \$50,000.))~~ (1) Securities used as an alternative to an errors and omissions policy shall be effectively delivered to the director ~~((For the purpose of fulfilling the~~

~~requirements of chapter 18.44 RCW and these rules;))~~ and the escrow agent shall execute an irrevocable assignment and any supporting documentation as required by the director.

(2) Only those securities that meet the definition of "investment securities" under chapter 208-512 WAC may be used to satisfy RCW 18.44.201. Securities ~~((which are stocks or other interest in))~~ issued by the registered escrow ~~((agency))~~ agent or its affiliates are not acceptable securities for the purposes of fulfilling the requirements of ~~((chapter 18.44 RCW and these rules))~~ RCW 18.44.201.

AMENDATORY SECTION (Amending WSR 01-08-055, filed 4/2/01, effective 5/3/01)

WAC 208-680A-040 Definitions. The terms and definitions used in chapter 18.44 RCW have the same meanings given therein when used in these rules.

"Third party to the transaction" means those persons providing professional services necessary for the closing of the escrow. "Third party to the transaction" includes, but is not limited to: Real estate brokers, lenders, mortgage brokers, attorneys engaged to review the escrow, tax facilitators or underlying lien holders.

"Applicant" means any person applying for an escrow officer license or any person or group of persons applying for an escrow agent license. The term "applicant" includes the officers and controlling persons of the applicant, as well as any escrow officer seeking to become an escrow agent's designated escrow officer or designated branch escrow officer.

"Cash deposit" means funds deposited, in lieu of an errors and omissions policy, in an account in a recognized Washington state depository which account is maintained separate and apart from the escrow agent's own funds. The funds shall be deposited in such a manner to permit only the director to withdraw from the principal amount. The escrow agent may withdraw any interest accumulated to the account.

"Closing" means the transfer of title of real or personal property or execution of a real estate contract whichever event occurs first.

"Completed escrow" means a transaction in which the escrow agent has fully discharged its duties to the principal parties to the transaction. This includes obtaining all necessary documents, obtaining required signatures, completing reconveyance or title elimination, and disbursing funds to the principal parties to the transaction, the agents to the transaction, and to third parties to the transaction as agreed by the principal parties in the escrow instructions or on the settlement form (such as HUD1 or HUD1A).

"Conversion" means an unauthorized assumption and exercise of the right of ownership over moneys, property, or things of value belonging to another, to the alteration of the condition of, or the exclusion of the owner's rights to such moneys, property, or things of value. It includes any unauthorized act which deprives an owner of his/her property permanently or for an indefinite time, including but not limited to theft, embezzlement, forgery, swindling, and unauthorized control.

"Escrow instructions" are the instructions, signed by the principal parties to the transaction that identify the duties and responsibilities of the escrow agent in carrying out the

escrow, that identify the thing or things of value held by the escrow agent and the specified condition or set of conditions under which the thing or things of value are to be transferred.

"Investigation" means an examination undertaken for the purpose of detection of violations of chapter 18.44 RCW, and these rules or securing information lawfully required under chapter 18.44 RCW, and these rules. The director or his or her designee may make private or public investigations.

"Officers" of the escrow agent shall include the president, secretary, treasurer, vice-president, and any other persons with control over management decisions of the escrow agent.

"Overdue instrument" means a negotiable instrument that is overdue as defined in RCW 62A.3-304.

"Permanent record" means any record required to be kept under RCW 18.44.400 for a period of six years from the completion of the escrow transaction.

"Principal parties" means the buyers and sellers in a purchase transaction, and the borrower in a refinance transaction.

"Reconveyance" means an instrument used to transfer title from an individual holding such title in trust to the equitable owner of real estate, when title is held as collateral security for a debt.

~~("Securities" means any stock, treasury bill, bond, debenture or collateral trust certificate tendered in lieu of an errors and omissions policy. It does not mean or include any insurance or endowment policy, annuity contract or letter of credit.)~~

"Split escrow" means a transaction in which two or more escrow agents act to effect and close an escrow transaction.

"Transfer of title" occurs at the time the seller executes a deed or bill of sale and such is delivered to the purchaser or recorded.

"Trust" means a fiduciary relationship whereby a thing of value is delivered to an escrow agent with the intention that such thing of value be administered by the escrow agent for the benefit of the principal parties to the transaction.

"Trust account" or "trust bank account" means a bank account holding funds of any party to the transaction.

"Unclaimed funds" means any funds that are abandoned under the Uniform Unclaimed Property Act, chapter 63.29 RCW.

WSR 05-03-042

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed January 11, 2005, 2:01 p.m., effective February 11, 2005]

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

Purpose: This rule-making order amends WAC 16-350-035 by (1) requiring that rootstock from out-of-state certification programs be propagated directly from mother plants that were tested and found free of all known virus and virus-like diseases; (2) requiring that all prunus seed, except peach seed, used in the propagation of certified fruit trees originate from registered seed trees (peach seed originating from commercial sources may be used if the seed is tested and found to contain no more than 5% seed-borne viruses); and (3) clarify-

ing existing language so that it is easier to read and understand.

Citation of Existing Rules Affected by this Order: Amending WAC 16-350-035.

Statutory Authority for Adoption: Chapters 15.14 and 34.05 RCW.

Adopted under notice filed as WSR 04-24-090 on December 1, 2004.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 11, 2005.

Valoria H. Loveland
Director

AMENDATORY SECTION (Amending WSR 00-19-036, filed 9/12/00, effective 10/13/00)

WAC 16-350-035 Requirements for certified nursery planting stock. (1) All nursery stock being grown for certification must be propagated on certified rootstock. Certified rootstock ~~((may be any))~~ must comply with at least one of the following conditions:

(a) Rootstock ~~((originating))~~ propagated directly from registered trees.

(b) Rootstock originating from other approved certification programs, if the rootstock was propagated directly from mother plants that have been tested and found free of all known virus and virus-like diseases.

(c) *Prunus persica* seedlings grown from commercial seed, if the seed lot has been tested for transmissible virus content, and not more than five percent of the seed tested positive for transmissible virus content.

(d) Pome fruit seedlings.

(2) Growers must keep records identifying the scion, rootstock, and interstock sources for all Washington certified stock. Upon request, these records must be made available to the department.

(3) Seed may be designated as Washington certified seed only if both of the following conditions are complied with:

(a) The seed was produced on registered seed trees; and

(b) The seed lot has been tested for transmissible virus content, and not more than five percent of the seed tested positive for transmissible viruses.

(4) Washington certified nursery stock must be identified by a blue certification tag.

(5) When it is offered for sale, Washington certified nursery stock must be identified as to variety, interstock and rootstock.

WSR 05-03-051
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed January 11, 2005, 4:00 p.m., effective July 1, 2005]

Effective Date of Rule: July 1, 2005.

Purpose: Persons who distribute or cause to be distributed any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services are subject to use tax on the value of the property. RCW 82.12.010, 82.12.020, and chapter 367, Laws of 2002. WAC 458-20-17803 Use tax on promotional material, is a new rule explaining how use tax applies when such property is delivered to persons other than the consumer from outside Washington. For purposes of the rule, this property is referred to as "promotional material." The rule explains what are considered to be promotional materials, who is liable for the use tax, the measure of the use tax, and how to determine the appropriate local use tax rate/jurisdiction.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 04-19-079 on September 17, 2004.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 11, 2005.

Janis P. Bianchi, Manager
Interpretations and Technical Advice Unit

NEW SECTION

WAC 458-20-17803 Use tax on promotional material. (1) **Introduction.** Persons who distribute or cause to be distributed any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services, are subject to use tax on the value of the property. RCW 82.12.010, 82.12.020, and chapter 367, Laws of 2002. This rule explains the use tax reporting responsibilities of consumers when such property is delivered directly to persons other than the consumer from outside Washington. For the purposes of this rule, the term "promo-

tional material" is used in describing such property where applicable.

This rule provides numerous examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances. For purposes of these examples, presume the promotional material is delivered to persons within Washington.

(2) **What is the use tax?** The use tax complements the retail sales tax by imposing a tax of a like amount when a consumer uses tangible personal property or certain retail services within this state. RCW 82.12.020. The tax does not apply to the use of any property or service if the present user, donor, or bailor previously paid retail sales tax under chapter 82.08 RCW with respect to the property used or the service obtained. See WAC 458-20-178 (Use tax) for an explanation of the use tax and use tax reporting requirements.

(3) **Who is liable for the use tax on promotional material?** The use tax is imposed on the consumer. The law provides that with respect to promotional material distributed to persons within this state, the consumer is the person who distributes or causes the distribution of the promotional material. A consumer as defined in this rule is responsible for remitting use tax only if the consumer has nexus in Washington.

(a) **Example 1.** Department Store contracts with Printer in Idaho, to print promotional material advertising sale merchandise available at Department Store's Washington locations. Printer delivers promotional material to Seattle Mailing Bureau, with whom Department Store has contracted to prepare the material for distribution to Department Store's customers. Department Store is the consumer of the promotional material and is liable for use tax on promotional material distributed within Washington. Neither Printer, Seattle Mailing Bureau, nor Department Store's customers are consumers of this promotional material.

(b) **Example 2.** Retailer contracts with Seattle Advertising Agency for advertising services. Advertising Agency makes a single charge for all services, which includes designing, printing, and distributing catalogs to potential customers. Advertising Agency contracts with California Printer to print and prepare for distribution promotional material advertising a new Washington location. Retailer is the consumer of the catalogs and is liable for use tax on the promotional material sent to Washington addresses. Neither Advertising Agency nor potential customers are consumers of this promotional material.

(4) **What is promotional material?** Promotional material is any tangible personal property, except newspapers, displayed or distributed in the state of Washington for the primary purpose of promoting the sale of products or services. Examples of promotional material include, but are not limited to, advertising literature, circulars, catalogs, brochures, inserts (but not newspaper inserts), flyers, applications, order forms, envelopes, folders, posters, coupons, displays, signs, free gifts, or samples (such as carpet or textile samples).

(a) **Is advertising contained on billing statements promotional material?** It is presumed that the primary purpose of billing statements and statements of account is to secure payment for goods or services previously purchased. Thus,

unless the facts and circumstances indicate that the primary purpose of the property is to promote the sale of goods and services, billing statements and statements of account are not considered promotional material. Attaching, affixing, or otherwise incorporating property promoting the sale of goods or services does not alter the primary purpose of billing statements and statements of account. However, flyers, inserts, or other separate property enclosed with billing statements or statements of account that promote the sale of goods or services are promotional material and subject to use tax.

(i) **Example 1.** Richland Attorney contracts with Oregon Printer to print and prepare for distribution monthly billing statements and return remittance envelopes to Attorney's clients. The contract also includes printing and inserting flyers promoting Attorney's estate planning services. The primary purpose of the flyers is to solicit the sale of services. Consequently, the flyers are promotional material. The primary purpose of the billing statements is to secure payment for services rendered. The billing statements are not promotional material.

(ii) **Example 2.** Department Store prints the monthly billing statements for its store credit card in Atlanta, Georgia, and mails them to customers located in Washington. Although the billing statement includes three sentences noting an upcoming sale, this information does not alter the primary purpose of the billing statement, which is to secure payment for services rendered. The billing statements are not promotional material.

(iii) **Example 3.** The following month, Department Store's billing statement includes a detachable coupon for fifteen percent off selected items purchased during a specified period. Although the detachable coupon solicits the sale of goods or services, it does not alter the primary purpose of the billing statement, which is to secure payment for goods or services already purchased. The billing statement and detachable coupon are not promotional material.

(iv) **Example 4.** In the third month, Department Store lengthens the billing statement to include information promoting the grand opening of a location. Although the lengthened portion of the billing statement contains information promoting the sale of goods or services, it does not alter the primary purpose of the billing statement, which is to secure payment for goods or services already purchased. The lengthened billing statement is not promotional material.

(b) **When are envelopes considered promotional material?** Envelopes used solely to mail property to promote the sale of goods or services are considered promotional material and subject to use tax.

Envelopes used to mail nonpromotional material, such as billing statements and statements of account, are used to secure payment for goods purchased or services rendered. The same is true of return envelopes that are enclosed for submitting payment. Unless the facts and circumstances indicate otherwise, the presumption is that the primary purpose of envelopes used for mailing both promotional and nonpromotional material in the same envelope is not to promote the sale of goods and services. Thus, envelopes and return envelopes used for dual purposes are not subject to use tax, even though promotional material may be printed on or attached to the envelopes. Although the imprinted or

attached material promotes the sale of goods or services, it does not alter the primary purpose of the envelopes.

(i) **Example 1.** Bank mails brochures, applications, and return envelopes from Atlanta, Georgia, to Washington addresses promoting Bank's credit card. The primary purpose of envelopes used to mail the brochures, applications, and return envelopes is to solicit the sale of services. The envelopes, brochures, and applications are promotional material.

(ii) **Example 2.** Telephone Company mails monthly billing statements to Washington customers from St. Louis, Missouri. Inserts promoting the sale of various telephone accessories are included. Return envelopes to be used in making payment of the statement amount are also enclosed. The primary purpose of the envelopes used to mail the billing statements and the return envelopes is to secure payment. Neither the mailing envelopes nor the return envelopes are promotional material.

(iii) **Example 3.** Mortgage Company mails monthly billing statements to Washington residents from its administrative offices in Nevada. The enclosed return envelope for customers to use in making payment includes an attachment promoting additional banking services. Although the attachment to the return envelopes contains advertising information, it does not alter the primary purpose of the envelope which is to obtain payment. Neither the mailing envelopes nor the return envelopes are promotional material.

(5) **What is the measure of tax?** The measure of the use tax is the value of the article used. For the purposes of computing the use tax due on promotional material, the measure of tax is the amount of consideration paid for the promotional material without deduction for the cost of materials, labor, or other service charges, even though such charges may be stated or shown separately on invoices. It also includes the amount of any freight, delivery, or other like transportation charge paid or given by the consumer to the seller. The value of the promotional material also includes any tariffs or duties paid. If the total consideration paid does not represent the true value of the article used, the value must be determined as nearly as possible according to the retail selling price at place of use of similar materials of like quality and character. RCW 82.12.010.

A consumer who has paid retail sales or use tax that is due in another state with respect to promotional material that is subject to use tax in this state may take a credit for the amount of tax so paid. RCW 82.12.035. For further information, refer to WAC 458-20-178 (Use tax).

(a) **Does the measure of tax include delivery charges?** The measure of tax includes all delivery charges. Postage is a delivery charge and is therefore included in the measure of tax if the cost is part of the consideration paid by the consumer to the seller. RCW 82.08.010 and 82.12.010. It is immaterial if amounts charged for postage are stated or shown separately on invoices. Amounts charged for postage and other delivery costs are not included in the measure of tax only if the amounts are not part of the consideration paid. For discussion about when postage is and is not considered part of the consideration paid, please refer to WAC 458-20-141 (Duplicating industry and mailing bureaus).

(b) **What is the measure of tax when a consumer contracts with one party for the promotional material and a third party to prepare the material for distribution?** The use tax is imposed on consumers of certain services rendered in respect to tangible personal property for use in this state when the retail sales tax has not been paid. RCW 82.12.020. These services generally include labor and services rendered in respect to altering, imprinting, or improving tangible personal property and include activities performed typically by mailing bureaus or houses, such as addressing, labeling, binding, folding, sealing, and tabbing.

A consumer of promotional material is subject to use tax on the value of the promotional material and the value of the services used. The value of the service used is the amount of consideration paid for the service and includes delivery charges such as postage. RCW 82.12.010 and 82.08.010.

(c) **What is the measure of tax when a consumer manufactures its own promotional materials?** The measure of use tax is the value of the promotional material. Refer to WAC 458-20-112 (Value of products). A consumer who manufactures its own promotional material may also be conducting manufacturing activities and should refer to WAC 458-20-134 (Commercial or industrial use) and WAC 458-20-136 (Manufacturing, processing for hire, fabricating).

(6) **Determining the applicable local use tax rate.** For purposes of determining the applicable rate of local use tax for promotional material, the following guidelines must be followed unless the consumer obtains prior written approval from the department to use an alternative method. Refer to (c) of this subsection for an explanation of the circumstances under which the department will consider approving alternate methods and how to obtain such approval.

(a) **Operations directed from within Washington.** The applicable local taxing jurisdiction and tax rate is the in-state location from where the consumer directs or manages its Washington operations.

(i) **Example 1.** Department Store operates ten locations in western Washington. Department Store's corporate headquarters, the location from where it manages its in-state operations, is in Seattle. The local use tax rate for Seattle is the applicable rate.

(ii) **Example 2.** Retailer, a national company with headquarters in Chicago, Illinois, operates multiple locations in Washington. Retailer manages its Washington operations from a location in Spokane. The local use tax rate for Spokane is the applicable rate.

(b) **Operations directed from outside Washington.** A consumer that manages or directs its Washington activities from outside the state must equally apportion the value of the promotional material among the local tax jurisdictions where the consumer conducts its business activities. Promotional material that is targeted to specific business locations of the consumer must be apportioned solely between those business locations. Targeted material is material specifically distributed to promote sales of products or services solely at a specific location(s) and at a different price(s) or terms than those offered at all other Washington locations.

(i) **Example 1.** Bank directs the operations of its four Washington branches from its headquarters in Sacramento, California. The branches are in Seattle, unincorporated King

County, Tacoma, and Everett. For purposes of determining use tax liability, twenty-five percent of the value of the promotional material must be equally apportioned to Seattle, unincorporated King County, Tacoma, and Everett.

(ii) **Example 2.** Furniture Store, headquartered in Nevada, orders 100,000 flyers from a Portland, Oregon, printer to be mailed to Washington households announcing the opening of its new store in Spokane. Customers will receive a ten percent discount on all items purchased at the Spokane store. This discount will not apply to purchases made at Store C's other Washington locations. The local use tax rate for Spokane is the applicable rate.

(iii) **Example 3.** Restaurant manages the operations of its Washington locations from Portland, Oregon. Restaurant contracts to have coupon books printed and mailed to households in Clark and Cowlitz counties. The coupons are accepted only at the Vancouver and Longview locations. The value of the promotional material must be equally apportioned to both locations.

(iv) **Example 4.** Ohio Manufacturer has no offices, warehouses, or storefront locations in Washington. A salesperson operating from the person's Kent home solicits sales from Washington distributors for the manufacturer. Manufacturer mails promotional material to its distributors' customers in Washington. The local use tax rate for Kent is the applicable rate.

(v) **Example 5.** Michigan Wholesaler without offices, warehouses, or storefront locations in Washington sends salesperson into Washington to solicit sales. Wholesaler mails promotional material to potential customers in Washington. The applicable local use tax rate is a uniform statewide local rate of .005.

(c) **Are there alternative methods for determining the place of first use?** For purposes of reporting use tax on promotional material, the department may agree to allow a consumer to use another method of determining the applicable local use tax rate provided that the method proposed by the consumer results in an equal or more equitable distribution of the tax. A consumer may request written approval for the use of an alternative method by contacting the department's taxpayer services division at:

Department of Revenue
Taxpayer Services
P.O. Box 47478
Olympia, WA 98504-7478

WSR 05-03-052

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 11, 2005, 4:01 p.m., effective July 1, 2005]

Effective Date of Rule: July 1, 2005.

Purpose: WAC 458-20-144 (Rule 144) discusses the business and occupation (B&O) and retail tax reporting responsibilities of persons engaged in printing activities. The instructions regarding amounts charged for postage costs have been modified to identify the Washington state statutory provisions to be used to determine whether such amounts are included or excluded from the measure of tax, and to refer the

reader to WAC 458-20-111 for information about nontaxable advances and reimbursements. Language has also been added to refer persons who engage in duplicating activities to WAC 458-20-141 Duplicating activities and mailing bureaus.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-144 Printing industry.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 04-19-080 on September 17, 2004.

Changes Other than Editing from Proposed to Adopted Version: We have made a change to more clearly explain that the statutory definition of delivery charges includes postage. The change also provides the information in an active voice, updates terminology to recognize current business practices, and refers the reader to Rule 111 for additional information.

The language in the proposed rule is as follows (language proposed for removal reflected in ~~strike out~~ with proposed new language underlined):

RCW 82.04.070 and 82.08.010, respectively, define "gross proceeds of sales" and "selling price to include "delivery costs." Where stamped envelopes or government postals are purchased and printed for customers or where stamps are provided, the amount of the postage ((~~may be deducted from the total charge to the customer in determining the selling price for business tax and sales tax~~)) is included in or excluded from the measure of B&O or retail sales tax consistent with these statutes and any other provisions of chapters 82.04 and 82.08 RCW.

The language being adopted is as follows (language being removed reflected in ~~strike out~~ with adopted new language underlined):

((~~Where stamped envelopes or government postals are purchased and printed for customers or where stamps are provided, the amount of the postage may be deducted from the total charge to the customer in determining the selling price for business tax and sales tax.~~)) RCW 82.04.070 and 82.08.010, respectively, define "gross proceeds of sales" and "selling price." These definitions provide that there is no deduction for "delivery costs." RCW 82.08.010 further provides that there is no deduction for "delivery charges," a term also defined by the statute to include postage. If a printer purchases stamps, applies metered postage using its meter account, or applies its permit imprint, and also charges the customer for the postage, the charge is included in the measure of B&O and/or retail sales tax, unless excluded by another provision of chapters 82.04 and 82.08 RCW. See also WAC 458-20-111 for information about nontaxable advances and reimbursements.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 11, 2005.

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit

AMENDATORY SECTION (Amending Order ET 70-4, filed 6/12/70, effective 7/12/70)

WAC 458-20-144 Printing industry. ~~((Note: This rule contains the material previously included in WAC 458-20-145 which is not currently incorporated in WAC 458-20-141.))~~ **(1) Introduction.** This rule discusses the taxability of the printing industry. For information on the taxability of mailing bureau services, refer to WAC 458-20-141, Duplicating industry and mailing bureaus.

(2) Definition. The phrase "printing industry" includes letterpress, offset-lithography, and gravure processes as well as multigraph, mimeograph, autotyping, addressographing and similar activities.

(3) Business and occupation tax. Printers are subject to the business and occupation tax under the printing and publishing classification upon the gross income of the business.

(4) Retail sales tax. The printing or imprinting of advertising circulars, books, briefs, envelopes, folders, posters, racing forms, tickets, and other printed matter, whether upon special order or upon materials furnished either directly or indirectly by the customer is a retail sale and subject to the retail sales tax, providing the customer either consumes, or distributes such articles free of charge, and does not resell such articles in the regular course of business. The retail sales tax is computed upon the total charge for printing, and the printer may not deduct the cost of labor, author's alterations, or other service charges in performing the printing, even though such charges may be stated or shown separately on invoices.

((~~Where stamped envelopes or government postals are purchased and printed for customers or where stamps are provided, the amount of the postage may be deducted from the total charge to the customer in determining the selling price for business tax and sales tax.~~)) RCW 82.04.070 and 82.08.010, respectively, define "gross proceeds of sales" and "selling price." These definitions provide that there is no deduction for "delivery costs." RCW 82.08.010 further provides that there is no deduction for "delivery charges," a term also defined by the statute to include postage. If a printer purchases stamps, applies metered postage using its meter account, or applies its permit imprint, and also charges the customer for the postage, the charge is included in the measure of B&O and/or retail sales tax, unless excluded by another provision of chapters 82.04 and 82.08 RCW. See also WAC 458-20-111 for information about nontaxable advances and reimbursements.

Sales of printed matter to advertising agencies who purchase for their own use or for the use of their clients, and not for resale in the regular course of business, are sales for consumption and subject to the retail sales tax.

Sales of tickets to theater owners, amusement operators, transportation companies and others are sales for consumption and subject to the retail sales tax. Such tickets are not resold by the theater owners or amusement proprietors as tangible personal property but are used merely as a receipt to the patrons for payment and as evidence of the right to admission or transportation.

Sales of school annuals and similar publications by printers to school districts, private schools or student organizations therein are subject to the retail sales tax.

Sales by printers of books, envelopes, folders, posters, racing forms, stationery, tickets and other printed matter to dealers for resale in the regular course of business are wholesale sales and are not subject to the retail sales tax.

Charges made by bookbinders or printers for imprinting, binding or rebinding of materials for consumers are subject to the retail sales tax.

Sales to printers of equipment, supplies and materials which do not become a component part or ingredient of the finished printed matter sold or which are put to "intervening use" before being resold are subject to the retail sales tax. This includes, among others, sales of fuel, furniture, lubricants, machinery, type, lead, slugs and mats.

Sales to printers of paper stock and ink which become a part of the printed matter sold are sales for resale and are not subject to retail sales tax.

(5) Commissions and discounts. There is a general trade practice in the printing industry of making allowances to advertising agencies of a certain percentage of the gross charge made for printed matter ordered by the agency either in its own name or in the name of the advertiser. This allowance may be a "commission" or may be a "discount."

A "commission" paid by a seller constitutes an expense of doing business and is not deductible from the measure of tax under either business and occupation tax or retail sales tax. On the other hand, a "discount" is a deduction from an established selling price allowed to buyers, and a bona fide discount is deductible under both these classifications.

In order that there may be a definite understanding, printers, advertising agencies and advertisers are advised that tax liability in such cases is as follows:

~~((1))~~ **(a)** The allowance taken by an advertising agency will be deductible as a discount in the computation of the printer's liability only in the event that the printer bills the charge on a net basis; i.e., less the discount.

~~((2))~~ **(b)** Where the printer bills the gross charge to the agency, and the advertiser pays the sales tax measured by the gross charge, no deduction will be allowed, irrespective of the fact that in payment of the account the printer actually receives from the agency the net amount only; i.e., the gross billing, less the commission retained by the agency. In all cases the commission received is taxable to the agency.

~~((Revised June 1, 1970.))~~

WSR 05-03-053
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed January 11, 2005, 4:02 p.m., effective July 1, 2005]

Effective Date of Rule: July 1, 2005.

Purpose: WAC 458-20-141 (Rule 141) provides B&O and retail sales tax-reporting information to persons conducting duplicating or mailing bureau activities. The department has revised Rule 141 to reorganize and update information to reflect current law. The rule explains that persons duplicating and selling items in this state must report under both the manufacturing and wholesaling/retailing B&O tax credits and are entitled to claim the multiple activities tax credit. It also provides information about self-service copying facilities and potential litter tax liabilities.

Language that stated a deduction from the measure of tax for both B&O tax and the retail sales tax was available where a mailing bureau purchases postage for a customer and charges that customer for the postage has been removed. The revised rule explains that amounts received from a customer for postage costs incurred by the seller are, under the law, included in the measures of both taxes. It also identifies the circumstances under which postage charges are not included in the measure of tax because the charges qualify as advances or reimbursements.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 04-19-074 on September 17, 2004.

Changes Other than Editing from Proposed to Adopted Version:

- Subsection (3), mailing bureau services, language has been added to refer the reader to subsection (2) of the rule if the mailing bureau duplicates the material being prepared and to WAC 458-20-144 Printing industry, if printing the material.
- Subsection (3)(a)(ii), presort services, we have removed this discussion of presort activities. We have also removed references to tax liabilities associated with presort activities from elsewhere in the rule.
- Subsection (3)(b)(i)(B), when is postage not part of the consideration paid?, we have added the following language: The mailing bureau in these cases has no primary or secondary liability for payment of the postage costs. (Refer to WAC 458-20-111 for information about advance and reimbursements.)
- Subsection (3)(b)(ii), examples, we have added the following language: For purposes of the following examples, sales invoices to the customer separately identify charges for postage.
- Subsections (3)(b)(ii)(A) through (J), which provide examples of common transactions that occur between mailing bureaus and their customers, explanations of the specific services being provided by the mailing bureau (including presort services, the discussion of which was removed from subsection (3)(a)(ii)) and references to specific tax classifications have been removed. The examples now focus only on the issue of whether charges for postage are or are not included in the measure of tax.

Duplicative or unnecessary examples have been removed, and two examples have been added. The tax result of the example in subsection (3)(b)(ii)(2) of the rule being adopted was changed because additional clarification was provided about industry practices.

- Subsection (3)(c)(i), interstate sales of tangible personal property, the following language has been added: **Interstate sales of tangible personal property.** The sale of tangible personal property is not subject to retail sales tax when the seller agrees to and does deliver the property outside the state. Refer to WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property, for further information about interstate sales.
- Subsection (3)(c)(ii), labor and services rendered in respect to tangible personal property of or for a nonresident (a part of subsection (3)(c) in the proposed rule), language has been added to refer readers to WAC 458-20-173 for additional information about the exemption.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 11, 2005.

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit

AMENDATORY SECTION (Amending Order ET 83-17, filed 3/15/83, effective 3/14/83 [3/15/83])

WAC 458-20-141 Duplicating ((industry)) activities and mailing bureaus. The phrase "duplicating industry" includes activities involving photostating, blueprinting, xeroxing, and other reproduction processes.

Business and Occupation Tax

Duplicators are taxable under the retailing classification upon the gross proceeds received from sales of photostats, blueprints, copies, etc., to consumers, whether the tangible personal property on which the work is recorded is owned by the duplicator or customer.

The wholesaling all other classification applies to sales for resale in the regular course of the purchaser's business. The duplicator must secure a resale certificate in the usual form.

Neither of these classifications is applicable, however, if the article sold is delivered to an out-of-state customer at an out-of-state point or if an article is produced for commercial or industrial use (see WAC 458-20-134.) In these cases tax is due under the manufacturing classification on the "value of products."

Mailing bureaus mail material for the publishing industry and also mail folders, bulletins, form letters, advertising publications, flyers, and similar material for other customers. As part of these services, the bureaus also label, fold, enclose and seal. All of these activities come within the definition of "sale at retail" (RCW 82.04.050) as constituting "labor and services rendered in respect to . . . the . . . altering, imprinting or improving of tangible personal property of or for consumers."

The gross proceeds received by mailing bureaus from charges made to consumers, whether such charges are itemized or lump sum, are taxable under the retailing classification. The gross proceeds are taxable under the wholesaling all other classification where charges (lump sum or itemized) are for tangible personal property resold as such to the purchaser or for services rendered to tangible personal property which becomes a component of an article for resale in the regular course of the purchaser's business. In either case mailing bureaus must secure resale certificates in the usual form.

Where a mailing bureau purchases stamps, government postals or stamped envelopes for a customer and the customer is charged therefor, the amount of the postage may be deducted from the measure of the business and occupation tax.

Retail Sales Tax

Sales by duplicators and mailing bureaus of tangible personal property (for example, photostats, blueprints, copies, mailing lists, "Dick" strips, etc.) and/or services rendered to tangible personal property of or for consumers are subject to the retail sales tax. Examples of persons purchasing as "consumers" are, among others, architects, engineers, and advertising agencies.

Where a mailing bureau purchases stamps, government postals or stamped envelopes for a customer and the customer is charged therefor, the amount of the postage may be deducted from the measure of the retail sales tax due.

Vendors selling tangible personal property to duplicators and mailing bureaus which will be resold, without any intervening use, are not required to collect the retail sales tax upon taking a resale certificate in the usual form.

On the other hand, vendors selling to duplicators and mailing bureaus, equipment, supplies or materials which do not become a component part of an article produced for sale, or selling items which are subjected to intervening use before resale, are making retail sales and must collect the retail sales tax. **(1) Introduction.** This rule discusses the business and occupation (B&O) tax and retail sales and use tax reporting responsibilities of persons who engage in duplicating activities or who provide mailing bureau services in Washington. Persons engaged in printing activities should refer to WAC 458-20-144 (Printing industry).

(2) Duplicating activities. Duplicating is the copying of typed, written, drawn, photographed, previously duplicated,

or printed materials using a photographic process such as photocopying, color copying, or blueprinting.

(a) Sales of duplicated products. Income from the sale of photostats, photocopies, blueprint copies and other duplicated tangible personal property to consumers is subject to the retailing B&O tax. The measure of tax is the gross proceeds of sale. The seller is also responsible for collecting and remitting retail sales tax on the selling price when making sales to consumers, unless a specific exemption applies. The wholesaling B&O tax applies to the gross proceeds of sale when the buyer purchases the duplicated property for resale without intervening use. The seller must obtain a resale certificate from the buyer to document the wholesale nature of any sale as provided in WAC 458-20-102 (Resale certificates).

If the seller is also the manufacturer of the duplicated products, the seller may be eligible for a multiple activities tax credit. Refer to WAC 458-20-19301 (Multiple activities tax credits) for more information about the credit.

(b) Duplicating as a manufacturing activity. A person duplicating tangible personal property for sale or commercial or industrial use (the use of manufactured property as a consumer) is subject to the manufacturing B&O tax classification. For further information about manufacturing activities, refer to WAC 458-20-112 (Value of products), WAC 458-20-134 (Commercial or industrial use), and WAC 458-20-136 (Manufacturing, processing for hire, fabricating).

(c) Self-service copying. Some persons provide consumers with access to duplicating equipment to make their own copies (frequently referred to "self-service copying"). These customers are generally charged on a per page basis. The gross proceeds of sales made to consumers for self-service copying is subject to the retailing B&O tax. The seller is also responsible for collecting retail sales tax, unless a specific exemption applies. In such cases, the person providing access to duplicating equipment is not engaged in a manufacturing activity and charges for self-service copying are not subject to the manufacturing B&O tax.

(d) Potential litter tax liability. Chapter 82.19 RCW imposes a litter tax on manufacturers (including duplicators), wholesalers, and retailers of certain products. These products include, but are not limited to, newspapers, magazines, and household paper and paper products. Thus, persons who duplicate tangible personal property for sale or who provide facilities for self-service copying may incur a litter tax liability. The measure of the litter tax is the gross proceeds of sale. For further information about the litter tax, refer to chapter 82.19 RCW and WAC 458-20-243 (Litter tax).

(e) Purchases for resale. The purchase of tangible personal property for resale as tangible personal property or as a component or ingredient of duplicated property is a purchase at wholesale. Examples of items that may be purchased at wholesale include paper, ink, toner, and staples. Refer to WAC 458-20-113 (Ingredients or components, chemicals used in processing new articles for sale). Wholesale purchases are not subject to retail sales tax when the buyer provides a resale certificate to the seller as provided by WAC 458-20-102 (Resale certificates).

(f) Purchases subject to retail sales or use tax. A person who engages in duplicating activities and acquires tangi-

ble personal property for use as a consumer must pay retail sale tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect retail sales tax. Examples of purchases by a person engaged in duplicating activities that are subject to retail sales tax or use tax include photocopiers, cutting boards, computers, cash registers, and office furniture. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

Persons who engage in duplicating products for sale should refer to WAC 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment) for information about the sales and use tax exemptions for certain machinery and equipment used directly in a manufacturing operation.

(g) Example. Copy Company provides a public area with photocopying equipment and materials (paper, toner, and staples) to allow customers to make their own copies. Copy Company has a separate area where Copy Company employees make copies for customers. The income attributable to copies made both by the customers and by Copy Company employees is subject to the retailing B&O and retail sales taxes. The value of the copies made by Copy Company employees is also subject to the manufacturing B&O tax, and Copy Company may claim a multiple activities tax credit as described above in subsection (2)(a). Litter tax may be due as explained above in subsection (2)(d).

Copy Company may purchase the paper, toner, and staples that are used or provided in both areas at wholesale, if the seller receives a resale certificate. Retail sales or use tax applies to the purchase of photocopying equipment in both areas. The purchase and/or use of the equipment where Copy Company employees make copies may qualify for the machinery and equipment exemption described in WAC 458-20-13601.

(3) Mailing bureau services. Mailing bureaus, also referred to as mail houses, prepare for distribution mail pieces such as bulletins, form letters, advertising material, political publications, and flyers as directed by their customers. The customer may provide the mail pieces to be prepared for distribution or the mailing bureau itself may sell the material to the customer. Mailing bureaus that duplicate the material being prepared should also refer to subsection (2), above. Mailing bureaus that print the material being prepared should also refer to WAC 458-20-144.

(a) Mailing bureau activities. Activities conducted by mailing bureaus include, but are not limited to, picking up, addressing, labeling, binding, folding, enclosing, sealing, tabbing, and mailing the mail pieces. The mailing bureau generally charges the customer on a per-piece basis for each separate service provided plus the actual cost of any postage.

Charges for labor and services rendered in respect to altering, imprinting, or improving tangible personal property of or for consumers are retail sales. RCW 82.04.050 (2)(a). Thus, the retailing B&O tax applies to income received from consumers for services that include addressing, labeling, binding, folding, enclosing, sealing, and/or tabbing. Mailing bureau businesses are also responsible for collecting and remitting retail sales tax when making sales to consumers, unless a specific exemption applies.

(b) Measure of tax. The measure of the B&O and retail sales taxes is the gross proceeds of sale and selling price, respectively. These terms include all consideration paid by the buyer, however identified, without any deduction for costs of doing business, such as material, labor, and delivery costs. RCW 82.04.070 and 82.08.010.

(i) Postage. Charges for postage or other delivery costs are included in the measure of tax for both B&O tax and retail sales tax if the costs are part of the consideration paid by the customer. It is immaterial if the amounts charged for postage are stated or shown separately on the sales invoice or reflect actual mailing costs to the mailing bureau. Amounts charged for postage and other delivery costs are not included in the measure of tax only if the amounts are not part of the consideration paid by the customer.

(A) When is postage part of the consideration paid? Charges for postage costs are considered part of the consideration paid if the permit to use precancelled stamps, a postage meter, or an imprint account for bulk mailings is in the name of the mailing bureau. The mailing bureau is liable to the post office for payment and the customer's payment of such amounts represents a payment on the sale of tangible personal property or the services provided. For further information, refer to WAC 458-20-111 (Advances and reimbursements).

(B) When is postage not part of the consideration paid? Charges for postage are not considered part of the consideration paid if the permit to use precancelled stamps or a permit imprint account for bulk mailings is in the customer's name. The mailing bureau in these cases has no primary or secondary liability for payment of the postage costs. (Refer to WAC 458-20-111 for information about advances and reimbursements.)

(ii) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of any situation must be determined after a review of all facts and circumstances. For purposes of the following examples, sales invoices to the customer separately identify charges for postage.

(A) Example 1. Mailing Bureau receives mail pieces from Department Store to prepare and mail. Mailing Bureau advises Department Store of the estimated amount of postage. Department Store deposits an amount equal to the estimated cost of postage in its own permit imprint account. The estimated postage is not part of the total consideration paid because the Department Store is personally liable to the post office for postage. The total charge, excluding postage, is the consideration paid by Department Store and subject to tax.

(B) Example 2. Assume facts as described above in Example 1. The post office determines that the actual cost of postage exceeds the estimated amount deposited by Department Store in its permit imprint account. Post office transfers the additional amount for postage from Mailing Bureau's account. Mailing Bureau invoices Department Store for the additional amount. The additional amount for postage is not part of the consideration paid and is not included in the measure of tax because Mailing Bureau's liability for payment of the additional postage is limited to that of an agent.

(C) Example 3. Mailing Bureau receives from Political Candidate B mail pieces to prepare and mail. Mailing Bureau uses its own postage meter to apply metered postage. Postage is a part of the consideration paid by Candidate B and is included in the measure of tax.

(D) Example 4. Mailing Bureau receives pre-stamped mail pieces from Medical Clinic to prepare and mail. The mail pieces qualify for the lower bulk mail rates after Mailing Bureau prepares the mail pieces. The post office refunds the difference between the single piece rate and the bulk mail rate to Mailing Bureau. Mailing Bureau retains the amount due for services rendered and in turn remits the balance of the refunded postage to Medical Clinic. Postage is not a part of the consideration paid and is not included in the measure of tax.

(E) Example 5. Mailing Bureau prints, prepares, and mails mail pieces for Non-Profit Organization's fundraising drive. Mailing Bureau applies metered postage using its own postage meter. The charge for postage is a part of the consideration paid and included in the measure of tax.

(F) Example 6. Mailing Bureau duplicates, prepares, and mails advertising for Restaurant. Mailing Bureau applies precancelled stamps that it purchases from the post office. The charge for postage is a part of the consideration paid and included in the measure of tax.

(G) Example 7. Mailing Bureau picks up mail pieces from Washington City to prepare and mail. Mailing Bureau applies metered postage using its own postage meter. The charge for postage is a part of the consideration paid by Washington City and included in the measure of tax.

(H) Example 8. Mailing Bureau prepares and mails advertising for Insurance Company. To apply postage, Mailing Bureau uses a postage meter leased by Insurance Company from a third party vendor. Insurance Company is liable to the third party vendor for payment of postage. The consideration does not include charges for postage.

(I) Example 9. Assume same facts as described in Example 8 above. The postage meter account contains insufficient funds required for mailing pieces. Mailing Bureau advances sufficient funds to Insurance Company's metering account. Mailing Bureau invoices Insurance Company for the additional amount. The consideration does not include postage because Mailing Bureau's liability for payment is limited to that of an agent.

(c) Retail sales tax exemptions. Certain sales tax exemptions may apply to the sale of tangible personal property or labor and services rendered to tangible personal property.

(i) Interstate sales of tangible personal property. The sale of tangible personal property is not subject to retail sales tax when the seller agrees to and does deliver the property outside the state. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for further information about interstate sales.

(ii) Labor and services rendered in respect to tangible personal property of or for a nonresident. RCW 82.08.-0265 provides a retail sales tax exemption for charges made for labor and services rendered in respect to any installing, repairing, cleaning, altering, or improving tangible personal property of or for a nonresident when the seller agrees to and

does deliver the property to the purchaser at a point outside this state or delivers the property to a common or bona fide private carrier consigned to the purchaser at a point outside this state. For further information about this exemption, refer to WAC 458-20-173 (Installing, cleaning, repairing or otherwise altering or improving personal property of consumers).

(d) Purchases for resale. The purchase of tangible personal property for resale as tangible personal property or to become a component or ingredient of property upon which mailing bureau services will be performed is a purchase at wholesale. Examples of items that may be purchased at wholesale include paper, printing ink, envelopes, and staples. Wholesale purchases are not subject to retail sales tax when the buyer provides a resale certificate to the seller as provided by WAC 458-20-102 (Resale certificates). Refer to WAC 458-20-113 (Ingredients or components, chemicals used in processing new articles for sale) for further information regarding ingredients and components.

(e) Purchases subject to retail sales or use tax. A mailing bureau business that purchases, leases, or otherwise acquires tangible personal property for use as a consumer must pay retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department when the seller fails to collect the retail sales tax. Examples of such property include photocopiers, cutting boards, computers, office furniture, and equipment to address, label, fold, seal, insert, meter, stamp, or sort. For further information about the use tax, refer to WAC 458-20-178 (Use tax).

(f) Purchases of mailing lists. Persons acquiring mailing lists are purchasing an information service regardless of the medium used to provide or transfer the information. Thus, the purchase of a mailing list by a mailing bureau business is not subject to either retail sales or use tax.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Adopted under notice filed as WSR 04-20-067 on October 4, 2004.

Changes Other than Editing from Proposed to Adopted Version: There are two minor changes between the proposed rule and the adopted rule. In WAC 246-101-201, regarding Hepatitis B virus, the adopted rule does not include "(Chronic)—initial diagnosis and previously unreported prevalent cases." In WAC 246-101-201, regarding Hepatitis C, the adopted rule does not include the phrase "Acute and Chronic." The board removed this language based on public comment—this terminology is based on clinical history information, which laboratories do not have. The change will assure that local health departments receive consistent reporting on all Hepatitis B and C cases from laboratories.

A final cost-benefit analysis is available by contacting Michelle Davis, P.O. Box 47890, Olympia, WA 98504-7890, phone (360) 236-4044, fax (360) 586-7424, e-mail michelle.davis@doh.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: November 10, 2004.

Craig McLaughlin
Executive Director

WSR 05-03-055

PERMANENT RULES

STATE BOARD OF HEALTH

[Filed January 11, 2005, 4:48 p.m., effective February 11, 2005]

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

Purpose: This rule change will assure continued reporting of specific conditions and diagnoses by health care providers laboratories, and facilities to public health officials. This adoption moves seven conditions from a provisionally notifiable status to permanently notifiable status; moves Hepatitis B and Hepatitis C from a voluntary reporting status to a mandatory reporting status for laboratories; and adds a new national case definition for arboviral disease, to ensure consistency with CDC case definitions.

Citation of Existing Rules Affected by this Order: Amending WAC 246-101-015, 246-101-101, 246-101-201, and 246-101-301.

Statutory Authority for Adoption: RCW 43.20.050, 70.24.125.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-015 Provisional condition notification. This section describes how conditions can become notifiable; what period of time conditions are provisionally notifiable; what analyses must be accomplished during provisional notification status; the transition of provisionally notifiable conditions to permanent notification or deletion of notification requirements. The department's goal for provisionally notifiable conditions is to collect enough information to determine whether requiring notification improves public health.

(1) The state health officer may:

(a) Request reporting of cases and suspected cases of disease and conditions in addition to those required in Tables HC-1, Lab-1, and HF-1 on a provisional basis for a period of time less than forty-eight months when:

(i) The disease or condition is newly recognized or recently acknowledged as a public health concern;

(ii) Epidemiological investigation based on notification of cases may contribute to understanding of the disease or condition;

(iii) There is reason to expect that the information acquired through notification will assist the state and/or local health department to design or implement intervention strategies that will result in an improvement in public health; and

(iv) Written notification is provided to all local health officers regarding:

(A) Additional reporting requirements; and

(B) Rationale or justification for specifying the disease or condition as notifiable.

(b) Request laboratories to submit specimens indicative of infections in addition to those required in Table Lab-1 on a provisional basis for a period of time less than forty-eight months, if:

(i) The infection is of public health concern;

(ii) The department has a plan for using data gathered from the specimens; and

(iii) Written notification is provided to all local health officers and all laboratory directors explaining:

(A) Actions required; and

(B) Reason for the addition.

(2) Within forty months of the state health officer's designation of a condition as provisionally notifiable in subsection (1) of this section, or requests for laboratories to submit specimens indicative of infections in subsection (2) of this section, the department will conduct an evaluation for the notification requirement that:

(a) Estimates the societal cost resulting from the provisionally notifiable condition;

(i) Determine the prevalence of the provisional notifiable condition; and

(ii) Identify the quantifiable costs resulting from the provisionally notifiable condition; and

(iii) Discuss the qualitative costs resulting from the provisionally notifiable condition.

(b) Describes how the information was used and how it will continue to be used to design and implement intervention strategies aimed at combating the provisionally notifiable condition;

(c) Verifies the effectiveness of previous intervention strategies at reducing the incidence, morbidity, or mortality of the provisional notifiable condition;

(d) Identifies the quantitative and qualitative costs of the provisional notification requirement;

(e) Compares the costs of the provisional notification requirement with the estimated cost savings resulting from the intervention based on the information provided through the provisional notification requirement;

(f) Describes the effectiveness and utility of using the notifiable conditions process as a mechanism to collect these data; and

(g) Describes that a less burdensome data collection system (example: biennial surveys) would not provide the information needed to effectively establish and maintain the intervention strategies.

(3) Based upon the evaluation in subsection (2) of this section, the board will assess results of the evaluation after the particular condition is notifiable or the requirement for

laboratories to submit specimens indicative of infections has been in place for no longer than forty months. The board will determine based upon the results of the evaluation whether the provisionally notifiable condition or the requirement for laboratories to submit specimens indicative of infections should be:

(a) Permanently notifiable in the same manner as the provisional notification requirement;

(b) Permanently notifiable in a manner that would use the evaluation results to redesign the notification requirements; or

(c) Deleted from the notifiable conditions system.

(4) ~~((The following conditions are provisionally notifiable through the date indicated:~~

~~(a) Autism (through August, 2004);~~

~~(b) Cerebral palsy (through August, 2004);~~

~~(c) Fetal alcohol syndrome/Fetal alcohol effects (through August, 2004);~~

~~(d) Hepatitis B, chronic—Initial diagnosis, and previously unreported prevalent cases (through August, 2004);~~

~~(e) Hepatitis C—Initial diagnosis, and previously unreported prevalent cases (through August, 2004);~~

~~(f) Herpes simplex (initial genital infection, only) (through August, 2004);~~

~~(g) Streptococcus, Group A (invasive disease only indicated by blood, spinal fluid or other normally sterile site) (through August, 2004); and~~

~~(h) Birth defects—Abdominal wall defects (through August, 2004).~~

(5)) The department shall have the authority to declare an emergency and institute notification requirements under the provisions of RCW 34.05.350.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-101 Notifiable conditions and the health care provider. This section describes the conditions that Washington's health care providers must notify public health authorities of on a statewide basis. The board finds that the conditions in the table below (Table HC-1) are notifiable for the prevention and control of communicable and noninfectious diseases and conditions in Washington. Principal health care providers shall notify public health authorities of these conditions as individual case reports using procedures described throughout this chapter. Other health care providers in attendance shall notify public health authorities of the following notifiable conditions, unless the condition notification has already been made. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

WAC 246-101-105, 246-101-110, 246-101-115, and 246-101-120 also include requirements for how notifications shall be made, when they shall be made, the content of these notifications, and how information regarding notifiable conditions cases must be handled and may be disclosed.

Table HC-1 (Conditions Notifiable by Health Care Providers)

Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Acquired Immunodeficiency Syndrome (AIDS)	Within 3 work days	√	
Animal Bites	Immediately	√	
<u>Arboviral Disease</u>	<u>Within 3 work days</u>	<u>√</u>	
Asthma, occupational	Monthly		√
Birth Defects – Autism ((Provisional through August, 2004)) <u>Spectrum Disorders</u>	Monthly		√
Birth Defects – Cerebral Palsy ((Provisional through August, 2004))	Monthly		√
Birth Defects – ((Fetal)) Alcohol ((Syndrome/Fetal Alcohol Effects- (Provisional through August, 2004))) <u>Related Birth Defects</u>	Monthly		√
Botulism (foodborne, infant, and wound)	Immediately	√	
Brucellosis (<i>Brucella</i> species)	Immediately	√	
Campylobacteriosis	Within 3 work days	√	
Chancroid	Within 3 work days	√	
<i>Chlamydia trachomatis</i> infection	Within 3 work days	√	
Cholera	Immediately	√	
Cryptosporidiosis	Within 3 work days	√	
Cyclosporiasis	Within 3 work days	√	
Diphtheria	Immediately	√	
Disease of suspected bioterrorism origin (including): • Anthrax • Smallpox	Immediately	√	
Disease of suspected foodborne origin (communicable disease clusters only)	Immediately	√	
Disease of suspected waterborne origin (communicable disease clusters only)	Immediately	√	
((Encephalitis, viral	Within 3 work days	÷))	
Enterohemorrhagic <i>E. coli</i> (shiga-like toxin producing infections only) such as <i>E. coli</i> O157:H7 Infection	Immediately	√	
Giardiasis	Within 3 work days	√	
Gonorrhea	Within 3 work days	√	
Granuloma inguinale	Within 3 work days	√	
<i>Haemophilus influenzae</i> (invasive disease, children under age 5)	Immediately	√	
Hantavirus pulmonary syndrome	Within 3 work days	√	
Hemolytic uremic syndrome	Immediately	√	

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Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Hepatitis A (acute infection)	Immediately	√	
Hepatitis B (acute infection)	Within 3 work days	√	
Hepatitis B surface antigen + pregnant women	Within 3 work days	√	
Hepatitis B (chronic) – Initial diagnosis, and previously unreported prevalent cases ((((Provisional through August, 2004))))	Monthly	√	
Hepatitis C – Acute and chronic ((((Provisional through August, 2004))))	Monthly	√	
Hepatitis (infectious), unspecified	Within 3 work days	√	
Herpes simplex, neonatal and genital (initial infection only) ((((Provisional through August, 2004))))	Within 3 work days	√	
Human immunodeficiency virus (HIV) infection	Within 3 work days	√	
Legionellosis	Within 3 work days	√	
Leptospirosis	Within 3 work days	√	
Listeriosis	Immediately	√	
Lyme Disease	Within 3 work days	√	
Lymphogranuloma venereum	Within 3 work days	√	
Malaria	Within 3 work days	√	
Measles (rubeola)	Immediately	√	
Meningococcal disease	Immediately	√	
Mumps	Within 3 work days	√	
Paralytic shellfish poisoning	Immediately	√	
Pertussis	Immediately	√	
Pesticide poisoning (hospitalized, fatal, or cluster)	Immediately		√
Pesticide poisoning (all other)	Within 3 work days		√
Plague	Immediately	√	
Poliomyelitis	Immediately	√	
Psittacosis	Within 3 work days	√	
Q Fever	Within 3 work days	√	
Rabies (Confirmed Human or Animal)	Immediately	√	
Rabies (Including use of post-exposure prophylaxis)	Within 3 work days	√	
Relapsing fever (borreliosis)	Immediately	√	
Rubella (including congenital rubella syndrome)	Immediately	√	
Salmonellosis	Immediately	√	
Serious adverse reactions to immunizations	Within 3 work days	√	
Shigellosis	Immediately	√	

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Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
((Streptococcus, Group A, Invasive (Indicated by blood, spinal fluid or other normally sterile site) (Provisional through August, 2004)	Within 3 work days	÷))	
Syphilis	Within 3 work days	√	
Tetanus	Within 3 work days	√	
Trichinosis	Within 3 work days	√	
Tuberculosis	Immediately	√	
Tularemia	Within 3 work days	√	
Typhus	Immediately	√	
Vibriosis	Within 3 work days	√	
Yellow fever	Immediately	√	
Yersiniosis	Within 3 work days	√	
Other rare diseases of public health significance	Immediately	√	
Unexplained critical illness or death	Immediately	√	

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-201 Notifiable conditions and laboratories. This section describes the conditions about which Washington's laboratories must notify public health authorities of on a statewide basis. The board finds that the conditions in the table below (Table Lab-1) are notifiable for the prevention and control of communicable and noninfectious diseases and conditions in Washington. The board also finds that submission of specimens for many of these conditions will further prevent the spread of disease. Laboratory directors shall notify public health authorities of positive cultures

and preliminary test results as individual case reports and provide specimen submissions using procedures described throughout this chapter. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

WAC 246-101-205, 246-101-210, 246-101-215, 246-101-220, 246-101-225, and 246-101-230 also include requirements for how notifications and specimen submissions are made, when they are made, the content of these notifications and specimen submissions, and how information regarding notifiable conditions cases must be handled and may be disclosed.

Table Lab-1 (Conditions Notifiable by Laboratory Directors)

Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
<u>Arboviral Disease (Isolation; Detection of Viral Nucleic Acid or Antibody)</u>	<u>2 days</u>	√		
Blood Lead Level	Elevated Levels – 2 Days Nonelevated Levels – Monthly		√	
Botulism (Foodborne)	Immediately	√		Serum and Stool - If available, submit suspect foods (2 days)
Botulism (Infant)	Immediately	√		Stool (2 days)
Botulism (Wound)	Immediately	√		Culture, Serum, Debrided tissue, or Swab sample (2 days)
Brucellosis (<i>Brucella</i> species)	2 days	√		Subcultures (2 days)

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Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
CD4+ (T4) lymphocyte counts less than 200 and/or CD4+ (T4) percents less than fourteen percent of total lymphocytes (patients aged thirteen or older)	Monthly	Only when the local health department is designated by the Department of Health	√	
<i>Chlamydia trachomatis</i> infection	2 days	√		
Cholera	Immediately	√		Culture (2 days)
Cryptosporidiosis	2 days	√		
Cyclosporiasis	2 days	√		Specimen (2 days)
Diphtheria	2 days	√		Culture (2 days)
Disease of Suspected Bioterrorism Origin (examples): • Anthrax • Smallpox	Immediately	√		Culture (2 days)
Enterohemorrhagic <i>E. coli</i> (shiga-like toxin producing infections only) such as <i>E. coli</i> O157:H7 Infection	2 days	√		Culture (2 days)
Gonorrhea	2 days	√		
Hepatitis A (IgM positive)	2 days	√		
<u>Hepatitis B</u>	<u>Monthly</u>	√		
<u>Hepatitis C</u>	<u>Monthly</u>	√		
Human immunodeficiency virus (HIV) infection (including positive Western Blot assays, P24 antigen or viral culture tests)	2 days	Only when the local health department is designated by the Department of Health	√ (Except King County)	
Human immunodeficiency virus (HIV) infection (positive results on HIV nucleic acid tests (RNA or DNA))	Monthly	Only when the local health department is designated by the Department of Health	√ (Except King County)	
Listeriosis	2 days	√		
Measles (rubeola)	Immediately	√		Serum (2 days)
Meningococcal disease	2 days	√		Culture (Blood/CSF or other sterile sites) (2 days)
Pertussis	2 days	√		
Plague	Immediately	√		Culture or other appropriate clinical material (2 days)
Rabies (human or animal)	Immediately	√ (Pathology Report Only)		Tissue or other appropriate clinical material (Upon request only)
Salmonellosis	2 days	√		Culture (2 days)
Shigellosis	2 days	√		Culture (2 days)
Syphilis				Serum (2 days)

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Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
Tuberculosis	2 days		√	Culture (2 days)
Tuberculosis (Antibiotic sensitivity for first isolates)	2 days		√	
Tularemia				Culture or other appropriate clinical material (2 days)
Other rare diseases of public health significance	Immediately	√		

Additional notifications that are requested but not mandatory include:

(1) Laboratory directors may notify either local health departments or the department or both of other laboratory results ((including hepatitis B and hepatitis C)) through cooperative agreement.

(2) Laboratory directors may submit malaria cultures to the state public health laboratories.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

WAC 246-101-301 Notifiable conditions and health care facilities. This section describes the conditions that Washington's health care facilities must notify public health authorities of on a statewide basis. The board finds that the conditions in the table below (Table HF-1) are notifiable for the prevention and control of communicable and noninfectious diseases and conditions.

Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction. Health care facilities are required to notify public health authorities of cases that occur in their facilities. Health care facilities may choose to assume the notification for their health care providers for conditions designated in Table HF-1. Health care facilities may not assume the reporting requirements of laboratories that are components of the health care facility. Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

WAC sections 246-101-305, 246-101-310, 246-101-315, and 246-101-320 also include requirements for how notifications shall be made, when they are made, the content of these notifications, and how information regarding notifiable conditions cases must be handled and may be disclosed.

Table HF-1 (Conditions Notifiable by Health Care Facilities)

Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Acquired Immunodeficiency Syndrome (AIDS)	Within 3 work days		√
Animal Bites	Immediately	√	
<u>Arboviral Disease</u>	<u>Within 3 work days</u>	√	
Asthma, occupational	Monthly		√
Birth Defects – Abdominal Wall Defects (inclusive of gastroschisis and omphalocele) ((Provisional through August, 2004))	Monthly		√
Birth Defects – Autism ((Provisional through August, 2004)) <u>Spec- trum Disorders</u>	Monthly		√
Birth Defects – Cerebral Palsy ((Provisional through August, 2004))	Monthly		√
Birth Defects – Down Syndrome	Monthly		√
Birth Defects – ((Fetal)) Alcohol ((Syndrome/Fetal Alcohol Effects - (Provisional through August, 2004)) <u>Related Birth Defects</u>	Monthly		√
Birth Defects – Hypospadias	Monthly		√

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Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Birth Defects – Limb reductions	Monthly		√
Birth Defects – Neural Tube Defects (inclusive of anencephaly and spina bifida)	Monthly		√
Birth Defects – Oral Clefts (inclusive of cleft lip with/without cleft palate)	Monthly		√
Botulism (foodborne, infant, and wound)	Immediately	√	
Brucellosis (<i>Brucella</i> species)	Immediately	√	
Cancer (<i>See chapter 246-430 WAC</i>)	Monthly		√
Chancroid	Within 3 work days	√	
<i>Chlamydia trachomatis</i> infection	Within 3 work days	√	
Cholera	Immediately	√	
Cryptosporidiosis	Within 3 work days	√	
Cyclosporiasis	Within 3 work days	√	
Diphtheria	Immediately	√	
Disease of suspected bioterrorism origin (including): • Anthrax • Smallpox	Immediately	√	
Disease of suspected foodborne origin (communicable disease clusters only)	Immediately	√	
Disease of suspected waterborne origin (communicable disease clusters only)	Immediately	√	
((Encephalitis, viral	Within 3 work days	÷))	
Enterohemorrhagic <i>E. coli</i> (shiga-like toxin producing infections only) such as <i>E. coli</i> O157:H7 Infection	Immediately	√	
Giardiasis	Within 3 work days	√	
Gonorrhea	Within 3 work days	√	
Granuloma inguinale	Within 3 work days	√	
Gunshot wounds (nonfatal)	Monthly		√
<i>Haemophilus influenzae</i> (invasive disease, children under age 5)	Immediately	√	
Hantavirus pulmonary syndrome	Within 3 work days	√	
Hemolytic uremic syndrome	Immediately	√	
Hepatitis A (acute infection)	Immediately	√	
Hepatitis B (acute infection)	Within 3 work days	√	
Hepatitis B surface antigen+ pregnant women	Within 3 work days	√	
Hepatitis B (chronic) – Initial diagnosis, and previously unreported prevalent cases ((Provisional through August, 2004))	Monthly	√	

Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Hepatitis C – Acute and chronic ((Provisional through August, 2004))	Monthly	√	
Hepatitis (infectious), unspecified	Within 3 work days	√	
Human immunodeficiency virus (HIV) infection	Within 3 work days	√	
Legionellosis	Within 3 work days	√	
Leptospirosis	Within 3 work days	√	
Listeriosis	Immediately	√	
Lyme Disease	Within 3 work days	√	
Lymphogranuloma venereum	Within 3 work days	√	
Malaria	Within 3 work days	√	
Measles (rubeola)	Immediately	√	
Meningococcal disease	Immediately	√	
Mumps	Within 3 work days	√	
Paralytic shellfish poisoning	Immediately	√	
Pertussis	Immediately	√	
Pesticide poisoning (hospitalized, fatal, or cluster)	Immediately		√
Plague	Immediately	√	
Poliomyelitis	Immediately	√	
Psittacosis	Within 3 work days	√	
Q Fever	Within 3 work days	√	
Rabies (Confirmed Human or Animal)	Immediately	√	
Rabies (Use of post-exposure prophylaxis)	Within 3 work days	√	
Relapsing fever (borreliosis)	Immediately	√	
Rubella (including congenital rubella syndrome)	Immediately	√	
Salmonellosis	Immediately	√	
Serious adverse reactions to immunizations	Within 3 work days	√	
Shigellosis	Immediately	√	
((Streptococcus, Group A Invasive (Indicated by blood, spinal fluid or other normally sterile site) (Provisional through August, 2004))	Within 3 work days	÷))	
Syphilis	Within 3 work days	√	
Tetanus	Within 3 work days	√	
Trichinosis	Within 3 work days	√	
Tuberculosis	Immediately	√	
Tularemia	Within 3 work days	√	
Typhus	Immediately	√	
Vibriosis	Within 3 work days	√	

Notifiable Condition	Time frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Yellow fever	Immediately	√	
Yersiniosis	Within 3 work days	√	
Other rare diseases of public health significance	Immediately	√	
Unexplained critical illness or death	Immediately	√	

WSR 05-03-077
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Medical Assistance Administration)

[Filed January 17, 2005, 12:53 p.m., effective February 17, 2005]

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

Purpose: Amending WAC 388-515-1505 to clarify income and resource allocations for the COPES (community options program entry system) waiver services program, including court-ordered guardianship and attorney fees in those allocations; and correct erroneous statement regarding SSI (supplemental security income) clients' income being used to participate in their cost of care. Amendments also include a provision in subsection (9) stating that total client income cannot exceed the SIL (special income level), which is included in the federal waiver but was unintentionally left out of the WAC. When effective this permanent rule will replace emergency rules filed as WSR 05-01-219.

Citation of Existing Rules Affected by this Order: Amending WAC 388-515-1505.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.575.

Adopted under notice filed as WSR 04-24-077 on November 30, 2004.

Changes Other than Editing from Proposed to Adopted Version: Editing changes only.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 11, 2005.

Andy Fernando, Manager
 Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-05-003, filed 2/7/02, effective 3/10/02)

WAC 388-515-1505 Community options program entry system (COPES). This section describes the financial eligibility requirements for waiver services under the community options program entry system (COPES) and the rules used to determine a client's participation in the total cost of care.

(1) To be eligible for COPES a client must:

(a) Be eighteen years of age or older;

(b) Meet the disability criteria of the Supplemental Security Income (SSI) program as described in WAC 388-503-0510(1);

(c) Require the level of care provided in a nursing facility as described in WAC ((388-71-0700)) 388-72A-0055;

(d) Be residing in a medical facility as defined in WAC 388-513-1301, or likely be placed in one within the next thirty days in the absence of ((waivered)) waiver services described in WAC 388-71-0410 and 388-71-0415;

(e) Have attained institutional status as described in WAC 388-513-1320;

(f) Be determined in need of waived services and be approved for a plan of care as described in WAC((388-71-0435)) 388-72A-0055;

(g) Be able to live at home with community support services and ((eases)) choose to remain at home, or live in a department-contracted:

(i) Enhanced adult residential care (EARC) facility;

(ii) Licensed adult family home (AFH); or

(iii) Assisted living (AL) facility.

(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1364, 388-513-1365 and 388-513-1366; and

(i) Meet the resource and income requirements described in subsections (2), (3) and (4).

(2) Refer to WAC 388-513-1315 for rules used to determine nonexcluded resources and income.

(3) Nonexcluded resources above the standard described in WAC 388-513-1350(1):

(a) Are allowed during the month of an application or eligibility review ((if)), when ((excess resources are added to nonexcluded income,)) the combined total ((is not over)) of excess resources and nonexcluded income does not exceed the special income level (SIL).

(b) Are reduced by incurred medical expenses (for definition, see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:

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(i) Health insurance and Medicare premiums, deductions, and co-insurance charges; and

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan.

(c) Not allocated to participation must be at or below the resource standard, otherwise the client is ineligible.

~~(((a)))~~ (4) Nonexcluded income must be at or below the SIL and is allocated in the following order:

~~((A))~~ (a) ~~(Must be at or below the SIL;~~

~~((B))~~ ~~Is allocated in the following order:~~

~~((C))~~ (a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

~~((D))~~ (b) Maintenance and personal needs allowances as described in subsection (6), (7), and (8) of this section;

~~((E))~~ (c) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter ~~((388-079))~~ 388-79 WAC;

~~((F))~~ (d) Income garnished for child support or withheld pursuant to a child support order:

~~((A))~~ (i) For the time period covered by the maintenance amount; and

~~((B))~~ (ii) Not deducted under another provision in the post-eligibility process.

~~((C))~~ (e) Monthly maintenance needs allowance for the community spouse not to exceed that in WAC 388-513-1380 (6)(b) unless a greater amount is allocated as described in subsection (5) of this section. This amount:

~~((A))~~ (i) Is allowed only to the extent that the client's income is made available to the community spouse; and

~~((B))~~ (ii) Consists of a combined total of both:

~~((C))~~ (A) An amount added to the community spouse's gross income to provide a total equal to the amount allocated in WAC 388-513-1380 (6)(b); and

~~((D))~~ (B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for the community spouse's principal residence ~~((of))~~. These expenses are:

~~((I))~~ (I) Rent;

~~((II))~~ (II) Mortgage;

~~((III))~~ (III) Taxes and insurance;

~~((IV))~~ (IV) Any maintenance care for a condominium or cooperative; and

~~((V))~~ (V) The food assistance standard utility allowance (for LTC services this is set at the standard utility allowance (SUA) for a four-person household), provided the utilities are not included in the maintenance charges for a condominium or cooperative;

~~((VI))~~ (VI) LESS the standard shelter allocation listed in WAC 388-513-1380 (7)(a).

~~((H))~~ (f) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community or institutionalized spouse based on the living arrangement of the dependent. If the dependent:

~~((I))~~ (i) Resides with the community spouse, the amount is equal to one-third of the community spouse income allocation as described in WAC 388-513-1380 (6)(b)(I)(A) that exceeds the dependent family member's income;

~~((II))~~ (ii) Does not reside with the community spouse, the amount is equal to the MNIL for the number of dependent

family members in the home less the income of the dependent family members. Child support received from an absent parent is the child's income;

~~((G))~~ (g) Incurred medical expenses described in subsection (3)(b) not used to reduce excess resources.

(5) The amount allocated to the community spouse may be greater than the amount in subsection ~~((4)(b)(iv))~~ (4)(e) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(6) A client who receives SSI does not use income to participate in the cost of personal care, but does use SSI income to participate in paying costs of board and room. ~~((Other income an SSI client receives is used to participate in the cost of personal care.))~~ When such a client ((who)) lives:

(a) At home, the client retains a maintenance needs amount equal to the following:

(i) Up to one hundred percent of the one-person Federal Poverty Level (FPL), if the client is:

(A) Single; or

(B) Married, and is:

(I) Not living with the community spouse; or

(II) Whose spouse is receiving long-term care (LTC) services outside of the home.

(ii) Up to one hundred percent of the one-person FPL for each client, if both spouses are receiving COPES services;

(iii) Up to the one-person MNIL if the client is living with a community spouse who is not receiving LTC services.

(b) In an EARC, AFH, or AL the client:

(i) Retains a personal needs allowance (PNA) of fifty-eight dollars and eighty-four cents; ~~((and))~~

(ii) Pays ~~((remaining SSI income to))~~ the facility for the cost of ~~((board and))~~ room and board. Room and board is the SSI Federal Benefit Rate (FBR) minus fifty-eight dollars and eighty-four cents; and

(iii) Retains the remainder of the income.

(7) An SSI-related client living:

(a) At home, retains a maintenance needs amount equal to the following:

(i) Up to one hundred percent of the one-person ~~((Federal Poverty Level-))~~ FPL((s)), if the client is:

(A) Single; or

(B) Married, and is:

(I) Not living with the community spouse; or

(II) Whose spouse is receiving long-term care (LTC) services outside of the home.

(ii) Up to one hundred percent of the one-person FPL for each client, if both spouses are receiving COPES services;

(iii) Up to the one-person medically needy income level (MNIL) for a married client who is living with a community spouse who is not receiving COPES.

(b) In an ARC, EARC, AFH, or AL retains a maintenance needs amount equal to the ~~((one-person MNIL))~~ SSI FBR and:

(i) Retains a ~~((PNA taken from the MNIL))~~ personal needs allowance (PNA) of fifty-eight dollars and eighty-four cents from the maintenance needs; and

(ii) Pays the remainder of the ~~((MNIL to the))~~ maintenance needs to the facility for the cost of board and room.

(8) A client who is eligible for the general assistance expedited Medicaid disability (GAX) program does not participate in the cost of personal care. When such a client ~~((who))~~ lives:

(a) At home, the client retains the cash grant amount authorized under the general assistance program; ~~((or))~~

(b) In an AFH, ~~((EARC, or AL,))~~ the client retains a PNA of thirty-eight dollars and eighty-four cents, and pays remaining income and GAX grant to the facility for the cost of board and room; or

(c) In an EARC or AL, the client only receives a PNA of thirty-eight dollars and eighty-four cents and retains it.

(9) The total of the following amounts cannot exceed the SIL:

(a) Maintenance and personal needs allowances as described in subsections (6), (7), and (8);

(b) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (4)(a); and

(c) Guardianship fees and administrative costs in subsection (4)(c).

~~((9))~~(10) The client's remaining income after the allocations described in subsections (4) through (8) is the client's participation in the total cost of care.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 05-03-078

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 17, 2005, 12:55 p.m., effective February 17, 2005]

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

Purpose: To amend WAC 388-450-0015 What types of income are not used when figuring out my benefits?, to specifically support the following excludable income types for assistance determinations: Certain payments to children of Vietnam veterans, certain third-party vendor payments, and a reference to other exclusions specifically excluded under state or federal law. This amendment is also necessary to update program language.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Other Authority: Public Law 106-419.

Adopted under notice filed as WSR 04-22-067 on October 29, 2004.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 10, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-14-022, filed 6/21/02, effective 6/22/02)

WAC 388-450-0015 What types of income are not used when figuring out my benefits? This section applies to cash assistance, ~~((medical programs for children, pregnant women and families))~~ Children's, Family, or Pregnancy Medical, and Basic Food ((assistance)) benefits.

(1) There are some types of income that we (the department) do not count when figuring out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0025, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Title IV-E and state foster care maintenance payments if the foster child is not included in your assistance unit;

(d) Energy assistance payments;

(e) Educational assistance as specified in WAC 388-450-0035;

(f) Native American benefits and payments as specified in WAC 388-450-0040;

(g) Income from employment and training programs as specified in WAC 388-450-0045;

(h) Money withheld from a client's benefit to repay an overpayment from the same income source. For Basic Food ((assistance)), this exclusion does not apply when the money is withheld to recover an intentional noncompliance overpayment from a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

(i) Legally obligated child support payments received by TANF/SFA recipients; ~~((and))~~

(j) Payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

(k) Payments specifically excluded from being counted as income under state or federal law. Disregard certain payments made by the Veterans Administration to children of Vietnam veterans (P.L. 106-419, see FR 67147§3.815);

(l) For cash and Basic Food: payments made to a third party on behalf of the household using funds that are not owed to the household; and

(m) For medical assistance: only the portion of income used to repay the cost of obtaining that income source.

(2) For ~~((medical programs for children, pregnant women, or families))~~ Children's, Family, or Pregnancy Medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

WSR 05-03-093
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed January 18, 2005, 10:11 a.m., effective March 1, 2005]

Effective Date of Rule: March 1, 2005.

Purpose: This rule making made changes to chapter 296-841 WAC, Respiratory hazards and chapter 296-842 WAC, Respirators and updated references to respiratory hazards and respirators throughout the WISHA safety and health rules.

Citation of Existing Rules Affected by this Order: Amending WAC 296-24-58513 Protective clothing, 296-24-58515 Respiratory protection devices, 296-24-58517 Appendix A—Fire brigades, 296-24-67515 Personal protective equipment, 296-24-67517 Air supply and air compressors, 296-24-71515 Beryllium, 296-24-71519 Mercury, 296-54-51150 Respiratory protection, 296-56-60001 Scope and application, 296-56-60005 Definitions, 296-56-60053 Hazardous atmospheres and substances, 296-56-60057 Fumigants, pesticides, insecticides and hazardous preservatives (see also WAC 296-56-60049, 296-56-60051, and 296-56-60053), 296-56-60107 Terminal facilities handling menhaden and similar species of fish, 296-56-60110 Respiratory protection, 296-56-60235 Welding, cutting and heating (hot work) (see also definition of "hazardous cargo, material, substance or atmosphere"), 296-62-07306 Requirements for areas containing carcinogens listed in WAC 296-62-07302, 296-62-07329 Vinyl chloride, 296-62-07336 Acrylonitrile, 296-62-07342 1,2-Dibromo-3-chloropropane, 296-62-07367 Respiratory protection and personal protective equipment, 296-62-07413 Respirator protection, 296-62-07460 Butadiene, 296-62-07521 Lead, 296-62-07615 Respiratory protection, 296-62-07722 Employee information and training, 296-62-14533 Cotton dust, 296-62-20011 Respiratory protection, 296-62-20019 Employee information and training, 296-62-3060 Engineering controls, work practices, and personal protective equipment for employee protection, 296-62-3195 Appendix E—Training curriculum guidelines, 296-62-40001 Scope and application, 296-62-40007 Employee exposure determination, 296-78-665 Sanding machines, 296-78-71015 Tanks and chemicals, 296-78-71019 Exhaust systems, 296-78-84005 Dry kilns, 296-79-29007 Bleach plant, 296-155-160 Gases, vapors, fumes, dusts, and mists, 296-155-17317 Respiratory protection, 296-155-174 Cadmium, 296-155-17613 Respiratory protection, 296-155-17625 Employee information and training, 296-155-17652 Appendix B to WAC 296-155-176 Employee standard summary, 296-155-20301 Definitions, 296-155-220 Respiratory protection, 296-

155-367 Masonry saws, 296-155-525 Cranes and derricks, 296-155-655 General protection requirements, 296-155-730 Tunnels and shafts, 296-301-220 Personal protective equipment, 296-304-02003 Precautions and the order of testing before entering confined and enclosed spaces and other dangerous atmospheres, 296-304-03001 Toxic cleaning solvents, 296-304-03005 Mechanical paint removers, 296-304-03007 Painting, 296-304-04001 Ventilation and protection in welding, cutting and heating, 296-304-09007 Respiratory protection, 296-305-02501 Emergency medical protection, 296-305-04001 Respiratory equipment protection, 296-305-05503 Summary of training requirements, 296-800-160 Summary, 296-824-20005 Develop an emergency response plan, 296-824-40005 Provide medical surveillance to employees, 296-824-60005 Personal protective equipment, 296-824-70005 Follow the appropriate post emergency response requirements, 296-824-800 Definitions, 296-835-11045 Protect employees during welding, burning, or other work using open flames, 296-839-30005 Develop or obtain material safety data sheets (MSDSs), and 296-839-500 Definitions.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 04-20-080 on October 5, 2004.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 68, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; **Pilot Rule Making:** New 0, Amended 0, Repealed 0; or **Other Alternative Rule Making:** New 0, Amended 68, Repealed 0.

Date Adopted: January 18, 2005.

Paul Trause
Director

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-24-58513 Protective clothing. The following requirements apply to those employees who perform interior structural fire fighting. The requirements do not apply to employees who use fire extinguishers or standpipe systems to control or extinguish fires only in the incipient stage.

(1) General.

(a) The employer shall provide at no cost to the employee and assure the use of protective clothing which complies with the requirements of this section. The employer shall assure that protective clothing ordered or purchased after January 1, 1982, meets the requirements contained in this section. As the new equipment is provided, the employer shall assure that all fire brigade members wear the equipment

when performing interior structural fire fighting. After July 1, 1985, the employer shall assure that all fire brigade members wear protective clothing meeting the requirements of this section when performing interior structural fire fighting.

(b) The employer shall assure that protective clothing protects the head, body, and extremities, and consists of at least the following components: Foot and leg protection; hand protection; body protection; eye, face and head protection.

(2) Foot and leg protection.

(a) Foot and leg protection shall meet the requirements of (b) and (c) of this subsection, and may be achieved by either of the following methods:

(i) Fully extended boots which provide protection for the legs; or

(ii) Protective shoes or boots worn in combination with protective trousers that meet the requirements of subsection (3) of this section.

(b) Protective footwear shall meet the requirements of WAC 296-800-160 for Class 75 footwear. In addition, protective footwear shall be water-resistant for at least five inches (12.7 cm) above the bottom of the heel and shall be equipped with slip-resistant outer soles.

(c) Protective footwear shall be tested in accordance with WAC 296-24-63599(1) Appendix E, and shall provide protection against penetration of the midsole by a size 8D common nail when at least 300 pounds (1330 N) of static force is applied to the nail.

(3) Body protection.

(a) Body protection shall be coordinated with foot and leg protection to ensure full body protection for the wearer. This shall be achieved by one of the following methods:

(i) Wearing of a fire-resistive coat meeting the requirements of (b) of this subsection, in combination with fully extended boots meeting the requirements of subsection (2)(b) and (c) of this section; or

(ii) Wearing of fire-resistive coat in combination with protective trousers both of which meet the requirements of (b) of this subsection.

(b) The performance, construction, and testing of fire-resistive coats and protective trousers shall be at least equivalent to the requirements of the National Fire Protection Association (NFPA) standard NFPA No. 1971-1975, "Protective Clothing for Structural Fire Fighting," (see WAC 296-24-63499, Appendix D) with the following permissible variations from those requirements:

(i) Tearing strength of the outer shell shall be a minimum of eight pounds (35.6 N) in any direction when tested in accordance with WAC 296-24-63599(2), Appendix E; and

(ii) The outer shell may discolor but shall not separate or melt when placed in a forced air laboratory oven at a temperature of 500°F (260°C) for a period of five minutes. After cooling to ambient temperature and using the test method specified in WAC 296-24-63599(3) Appendix E, char length shall not exceed 4.0 inches (10.2 cm) and after-flame shall not exceed 2.0 seconds.

(4) Hand protection.

(a) Hand protection shall consist of protective gloves or glove system which will provide protection against cut, puncture, and heat penetration. Gloves or glove system shall be

tested in accordance with the test methods contained in the National Institute for Occupational Safety and Health (NIOSH) 1976 publication, "The Development of Criteria for Fire Fighter's Gloves; Vol. II, Part II: Test Methods," (see WAC 296-24-63499, Appendix D—Availability of publications incorporated by references in WAC 296-24-58505—Fire brigades) and shall meet the following criteria for cut, puncture, and heat penetration:

(i) Materials used for gloves shall resist surface cut by a blade with an edge having a 60 degree included angle and a .001 inch (.0025 cm.) radius, under an applied force of 16 lbf (72N) and at a slicing velocity of greater or equal to 60 in/min. (2.5 cm/sec);

(ii) Materials used for the palm and palm side of the fingers shall resist puncture by a penetrometer (simulating a 4d lath nail), under an applied force of 13.2 lbf (60N) and at a velocity greater or equal to 20 in/min. (.85 cm/sec); and

(iii) The temperature inside the palm and gripping surface of the fingers of gloves shall not exceed 135°F (57°C) when gloves or glove system are exposed to 932°F (500°C) for five seconds at 4 psi (28 kPa) pressure.

(b) Exterior materials of gloves shall be flame resistant and shall be tested in accordance with WAC 296-24-63599 (3) Appendix E. Maximum allowable after-flame shall be 2.0 seconds, and the maximum char length shall be 4.0 inches (10.2 cm).

(c) When design of the fire-resistive coat does not otherwise provide protection for the wrists, protective gloves shall have wristlets of at least 4.0 inches (10.2 cm) in length to protect the wrist area when the arms are extended upward and outward from the body.

(5) Head, eye and face protection.

(a) Head protection shall consist of a protective head device with ear flaps and chin strap which meet the performance, construction, and testing requirements of the National Fire Safety and Research Office of the National Fire Prevention and Control Administration, United States Department of Commerce (now known as the United States Fire Administration), which are contained in, "Model Performance Criteria for Structural Fire Fighters' Helmets," (August 1977) (see WAC 296-24-63499, Appendix D).

(b) Protective eye and face devices which comply with WAC 296-800-160 shall be used by fire brigade members when performing operations where the hazards of flying or falling materials which may cause eye and face injuries are present. Protective eye and face devices provided as accessories to protective head devices (face shields) are permitted when such devices meet the requirements of WAC 296-800-160.

(c) Full facepieces, helmets, or hoods of breathing apparatus which meet the requirements of chapter ((296-62-WAC, Part E)) 296-842 WAC and WAC 296-24-58515, shall be acceptable as meeting the eye and face protection requirements of (b) of this subsection.

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-24-58515 Respiratory protection devices.

(1) General requirements.

(a) The employer shall ensure that respirators are provided to, and used by, fire brigade members, and that the respirators meet the requirements of chapter ((296-62-WAC, Part E)) 296-842 WAC and this section.

(b) The employer must ensure that all employees engaged in interior structural fire fighting use self-contained breathing apparatus (SCBAs).

(c) Approved self-contained breathing apparatus may be equipped with either a "buddy-breathing" device or a quick disconnect valve, even if these devices are not certified by NIOSH. If these accessories are used, they shall not cause damage to the apparatus, or restrict the air flow of the apparatus, or obstruct the normal operation of the apparatus.

(d) Approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet DOT and NIOSH criteria.

(e) Self-contained breathing apparatus shall have a minimum service life rating of 30 minutes in accordance with the methods and requirements specified by NIOSH under 42 CFR part 84, except for escape self-contained breathing apparatus (ESCBA) used only for emergency escape purposes.

(f) Self-contained breathing apparatus shall be provided with an indicator which automatically sounds an audible alarm when the remaining service life of the apparatus is reduced to within a range of twenty to twenty-five percent of its rated service time.

(2) Positive-pressure breathing apparatus.

(a) The employer shall assure that self-contained breathing apparatus ordered or purchased after January 1, 1982, for use by fire brigade members performing interior structural fire fighting operations, are of the pressure-demand or other positive-pressure type. Effective July 1, 1983, only pressure-demand or other positive-pressure self-contained breathing apparatus shall be worn by fire brigade members performing interior structural fire fighting.

(b) This section does not prohibit the use of a self-contained breathing apparatus where the apparatus can be switched from a demand to a positive-pressure mode. However, such apparatus shall be in the positive-pressure mode when fire brigade members are performing interior structural fire fighting operations.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-24-58517 Appendix A—Fire brigades. (1) Scope. This section does not require an employer to organize a fire brigade. However, if an employer does decide to organize a fire brigade, the requirements of this section apply.

(2) Prefire planning. It is suggested that prefire planning be conducted by the local fire department and/or the workplace fire brigade in order for them to be familiar with the workplace and process hazards. Involvement with the local fire department or fire prevention bureau is encouraged to facilitate coordination and cooperation between members of

the fire brigade and those who might be called upon for assistance during a fire emergency.

(3) Organizational statement. In addition to the information required in the organizational statement, WAC 296-24-58507(1), it is suggested that the organizational statement also contain the following information: A description of the duties that the fire brigade members are expected to perform; the line authority of each fire brigade officer; the number of the fire brigade officers and number of training instructors; and a list and description of the types of awards or recognition that brigade members may be eligible to receive.

(4) Physical capability. The physical capability requirement applies only to those fire brigade members who perform interior structural fire fighting. Employees who cannot meet the physical capability requirement may still be members of the fire brigade as long as such employees do not perform interior structural fire fighting. It is suggested that fire brigade members who are unable to perform interior structural fire fighting be assigned less stressful and physically demanding fire brigade duties, e.g., certain types of training, recordkeeping, fire prevention inspection and maintenance, and fire pump operations.

Physically capable can be defined as being able to perform those duties specified in the training requirements of WAC 296-24-58509. Physically capable can also be determined by physical performance tests or by a physical examination when the examining physician is aware of the duties that the fire brigade member is expected to perform.

It is also recommended that fire brigade members participate in a physical fitness program. There are many benefits which can be attributed to being physically fit. It is believed that physical fitness may help to reduce the number of sprain and strain injuries as well as contributing to the improvement of the cardiovascular system.

(5) Training and education. The section on training and education does not contain specific training and education requirements because the type, amount, and frequency of training and education will be as varied as are the purposes for which fire brigades are organized. However, the section does require that training and education be commensurate with those functions that the fire brigade is expected to perform; i.e., those functions specified in the organizational statement. Such a performance requirement provides the necessary flexibility to design a training program which meets the needs of individual fire brigades.

At a minimum, hands-on training is required to be conducted annually for all fire brigade members. However, for those fire brigade members who are expected to perform interior structural fire fighting, some type of training or education session must be provided at least quarterly.

In addition to the required hands-on training, it is strongly recommended that fire brigade members receive other types of training and education such as: Classroom instruction, review of emergency action procedures, prefire planning, review of special hazards in the workplace, and practice in the use of self-contained breathing apparatus.

It is not necessary for the employer to duplicate the same training or education that a fire brigade member receives as a member of a community volunteer fire department, rescue squad, or similar organization. However, such training or

education must have been provided to the fire brigade member within the past year and it must be documented that the fire brigade member has received the training or education. For example: There is no need for a fire brigade member to receive another training class in the use of positive-pressure self-contained breathing apparatus if the fire brigade member has recently completed such training as a member of a community fire department. Instead, the fire brigade member should receive training or education covering other important equipment or duties of the fire brigade as they relate to the workplace hazards, facilities and processes.

It is generally recognized that the effectiveness of fire brigade training and education depends upon the expertise of those providing the training and education as well as the motivation of the fire brigade members. Fire brigade training instructors must receive a higher level of training and education than the fire brigade members they will be teaching. This includes being more knowledgeable about the functions to be performed by the fire brigade and the hazards involved. The instructors should be qualified to train fire brigade members and demonstrate skills in communication, methods of teaching, and motivation. It is important for instructors and fire brigade members alike to be motivated toward the goal of the fire brigade and be aware of the importance of the service that they are providing for the protection of other employees and the workplace.

It is suggested that publications from the International Fire Service Training Association, the National Fire Protection Association (NFPA-1041), the International Society of Fire Service Instructors and other fire training sources be consulted for recommended qualifications of fire brigade training instructors.

In order to be effective, fire brigades must have competent leadership and supervision. It is important for those who supervise the fire brigade during emergency situations, e.g., fire brigade chiefs, leaders, etc., to receive the necessary training and education for supervising fire brigade activities during these hazardous and stressful situations. These fire brigade members with leadership responsibilities should demonstrate skills in strategy and tactics, fire suppression and prevention techniques, leadership principles, prefire planning, and safety practices. It is again suggested that fire service training sources be consulted for determining the kinds of training and education which are necessary for those with fire brigade leadership responsibilities.

It is further suggested that fire brigade leaders and fire brigade instructors receive more formalized training and education on a continuing basis by attending classes provided by such training sources as universities and university fire extension services.

The following recommendations should not be considered to be all of the necessary elements of a complete comprehensive training program, but the information may be helpful as a guide in developing a fire brigade training program.

All fire brigade members should be familiar with exit facilities and their location, emergency escape routes for handicapped workers, and the workplace "emergency action plan."

In addition, fire brigade members who are expected to control and extinguish fires in the incipient stage should, at a minimum, be trained in the use of fire extinguishers, standpipes, and other fire equipment they are assigned to use. They should also be aware of first aid medical procedures and procedures for dealing with special hazards to which they may be exposed. Training and education should include both classroom instruction and actual operation of the equipment under simulated emergency conditions. Hands-on type training must be conducted at least annually but some functions should be reviewed more often.

In addition to the above training, fire brigade members who are expected to perform emergency rescue and interior structural fire fighting should, at a minimum, be familiar with the proper techniques in rescue and fire suppression procedures. Training and education should include fire protection courses, classroom training, simulated fire situations including "wet drills" and, when feasible, extinguishment of actual mock fires. Frequency of training or education must be at least quarterly, but some drills or classroom training should be conducted as often as monthly or even weekly to maintain the proficiency of fire brigade members.

There are many excellent sources of training and education that the employer may want to use in developing a training program for the workplace fire brigade. These sources include publications, seminars, and courses offered by universities.

There are also excellent fire school courses by such facilities as Texas A and M University, Delaware State Fire School, Lamar University, and Reno Fire School, that deal with those unique hazards which may be encountered by fire brigades in the oil and chemical industry. These schools, and others, also offer excellent training courses which would be beneficial to fire brigades in other types of industries. These courses should be a continuing part of the training program, and employers are strongly encouraged to take advantage of these excellent resources.

It is also important that fire brigade members be informed about special hazards to which they may be exposed during fire and other emergencies. Such hazards as storage and use areas of flammable liquids and gases, toxic chemicals, water-reactive substances, etc., can pose difficult problems. There must be written procedures developed that describe the actions to be taken in situations involving special hazards. Fire brigade members must be trained in handling these special hazards as well as keeping abreast of any changes that occur in relation to these special hazards.

(6) Fire fighting equipment. It is important that fire fighting equipment that is in damaged or unserviceable condition be removed from service and replaced. This will prevent fire brigade members from using unsafe equipment by mistake.

Fire fighting equipment, except portable fire extinguishers and respirators, must be inspected at least annually. Portable fire extinguishers and respirators are required to be inspected at least monthly.

(7) Protective clothing.

(a) General. WAC 296-24-58513 does not require all fire brigade members to wear protective clothing. It is not the intention of these standards to require employers to provide a full ensemble of protective clothing for every fire brigade

member without consideration given to the types of hazardous environments to which the fire brigade member might be exposed. It is the intention of these standards to require adequate protection for those fire brigade members who might be exposed to fires in an advanced stage, smoke, toxic gases, and high temperatures. Therefore, the protective clothing requirements only apply to those fire brigade members who perform interior structural fire fighting operations.

Additionally, the protective clothing requirements do not apply to the protective clothing worn during outside fire fighting operations (brush and forest fires, crash crew operations) or other special fire fighting activities. It is important that the protective clothing to be worn during these types of fire fighting operations reflect the hazards which are expected to be encountered by fire brigade members.

(b) Foot and leg protection. WAC 296-24-58513 permits an option to achieve foot and leg protection.

The section recognizes the interdependence of protective clothing to cover one or more parts of the body. Therefore, an option is given so that fire brigade members may meet the foot and leg requirements by either wearing long fire-resistant coats in combination with fully extended boots, or by wearing shorter fire-resistant coats in combination with protective trousers and protective shoes or shorter boots.

(c) Body protection. WAC 296-24-58513(3) provides an option for fire brigade members to achieve body protection. Fire brigade members may wear a fire-resistant coat in combination with fully extended boots, or they may wear a fire-resistant coat in combination with protective trousers.

Fire-resistant coats and protective trousers meeting all of the requirements contained in NFPA 1971-1975, "Protective Clothing for Structural Fire Fighters," are acceptable as meeting the requirements of this standard.

The lining is required to be permanently attached to the outer shell. However, it is permissible to attach the lining to the outer shell material by stitching in one area such as at the neck. Fastener tape or snap fasteners may be used to secure the rest of the lining to the outer shell to facilitate cleaning. Reference to permanent lining does not refer to a winter liner which is a detachable extra lining used to give added protection to the wearer against the effects of cold weather and wind.

(d) Hand protection. The requirements of WAC 296-24-58513(4) on hand protection may be met by protective gloves or a glove system. A glove system consists of a combination of different gloves. The usual components of a glove system consist of a pair of gloves, which provide thermal insulation to the hand, worn in combination with a second pair of gloves which provide protection against flame, cut and puncture.

It is suggested that protective gloves provide dexterity and a sense of feel for objects. Criteria and test methods for dexterity are contained in the NIOSH publications, "The Development of Criteria for Firefighters' Gloves; Vol. I: Glove Requirements," and "Vol. II: Glove Criteria and Test Methods." These NIOSH publications also contain a permissible modified version of Federal Test Method 191, Method 5903, (WAC 296-24-63599(3) Appendix E) for flame resistance when gloves, rather than glove material, are tested for flame resistance.

(e) Head, eye and face protection. Head protective devices which meet the requirements contained in NFPA No. 1972 are acceptable as meeting the requirements of this standard for head protection.

Head protective devices are required to be provided with ear flaps so that the ear flaps will be available if needed. It is recommended that ear protection always be used while fighting interior structural fires.

Many head protective devices are equipped with face shields to protect the eyes and face. These face shields are permissible as meeting the eye and face protection requirements of this section as long as such face shields meet the requirements of WAC 296-800-160 of the general safety and health standards.

Additionally, full facepieces, helmets or hoods of approved breathing apparatus which meet the requirements of ~~chapter 296-842 WAC ((296-62-071))~~ and WAC 296-24-58515 are also acceptable as meeting the eye and face protection requirements.

It is recommended that a flame resistant protective head covering such as a hood or snood, which will not adversely affect the seal of a respirator facepiece, be worn during interior structural fire fighting operations to protect the sides of the face and hair.

(8) Respiratory protective devices. Respiratory protection is required to be worn by fire brigade members while working inside buildings or confined spaces where toxic products of combustion or an oxygen deficiency is likely to be present; respirators are also to be worn during emergency situations involving toxic substances. When fire brigade members respond to emergency situations, they may be exposed to unknown contaminants in unknown concentrations. Therefore, it is imperative that fire brigade members wear proper respiratory protective devices during these situations. Additionally, there are many instances where toxic products of combustion are still present during mop-up and overhaul operations. Therefore, fire brigade members should continue to wear respirators during these types of operations.

Self-contained breathing apparatus are not required to be equipped with either buddy-breathing device or a quick disconnect valve. However, these accessories may be very useful and are acceptable as long as such accessories do not cause damage to the apparatus, restrict the air flow of the apparatus, or obstruct the normal operation of the apparatus.

Buddy-breathing devices are useful for emergency situations where a victim or another fire brigade member can share the same air supply with the wearer of the apparatus for emergency escape purposes.

The employer is encouraged to provide fire brigade members with an alternative means of respiratory protection to be used only for emergency escape purposes if the self-contained breathing apparatus becomes inoperative. Such alternative means of respiratory protection may be either a buddy-breathing device or an escape self-contained breathing apparatus (ESCBA). The ESCBA is a short-duration respiratory protective device which is approved for only emergency escape purposes. It is suggested that if ESCBA units are used, that they be of at least five minutes service life.

Quick disconnect valves are devices which start the flow of air by insertion of the hose (which leads to the facepiece)

into the regulator of self-contained breathing apparatus, and stop the flow of air by disconnecting the hose from the regulator. These devices are particularly useful for those positive-pressure self-contained breathing apparatus which do not have the capability of being switched from the demand to the positive-pressure mode.

The use of a self-contained breathing apparatus where the apparatus can be switched from a demand to a positive-pressure mode is acceptable as long as the apparatus is in the positive-pressure mode when performing interior structural fire fighting operations. Also acceptable are approved respiratory protective devices which have been converted to the positive-pressure type when such modification is accomplished by trained and experienced persons using kits or parts approved by NIOSH and provided by the manufacturer and by following the manufacturer's instructions.

There are situations which require the use of respirators which have a duration of two hours or more. Presently, there are no approved positive-pressure apparatus with a rated service life of more than two hours. Consequently, negative-pressure self-contained breathing apparatus with a rated service life of more than two hours and which have a minimum protection factor of 5,000 as determined by an acceptable quantitative fit test performed on each individual, will be acceptable for use during situations which require long duration apparatus. Long duration apparatus may be needed in such instances as working in tunnels, subway systems, etc. Such negative-pressure breathing apparatus will continue to be acceptable for a maximum of eighteen months after a positive-pressure apparatus with the same or longer rated service life of more than two hours is certified by NIOSH/MSHA. After this eighteen-month phase-in period, all self-contained breathing apparatus used for these long duration situations will have to be of the positive-pressure type.

AMENDATORY SECTION (Amending WSR 02-12-098, filed 6/5/02, effective 8/1/02)

WAC 296-24-67515 Personal protective equipment.

(1) Employers must use only respirators certified by NIOSH under 42 CFR part 84 for protecting employees from dusts produced during abrasive-blasting operations.

(2) Abrasive-blasting respirators. Abrasive-blasting respirators must be worn by all abrasive-blasting operators in the following situations: (a) When working inside of blast cleaning rooms, or (b) when using silica sand in manual blasting operations except where the nozzle and blast are physically separated from the operator in an exhaust ventilated enclosure, or (c) where concentrations of toxic dusts dispersed by the abrasive blasting may exceed the limits set in chapter ((296-62 WAC, Part E)) 296-842 WAC except where the nozzle and blast are physically separated from the operator in an exhaust-ventilated enclosure.

(3) Particulate-filter respirators.

(a) Properly fitted particulate-filter respirators, commonly referred to as dust-filter respirators, may be used for short, intermittent, or occasional dust exposures such as clean-up, dumping of dust collectors, or unloading shipments of sand at a receiving point when it is not feasible to control the dust by enclosure, exhaust ventilation, or other means.

(b) Dust-filter respirators may also be used to protect the operator of outside (outdoor) abrasive-blasting operations where nonsilica abrasives are used on materials having low toxicity.

(c) Dust-filter respirators used must be certified by NIOSH under 42 CFR part 84 for protection against the specific type of dust encountered.

(d) Dust-filter respirators must be properly fitted as required in chapter ((296-62 WAC, Part E)) 296-842 WAC.

(e) Dust-filter respirators must not be used for continuous protection where silica sand is used as the blasting abrasive, or when toxic materials are blasted.

(4) A respiratory protection program as required in chapter ((296-62 WAC, Part E)) 296-842 WAC must be established wherever it is necessary to use respirators.

(5) Personal protective clothing.

(a) Operators must be equipped with heavy canvas or leather gloves and aprons or equivalent protection to protect them from the impact of abrasives.

(b) Safety shoes must be worn where there is a hazard of foot injury.

(c) Equipment for protection of the eyes and face must be supplied to the operator and to other personnel working near abrasive blasting operations when the respirator design does not provide such protection.

(6) Personal protective clothing, equipment and their use must comply with WAC 296-800-160.

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-24-67517 Air supply and air compressors.

Clean air supply. The air for abrasive-blasting respirators must be free of harmful quantities of dusts, mists, or noxious gases, and must meet the requirements for supplied-air quality and use as specified in chapter ((296-62 WAC, Part E)) 296-842 WAC.

AMENDATORY SECTION (Amending Order 73-5, filed 5/9/73 and Order 73-4, filed 5/7/73)

WAC 296-24-71515 Beryllium. Welding or cutting indoors, outdoors, or in confined spaces involving beryllium-containing base or filler metals shall be done using local exhaust ventilation and airline respirators unless atmospheric tests under the most adverse conditions have established that the workers' exposure is within the acceptable concentrations defined by chapter ((296-62)) 296-841 WAC. In all cases, workers in the immediate vicinity of the welding or cutting operations shall be protected as necessary by local exhaust ventilation or airline respirators.

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-24-71519 Mercury. In confined spaces or indoors, welding or cutting operations involving metals coated with mercury-bearing materials, including paint, must be done using local exhaust ventilation or airline respirators unless atmospheric tests under the most adverse conditions show that employee exposure is within the acceptable con-

centrations specified by chapter ((296-62)) 296-841 WAC. Such operations, when done outdoors, must be done using respirators certified for this purpose by NIOSH under 24 CFR part 84.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-51150 Respiratory protection. The employer must provide respiratory protection when required by the general occupational health standards, chapter ((296-62)) 296-842 WAC.

AMENDATORY SECTION (Amending WSR 03-11-060, filed 5/19/03, effective 8/1/03)

WAC 296-56-60001 Scope and applicability. (1) The rules included in this chapter apply throughout the state of Washington, to any and all waterfront operations under the jurisdiction of the department of labor and industries.

(2) These minimum requirements are promulgated in order to augment the general safety and health standards, and any other safety and health standards promulgated by the department of labor and industries which are applicable to all places of employment under the jurisdiction of the department of labor and industries. The rules of this chapter, and the rules of chapters 296-24, 296-62 and 296-800 WAC are applicable to all longshore, stevedore and related waterfront operations: Provided, That such rules shall not be applicable to those operations under the exclusive safety jurisdiction of the federal government.

(3) The provisions of this chapter shall prevail in the event of a conflict with, or duplication of, provisions contained in chapters 296-24, 296-62 and 296-800 WAC. Specific standards which are applicable include, but are not limited to:

(a) Electrical—Chapter 296-24 WAC Part L, and WAC 296-800-280.

(b) Toxic and hazardous substances are regulated by chapters 296-62 and 296-841 WAC. Where references to this chapter are given they are for informational purposes only. Where specific requirements of this chapter conflict with the provisions of chapters 296-62 and 296-841 WAC, this chapter prevails. Chapter 296-62 WAC does not apply when a substance or cargo is contained within a manufacturer's original, sealed, intact means of packaging or containment complying with the department of transportation or International Maritime Organization requirements.

(c) Hearing loss prevention (noise)—Chapter 296-817 WAC.

(d) Standards for commercial diving operations—Chapter 296-37 WAC.

(e) Safety requirements for scaffolding—Chapter 296-24 WAC Part J-2.

(f) Safe practices of abrasive blasting operations—Chapter 296-24 WAC Part H-2.

(g) Access to employee exposure and medical records—Chapter 296-62 WAC Part B.

(h) Respiratory protection—Chapter ((296-62)) 296-842 WAC ((Part E)).

(i) Safety standards for grain handling facilities—Chapter 296-99 WAC.

(j) Chemical hazard communication program—WAC 296-800-170.

(k) Asbestos—Chapters 296-62 Part I-1 and 296-65 WAC.

(l) Permit - required confined spaces and confined space—Chapter 296-62 WAC Part M.

(m) Servicing multipiece and single-piece rim wheels—Chapter 296-24 WAC Part D.

(n) First-aid requirements—WAC 296-800-150.

(o) Employee emergency plans and fire prevention plans—Chapter 296-24 WAC Part G-1.

(4) The provisions of this chapter do not apply to the following:

(a) Fully automated bulk coal handling facilities contiguous to electrical power generating plants.

(b) Facilities subject to the regulations of the office of pipeline safety regulation of the materials transportation bureau, department of transportation, to the extent such regulations apply.

(5) WAC 296-62-074 shall apply to the exposure of every employee to cadmium in every employment and place of employment covered by chapter 296-56 WAC in lieu of any different standard on exposures to cadmium that would otherwise be applicable by virtue of those sections.

AMENDATORY SECTION (Amending WSR 00-21-103, filed 10/18/00, effective 2/1/01)

WAC 296-56-60005 Definitions. "Apron" means that open portion of a marine terminal immediately adjacent to a vessel berth and used in the direct transfer of cargo between the terminal and vessel.

"Assistant director for the division of WISHA services" means the assistant director of WISHA services, department of labor and industries or his/her authorized representative.

"Authorized," in reference to an employee's assignment, means selected by the employer for that purpose.

"Cargo door" (transit shed door) means a door designed to permit transfer of cargo to and from a marine terminal structure.

"Cargo packaging" means any method of containment for shipment, including cases, cartons, crates and sacks, but excluding large units such as intermodal containers, vans or similar devices.

"Confined space" means a space that:

- Is large enough and so configured that an employee can bodily enter and perform assigned work; and

- Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and

- Is not designed for continuous employee occupancy.

"Conveyor" means a device designed exclusively for transporting bulk materials, packages or objects in a predetermined path and having fixed or selective points of loading or discharge.

"Danger zone" means any place in or about a machine or piece of equipment where an employee may be struck by or

caught between moving parts, caught between moving and stationary objects or parts of the machine, caught between the material and a moving part of the machine, burned by hot surfaces or exposed to electric shock. Examples of danger zones are nip and shear points, shear lines, drive mechanisms, and areas beneath counterweights.

"Designated person" means a person who possesses specialized abilities in a specific area and is assigned by the employer to perform a specific task in that area.

"Dock" means a wharf or pier forming all or part of a waterfront facility, including marginal or quayside berthing facilities; not to be confused with "loading dock" as at a transit shed or container freight station, or with the body of water between piers or wharves.

"Dock facilities" includes all piers, wharves, sheds, aprons, dolphins, cranes, or other gear or equipment owned or controlled by the dock or facility owner, where cargo or materials are loaded, moved or handled to or from a vessel.

"Dockboards" (car and bridge plates) mean devices for spanning short distances between rail cars or highway vehicles and loading platforms that do not expose employees to falls greater than 4 feet (1.22 m).

"Enclosed space" means an indoor space, other than a confined space, that may contain or accumulate a hazardous atmosphere due to inadequate natural ventilation. Examples of enclosed spaces are trailers, railcars, and storage rooms.

"Examination," as applied to material handling devices required to be certified by this chapter, means a comprehensive survey consisting of the criteria outlined in WAC 296-56-60093 through 296-56-60097. The examination is supplemented by a unit proof test in the case of annual survey.

"Flammable atmosphere" means an atmosphere containing more than ten percent of the lower flammable limit (LEL) of a flammable or combustible vapor or dust mixed with air. Such atmospheres are usually toxic as well as flammable.

"Front-end attachments."

- As applied to power-operated industrial trucks, means the various devices, such as roll clamps, rotating and side-shifting carriages, magnets, rams, crane arms or booms, load stabilizers, scoops, buckets, and dumping bins, attached to the load end for handling lifts as single or multiple units.

- As applied to cranes, means various attachments applied to the basic machine for the performance of functions such as lifting, clamshell or magnet services.

"Fumigant" is a substance or mixture of substances, used to kill pests or prevent infestation, which is a gas or is rapidly or progressively transformed to the gaseous state even though some nongaseous or particulate matter may remain and be dispersed in the treatment space.

"Hazardous cargo, material, substance or atmosphere" means:

- Any substance listed in chapters 296-62 and 296-841 WAC;

- Any material in the hazardous materials table and hazardous materials communications regulations of the Department of Transportation, 49 CFR Part 172;

- Any article not properly described by a name in the hazardous materials table and hazardous materials communications regulations of the Department of Transportation, 49 CFR Part 172, but which is properly classified under the def-

inition of those categories of dangerous articles given in 49 CFR Part 173;

- Atmospheres having concentrations of airborne chemicals in excess of permissible exposure limits as defined in chapter 296-62 WAC; or

- Any atmosphere with an oxygen content of less than nineteen and one-half percent by volume.

"House falls" means spans and supporting members, winches, blocks, and standing and running rigging forming part of a marine terminal and used with a vessel's cargo gear to load or unload by means of married falls.

"Inspection," as applied to material handling devices required to be certified by this chapter, includes a complete visual examination of all visible parts of the device.

"Intermodal container" means a reusable cargo container of rigid construction and rectangular configuration intended to contain one or more articles of cargo or bulk commodities for transportation by water and one or more other transport modes without intermediate cargo handling. The term includes completely enclosed units, open top units, fractional height units, units incorporating liquid or gas tanks and other variations fitting into the container system, demountable or with attached wheels. It does not include cylinders, drums, crates, cases, cartons, packages, sacks, unitized loads or any other form of packaging.

"Loose gear" means removable or replaceable components of equipment or devices which may be used with or as a part of assembled material handling units for purposes such as making connections, changing line direction and multiplying mechanical advantage. Examples include shackles and snatch blocks.

"Marina" means a small harbor or boat basin providing dockage, supplies, and services for small craft.

"Marine terminal" means wharves, bulkheads, quays, piers, docks and other berthing locations and adjacent storage or contiguous areas and structures associated with the primary movement of cargo or materials from vessel to shore or shore to vessel. It includes structures which are devoted to receiving, handling, holding, consolidation, loading or delivery of waterborne shipments and passengers, and areas devoted to the maintenance of the terminal or equipment. The term does not include production or manufacturing areas having their own docking facilities and located at a marine terminal nor storage facilities directly associated with those production or manufacturing areas.

"Permit-required confined space (permit space)" means a confined space that has one or more of the following characteristics:

- Contains or has a potential to contain a hazardous atmosphere;

- Contains a material that has the potential for engulfing an entrant;

- Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or

- Contains any other recognized serious safety or health hazard.

"Ramps" mean other flat-surface devices for passage between levels and across openings not covered under "dock-boards."

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-56-60053 Hazardous atmospheres and substances. (1) Purpose and scope. This section covers areas where a hazardous atmosphere or substance may exist, except where one or more of the following sections apply: WAC 296-56-60049 Hazardous cargo; WAC 296-56-60051 Handling explosives or hazardous materials; WAC 296-56-60055 Carbon monoxide; WAC 296-56-60057 Fumigants, pesticides, insecticides and hazardous preservatives; WAC 296-56-60107 Terminal facilities handling menhaden and similar species of fish; WAC 296-56-60235 Welding, cutting and heating (hot work); and WAC 296-56-60237 Spray painting.

(2) Determination of hazard.

(a) Whenever a room, building, vehicle, railcar or other space contains or has contained a hazardous atmosphere, a designated and appropriately equipped person shall test the atmosphere before entry to determine whether a hazardous atmosphere exists.

(b) Records of results of any tests required by this section shall be maintained for at least thirty days.

(3) Testing during ventilation. When mechanical ventilation is used to maintain a safe atmosphere, tests shall be made by a designated person to ensure that the atmosphere is not hazardous.

(4) Entry into hazardous atmospheres. Only designated persons shall enter hazardous atmospheres. The following provisions shall apply:

(a) Persons entering a space containing a hazardous atmosphere shall be protected by respiratory and emergency protective equipment meeting the requirements of chapter ((296-62)) 296-842 WAC((,-Part E));

(b) Persons entering a space containing a hazardous atmosphere shall be instructed in the nature of the hazard, precautions to be taken, and the use of protective and emergency equipment. Standby observers, similarly equipped and instructed, shall continuously monitor the activity of employees within such space; and

(c) Except for emergency or rescue operations, employees shall not enter into any atmosphere which has been identified as flammable or oxygen deficient (less than nineteen and one-half percent oxygen). Persons who may be required to enter flammable or oxygen deficient atmospheres in emergency operations shall be instructed in the dangers attendant to those atmospheres and instructed in the use of self-contained breathing apparatus, which shall be utilized.

(d) To prevent inadvertent employee entry into spaces that have been identified as having hazardous, flammable or oxygen deficient atmospheres, appropriate warning signs or equivalent means shall be posted at all means of access to those spaces.

(5) When the packaging of asbestos cargo leaks, spillage shall be cleaned up by designated employees protected from the harmful effects of asbestos as required by WAC 296-62-07517 and chapter 296-65 WAC.

AMENDATORY SECTION (Amending WSR 00-21-103, filed 10/18/00, effective 2/1/01)

WAC 296-56-60057 Fumigants, pesticides, insecticides and hazardous preservatives (see also WAC 296-56-60049, 296-56-60051 and 296-56-60053). (1) Whenever cargo in a space is or has been stowed, handled, or treated with a fumigant, pesticide, insecticide, or hazardous preservative, a determination shall be made as to whether a hazardous atmosphere is present in the space. Only employees protected as required in subsection (5) of this section shall enter the space if it is hazardous.

(2) Tests to determine the atmospheric concentration of chemicals used to treat cargo shall be:

- (a) Appropriate for the hazard involved;
- (b) Conducted by designated persons; and

(c) Performed at the intervals necessary to ensure that employee exposure does not exceed the permissible exposure limit for the chemical involved, see chapters 296-62 and 296-841 WAC.

(3) Results of any tests shall be available for at least thirty days.

(4) Chemicals shall only be applied to cargoes by designated persons.

(5) Only designated persons shall enter hazardous atmospheres. Whenever a hazardous atmosphere is entered the following provisions apply.

(a) Persons entering a space containing a hazardous atmosphere shall be protected by respiratory and emergency protective equipment meeting the requirements of part G of this standard; and

(b) Persons entering a space containing a hazardous atmosphere shall be instructed in the nature of the hazard, precautions to be taken, and the use of protective and emergency equipment. Standby observers, similarly equipped and instructed, shall continuously monitor the activity of employees within such a space.

(6) Signs shall be clearly posted where fumigants, pesticides or hazardous preservatives have created a hazardous atmosphere. These signs shall note the danger, identify specific chemical hazards, and give appropriate information and precautions, including instructions for the emergency treatment of employees affected by any chemical in use.

(7) In the case of containerized shipments of fumigated tobacco, the contents of the container shall be aerated by opening the container doors for a period of forty-eight hours after the completion of fumigation and prior to loading. When tobacco is within shipping cases having polyethylene or similar bag liners, the aeration period shall be seventy-two hours. The employer shall obtain a written warranty from the fumigation facility stating that the appropriate aeration period has been met.

AMENDATORY SECTION (Amending WSR 00-21-103, filed 10/18/00, effective 2/1/01)

WAC 296-56-60107 Terminal facilities handling menhaden and similar species of fish. (1)(a) Tanks in terminal areas used for receiving or storing bailwater for recirculating into vessel holds in discharging operations shall be opened or ventilated to minimize contamination of water cir-

culated to the vessel. Bailwater tanks shall be thoroughly drained upon completion of each day's operations and shall be left open to the air. Drainage is unnecessary when bailwater has been treated to remove hydrogen sulfide-producing contaminants and the efficiency of such treatment has been established.

(b) Before employees enter a dock tank, it shall first be drained, rinsed and tested for hydrogen sulfide and oxygen deficiency. Employees shall not enter the tank when the hydrogen sulfide level exceeds twenty ppm or oxygen content is less than nineteen and one-half percent, except in emergencies.

(c) Tests shall be conducted by designated personnel with suitable test equipment and respiratory protective equipment complying with the provisions of this chapter and chapter ((296-62)) 296-842 WAC.

(2) Pipelines and hoses on the dock or terminal used for receiving and circulating used bailwater shall be completely drained upon completion of each day's operation and left open to the air.

(3) At least four units of respiratory protective equipment consisting of supplied-air respirators or self-contained breathing apparatus complying with the requirements of chapter ((296-62)) 296-842 WAC shall be available in a suitably labeled cabinet for immediate use in case of an emergency caused by oxygen deficiency or hydrogen sulfide. Any employee entering a tank in an emergency shall, in addition to respiratory protective equipment, wear a lifeline and safety harness to facilitate rescue. At least two other employees, similarly equipped, shall be continuously stationed outside the tank to observe and to provide rescue services.

(4) The plant superintendent and foremen shall be trained and knowledgeable about the hazards of hydrogen sulfide and oxygen deficiency. They shall be trained in the use of appropriate respiratory and other protective equipment, and in rescue procedures. Other supervisory plant personnel shall be informed of these hazards and instructed in the necessary safety measures, including use of respiratory and rescue equipment.

(5) Supervisory personnel shall be on hand at dockside to supervise discharging of bailwater from vessels.

AMENDATORY SECTION (Amending Order 86-02, filed 1/17/86)

WAC 296-56-60110 Respiratory protection. The respiratory protection requirements of the general occupational health standards, chapter ((296-62)) 296-842 WAC, apply.

AMENDATORY SECTION (Amending WSR 00-21-103, filed 10/18/00, effective 2/1/01)

WAC 296-56-60235 Welding, cutting and heating (hot work) (see also definition of "hazardous cargo, material, substance or atmosphere"). (1) Definition. "Hot work" means riveting, welding, flame cutting or other fire or spark-producing operation.

(2) Hot work in confined spaces. Hot work shall not be performed in a confined space until all requirements of chapter 296-62 WAC, Part M, are met.

(3) Fire protection.

(a) To the extent possible, hot work shall be performed in designated locations that are free of fire hazards.

(b) When hot work must be performed in a location that is not free of fire hazards, all necessary precautions shall be taken to confine heat, sparks, and slag so that they cannot contact flammable or combustible material.

(c) Fire extinguishing equipment suitable for the location shall be immediately available and shall be maintained in readiness for use at all times.

(d) When the hot work operation is such that normal fire prevention precautions are not sufficient, additional personnel shall be assigned to guard against fire during hot work and for a sufficient time after completion of the work to ensure that no fire hazard remains. The employer shall instruct all employees involved in hot work operations as to potential fire hazards and the use of fire fighting equipment.

(e) Drums and containers which contain or have contained flammable or combustible liquids shall be kept closed. Empty containers shall be removed from the hot work area.

(f) When openings or cracks in flooring cannot be closed, precautions shall be taken to ensure that no employees or flammable or combustible materials are exposed to sparks dropping through the floor. Similar precautions shall be taken regarding cracks or holes in walls, open doorways and open or broken windows.

(g) Hot work shall not be performed:

(i) In flammable or potentially flammable atmospheres;

(ii) On or in equipment or tanks that have contained flammable gas or liquid or combustible liquid or dust-producing material, until a designated person has tested the atmosphere inside the equipment or tanks and determined that it is not hazardous; or

(iii) Near any area in which exposed readily ignitable materials such as bulk sulphur, baled paper or cotton are stored. Bulk sulphur is excluded from this prohibition if suitable precautions are followed, the person in charge is knowledgeable and the person performing the work has been instructed in preventing and extinguishing sulphur fires.

(h)(i) Drums, containers or hollow structures that have contained flammable or combustible substances shall either be filled with water or cleaned, and shall then be ventilated. A designated person shall test the atmosphere and determine that it is not hazardous before hot work is performed on or in such structures.

(ii) Before heat is applied to a drum, container or hollow structure, an opening to release built-up pressure during heat application shall be provided.

(4) Gas welding and cutting.

(a) Compressed gas cylinders:

(i) Shall have valve protection caps in place except when in use, hooked up or secured for movement. Oil shall not be used to lubricate caps;

(ii) Shall be hoisted only while secured, as on a cradle or pallet, and shall not be hoisted by magnet, choker sling or cylinder caps;

(iii) Shall be moved only by tilting or rolling on their bottom edges;

(iv) Shall be secured when moved by vehicle;

(v) Shall be secured while in use;

(vi) Shall have valves closed when cylinders are empty, being moved or stored;

(vii) Shall be secured upright except when hoisted or carried;

(viii) Shall not be freed when frozen by prying the valves or caps with bars or by hitting the valve with a tool;

(ix) Shall not be thawed by boiling water;

(x) Shall not be exposed to sparks, hot slag, or flame;

(xi) Shall not be permitted to become part of electrical circuits or have electrodes struck against them to strike arcs;

(xii) Shall not be used as rollers or supports;

(xiii) Shall not have contents used for purposes not authorized by the supplier;

(xiv) Shall not be used if damaged or defective;

(xv) Shall not have gases mixed within, except by gas suppliers;

(xvi) Shall be stored so that oxygen cylinders are separated from fuel gas cylinders and combustible materials by either a minimum distance of twenty feet (6.1 m) or a barrier having a fire-resistance rating of thirty minutes; and

(xvii) Shall not have objects that might either damage the safety device or obstruct the valve placed on top of the cylinder when in use.

(b) Use of fuel gas. Fuel gas shall be used only as follows:

(i) Before regulators are connected to cylinder valves, the valves shall be opened slightly (cracked) and closed immediately to clear away dust or dirt. Valves shall not be cracked if gas could reach possible sources of ignition;

(ii) Cylinder valves shall be opened slowly to prevent regulator damage and shall not be opened more than one and one-half turns. Any special wrench required for emergency closing shall be positioned on the valve stem during cylinder use. For manifolded or coupled cylinders, at least one wrench shall be immediately available. Nothing shall be placed on top of a cylinder or associated parts when the cylinder is in use;

(iii) Pressure-reducing regulators shall be attached to cylinder valves when cylinders are supplying torches or devices equipped with shut-off valves;

(iv) Cylinder valves shall be closed and gas released from the regulator or manifold before regulators are removed;

(v) Leaking fuel gas cylinder valves shall be closed and the gland nut tightened. If the leak continues, the cylinder shall be tagged, removed from service, and moved to a location where the leak will not be hazardous. If a regulator attached to a valve stops a leak, the cylinder need not be removed from the workplace but shall be tagged and may not be used again before it is repaired; and

(vi) If a plug or safety device leaks, the cylinder shall be tagged, removed from service, and moved to a location where the leak will not be hazardous.

(c) Hose.

(i) Fuel gas and oxygen hoses shall be easily distinguishable from each other by color or sense of touch. Oxygen and fuel hoses shall not be interchangeable. Hoses having more than one gas passage shall not be used.

(ii) When oxygen and fuel gas hoses are taped together, not more than four of each twelve inches (10.16 cm of each 30.48 cm) shall be taped.

(iii) Hose shall be inspected before use. Hose subjected to flashback or showing evidence of severe wear or damage shall be tested to twice the normal working pressure but not less than two hundred p.s.i. (1378.96 kPa) before reuse. Defective hose shall not be used.

(iv) Hose couplings shall not unlock or disconnect without rotary motion.

(v) Hose connections shall be clamped or securely fastened to withstand twice the normal working pressure but not less than three hundred p.s.i. (2068.44 kPa) without leaking.

(vi) Gas hose storage boxes shall be ventilated.

(d) Torches.

(i) Torch tip openings shall only be cleaned with devices designed for that purpose.

(ii) Torches shall be inspected before each use for leaking shut-off valves, hose couplings and tip connections. Torches shall be inspected before each use for leaking shut-off valves, hose couplings and tip connections. Torches with such defects shall not be used.

(iii) Torches shall not be lighted from matches, cigarette lighters, other flames or hot work.

(e) Pressure regulators. Pressure regulators, including associated gauges, shall be maintained in safe working order.

(f) Operational precaution. Gas welding equipment shall be maintained free of oil and grease.

(5) Arc welding and cutting.

(a) Manual electrode holders.

(i) The employer shall ensure that only manual electrode holders intended for arc welding and cutting and capable of handling the maximum current required for such welding or cutting shall be used.

(ii) Current-carrying parts passing through those portions of the holder gripped by the user and through the outer surfaces of the jaws of the holder shall be insulated against the maximum voltage to ground.

(b) Welding cables and connectors.

(i) Arc welding and cutting cables shall be insulated, flexible and capable of handling the maximum current required by the operation, taking into account the duty cycles.

(ii) Only cable free from repair or splice for ten feet (3 m) from the electrode holder shall be used unless insulated connectors or splices with insulating quality equal to that of the cable are provided.

(iii) When a cable other than the lead mentioned in (b)(ii) of this subsection wears and exposes bare conductors, the portion exposed shall not be used until it is protected by insulation equivalent in performance capacity to the original.

(iv) Insulated connectors of equivalent capacity shall be used for connecting or splicing cable. Cable lugs, where used as connectors, shall provide electrical contact. Exposed metal parts shall be insulated.

(c) Ground returns and machine grounding.

(i) Ground return cables shall have current-carrying capacity equal to or exceeding the total maximum output capacities of the welding or cutting units served.

(ii) Structures or pipelines, other than those containing gases or flammable liquids or conduits containing electrical

circuits, may be used in the ground return circuit if their current-carrying capacity equals or exceeds the total maximum output capacities of the welding or cutting units served.

(iii) Structures or pipelines forming a temporary ground return circuit shall have electrical contact at all joints. Arcs, sparks or heat at any point in the circuit shall cause rejection as a ground circuit.

(iv) Structures or pipelines acting continuously as ground return circuits shall have joints bonded and maintained to ensure that no electrolysis or fire hazard exists.

(v) Arc welding and cutting machine frames shall be grounded, either through a third wire in the cable containing the circuit conductor or through a separate wire at the source of the current. Grounding circuits shall have resistance low enough to permit sufficient current to flow to cause the fuse or circuit breaker to interrupt the current.

(vi) Ground connections shall be mechanically and electrically adequate to carry the current.

(d) When electrode holders are left unattended, electrodes shall be removed and holders placed to prevent employee injury.

(e) Hot electrode holders shall not be dipped in water.

(f) The employer shall ensure that when arc welders or cutters leave or stop work or when machines are moved, the power supply switch is kept in the off position.

(g) Arc welding or cutting equipment having a functional defect shall not be used.

(h)(i) Arc welding and cutting operations shall be separated from other operations by shields, screens, or curtains to protect employees in the vicinity from the direct rays and sparks of the arc.

(ii) Employees in areas not protected from the arc by screening shall be protected by appropriate filter lenses in accordance with subsection (8) of this section. When welders are exposed to their own arc or to each other's arc, they shall wear filter lenses complying with the requirements of subsection (8) of this section.

(i) The control apparatus of arc welding machines shall be enclosed, except for operating wheels, levers, and handles.

(j) Input power terminals, top change devices and live metal parts connected to input circuits shall be enclosed and accessible only by means of insulated tools.

(k) When arc welding is performed in wet or high-humidity conditions, employees shall use additional protection, such as rubber pads or boots, against electric shock.

(6) Ventilation and employee protection in welding, cutting and heating.

(a) Mechanical ventilation requirements. The employer shall ensure that general mechanical ventilation or local exhaust systems shall meet the following requirements:

(i) General mechanical ventilation shall maintain vapors, fumes and smoke below a hazardous level;

(ii) Local exhaust ventilation shall consist of movable hoods positioned close to the work and shall be of such capacity and arrangement as to keep breathing zone concentrations below hazardous levels;

(iii) Exhausts from working spaces shall be discharged into the open air, clear of intake air sources;

(iv) Replacement air shall be clean and respirable; and

(v) Oxygen shall not be used for ventilation, cooling or cleaning clothing or work areas.

(b) Hot work in confined spaces. Except as specified in (c)(ii) and (iii) of this subsection, when hot work is performed in a confined space the employer shall, in addition to the requirements of chapter 296-62 WAC, Part M, ensure that:

(i) General mechanical or local exhaust ventilations shall be provided; or

(ii) Employees in the space shall wear respirators in accordance with chapter ((296-62)) 296-842 WAC((~~Part E~~)).

(c) Welding, cutting or heating of toxic metals.

(i) In confined or enclosed spaces, hot work involving the following metals shall only be performed with general mechanical or local exhaust ventilation that ensures that employees are not exposed to hazardous levels of fumes:

(A) Lead base metals;

(B) Cadmium-bearing filler materials; and

(C) Chromium-bearing metals or metals coated with chromium-bearing materials.

(ii) In confined or enclosed spaces, hot work involving the following metals shall only be performed with local exhaust ventilation meeting the requirements of this subsection or by employees wearing supplied air respirators in accordance with chapter ((296-62)) 296-842 WAC((~~Part E~~));

(A) Zinc-bearing base or filler metals or metals coated with zinc-bearing materials;

(B) Metals containing lead other than as an impurity, or coated with lead-bearing materials;

(C) Cadmium-bearing or cadmium-coated base metals; and

(D) Metals coated with mercury-bearing materials.

(iii) Employees performing hot work in confined or enclosed spaces involving beryllium-containing base or filler metals shall be protected by local exhaust ventilation and wear supplied air respirators or self-contained breathing apparatus, in accordance with the requirements of chapter ((296-62)) 296-842 WAC((~~Part E~~)).

(iv) The employer shall ensure that employees performing hot work in the open air that involves any of the metals listed in (c)(i) and (ii) of this subsection shall be protected by respirators in accordance with the requirements of chapter ((296-62)) 296-842 WAC((~~Part E~~)) and those working on beryllium-containing base or filler metals shall be protected by supplied air respirators, in accordance with the requirements of chapter ((296-62)) 296-842 WAC((~~Part E~~)).

(v) Any employee exposed to the same atmosphere as the welder or burner shall be protected by the same type of respiratory and other protective equipment as that worn by the welder or burner.

(d) Inert-gas metal-arc welding. Employees shall not engage in and shall not be exposed to the inert-gas metal-arc welding process unless the following precautions are taken:

(i) Chlorinated solvents shall not be used within two hundred feet (61 m) of the exposed arc. Surfaces prepared with chlorinated solvents shall be thoroughly dry before welding is performed on them.

(ii) Employees in areas not protected from the arc by screening shall be protected by appropriate filter lenses in accordance with the requirements of subsection (8) of this section. When welders are exposed to their own arc or to each other's arc, filter lenses complying with the requirements of subsection (8) of this section shall be worn to protect against flashes and radiant energy.

(iii) Employees exposed to radiation shall have their skin covered completely to prevent ultraviolet burns and damage. Helmets and hand shields shall not have leaks, openings or highly reflective surfaces.

(iv) Inert-gas metal-arc welding on stainless steel shall not be performed unless exposed employees are protected either by local exhaust ventilation or by wearing supplied air respirators in accordance with the requirements of chapter ((296-62)) 296-842 WAC((,-Part E)).

(7) Welding, cutting and heating on preservative coatings.

(a) Before hot work is commenced on surfaces covered by a preservative coating of unknown flammability, a test shall be made by a designated person to determine the coating's flammability. Preservative coatings shall be considered highly flammable when scrapings burn with extreme rapidity.

(b) Appropriate precaution shall be taken to prevent ignition of highly flammable hardened preservative coatings. Highly flammable coatings shall be stripped from the area to be heated. An uncoiled fire hose with fog nozzle, under pressure, shall be immediately available in the hot work area.

(c) Surfaces covered with preservative coatings shall be stripped for at least four inches (10.16 cm) from the area of heat application or employees shall be protected by supplied air respirators in accordance with the requirements of chapter 296-62 WAC.

(8) Protection against radiant energy.

(a) Employees shall be protected from radiant energy eye hazards by spectacles, cup goggles, helmets, hand shields or face shields with filter lenses complying with the requirements of this subsection.

(b) Filter lenses shall have an appropriate shade number, as indicated in Table G-1, for the work performed. Variations of one or two shade numbers are permissible to suit individual preferences.

(c) If filter lenses are used in goggles worn under the helmet, the shade numbers of both lenses equals the value shown in Table G-1 for the operation.

Table G-1.—Filter Lenses for Protection Against Radiant Energy

Operation	Shade No.
Shielded Metal-Arc Welding 1/16 to 5/32-inch electrodes	10
Inert gas Metal-Arc Welding (nonferrous) 1/16 to 5/32-inch electrodes	11
Shielded Metal-Arc Welding:	
3/16 to 1/4-inch electrodes	12
5/16 and 3/8-inch electrodes	14

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-62-07306 Requirements for areas containing carcinogens listed in WAC 296-62-07302. (1) A regulated area shall be established by an employer where listed carcinogens are manufactured, processed, used, repackaged, released, handled or stored.

(2) All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operation involved:

(a) Isolated systems. Employees working with carcinogens within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas where carcinogens are stored in sealed containers, or contained in a closed system including piping systems with any sample ports or openings closed while carcinogens are contained within:

(i) Access shall be restricted to authorized employees only;

(ii) Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations as defined in WAC 296-62-07304(12) are prohibited.

(d) Transfer from a closed system. Charging or discharging point operations, or otherwise opening a closed system. In operations involving "laboratory-type hoods," or in locations where a carcinogen is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this section shall apply.

(i) Access shall be restricted to authorized employees only;

(ii) Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean makeup air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

Table G-1.—Filter Lenses for Protection Against Radiant Energy

Operation	Shade No.
Soldering	2
Torch Brazing	3 or 4
Light cutting, up to 1 inch	3 or 4
Medium cutting, 1-6 inches	4 or 5
Heavy cutting, over 6 inches	5 or 6
Light gas welding, up to 1/8 inch	4 or 5
Medium gas welding, 1/8-1/2 inch	5 or 6
Heavy gas welding, over 1/2 inch	6 or 8

PERMANENT

(iii) Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

(iv) Employees engaged in handling operations involving the following carcinogens must be provided with and required to wear and use a full-face, supplied-air respirator, of the continuous flow or pressure-demand type as required in chapter ((296-62)) 296-842 WAC((, Part E)):

- Methyl Chloromethyl Ether;
- bis-Chloromethyl Ether;
- Ethylenimine;
- beta-Propiolactone;
- 4-Amino Diphenyl.

(v) Employees engaged in handling operations involving:

- 4-nitrobiphenyl;
- alpha-naphthylamine;
- 4-4'methylene bis(2-chloroaniline);
- 3-3'dichlorobenzidine (and its salts);
- beta-naphthylamine;
- benzidine;
- 2-acetylamino fluroene;
- 4-dimethylaminobenzene;
- n-nitrosodimethylamine

must be provided with, and required to wear and use, a half-face, filter-type respirator certified for solid or liquid particulates with minimum efficiency rating of 95% as required in chapter ((296-62)) 296-842 WAC((, Part E)). A respirator affording higher levels of protection than this respirator may be substituted.

(vi) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under WAC 296-62-07310 (2), (3) and (4).

(vii) Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

(viii) Employees shall be required to shower after the last exit of the day.

(ix) Drinking fountains are prohibited in the regulated area.

(e) Maintenance and decontamination activities. In clean up of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with carcinogens could result, each authorized employee entering the area shall:

(i) Be provided with and required to wear, clean, impervious garments, including gloves, boots and continuous-air supplied hood in accordance with WAC 296-800-160, and

respiratory protective equipment required by this chapter ((296-62)) 296-842 WAC;

(ii) Be decontaminated before removing the protective garments and hood;

(iii) Be required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this subdivision shall apply to research and quality control activities involving the use of carcinogens listed in WAC 296-62-07302.

(i) Mechanical pipetting aids shall be used for all pipetting procedures.

(ii) Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(iii) Surfaces on which carcinogens are handled shall be protected from contamination.

(iv) Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are released.

(v) All other forms of listed carcinogens shall be inactivated prior to disposal.

(vi) Laboratory vacuum systems shall be protected with high efficiency scrubbers or with disposable absolute filters.

(vii) Employees engaged in animal support activities shall be:

(A) Provided with, and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

(B) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under WAC 296-62-07310 (2), (3) and (4).

(C) Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities; and

(D) Required to shower after the last exit of the day.

(viii) Employees, other than those engaged only in animal support activities, each day shall be:

(A) Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat.

(B) Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under WAC 296-62-07310 (2), (3) and (4).

(C) Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities.

(ix) Air pressure in laboratory areas and animal rooms where carcinogens are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

(x) There shall be no connection between regulated areas and any other areas through the ventilation system.

(xi) A current inventory of the carcinogens shall be maintained.

(xii) Ventilated apparatus such as laboratory-type hoods, shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

WAC 296-62-07329 Vinyl chloride. (1) Scope and application.

(a) This section includes requirements for the control of employee exposure to vinyl chloride (chloroethene), Chemical Abstracts Service Registry No. 75014.

(b) This section applies to the manufacture, reaction, packaging, repackaging, storage, handling or use of vinyl chloride or polyvinyl chloride, but does not apply to the handling or use of fabricated products made of polyvinyl chloride.

(c) This section applies to the transportation of vinyl chloride or polyvinyl chloride except to the extent that the department of transportation may regulate the hazards covered by this section.

(2) Definitions.

(a) "Action level" means a concentration of vinyl chloride of 0.5 ppm averaged over an 8-hour work day.

(b) "Authorized person" means any person specifically authorized by the employer whose duties require him/her to enter a regulated area or any person entering such an area as a designated representative of employees for the purpose of exercising an opportunity to observe monitoring and measuring procedures.

(c) "Director" means the director of department of labor and industries or his/her designated representative.

(d) "Emergency" means any occurrence such as, but not limited to, equipment failure, or operation of a relief device which is likely to, or does, result in massive release of vinyl chloride.

(e) "Fabricated product" means a product made wholly or partly from polyvinyl chloride, and which does not require further processing at temperatures, and for times, sufficient to cause mass melting of the polyvinyl chloride resulting in the release of vinyl chloride.

(f) "Hazardous operation" means any operation, procedure, or activity where a release of either vinyl chloride liquid or gas might be expected as a consequence of the operation or because of an accident in the operation, which would result in an employee exposure in excess of the permissible exposure limit.

(g) "Polyvinyl chloride" means polyvinyl chloride homopolymer or copolymer before such is converted to a fabricated product.

(h) "Vinyl chloride" means vinyl chloride monomer.

(3) Permissible exposure limit.

(a) No employee may be exposed to vinyl chloride at concentrations greater than 1 ppm averaged over any 8-hour period, and

(b) No employee may be exposed to vinyl chloride at concentrations greater than 5 ppm averaged over any period not exceeding 15 minutes.

(c) No employee may be exposed to vinyl chloride by direct contact with liquid vinyl chloride.

(4) Monitoring.

(a) A program of initial monitoring and measurement shall be undertaken in each establishment to determine if there is any employee exposed, without regard to the use of respirators, in excess of the action level.

(b) Where a determination conducted under subdivision (a) of this subsection shows any employee exposures without regard to the use of respirators, in excess of the action level, a program for determining exposures for each such employee shall be established. Such a program:

(i) Shall be repeated at least monthly where any employee is exposed, without regard to the use of respirators, in excess of the permissible exposure limit.

(ii) Shall be repeated not less than quarterly where any employee is exposed, without regard to the use of respirators, in excess of the action level.

(iii) May be discontinued for any employee only when at least two consecutive monitoring determinations, made not less than 5 working days apart, show exposures for that employee at or below the action level.

(c) Whenever there has been a production, process or control change which may result in an increase in the release of vinyl chloride, or the employer has any other reason to suspect that any employee may be exposed in excess of the action level, a determination of employee exposure under subdivision (a) of this subsection shall be performed.

(d) The method of monitoring and measurement shall have an accuracy (with a confidence level of 95 percent) of not less than plus or minus 50 percent from 0.25 through 0.5 ppm, plus or minus 35 percent from over 0.5 ppm through 1.0 ppm, plus or minus 25 percent over 1.0 ppm, (methods meeting these accuracy requirements are available from the director).

(e) Employees or their designated representatives shall be afforded reasonable opportunity to observe the monitoring and measuring required by this subsection.

(5) Regulated area.

(a) A regulated area shall be established where:

(i) Vinyl chloride or polyvinyl chloride is manufactured, reacted, repackaged, stored, handled or used; and

(ii) Vinyl chloride concentrations are in excess of the permissible exposure limit.

(b) Access to regulated areas shall be limited to authorized persons.

(6) Methods of compliance. Employee exposures to vinyl chloride shall be controlled to at or below the permissible exposure limit provided in subsection (3) of this section

by engineering, work practice, and personal protective controls as follows:

(a) Feasible engineering and work practice controls shall immediately be used to reduce exposures to at or below the permissible exposure limit.

(b) Wherever feasible engineering and work practice controls which can be instituted immediately are not sufficient to reduce exposures to at or below the permissible exposure limit, they shall nonetheless be used to reduce exposures to the lowest practicable level, and shall be supplemented by respiratory protection in accordance with subsection (7) of this section. A program shall be established and implemented to reduce exposures to at or below the permissible exposure limit, or to the greatest extent feasible, solely by means of engineering and work practice controls, as soon as feasible.

(c) Written plans for such a program shall be developed and furnished upon request for examination and copying to the director. Such plans shall be updated at least every six months.

(7) Respiratory protection.

(a) General. For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of this section.

(b) Respirator program. The employer must establish, implement, and maintain a respiratory protection program as required in chapter ((296-62-WAC, Part E (except WAC 296-62-07130(1), 296-62-07131 (4)(b)(i) and (ii), and 296-62-07150 through 296-62-17156))) 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(c) Respirator selection. Respirators must be selected from the following table.

Atmospheric concentration of Vinyl Chloride	Apparatus
(i) Not over 10 ppm	Any chemical cartridge respirator with a vinyl chloride cartridge which provides a service life of at least 1 hour for concentrations of vinyl chloride up to 10 ppm.
(ii) Not over 25 ppm	(A) A powered air-purifying respirator with hood, helmet, full or half facepiece, and a canister which provides a service life of at least 4 hours for concentrations of vinyl chloride up to 25 ppm, or (B) Gas mask, front or back-mounted canister which provides a service life of at least 4 hours for concentrations of vinyl chloride up to 25 ppm.
(iii) Not over 100 ppm	Supplied air respirator demand type, with full facepiece.

Atmospheric concentration of Vinyl Chloride

Apparatus

(iv) Not over 250 ppm	Type C, supplied air respirator, continuous flow type, with full or half facepiece, helmet or hood.
(v) Not over 3,600 ppm	Combination Type C supplied air respirator, pressure demand type, with full or half facepiece and auxiliary self-contained air supply.
(vi) Unknown, or above 3,600 ppm	Open-circuit, self-contained breathing apparatus, pressure demand type, with full facepiece.

(d) Where air-purifying respirators are used:

(i) Air-purifying canisters or cartridges must be replaced prior to the expiration of their service life or the end of the shift in which they are first used, whichever occurs first, and

(ii) A continuous monitoring and alarm system must be provided when concentrations of vinyl chloride could reasonably exceed the allowable concentrations for the devices in use. Such system shall be used to alert employees when vinyl chloride concentrations exceed the allowable concentrations for the devices in use, and

(iii) Respirators specified for higher concentrations may be used for lower concentration.

(8) Hazardous operations.

(a) Employees engaged in hazardous operations, including entry of vessels to clean polyvinyl chloride residue from vessel walls, shall be provided and required to wear and use;

(i) Respiratory protection in accordance with subsections (3) and (7) of this section; and

(ii) Protective garments to prevent skin contact with liquid vinyl chloride or with polyvinyl chloride residue from vessel walls. The protective garments shall be selected for the operation and its possible exposure conditions.

(b) Protective garments shall be provided clean and dry for each use.

(c) Emergency situations. A written operational plan for emergency situations shall be developed for each facility storing, handling, or otherwise using vinyl chloride as a liquid or compressed gas. Appropriate portions of the plan shall be implemented in the event of an emergency. The plan shall specifically provide that:

(i) Employees engaged in hazardous operations or correcting situations of existing hazardous releases shall be equipped as required in subdivisions (a) and (b) of this subsection;

(ii) Other employees not so equipped shall evacuate the area and not return until conditions are controlled by the methods required in subsection (6) of this section and the emergency is abated.

(9) Training. Each employee engaged in vinyl chloride or polyvinyl chloride operations shall be provided training in a program relating to the hazards of vinyl chloride and precautions for its safe use.

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(a) The program shall include:

(i) The nature of the health hazard from chronic exposure to vinyl chloride including specifically the carcinogenic hazard;

(ii) The specific nature of operations which could result in exposure to vinyl chloride in excess of the permissible limit and necessary protective steps;

(iii) The purpose for, proper use, and limitations of respiratory protective devices;

(iv) The fire hazard and acute toxicity of vinyl chloride, and the necessary protective steps;

(v) The purpose for and a description of the monitoring program;

(vi) The purpose for and a description of, the medical surveillance program;

(vii) Emergency procedures:

(A) Specific information to aid the employee in recognition of conditions which may result in the release of vinyl chloride; and

(B) A review of this standard at the employee's first training and indoctrination program, and annually thereafter.

(b) All materials relating to the program shall be provided upon request to the director.

(10) Medical surveillance. A program of medical surveillance shall be instituted for each employee exposed, without regard to the use of respirators, to vinyl chloride in excess of the action level. The program shall provide each such employee with an opportunity for examinations and tests in accordance with this subsection. All medical examinations and procedures shall be performed by or under the supervision of a licensed physician and shall be provided without cost to the employee.

(a) At the time of initial assignment, or upon institution of medical surveillance;

(i) A general physical examination shall be performed with specific attention to detecting enlargement of liver, spleen or kidneys, or dysfunction in these organs, and for abnormalities in skin, connective tissues and the pulmonary system (see Appendix A).

(ii) A medical history shall be taken, including the following topics:

(A) Alcohol intake,

(B) Past history of hepatitis,

(C) Work history and past exposure to potential hepatotoxic agents, including drugs and chemicals,

(D) Past history of blood transfusions, and

(E) Past history of hospitalizations.

(iii) A serum specimen shall be obtained and determinations made of:

(A) Total bilirubin,

(B) Alkaline phosphatase,

(C) Serum glutamic oxalacetic transaminase (SGOT),

(D) Serum glutamic pyruvic transaminase (SGPT), and

(E) Gamma glutamyl transpeptidase.

(b) Examinations provided in accordance with this subdivision shall be performed at least:

(i) Every 6 months for each employee who has been employed in vinyl chloride or polyvinyl chloride manufacturing for 10 years or longer; and

(ii) Annually for all other employees.

(c) Each employee exposed to an emergency shall be afforded appropriate medical surveillance.

(d) A statement of each employee's suitability for continued exposure to vinyl chloride including use of protective equipment and respirators, shall be obtained from the examining physician promptly after any examination. A copy of the physician's statement shall be provided each employee.

(e) If any employee's health would be materially impaired by continued exposure, such employee shall be withdrawn from possible contact with vinyl chloride.

(f) Laboratory analyses for all biological specimens included in medical examinations shall be performed in laboratories licensed under 42 CFR Part 74.

(g) If the examining physician determines that alternative medical examinations to those required by subdivision (a) of this subsection will provide at least equal assurance of detecting medical conditions pertinent to the exposure to vinyl chloride, the employer may accept such alternative examinations as meeting the requirements of subdivision (a) of this subsection, if the employer obtains a statement from the examining physician setting forth the alternative examinations and the rationale for substitution. This statement shall be available upon request for examination and copying to authorized representatives of the director.

(11) Signs and labels.

(a) Entrances to regulated areas shall be posted with legible signs bearing the legend:

CANCER-SUSPECT AGENT AREA AUTHORIZED PERSONNEL
ONLY

(b) Areas containing hazardous operations or where an emergency currently exists shall be posted with legible signs bearing the legend:

CANCER-SUSPECT AGENT IN THIS AREA PROTECTIVE EQUIP-
MENT REQUIRED AUTHORIZED PERSONNEL ONLY

(c) Containers of polyvinyl chloride resin waste from reactors or other waste contaminated with vinyl chloride shall be legibly labeled:

CONTAMINATED WITH VINYL CHLORIDE CANCER-SUSPECT
AGENT

(d) Containers of polyvinyl chloride shall be legibly labeled:

POLYVINYL CHLORIDE (OR TRADE NAME) CONTAINS VINYL
CHLORIDE VINYL CHLORIDE IS A CANCER-SUSPECT AGENT

(e) Containers of vinyl chloride shall be legibly labeled either:

VINYL CHLORIDE EXTREMELY FLAMMABLE GAS UNDER PRES-
SURE CANCER-SUSPECT AGENT

(or)

(f) In accordance with 49 CFR Part 173, Subpart H, with the additional legends:

CANCER-SUSPECT AGENT

Applied near the label or placard.

(g) No statement shall appear on or near any required sign, label or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(12) Records.

(a) All records maintained in accordance with this section shall include the name and social security number of each employee where relevant.

(b) Records of required monitoring and measuring and medical records shall be provided upon request to employees, designated representatives, and the director in accordance with chapter 296-802 WAC. These records shall be provided upon request to the director. Authorized personnel rosters shall also be provided upon request to the director.

(i) Monitoring and measuring records shall:

(A) State the date of such monitoring and measuring and the concentrations determined and identify the instruments and methods used;

(B) Include any additional information necessary to determine individual employee exposures where such exposures are determined by means other than individual monitoring of employees; and

(C) Be maintained for not less than 30 years.

(ii) Medical records shall be maintained for the duration of the employment of each employee plus 20 years, or 30 years, whichever is longer.

(c) In the event that the employer ceases to do business and there is no successor to receive and retain his/her records for the prescribed period, these records shall be transmitted by registered mail to the director, and each employee individually notified in writing of this transfer. The employer shall also comply with any additional requirements set forth in chapter 296-802 WAC.

(d) Employees or their designated representatives shall be provided access to examine and copy records of required monitoring and measuring.

(e) Former employees shall be provided access to examine and copy required monitoring and measuring records reflecting their own exposures.

(f) Upon written request of any employee, a copy of the medical record of that employee shall be furnished to any physician designated by the employee.

(13) Reports.

(a) Not later than 1 month after the establishment of a regulated area, the following information shall be reported to the director. Any changes to such information shall be reported within 15 days.

(i) The address and location of each establishment which has one or more regulated areas; and

(ii) The number of employees in each regulated area during normal operations, including maintenance.

(b) Emergencies and the facts obtainable at that time, shall be reported within 24 hours to the director. Upon request of the director, the employer shall submit additional information in writing relevant to the nature and extent of employee exposures and measures taken to prevent future emergencies of similar nature.

(c) Within 10 working days following any monitoring and measuring which discloses that any employee has been

exposed, without regard to the use of respirators, in excess of the permissible exposure limit, each such employee shall be notified in writing of the results of the exposure measurement and the steps being taken to reduce the exposure to within the permissible exposure limit.

(14) Appendix A supplementary medical information.

When required tests under subsection (10)(a) of this section show abnormalities, the tests should be repeated as soon as practicable, preferably within 3 to 4 weeks. If tests remain abnormal, consideration should be given to withdrawal of the employee from contact with vinyl chloride, while a more comprehensive examination is made.

Additional tests which may be useful:

(A) For kidney dysfunction: Urine examination for albumin, red blood cells, and exfoliative abnormal cells.

(B) Pulmonary system: Forced vital capacity, forced expiratory volume at 1 second, and chest roentgenogram (posterior-anterior, 14 x 17 inches).

(C) Additional serum tests: Lactic acid dehydrogenase, lactic acid dehydrogenase isoenzyme, protein determination, and protein electrophoresis.

(D) For a more comprehensive examination on repeated abnormal serum tests: Hepatitis B antigen, and liver scanning.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

WAC 296-62-07336 Acrylonitrile. (1) Scope and application.

(a) This section applies to all occupational exposure to acrylonitrile (AN), Chemical Abstracts Service Registry No. 000107131, except as provided in (b) and (c) of this subsection.

(b) This section does not apply to exposures which result solely from the processing, use, and handling of the following materials:

(i) ABS resins, SAN resins, nitrile barrier resins, solid nitrile elastomers, and acrylic and modacrylic fibers, when these listed materials are in the form of finished polymers, and products fabricated from such finished polymers;

(ii) Materials made from and/or containing AN for which objective data is reasonably relied upon to demonstrate that the material is not capable of releasing AN in airborne concentrations in excess of 1 ppm as an eight-hour time-weighted average, under the expected conditions of processing, use, and handling which will cause the greatest possible release; and

(iii) Solid materials made from and/or containing AN which will not be heated above 170°F during handling, use, or processing.

(c) An employer relying upon exemption under (1)(b)(ii) shall maintain records of the objective data supporting that exemption, and of the basis of the employer's reliance on the data as provided in subsection (17) of this section.

(2) Definitions, as applicable to this section:

(a) "Acrylonitrile" or "AN" - acrylonitrile monomer, chemical formula CH₂=CHCN.

(b) "Action level" - a concentration of AN of 1 ppm as an eight-hour time-weighted average.

(c) "Authorized person" - any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the opportunity to observe monitoring procedures under subsection (18) of this section.

(d) "Decontamination" means treatment of materials and surfaces by water washdown, ventilation, or other means, to assure that the materials will not expose employees to airborne concentrations of AN above 1 ppm as an eight-hour time-weighted average.

(e) "Director" - the director of labor and industries, or his authorized representative.

(f) "Emergency" - any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment, which is likely to, or does, result in unexpected exposure to AN in excess of the ceiling limit.

(g) "Liquid AN" means AN monomer in liquid form, and liquid or semiliquid polymer intermediates, including slurries, suspensions, emulsions, and solutions, produced during the polymerization of AN.

(h) "Polyacrylonitrile" or "PAN" - polyacrylonitrile homopolymers or copolymers, except for materials as exempted under subsection (1)(b) of this section.

(3) Permissible exposure limits.

(a) Inhalation.

(i) Time-weighted average limit (TWA). The employer shall assure that no employee is exposed to an airborne concentration of acrylonitrile in excess of two parts acrylonitrile per million parts of air (2 ppm), as an eight-hour time-weighted average.

(ii) Ceiling limit. The employer shall assure that no employee is exposed to an airborne concentration of acrylonitrile in excess of 10 ppm as averaged over any fifteen-minute period during the working day.

(b) Dermal and eye exposure. The employer shall assure that no employee is exposed to skin contact or eye contact with liquid AN or PAN.

(4) Notification of use and emergencies.

(a) Use. Within ten days of the effective date of this standard, or within fifteen days following the introduction of AN into the workplace, every employer shall report, unless he has done so pursuant to the emergency temporary standard, the following information to the director for each such workplace:

(i) The address and location of each workplace in which AN is present;

(ii) A brief description of each process of operation which may result in employee exposure to AN;

(iii) The number of employees engaged in each process or operation who may be exposed to AN and an estimate of the frequency and degree of exposure that occurs; and

(iv) A brief description of the employer's safety and health program as it relates to limitation of employee exposure to AN. Whenever there has been a significant change in the information required by this subsection, the employer shall promptly amend such information previously provided to the director.

(b) Emergencies and remedial action. Emergencies, and the facts obtainable at that time, shall be reported within 24

hours of the initial occurrence to the director. Upon request of the director, the employer shall submit additional information in writing relevant to the nature and extent of employee exposures and measures taken to prevent future emergencies of a similar nature.

(5) Exposure monitoring.

(a) General.

(i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to AN over an eight-hour period.

(ii) For the purposes of this section, employee exposure is that which would occur if the employee were not using a respirator.

(b) Initial monitoring. Each employer who has a place of employment in which AN is present shall monitor each such workplace and work operation to accurately determine the airborne concentrations of AN to which employees may be exposed. Such monitoring may be done on a representative basis, provided that the employer can demonstrate that the determinations are representative of employee exposures.

(c) Frequency.

(i) If the monitoring required by this section reveals employee exposure to be below the action level, the employer may discontinue monitoring for that employee. The employer shall continue these quarterly measurements until at least two consecutive measurements taken at least seven days apart, are below the action level, and thereafter the employer may discontinue monitoring for that employee.

(ii) If the monitoring required by this section reveals employee exposure to be at or above the action level but below the permissible exposure limits, the employer shall repeat such monitoring for each such employee at least quarterly.

(iii) If the monitoring required by this section reveals employee exposure to be in excess of the permissible exposure limits, the employer shall repeat these determinations for each such employee at least monthly. The employer shall continue these monthly measurements until at least two consecutive measurements, taken at least seven days apart, are below the permissible exposure limits, and thereafter the employer shall monitor at least quarterly.

(d) Additional monitoring. Whenever there has been a production, process, control or personnel change which may result in new or additional exposure to AN, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to AN, additional monitoring which complies with this subsection shall be conducted.

(e) Employee notification.

(i) Within five working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever the results indicate that the representative employee exposure exceeds the permissible exposure limits, the employer shall include in the written notice a statement that the permissible exposure limits were exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limits.

(f) Accuracy of measurement. The method of measurement of employee exposures shall be accurate, to a confi-

dence level of 95 percent, to within plus or minus 25 percent for concentrations of AN at or above the permissible exposure limits, and plus or minus 35 percent for concentrations of AN between the action level and the permissible exposure limits.

(g) Weekly survey of operations involving liquid AN. In addition to monitoring of employee exposures to AN as otherwise required by this subsection, the employer shall survey areas of operations involving liquid AN at least weekly to detect points where AN liquid or vapor are being released into the workplace. The survey shall employ an infra-red gas analyzer calibrated for AN, a multipoint gas chromatographic monitor, or comparable system for detection of AN. A listing of levels detected and areas of AN release, as determined from the survey, shall be posted prominently in the workplace, and shall remain posted until the next survey is completed.

(6) Regulated areas.

(a) The employer shall establish regulated areas where AN concentrations are in excess of the permissible exposure limits.

(b) Regulated areas shall be demarcated and segregated from the rest of the workplace, in any manner that minimizes the number of persons who will be exposed to AN.

(c) Access to regulated areas shall be limited to authorized persons or to persons otherwise authorized by the act or regulations issued pursuant thereto.

(d) The employer shall assure that in the regulated area, food or beverages are not present or consumed, smoking products are not present or used, and cosmetics are not applied, (except that these activities may be conducted in the lunchrooms, change rooms and showers required under subsections (13)(a)-(13)(c) of this section.

(7) Methods of compliance.

(a) Engineering and work practice controls.

(i) The employer shall institute engineering or work practice controls to reduce and maintain employee exposures to AN, to or below the permissible exposure limits, except to the extent that the employer establishes that such controls are not feasible.

(ii) Whenever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limits, the employer shall nonetheless use them to reduce exposures to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of subsection (8) of this section.

(b) Compliance program.

(i) The employer shall establish and implement a written program to reduce employee exposures to or below the permissible exposure limits solely by means of engineering and work practice controls, as required by subsection (7)(a) of this section.

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation or process resulting in employee exposure to AN above the permissible exposure limits;

(B) Engineering plans and other studies used to determine the controls for each process;

(C) A report of the technology considered in meeting the permissible exposure limits;

(D) A detailed schedule for the implementation of engineering or work practice controls; and

(E) Other relevant information.

(iii) The employer shall complete the steps set forth in the compliance program by the dates in the schedule.

(iv) Written plans for such a program shall be submitted upon request to the director, and shall be available at the worksite for examination and copying by the director, or any affected employee or representative.

(v) The plans required by this subsection shall be revised and updated at least every six months to reflect the current status of the program.

(8) Respiratory protection.

(a) General. For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of this subsection. Respirators must be used during:

(i) Periods necessary to install or implement feasible engineering and work-practice controls;

(ii) Work operations, such as maintenance and repair activities or reactor cleaning, for which the employer establishes that engineering and work-practice controls are not feasible;

(iii) Work operations for which feasible engineering and work-practice controls are not yet sufficient to reduce employee exposure to or below the permissible exposure limits;

(iv) In emergencies.

(b) Respirator program.

The employer must implement a respiratory protection program in accordance with chapter ((296-62-WAC, Part E (except WAC 296-62-07130(1) and 296-62-07150 through 296-62-07156))) 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(c) Respirator selection. The employer must select the appropriate respirator from Table I of this subsection.

TABLE I
RESPIRATORY PROTECTION FOR ACRYLONITRILE (AN)

Concentration of AN or Condition of Use		Respirator Type	
(a)	Less than or equal to 25 x permissible exposure limits.	(i)	Any Type C supplied air respirator.
(b)	Less than or equal to 100 x permissible exposure limits.	(i)	Any supplied air respirator with full facepiece; or
		(ii)	Any self-contained breathing apparatus with full facepiece.
(c)	Less than or equal to 250 x permissible exposure limits	(i)	Supplied air respirator in positive pressure mode with full facepiece, helmet, hood, or suit.

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TABLE I
RESPIRATORY PROTECTION FOR ACRYLONITRILE (AN)

Concentration of AN or Condition of Use		Respirator Type
(d) Greater than 250 x permissible exposure limits.	(i)	Supplied air respirator with full facepiece and an auxiliary self-contained air supply, operated in pressure demand mode; or
	(ii)	Open circuit self-contained breathing apparatus with full facepiece in positive pressure mode.
(e) Emergency entry into unknown concentration or firefighting	(i)	Any self-contained breathing apparatus with full facepiece in positive pressure mode.
(f) Escape.	(i)	Any organic vapor gas mask; or
	(ii)	Any self-contained breathing.

(9) Emergency situations.

(a) Written plans.

(i) A written plan for emergency situations shall be developed for each workplace where AN is present. Appropriate portions of the plan shall be implemented in the event of an emergency.

(ii) The plan shall specifically provide that employees engaged in correcting emergency conditions shall be equipped as required in subsection (8) of this section until the emergency is abated.

(b) Alerting employees.

(i) Where there is the possibility of employee exposure to AN in excess of the ceiling limit due to the occurrence of an emergency, a general alarm shall be installed and maintained to promptly alert employees of such occurrences.

(ii) Employees not engaged in correcting the emergency shall be evacuated from the area and shall not be permitted to return until the emergency is abated.

(10) Protective clothing and equipment.

(a) Provision and use. Where eye or skin contact with liquid AN or PAN may occur, the employer shall provide at no cost to the employee, and assure that employees wear, appropriate protective clothing or other equipment in accordance with WAC 296-800-160 to protect any area of the body which may come in contact with liquid AN or PAN.

(b) Cleaning and replacement.

(i) The employer shall clean, launder, maintain, or replace protective clothing and equipment required by this subsection, as needed to maintain their effectiveness. In addition, the employer shall provide clean protective clothing and equipment at least weekly to each affected employee.

(ii) The employer shall assure that impermeable protective clothing which contacts or is likely to have contacted liquid AN shall be decontaminated before being removed by the employee.

(iii) The employer shall assure that AN- or PAN-contaminated protective clothing and equipment is placed and stored in closable containers which prevent dispersion of the AN or PAN outside the container.

(iv) The employer shall assure that an employee whose nonimpermeable clothing becomes wetted with liquid AN shall immediately remove that clothing and proceed to shower. The clothing shall be decontaminated before it is removed from the regulated area.

(v) The employer shall assure that no employee removes AN- or PAN-contaminated protective equipment or clothing from the change room, except for those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(vi) The employer shall inform any person who launders or cleans AN- or PAN-contaminated protective clothing or equipment of the potentially harmful effects of exposure to AN.

(vii) The employer shall assure that containers of contaminated protective clothing and equipment which are to be removed from the workplace for any reason are labeled in accordance with subsection (16)(c)(ii) of this section, and that such labels remain affixed when such containers leave the employer's workplace.

(11) Housekeeping.

(a) All surfaces shall be maintained free of accumulations of liquid AN and of PAN.

(b) For operations involving liquid AN, the employer shall institute a program for detecting leaks and spills of liquid AN, including regular visual inspections.

(c) Where spills of liquid AN are detected, the employer shall assure that surfaces contacted by the liquid AN are decontaminated. Employees not engaged in decontamination activities shall leave the area of the spill, and shall not be permitted in the area until decontamination is completed.

(d) Liquids. Where AN is present in a liquid form, or as a resultant vapor, all containers or vessels containing AN shall be enclosed to the maximum extent feasible and tightly covered when not in use, with adequate provision made to avoid any resulting potential explosion hazard.

(e) Surfaces.

(i) Dry sweeping and the use of compressed air for the cleaning of floors and other surfaces where AN and PAN are found is prohibited.

(ii) Where vacuuming methods are selected, either portable units or a permanent system may be used.

(A) If a portable unit is selected, the exhaust shall be attached to the general workplace exhaust ventilation system or collected within the vacuum unit, equipped with high efficiency filters or other appropriate means of contaminant removal, so that AN is not reintroduced into the workplace air; and

(B) Portable vacuum units used to collect AN may not be used for other cleaning purposes and shall be labeled as prescribed by subsection (16)(c)(ii) of this section.

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(iii) Cleaning of floors and other contaminated surfaces may not be performed by washing down with a hose, unless a fine spray has first been laid down.

(12) Waste disposal. AN and PAN waste, scrap, debris, bags, containers or equipment, shall be disposed of in sealed bags or other closed containers which prevent dispersion of AN outside the container, and labeled as prescribed in subsection (16)(c)(ii) of this section.

(13) Hygiene facilities and practices. Where employees are exposed to airborne concentrations of AN above the permissible exposure limits, or where employees are required to wear protective clothing or equipment pursuant to subsection (11) of this section, or where otherwise found to be appropriate, the facilities required by WAC 296-800-230 shall be provided by the employer for the use of those employees, and the employer shall assure that the employees use the facilities provided. In addition, the following facilities or requirements are mandated.

(a) Change rooms. The employer shall provide clean change rooms in accordance with WAC 296-800-230.

(b) Showers.

(i) The employer shall provide shower facilities in accordance with WAC 296-800-230.

(ii) In addition, the employer shall also assure that employees exposed to liquid AN and PAN shower at the end of the work shift.

(iii) The employer shall assure that, in the event of skin or eye exposure to liquid AN, the affected employee shall shower immediately to minimize the danger of skin absorption.

(c) Lunchrooms.

(i) Whenever food or beverages are consumed in the workplace, the employer shall provide lunchroom facilities which have a temperature controlled, positive pressure, filtered air supply, and which are readily accessible to employees exposed to AN above the permissible exposure limits.

(ii) In addition, the employer shall also assure that employees exposed to AN above the permissible exposure limits wash their hands and face prior to eating.

(14) Medical surveillance.

(a) General.

(i) The employer shall institute a program of medical surveillance for each employee who is or will be exposed to AN above the action level. The employer shall provide each such employee with an opportunity for medical examinations and tests in accordance with this subsection.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee.

(b) Initial examinations. At the time of initial assignment, or upon institution of the medical surveillance program, the employer shall provide each affected employee an opportunity for a medical examination, including at least the following elements:

(i) A work history and medical history with special attention to skin, respiratory, and gastrointestinal systems, and those nonspecific symptoms, such as headache, nausea, vomiting, dizziness, weakness, or other central nervous system

dysfunctions that may be associated with acute or chronic exposure to AN.

(ii) A physical examination giving particular attention to central nervous system, gastrointestinal system, respiratory system, skin and thyroid.

(iii) A 14" x 17" posteroanterior chest X ray.

(iv) Further tests of the intestinal tract, including fecal occult blood screening, and proctosigmoidoscopy, for all workers 40 years of age or older, and for any other affected employees for whom, in the opinion of the physician, such testing is appropriate.

(c) Periodic examinations.

(i) The employer shall provide examinations specified in this subsection at least annually for all employees specified in subsection (14)(a) of this section.

(ii) If an employee has not had the examinations prescribed in subsection (14)(b) of this section within six months of termination of employment, the employer shall make such examination available to the employee upon such termination.

(d) Additional examinations. If the employee for any reason develops signs or symptoms commonly associated with exposure to AN, the employer shall provide appropriate examination and emergency medical treatment.

(e) Information provided to the physician. The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level;

(iv) The employee's anticipated or estimated exposure level (for preplacement examinations or in cases of exposure due to an emergency);

(v) A description of any personal protective equipment used or to be used; and

(vi) Information from previous medical examinations of the affected employee, which is not otherwise available to the examining physician.

(f) Physician's written opinion.

(i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical examination and test performed;

(B) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at an increased risk of material impairment of the employee's health from exposure to AN;

(C) Any recommended limitations upon the employee's exposure to AN or upon the use of protective clothing and equipment such as respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure to AN.

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(15) Employee information and training.

(a) Training program.

(i) The employer shall institute a training program for all employees where there is occupational exposure to AN and shall assure their participation in the training program.

(ii) The training program shall be provided at the time of initial assignment, or upon institution of the training program, and at least annually thereafter, and the employer shall assure that each employee is informed of the following:

(A) The information contained in Appendices A, B and C;

(B) The quantity, location, manner of use, release or storage of AN and the specific nature of operations which could result in exposure to AN, as well as any necessary protective steps;

(C) The purpose, proper use, and limitations of respirators and protective clothing;

(D) The purpose and a description of the medical surveillance program required by subsection (14) of this section;

(E) The emergency procedures developed, as required by subsection (9) of this section; and

(F) The engineering and work practice controls, their function and the employee's relationship thereto; and

(G) A review of this standard.

(b) Access to training materials.

(i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the director.

(16) Signs and labels.

(a) General.

(i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this subsection.

(ii) The employer shall assure that no statement appears on or near any sign or label, required by this subsection, which contradicts or detracts from such effects of the required sign or label.

(b) Signs.

(i) The employer shall post signs to clearly indicate all workplaces where AN concentrations exceed the permissible exposure limits. The signs shall bear the following legend:

DANGER
ACRYLONITRILE (AN)
CANCER HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS REQUIRED

(ii) The employer shall assure that signs required by this subsection are illuminated and cleaned as necessary so that the legend is readily visible.

(c) Labels.

(i) The employer shall assure that precautionary labels are affixed to all containers of AN, and to containers of PAN and products fabricated from PAN, except for those materials for which objective data is provided as to the conditions specified in subsection (1)(b) of this section. The employer shall

assure that the labels remain affixed when the AN or PAN are sold, distributed or otherwise leave the employer's workplace.

(ii) The employer shall assure that the precautionary labels required by this subsection are readily visible and legible. The labels shall bear the following legend:

DANGER
CONTAINS ACRYLONITRILE (AN)
CANCER HAZARD

(17) Recordkeeping.

(a) Objective data for exempted operations.

(i) Where the processing, use, and handling of products fabricated from PAN are exempted pursuant to subsection (1)(b) of this section, the employer shall establish and maintain an accurate record of objective data reasonably relied upon in support of the exemption.

(ii) This record shall include the following information:

(A) The relevant condition in subsection (1)(b) upon which exemption is based;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and/or analysis of the material for the release of AN;

(D) A description of the operation exempted and how the data supports the exemption; and

(E) Other data relevant to the operations, materials, and processing covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(b) Exposure monitoring.

(i) The employer shall establish and maintain an accurate record of all monitoring required by subsection (5) of this section.

(ii) This record shall include:

(A) The dates, number, duration, and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure;

(B) A description of the sampling and analytical methods used and the data relied upon to establish that the methods used meet the accuracy and precision requirements of subsection (5)(f) of this section;

(C) Type of respiratory protective devices worn, if any; and

(D) Name, social security number and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least 40 years or the duration of employment plus 20 years, whichever is longer.

(c) Medical surveillance.

(i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by subsection (14) of this section.

(ii) This record shall include:

(A) A copy of the physicians' written opinions;

(B) Any employee medical complaints related to exposure to AN;

(C) A copy of the information provided to the physician as required by subsection (14)(f) of this section; and

(D) A copy of the employee's medical and work history.

(iii) The employer shall assure that this record be maintained for at least forty years or for the duration of employment plus twenty years, whichever is longer.

(d) Availability.

(i) The employer shall assure that all records required to be maintained by this section be made available upon request to the director for examination and copying.

(ii) Records required by subdivisions (a) through (c) of this subsection shall be provided upon request to employees, designated representatives, and the assistant director in accordance with chapter 296-802 WAC. Records required by subdivision (a) of this section shall be provided in the same manner as exposure monitoring records.

(iii) The employer shall assure that employee medical records required to be maintained by this section, be made available, upon request, for examination and copying, to the affected employee or former employee, or to a physician designated by the affected employee, former employee, or designated representative.

(e) Transfer of records.

(i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, these records shall be transmitted to the director.

(iii) At the expiration of the retention period for the records required to be maintained pursuant to this section, the employer shall transmit these records to the director.

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in chapter 296-802 WAC.

(18) Observation of monitoring.

(a) Employee observation. The employer shall provide affected employees, or their designated representatives, an opportunity to observe any monitoring of employee exposure to AN conducted pursuant to subsection (5) of this section.

(b) Observation procedures.

(i) Whenever observation of the monitoring of employee exposure to AN requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with personal protective clothing or equipment required to be worn by employees working in the area, assure the use of such clothing and equipment, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled:

(A) To receive an explanation of the measurement procedures;

(B) To observe all steps related to the measurement of airborne concentrations of AN performed at the place of exposure; and

(C) To record the results obtained.

(19) Appendices. The information contained in the appendices is not intended, by itself, to create any additional

obligation not otherwise imposed, or to detract from any obligation.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

WAC 296-62-07342 1,2-Dibromo-3-chloropropane.

(1) Scope and application.

(a) This section applies to occupational exposure to 1,2-dibromo-3-chloropropane (DBCP).

(b) This section does not apply to:

(i) Exposure to DBCP which results solely from the application and use of DBCP as a pesticide; or

(ii) The storage, transportation, distribution or sale of DBCP in intact containers sealed in such a manner as to prevent exposure to DBCP vapors or liquids, except for the requirements of subsections (11), (16) and (17) of this section.

(2) Definitions applicable to this section:

(a) "Authorized person" - any person specifically authorized by the employer and whose duties require the person to be present in areas where DBCP is present; and any person entering this area as a designated representative of employees exercising an opportunity to observe employee exposure monitoring.

(b) "DBCP" - 1,2-dibromo-3-chloropropane, Chemical Abstracts Service Registry Number 96-12-8, and includes all forms of DBCP.

(c) "Director" - the director of labor and industries, or his authorized representative.

(d) "Emergency" - any occurrence such as, but not limited to equipment failure, rupture of containers, or failure of control equipment which may, or does, result in unexpected release of DBCP.

(3) Permissible exposure limits.

(a) Inhalation.

(i) Time-weighted average limit (TWA). The employer shall assure that no employee is exposed to an airborne concentration in excess of 1 part DBCP per billion part of air (ppb) as an eight-hour time-weighted average.

(ii) Ceiling limit. The employer shall assure that no employee is exposed to an airborne concentration in excess of 5 parts DBCP per billion parts of air (ppb) as averaged over any 15 minutes during the working day.

(b) Dermal and eye exposure. The employer shall assure that no employee is exposed to eye or skin contact with DBCP.

(4) Notification of use. Within ten days of the effective date of this section or within ten days following the introduction of DBCP into the workplace, every employer who has a workplace where DBCP is present shall report the following information to the director for each such workplace:

(a) The address and location of each workplace in which DBCP is present;

(b) A brief description of each process or operation which may result in employee exposure to DBCP;

(c) The number of employees engaged in each process or operation who may be exposed to DBCP and an estimate of the frequency and degree of exposure that occurs;

(d) A brief description of the employer's safety and health program as it relates to limitation of employee exposure to DBCP.

(5) Regulated areas. The employer shall establish, within each place of employment, regulated areas wherever DBCP concentrations are in excess of the permissible exposure limit.

(a) The employer shall limit access to regulated areas to authorized persons.

(b) All employees entering or working in a regulated area shall wear respiratory protection in accordance with Table I.

(6) Exposure monitoring.

(a) General. Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to DBCP over an eight-hour period. (For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.)

(b) Initial. Each employer who has a place of employment in which DBCP is present shall monitor each workplace and work operation to accurately determine the airborne concentrations of DBCP to which employees may be exposed.

(c) Frequency.

(i) If the monitoring required by this section reveals employee exposures to be below the permissible exposure limits, the employer shall repeat these determinations at least quarterly.

(ii) If the monitoring required by this section reveals employee exposure to be in excess of the permissible exposure limits, the employer shall repeat these determinations for each such employee at least monthly. The employer shall continue these monthly determinations until at least two consecutive measurements, taken at least seven days apart, are below the permissible exposure limit, thereafter the employer shall monitor at least quarterly.

(d) Additional. Whenever there has been a production process, control or personnel change which may result in any new or additional exposure to DBCP, or whenever the employer has any other reason to suspect a change which may result in new or additional exposure to DBCP, additional monitoring which complies with subsection (6) shall be conducted.

(e) Employee notification.

(i) Within five working days after the receipt of monitoring results, the employer shall notify each employee in writing of results which represent the employee's exposure.

(ii) Whenever the results indicate that employee exposure exceeds the permissible exposure limit, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action being taken to reduce exposure to or below the permissible exposure limits.

(f) Accuracy of measurement. The method of measurement shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for concentrations of DBCP at or above the permissible exposure limits.

(7) Methods of compliance.

(a) Priority of compliance methods. The employer shall institute engineering and work practice controls to reduce and

maintain employee exposures to DBCP at or below the permissible exposure limit, except to the extent that the employer establishes that such controls are not feasible. Where feasible engineering and work practice controls are not sufficient to reduce employee exposures to within the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls, and shall supplement them by use of respiratory protection.

(b) Compliance program.

(i) The employer shall establish and implement a written program to reduce employee exposure to DBCP to or below the permissible exposure limit solely by means of engineering and work practice controls as required by this section.

(ii) The written program shall include a detailed schedule for development and implementation of the engineering and work practice controls. These plans shall be revised at least every six months to reflect the current status of the program.

(iii) Written plans for these compliance programs shall be submitted upon request to the director, and shall be available at the worksite for examination and copying by the director, and any affected employee or designated representative of employees.

(iv) The employer shall institute and maintain at least the controls described in his most recent written compliance program.

(8) Respiratory protection.

(a) General. For employees who are required to use respirators under this section, the employer must provide respirators that comply with the requirements of this subsection. Respirators must be used during:

(i) Period necessary to install or implement feasible engineering and work-practice controls;

(ii) Maintenance and repair activities for which engineering and work-practice controls are not feasible;

(iii) Work operations for which feasible engineering and work-practice controls are not yet sufficient to reduce employee exposure to or below the permissible exposure limit;

(iv) Emergencies.

(b) The employer must establish, implement, and maintain a respiratory protection program as required by chapter ~~((296-62-WAC, Part E (except WAC 296-62-07130(1) and 296-62-07150 through 296-62-07156))~~ 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(c) Respirator selection. The employer must select the appropriate respirator from Table I of this subsection.

TABLE I
RESPIRATORY PROTECTION FOR DBCP

Concentration	Respirator Type
Not Greater Than	
(a) 10 ppb:	(i) Any supplied-air respirator.
	(ii) Any self-contained breathing apparatus.

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TABLE I
RESPIRATORY PROTECTION FOR DBCP

Concentration Not Greater Than	Respirator Type
(b) 50 ppb:	(i) Any supplied-air respirator with full facepiece, helmet or hood. (ii) Any self-contained breathing apparatus with full facepiece.
(c) 250 ppb:	(i) A Type C supplied-air respirator operated in pressure-demand or other positive pressure or continuous flow mode.
(d) 500 ppb:	(i) A Type C supplied-air respirator with full facepiece operated in pressure-demand mode with full facepiece.
(e) Greater than 500 ppb or entry into unknown concentrations:	(i) A combination respirator which includes a Type C supplied-air respirator with full facepiece operated in pressure-demand mode and an auxiliary self-contained breathing apparatus. (ii) A self-contained breathing apparatus with full facepiece operated in pressure-demand mode.
(f) Fire fighting:	(i) A self-contained breathing apparatus with full facepiece operated in pressure-demand mode.

(9) Reserved.

(10) Emergency situations.

(a) Written plans.

(i) A written plan for emergency situations shall be developed for each workplace in which DBCP is present.

(ii) Appropriate portions of the plan shall be implemented in the event of an emergency.

(b) Employees engaged in correcting conditions shall be equipped as required in subsection (11) of this section until the emergency is abated.

(c) Evacuation. Employees not engaged in correcting the emergency shall be removed and restricted from the area and normal operations in the affected area shall not be resumed until the emergency is abated.

(d) Alerting employees. Where there is a possibility of employee exposure to DBCP due to the occurrence of an emergency, a general alarm shall be installed and maintained to promptly alert employees of such occurrences.

(e) Medical surveillance. For any employee exposed to DBCP in an emergency situation, the employer shall provide medical surveillance in accordance with subsection (14) of this section.

(f) Exposure monitoring.

(i) Following an emergency, the employer shall conduct monitoring which complies with subsection (6) of this section.

(ii) In workplaces not normally subject to periodic monitoring, the employer may terminate monitoring when two consecutive measurements indicate exposures below the permissible exposure limit.

(11) Protective clothing and equipment.

(a) Provision and use. Where eye or skin contact with liquid or solid DBCP may occur, employers shall provide at no cost to the employee, and assure that employees wear impermeable protective clothing and equipment in accordance with WAC 296-800-160 to protect the area of the body which may come in contact with DBCP.

(b) Cleaning and replacement.

(i) The employer shall clean, launder, maintain, or replace protective clothing and equipment required by this subsection to maintain their effectiveness. In addition, the employer shall provide clean protective clothing and equipment at least daily to each affected employee.

(ii) Removal and storage.

(A) The employer shall assure that employees remove DBCP contaminated work clothing only in change rooms provided in accordance with subsection (13) of this section.

(B) The employer shall assure that employees promptly remove any protective clothing and equipment which becomes contaminated with DBCP-containing liquids and solids. This clothing shall not be reworn until the DBCP has been removed from the clothing or equipment.

(C) The employer shall assure that no employee takes DBCP contaminated protective devices and work clothing out of the change room, except those employees authorized to do so for the purpose of laundering, maintenance, or disposal.

(iii) The employer shall assure that DBCP-contaminated protective work clothing and equipment is placed and stored in closed containers which prevent dispersion of DBCP outside the container.

(iv) The employer shall inform any person who launders or cleans DBCP-contaminated protective clothing or equipment of the potentially harmful effects of exposure to DBCP.

(v) The employer shall assure that the containers of contaminated protective clothing and equipment which are to be removed from the workplace for any reason are labeled in accordance with subsection (16)(c) of this section.

(vi) The employer shall prohibit the removal of DBCP from protective clothing and equipment by blowing or shaking.

(12) Housekeeping.

(a) Surfaces.

(i) All surfaces shall be maintained free of accumulations of DBCP.

(ii) Dry sweeping and the use of air for the cleaning of floors and other surfaces where DBCP dust or liquids are found is prohibited.

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(iii) Where vacuuming methods are selected, either portable units or a permanent system may be used.

(A) If a portable unit is selected, the exhaust shall be attached to the general workplace exhaust ventilation system or collected within the vacuum unit, equipped with high efficiency filters or other appropriate means of contaminant removal, so that DBCP is not reintroduced into the workplace air; and

(B) Portable vacuum units used to collect DBCP may not be used for other cleaning purposes and shall be labeled as prescribed by subsection (16)(c) of this section.

(iv) Cleaning of floors and other contaminated surfaces may not be performed by washing down with a hose, unless a fine spray has first been laid down.

(b) Liquids. Where DBCP is present in a liquid form, or as a resultant vapor, all containers or vessels containing DBCP shall be enclosed to the maximum extent feasible and tightly covered when not in use.

(c) Waste disposal. DBCP waste, scrap, debris, bags, containers or equipment, shall be disposed in sealed bags or other closed containers which prevent dispersion of DBCP outside the container.

(13) Hygiene facilities and practices.

(a) Change rooms. The employer shall provide clean change rooms equipped with storage facilities for street clothes and separate storage facilities for protective clothing and equipment whenever employees are required to wear protective clothing and equipment in accordance with subsections (8), (9) and (11) of this section.

(b) Showers.

(i) The employer shall assure that employees working in the regulated area shower at the end of the work shift.

(ii) The employer shall assure that employees whose skin becomes contaminated with DBCP-containing liquids or solids immediately wash or shower to remove any DBCP from the skin.

(iii) The employer shall provide shower facilities in accordance with WAC 296-800-230.

(c) Lunchrooms. The employer shall provide lunchroom facilities which have a temperature controlled, positive pressure, filtered air supply, and which are readily accessible to employees working in regulated areas.

(d) Lavatories.

(i) The employer shall assure that employees working in the regulated area remove protective clothing and wash their hands and face prior to eating.

(ii) The employer shall provide a sufficient number of lavatory facilities which comply with WAC 296-800-230.

(e) Prohibition of activities in regulated areas. The employer shall assure that, in regulated areas, food or beverages are not present or consumed, smoking products and implements are not present or used, and cosmetics are not present or applied.

(14) Medical surveillance.

(a) General. The employer shall institute a program of medical surveillance for each employee who is or will be exposed, without regard to the use of respirators, to DBCP. The employer shall provide each such employee with an opportunity for medical examinations and tests in accordance with this subsection. All medical examinations and proce-

dures shall be performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee.

(b) Frequency and content. At the time of initial assignment, annually thereafter, and whenever exposure to DBCP occurs, the employer shall provide a medical examination for employees who work in regulated areas, which includes at least the following:

(i) A complete medical and occupational history with emphasis on reproductive history.

(ii) A complete physical examination with emphasis on the genito-urinary tract, testicle size, and body habitus including the following tests:

(A) Sperm count;

(B) Complete urinalysis (U/A);

(C) Complete blood count; and

(D) Thyroid profile.

(iii) A serum specimen shall be obtained and the following determinations made by radioimmunoassay techniques utilizing National Institutes of Health (NIH) specific antigen or one of equivalent sensitivity:

(A) Serum multiphasic analysis (SMA 12);

(B) Serum follicle stimulating hormone (FSH);

(C) Serum luteinizing hormone (LH); and

(D) Serum estrogen (females).

(iv) Any other tests deemed appropriate by the examining physician.

(c) Additional examinations. If the employee for any reason develops signs or symptoms commonly associated with exposure to DBCP, the employer shall provide the employee with a medical examination which shall include those elements considered appropriate by the examining physician.

(d) Information provided to the physician. The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The level of DBCP to which the employee is exposed; and

(iv) A description of any personal protective equipment used or to be used.

(e) Physician's written opinion.

(i) For each examination under this section, the employer shall obtain and provide the employee with a written opinion from the examining physician which shall include:

(A) The results of the medical tests performed;

(B) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at an increased risk of material impairment of health from exposure to DBCP;

(C) Any recommended limitations upon the employee's exposure to DBCP or upon the use of protective clothing and equipment such as respirators; and

(D) A statement that the employee was informed by the physician of the results of the medical examination, and any medical conditions which require further examination or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure to DBCP.

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(f) Emergency situations. If the employee is exposed to DBCP in an emergency situation, the employer shall provide the employee with a sperm count test as soon as practicable, or, if the employee is unable to produce a semen specimen, the hormone tests contained in subsection (14)(b) of this section. The employer shall provide these same tests three months later.

(15) Employee information and training.

(a) Training program.

(i) Within thirty days of the effective date of this standard, the employer shall institute a training program for all employees who may be exposed to DBCP and shall assure their participation in such training program.

(ii) The employer shall assure that each employee is informed of the following:

(A) The information contained in Appendices A, B and C;

(B) The quantity, location, manner of use, release or storage of DBCP and the specific nature of operations which could result in exposure to DBCP as well as any necessary protective steps;

(C) The purpose, proper use, limitations, and other training requirements covering respiratory protection as required in chapter 296-62 WAC, Part E;

(D) The purpose and description of the medical surveillance program required by subsection (14) of this section; and

(E) A review of this standard.

(b) Access to training materials.

(i) The employer shall make a copy of this standard and its appendices readily available to all affected employees.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the director.

(16) Signs and labels.

(a) General.

(i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to or in combination with, signs and labels required by this subsection.

(ii) The employer shall assure that no statement appears on or near any sign or label required by this subsection which contradicts or detracts from the required sign or label.

(b) Signs.

(i) The employer shall post signs to clearly indicate all work areas where DBCP may be present. These signs shall bear the legend:

DANGER

1,2-Dibromo-3-chloropropane

(Insert appropriate trade or common names)

CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

(ii) Where airborne concentrations of DBCP exceed the permissible exposure limits, the signs shall bear the additional legend:

RESPIRATOR REQUIRED

(c) Labels.

(i) The employer shall assure that precautionary labels are affixed to all containers of DBCP and of products containing DBCP, and that the labels remain affixed when the DBCP or products containing DBCP are sold, distributed, or otherwise leave the employer's workplace. Where DBCP or products containing DBCP are sold, distributed or otherwise leave the employer's workplace bearing appropriate labels required by EPA under the regulations in 40 CFR Part 162, the labels required by this subsection need not be affixed.

(ii) The employer shall assure that the precautionary labels required by this subsection are readily visible and legible. The labels shall bear the following legend:

DANGER

1,2-Dibromo-3-chloropropane

CANCER HAZARD

(17) Recordkeeping.

(a) Exposure monitoring.

(i) The employer shall establish and maintain an accurate record of all monitoring required by subsection (6) of this section.

(ii) This record shall include:

(A) The dates, number, duration and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure;

(B) A description of the sampling and analytical methods used;

(C) Type of respiratory worn, if any; and

(D) Name, Social Security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least forty years or the duration of employment plus twenty years, whichever is longer.

(b) Medical surveillance.

(i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance required by subsection (14) of this section.

(ii) This record shall include:

(A) The name and Social Security number of the employee;

(B) A copy of the physician's written opinion;

(C) Any employee medical complaints related to exposure to DBCP;

(D) A copy of the information provided the physician as required by subsection (14)(c) of this section; and

(E) A copy of the employee's medical and work history.

(iii) The employer shall maintain this record for at least forty years or the duration of employment plus twenty years, whichever is longer.

(c) Availability.

(i) The employer shall assure that all records required to be maintained by this section be made available upon request to the director for examination and copying.

(ii) Employee exposure monitoring records and employee medical records required by this subsection shall be provided upon request to employees' designated representatives and the assistant director in accordance with chapter 296-802 WAC.

(d) Transfer of records.

(i) If the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by this section for the prescribed period.

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall transmit these records by mail to the director.

(iii) At the expiration of the retention period for the records required to be maintained under this section, the employer shall transmit these records by mail to the director.

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in chapter 296-802 WAC.

(18) Observation of monitoring.

(a) Employee observation. The employer shall provide affected employees, or their designated representatives, an opportunity to observe any monitoring of employee exposure to DBCP conducted under subsection (6) of this section.

(b) Observation procedures.

(i) Whenever observation of the measuring or monitoring of employee exposure to DBCP requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with personal protective clothing or equipment required to be worn by employees working in the area, assure the use of such clothing and equipment, and require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring or measurement, observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the measurement of airborne concentrations of DBCP performed at the place of exposure; and

(C) Record the results obtained.

(19) Appendices. The information contained in the appendices is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligation.

(b) Work operations, such as maintenance and repair activities, vessel cleaning, or other activities, for which engineering and work-practice controls are not feasible;

(c) Work operations for which feasible engineering and work-practice controls are not yet sufficient to reduce employee exposure to or below the TWA or excursion limit;

(d) Emergencies.

(2) Respirator program. The employer must establish, implement, and maintain a respiratory protection program as required in chapter ~~((296-62-WAC, Part E (except WAC 296-62-07130(1) and 296-62-07150 through 296-62-07156)))~~ 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(3) Respirator selection. The employer must select the appropriate respirator from Table 1 of this section.

Table 1.—Minimum Requirements for Respiratory Protection for Airborne EtO

Condition of use or concentration of airborne EtO (ppm)	Minimum required respirator
Equal to or less than 50	(a) Full facepiece respirator with EtO approved canister, front- or back-mounted.
Equal to or less than 2,000	(a) Positive-pressure supplied air respirator, equipped with full facepiece, hood or helmet, or (b) Continuous-flow supplied air respirator (positive pressure) equipped with hood, helmet or suit.
Concentration above 2,000 or unknown concentration (such as in emergencies)	(a) Positive-pressure self-contained breathing apparatus (SCBA), equipped with full facepiece, or (b) Positive-pressure full facepiece supplied air respirator equipped with an auxiliary positive-pressure self-contained breathing apparatus.
Fire fighting	(a) Positive pressure self-contained breathing apparatus equipped with full facepiece.
Escape	(a) Any respirator described above.

Note: Respirators approved for use in higher concentrations are permitted to be used in lower concentrations.

(4) Protective clothing and equipment. Where employees could have eye or skin contact with EtO or EtO solutions, the employer must select and provide, at no cost to the employee, appropriate protective clothing or other equipment in accordance with WAC 296-800-160, and to protect any area of the body that may come in contact with liquid EtO or EtO in solution, and must ensure that the employee wears the protective clothing and equipment provided.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-62-07367 Respiratory protection and personal protective equipment. (1) General. For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of WAC 296-62-07355 through 296-62-07389. Respirators must be used during:

(a) Periods necessary to install or implement feasible engineering and work-practice controls;

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AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-62-07413 Respirator protection. (1) General. For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of this subsection. Respirators must be used during:

(a) Periods necessary to install or implement feasible engineering and work-practice controls when employee exposure levels exceed the PEL;

(b) Maintenance and repair activities, and brief or intermittent operations, where employee exposures exceed the PEL and engineering and work-practice controls are not feasible or are not required;

(c) Activities in regulated areas as specified in WAC 296-62-07409;

(d) Work operations for which the employer has implemented all feasible engineering and work-practice controls and such controls are not sufficient to reduce employee exposures to or below the PEL;

(e) Work operations for which an employee who is exposed to cadmium at or above the action level, and the employee requests a respirator;

(f) Work operations for which an employee is exposed above the PEL and engineering controls are not required by WAC 296-62-07411 (1)(b); and

(g) Emergencies.

(2) Respirator program.

(a) The employer must implement a respiratory protection program as required by chapter ~~((296-62-WAC, Part E (except WAC 296-62-07130(1) and 296-62-07150 through 296-62-07156)))~~ 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(b) No employees must use a respirator if, based on their recent medical examination, the examining physician determines that they will be unable to continue to function normally while using a respirator. If the physician determines that the employee must be limited in, or removed from, their current job because of their inability to use a respirator, the limitation or removal must be in accordance with WAC 296-62-07423 (11) and (12).

(c) If an employee has breathing difficulty during fit testing or respirator use, the employer must provide the employee with a medical examination as required by WAC 296-62-07423 (6)(b) to determine if the employee can use a respirator while performing the required duties.

(3) Respirator selection.

(a) The employer must select the appropriate respirator from Table 2 of this section.

Table 2.—Respiratory Protection for Cadmium

Airborne concentration or condition of use ^a	Required respirator type ^b
10 x or less	A half mask, air-purifying respirator equipped with a HEPA ^c filter ^d .

Table 2.—Respiratory Protection for Cadmium

Airborne concentration or condition of use ^a	Required respirator type ^b
25 x or less	A powered air-purifying respirator ("PAPR") with a loose-fitting hood or helmet equipped with a HEPA filter, or a supplied-air respirator with a loose-fitting hood or helmet facepiece operated in the continuous flow mode.
50 x or less	A full facepiece air-purifying respirator equipped with a HEPA filter, or a powered air-purifying respirator with a tight-fitting half mask equipped with a HEPA filter, or a supplied air respirator with a tight-fitting half mask operated in the continuous flow mode.
250 x or less	A powered air-purifying respirator with a tight-fitting full facepiece equipped with a HEPA filter, or a supplied-air respirator with a tight-fitting full facepiece operated in the continuous flow mode.
1000 x or less	A supplied-air respirator with half mask or full facepiece operated in the pressure demand or other positive pressure mode.
>1000 x or unknown concentrations	A self-contained breathing apparatus with a full facepiece operated in the pressure demand or other positive pressure mode, or a supplied-air respirator with a full facepiece operated in the pressure demand or other positive pressure mode and equipped with an auxiliary escape type self-contained breathing apparatus operated in the pressure demand mode.
Fire fighting	A self-contained breathing apparatus with full facepiece operated in the pressure demand or other positive pressure mode.

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- a Concentrations expressed as multiple of the PEL.
- b Respirators assigned for higher environmental concentrations may be used at lower exposure levels. Quantitative fit testing is required for all tight-fitting air purifying respirators where airborne concentration of cadmium exceeds 10 times the TWA PEL ($10 \times 5 \mu\text{g}/\text{m}^3 = 50 \mu\text{g}/\text{m}^3$). A full facepiece respirator is required when eye irritation is experienced.
- c HEPA means High Efficiency Particulate Air.
- d Fit testing, qualitative or quantitative, is required.

SOURCE: Respiratory Decision Logic, NIOSH, 1987

(b) The employer must provide an employee with a powered, air-purifying respirator (PAPR) instead of a negative-pressure respirator when an employee who is entitled to a respirator chooses to use this type of respirator and such a respirator provides adequate protection to the employee.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

WAC 296-62-07460 Butadiene. (1) Scope and application.

(a) This section applies to all occupational exposures to 1,3-Butadiene (BD), Chemical Abstracts Service Registry No. 106-99-0, except as provided in (b) of this subsection.

(b)(i) Except for the recordkeeping provisions in subsection (13)(a) of this section, this section does not apply to the processing, use, or handling of products containing BD or to other work operations and streams in which BD is present where objective data are reasonably relied upon that demonstrate the work operation or the product or the group of products or operations to which it belongs may not reasonably be foreseen to release BD in airborne concentrations at or above the action level or in excess of the STEL under the expected conditions of processing, use, or handling that will cause the greatest possible release or in any plausible accident.

(ii) This section also does not apply to work operations, products or streams where the only exposure to BD is from liquid mixtures containing 0.1% or less of BD by volume or the vapors released from such liquids, unless objective data become available that show that airborne concentrations generated by such mixtures can exceed the action level or STEL under reasonably predictable conditions of processing, use or handling that will cause the greatest possible release.

(iii) Except for labeling requirements and requirements for emergency response, this section does not apply to the storage, transportation, distribution or sale of BD or liquid mixtures in intact containers or in transportation pipelines sealed in such a manner as to fully contain BD vapors or liquids.

(c) Where products or processes containing BD are exempted under (b) of this subsection, the employer shall maintain records of the objective data supporting that exemption and the basis for the employer's reliance on the data, as provided in subsection (13)(a) of this section.

(2) Definitions: For the purpose of this section, the following definitions shall apply:

"Action level" means a concentration of airborne BD of 0.5 ppm calculated as an 8-hour time-weighted average.

"Director" means the director of the department of labor and industries, or authorized representatives.

"Authorized person" means any person specifically designated by the employer, whose duties require entrance into a regulated area, or a person entering such an area as a designated representative of employees to exercise the right to observe monitoring and measuring procedures under subsection (4)(h) of this section, or a person designated under the WISH Act or regulations issued under the WISH Act to enter a regulated area.

"1,3-Butadiene" means an organic compound with chemical formula $\text{CH}_2=\text{CH}-\text{CH}=\text{CH}_2$ that has a molecular weight of approximately 54.15 gm/mole.

"Business day" means any Monday through Friday, except those days designated as federal, state, local or company specific holidays.

"Complete blood count (CBC)" means laboratory tests performed on whole blood specimens and includes the following: White blood cell count (WBC), hematocrit (Hct), red blood cell count (RBC), hemoglobin (Hgb), differential count of white blood cells, red blood cell morphology, red blood cell indices, and platelet count.

"Day" means any part of a calendar day.

"Emergency situation" means any occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment that may or does result in an uncontrolled significant release of BD.

"Employee exposure" means exposure of a worker to airborne concentrations of BD which would occur if the employee were not using respiratory protective equipment.

"Objective data" means monitoring data, or mathematical modelling or calculations based on composition, chemical and physical properties of a material, stream or product.

"Permissible exposure limits (PELs)" means either the 8-hour time-weighted average (8-hour TWA) exposure or the short-term exposure limit (STEL).

"Physician or other licensed health care professional" is an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows him or her to independently provide or be delegated the responsibility to provide one or more of the specific health care services required by (k) of this subsection.

"Regulated area" means any area where airborne concentrations of BD exceed or can reasonably be expected to exceed the 8-hour time-weighted average (8-hour TWA) exposure of 1 ppm or the short-term exposure limit (STEL) of 5 ppm for 15 minutes.

"This section" means this 1,3-butadiene standard.

(3) Permissible exposure limits (PELs).

(a) Time-weighted average (TWA) limit. The employer shall ensure that no employee is exposed to an airborne concentration of BD in excess of one part BD per million parts of air (ppm) measured as an eight (8)-hour time-weighted average.

(b) Short-term exposure limit (STEL). The employer shall ensure that no employee is exposed to an airborne concentration of BD in excess of five parts of BD per million parts of air (5 ppm) as determined over a sampling period of fifteen minutes.

(4) Exposure monitoring.

(a) General.

(i) Determinations of employee exposure shall be made from breathing zone air samples that are representative of the 8-hour TWA and 15-minute short-term exposures of each employee.

(ii) Representative 8-hour TWA employee exposure shall be determined on the basis of one or more samples representing full-shift exposure for each shift and for each job classification in each work area.

(iii) Representative 15-minute short-term employee exposures shall be determined on the basis of one or more samples representing 15-minute exposures associated with operations that are most likely to produce exposures above the STEL for each shift and for each job classification in each work area.

(iv) Except for the initial monitoring required under (b) of this subsection, where the employer can document that exposure levels are equivalent for similar operations on different work shifts, the employer need only determine representative employee exposure for that operation from the shift during which the highest exposure is expected.

(b) Initial monitoring.

(i) Each employer who has a workplace or work operation covered by this section, shall perform initial monitoring to determine accurately the airborne concentrations of BD to which employees may be exposed, or shall rely on objective data pursuant to subsection (1)(b)(i) of this section to fulfill this requirement.

(ii) Where the employer has monitored within two years prior to the effective date of this section and the monitoring satisfies all other requirements of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of (b)(i) of this subsection, provided that the conditions under which the initial monitoring was conducted have not changed in a manner that may result in new or additional exposures.

(c) Periodic monitoring and its frequency.

(i) If the initial monitoring required by (b) of this subsection reveals employee exposure to be at or above the action level but at or below both the 8-hour TWA limit and the STEL, the employer shall repeat the representative monitoring required by (a) of this subsection every twelve months.

(ii) If the initial monitoring required by (b) of this subsection reveals employee exposure to be above the 8-hour TWA limit, the employer shall repeat the representative monitoring required by (a)(ii) of this subsection at least every three months until the employer has collected two samples per quarter (each at least 7 days apart) within a two-year period, after which such monitoring must occur at least every six months.

(iii) If the initial monitoring required by (b) of this subsection reveals employee exposure to be above the STEL, the employer shall repeat the representative monitoring required by (a)(iii) of this subsection at least every three months until the employer has collected two samples per quarter (each at least 7 days apart) within a two-year period, after which such monitoring must occur at least every six months.

(iv) The employer may alter the monitoring schedule from every six months to annually for any required representative monitoring for which two consecutive measurements taken at least 7 days apart indicate that employee exposure

has decreased to or below the 8-hour TWA, but is at or above the action level.

(d) Termination of monitoring.

(i) If the initial monitoring required by (b) of this subsection reveals employee exposure to be below the action level and at or below the STEL, the employer may discontinue the monitoring for employees whose exposures are represented by the initial monitoring.

(ii) If the periodic monitoring required by (c) of this subsection reveals that employee exposures, as indicated by at least two consecutive measurements taken at least 7 days apart, are below the action level and at or below the STEL, the employer may discontinue the monitoring for those employees who are represented by such monitoring.

(e) Additional monitoring.

(i) The employer shall institute the exposure monitoring required under subsection (4) of this section whenever there has been a change in the production, process, control equipment, personnel or work practices that may result in new or additional exposures to BD or when the employer has any reason to suspect that a change may result in new or additional exposures.

(ii) Whenever spills, leaks, ruptures or other breakdowns occur that may lead to employee exposure above the 8-hour TWA limit or above the STEL, the employer shall monitor (using leak source, such as direct reading instruments, area or personal monitoring), after the cleanup of the spill or repair of the leak, rupture or other breakdown, to ensure that exposures have returned to the level that existed prior to the incident.

(f) Accuracy of monitoring.

Monitoring shall be accurate, at a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of BD at or above the 1 ppm TWA limit and to within plus or minus 35 percent for airborne concentrations of BD at or above the action level of 0.5 ppm and below the 1 ppm TWA limit.

(g) Employee notification of monitoring results.

(i) The employer shall, within 5 business days after the receipt of the results of any monitoring performed under this section, notify the affected employees of these results in writing either individually or by posting of results in an appropriate location that is accessible to affected employees.

(ii) The employer shall, within 15 business days after receipt of any monitoring performed under this section indicating the 8-hour TWA or STEL has been exceeded, provide the affected employees, in writing, with information on the corrective action being taken by the employer to reduce employee exposure to or below the 8-hour TWA or STEL and the schedule for completion of this action.

(h) Observation of monitoring.

(i) Employee observation. The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to BD conducted in accordance with this section.

(ii) Observation procedures. When observation of the monitoring of employee exposure to BD requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer at no cost with protective clothing and equipment, and shall ensure that

the observer uses this equipment and complies with all other applicable safety and health procedures.

(5) Regulated areas.

(a) The employer shall establish a regulated area wherever occupational exposures to airborne concentrations of BD exceed or can reasonably be expected to exceed the permissible exposure limits, either the 8-hour TWA or the STEL.

(b) Access to regulated areas shall be limited to authorized persons.

(c) Regulated areas shall be demarcated from the rest of the workplace in any manner that minimizes the number of employees exposed to BD within the regulated area.

(d) An employer at a multiemployer worksite who establishes a regulated area shall communicate the access restrictions and locations of these areas to other employers with work operations at that worksite whose employees may have access to these areas.

(6) Methods of compliance.

(a) Engineering controls and work practices.

(i) The employer shall institute engineering controls and work practices to reduce and maintain employee exposure to or below the PELs, except to the extent that the employer can establish that these controls are not feasible or where subsection (8)(a)(i) of this section applies.

(ii) Wherever the feasible engineering controls and work practices which can be instituted are not sufficient to reduce employee exposure to or below the 8-hour TWA or STEL, the employer shall use them to reduce employee exposure to the lowest levels achievable by these controls and shall supplement them by the use of respiratory protection that complies with the requirements of subsection (8) of this section.

(b) Compliance plan.

(i) Where any exposures are over the PELs, the employer shall establish and implement a written plan to reduce employee exposure to or below the PELs primarily by means of engineering and work practice controls, as required by (a) of this subsection, and by the use of respiratory protection where required or permitted under this section. No compliance plan is required if all exposures are under the PELs.

(ii) The written compliance plan shall include a schedule for the development and implementation of the engineering controls and work practice controls including periodic leak detection surveys.

(iii) Copies of the compliance plan required in (b) of this subsection shall be furnished upon request for examination and copying to the director, affected employees and designated employee representatives. Such plans shall be reviewed at least every 12 months, and shall be updated as necessary to reflect significant changes in the status of the employer's compliance program.

(iv) The employer shall not implement a schedule of employee rotation as a means of compliance with the PELs.

(7) Exposure goal program.

(a) For those operations and job classifications where employee exposures are greater than the action level, in addition to compliance with the PELs, the employer shall have an exposure goal program that is intended to limit employee exposures to below the action level during normal operations.

(b) Written plans for the exposure goal program shall be furnished upon request for examination and copying to the director, affected employees and designated employee representatives.

(c) Such plans shall be updated as necessary to reflect significant changes in the status of the exposure goal program.

(d) Respirator use is not required in the exposure goal program.

(e) The exposure goal program shall include the following items unless the employer can demonstrate that the item is not feasible, will have no significant effect in reducing employee exposures, or is not necessary to achieve exposures below the action level:

(i) A leak prevention, detection, and repair program.

(ii) A program for maintaining the effectiveness of local exhaust ventilation systems.

(iii) The use of pump exposure control technology such as, but not limited to, mechanical double-sealed or seal-less pumps.

(iv) Gauging devices designed to limit employee exposure, such as magnetic gauges on rail cars.

(v) Unloading devices designed to limit employee exposure, such as a vapor return system.

(vi) A program to maintain BD concentration below the action level in control rooms by use of engineering controls.

(8) Respiratory protection.

(a) General. For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of this subsection. Respirators must be used during:

(i) Periods necessary to install or implement feasible engineering and work-practice controls;

(ii) Nonroutine work operations that are performed infrequently and for which exposures are limited in duration;

(iii) Work operations for which feasible engineering controls and work-practice controls are not yet sufficient to reduce employee exposures to or below the PELs;

(iv) Emergencies.

(b) Respirator program.

(i) The employer must implement a respiratory protection program as required by chapter ~~((296-62-WAC, Part E (except WAC 296-62-07130(1), 296-62-07131 (4)(b)(i) and (ii), and 296-62-07150 through 296-62-07156)))~~ 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(ii) If air-purifying respirators are used, the employer must replace the air-purifying filter elements according to the replacement schedule set for the class of respirators listed in Table 1 of this section, and at the beginning of each work shift.

(iii) Instead of using the replacement schedule listed in Table 1 of this section, the employer may replace cartridges or canisters at 90% of their expiration service life, provided the employer:

(A) Demonstrates that employees will be adequately protected by this procedure;

(B) Uses BD breakthrough data for this purpose that have been derived from tests conducted under worst-case conditions of humidity, temperature, and air-flow rate through the filter element, and the employer also describes

the data supporting the cartridge- or canister-change schedule, as well as the basis for using the data in the employer's respirator program.

(iv) A label must be attached to each filter element to indicate the date and time it is first installed on the respirator.

(v) If NIOSH approves an end-of-service-life indicator (ESLI) for an air-purifying filter element, the element may be used until the ESLI shows no further useful service life or until the element is replaced at the beginning of the next work shift, whichever occurs first.

(vi) Regardless of the air-purifying element used, if an employee detects the odor of BD, the employer must replace the air-purifying element immediately.

(c) Respirator selection.

(i) The employer must select appropriate respirators from Table 1 of this section.

Table 1. - Minimum Requirements for Respiratory Protection for Airborne BD

Concentration of Airborne BD (ppm) or condition of use	Minimum required respirator
Less than or equal to 5 ppm (5 times PEL)	(a) Air-purifying half mask or full facepiece respirator equipped with approved BD or organic vapor cartridges or canisters. Cartridges or canisters shall be replaced every 4 hours.
Less than or equal to 10 ppm (10 times PEL)	(a) Air-purifying half mask or full facepiece respirator equipped with approved BD or organic vapor cartridges or canisters. Cartridges or canisters shall be replaced every 3 hours.
Less than or equal to 25 ppm (25 times PEL)	(a) Air-purifying full facepiece respirator equipped with approved BD or organic vapor cartridges or canisters. Cartridges or canisters shall be replaced every 2 hours. (b) Any powered air-purifying respirator equipped with approved BD or organic vapor cartridges. PAPR cartridges shall be replaced every 2 hours. (c) Continuous flow supplied air respirator equipped with a hood or helmet.

Table 1. - Minimum Requirements for Respiratory Protection for Airborne BD

Concentration of Airborne BD (ppm) or condition of use	Minimum required respirator
Less than or equal to 50 ppm (50 times PEL)	(a) Air-purifying full facepiece respirator equipped with approved BD or organic vapor cartridges or canisters. Cartridges or canisters shall be replaced every 1 hour. (b) Powered air purifying respirator equipped with a tight-fitting facepiece and an approved BD or organic vapor cartridges. PAPR cartridges shall be replaced every 1 hour.
Less than or equal to 1,000 ppm (1,000 times PEL)	(a) Supplied air respirator equipped with a half mask or full facepiece and operated in a pressure demand or other positive pressure mode.
Greater than 1,000 ppm	(a) Self-contained breathing unknown concentration, or apparatus equipped with a fire fighting full facepiece and operated in a pressure demand or other positive pressure mode. (b) Any supplied air respirator equipped with a full facepiece and operated in a pressure demand or other positive pressure mode in combination with an auxiliary self-contained breathing apparatus operated in a pressure demand or other positive pressure mode.
Escape from IDLH Conditions	(a) Any positive pressure self-contained breathing apparatus with an appropriate service life. (b) Any air-purifying full facepiece respirator equipped with a front or back mounted BD or organic vapor canister.

Notes: Respirators approved for use in higher concentrations are permitted to be used in lower concentrations. Full facepiece is required when eye irritation is anticipated.

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(ii) Air-purifying respirators must have filter elements certified by NIOSH for organic vapor or BD.

(iii) When an employee whose job requires the use of a respirator cannot use a negative-pressure respirator, the employer must provide the employee with a respirator that has less breathing resistance than the negative-pressure respirator, such as a powered air-purifying respirator or supplied-air respirator, when the employee is able to use it and if it provides the employee adequate protection.

(9) Protective clothing and equipment. Where appropriate to prevent eye contact and limit dermal exposure to BD, the employer shall provide protective clothing and equipment at no cost to the employee and shall ensure its use. Eye and face protection shall meet the requirements of WAC 296-800-160.

(10) Emergency situations. Written plan. A written plan for emergency situations shall be developed, or an existing plan shall be modified, to contain the applicable elements specified in WAC 296-24-567, Employee emergency plans and fire prevention plans, and in WAC 296-62-3112, hazardous waste operations and emergency responses, for each workplace where there is a possibility of an emergency.

(11) Medical screening and surveillance.

(a) Employees covered. The employer shall institute a medical screening and surveillance program as specified in this subsection for:

(i) Each employee with exposure to BD at concentrations at or above the action level on 30 or more days or for employees who have or may have exposure to BD at or above the PELs on 10 or more days a year;

(ii) Employers (including successor owners) shall continue to provide medical screening and surveillance for employees, even after transfer to a non-BD exposed job and regardless of when the employee is transferred, whose work histories suggest exposure to BD:

(A) At or above the PELs on 30 or more days a year for 10 or more years;

(B) At or above the action level on 60 or more days a year for 10 or more years; or

(C) Above 10 ppm on 30 or more days in any past year; and

(iii) Each employee exposed to BD following an emergency situation.

(b) Program administration.

(i) The employer shall ensure that the health questionnaire, physical examination and medical procedures are provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(ii) Physical examinations, health questionnaires, and medical procedures shall be performed or administered by a physician or other licensed health care professional.

(iii) Laboratory tests shall be conducted by an accredited laboratory.

(c) Frequency of medical screening activities. The employer shall make medical screening available on the following schedule:

(i) For each employee covered under (a)(i) and (ii) of this subsection, a health questionnaire and complete blood count (CBC) with differential and platelet count every year, and a physical examination as specified below:

(A) An initial physical examination that meets the requirements of this rule, if twelve months or more have elapsed since the last physical examination conducted as part of a medical screening program for BD exposure;

(B) Before assumption of duties by the employee in a job with BD exposure;

(C) Every 3 years after the initial physical examination;

(D) At the discretion of the physician or other licensed health care professional reviewing the annual health questionnaire and CBC;

(E) At the time of employee reassignment to an area where exposure to BD is below the action level, if the employee's past exposure history does not meet the criteria of (a)(ii) of this subsection for continued coverage in the screening and surveillance program, and if twelve months or more have elapsed since the last physical examination; and

(F) At termination of employment if twelve months or more have elapsed since the last physical examination.

(ii) Following an emergency situation, medical screening shall be conducted as quickly as possible, but not later than 48 hours after the exposure.

(iii) For each employee who must wear a respirator, physical ability to perform the work and use the respirator must be determined as required by chapter 296-842 WAC ((296-62-071)).

(d) Content of medical screening.

(i) Medical screening for employees covered by (a)(i) and (ii) of this subsection shall include:

(A) A baseline health questionnaire that includes a comprehensive occupational and health history and is updated annually. Particular emphasis shall be placed on the hematopoietic and reticuloendothelial systems, including exposure to chemicals, in addition to BD, that may have an adverse effect on these systems, the presence of signs and symptoms that might be related to disorders of these systems, and any other information determined by the examining physician or other licensed health care professional to be necessary to evaluate whether the employee is at increased risk of material impairment of health from BD exposure. Health questionnaires shall consist of the sample forms in Appendix C to this section, or be equivalent to those samples;

(B) A complete physical examination, with special emphasis on the liver, spleen, lymph nodes, and skin;

(C) A CBC; and

(D) Any other test which the examining physician or other licensed health care professional deems necessary to evaluate whether the employee may be at increased risk from exposure to BD.

(ii) Medical screening for employees exposed to BD in an emergency situation shall focus on the acute effects of BD exposure and at a minimum include: A CBC within 48 hours of the exposure and then monthly for three months; and a physical examination if the employee reports irritation of the eyes, nose, throat, lungs, or skin, blurred vision, coughing, drowsiness, nausea, or headache. Continued employee participation in the medical screening and surveillance program, beyond these minimum requirements, shall be at the discretion of the physician or other licensed health care professional.

(e) Additional medical evaluations and referrals.

(i) Where the results of medical screening indicate abnormalities of the hematopoietic or reticuloendothelial systems, for which a nonoccupational cause is not readily apparent, the examining physician or other licensed health care professional shall refer the employee to an appropriate specialist for further evaluation and shall make available to the specialist the results of the medical screening.

(ii) The specialist to whom the employee is referred under this subsection shall determine the appropriate content for the medical evaluation, e.g., examinations, diagnostic tests and procedures, etc.

(f) Information provided to the physician or other licensed health care professional. The employer shall provide the following information to the examining physician or other licensed health care professional involved in the evaluation:

(i) A copy of this section including its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's BD exposure;

(iii) The employee's actual or representative BD exposure level during employment tenure, including exposure incurred in an emergency situation;

(iv) A description of pertinent personal protective equipment used or to be used; and

(v) Information, when available, from previous employment-related medical evaluations of the affected employee which is not otherwise available to the physician or other licensed health care professional or the specialist.

(g) The written medical opinion.

(i) For each medical evaluation required by this section, the employer shall ensure that the physician or other licensed health care professional produces a written opinion and provides a copy to the employer and the employee within 15 business days of the evaluation. The written opinion shall be limited to the following information:

(A) The occupationally pertinent results of the medical evaluation;

(B) A medical opinion concerning whether the employee has any detected medical conditions which would place the employee's health at increased risk of material impairment from exposure to BD;

(C) Any recommended limitations upon the employee's exposure to BD; and

(D) A statement that the employee has been informed of the results of the medical evaluation and any medical conditions resulting from BD exposure that require further explanation or treatment.

(ii) The written medical opinion provided to the employer shall not reveal specific records, findings, and diagnoses that have no bearing on the employee's ability to work with BD.

Note: This provision does not negate the ethical obligation of the physician or other licensed health care professional to transmit any other adverse findings directly to the employee.

(h) Medical surveillance.

(i) The employer shall ensure that information obtained from the medical screening program activities is aggregated (with all personal identifiers removed) and periodically reviewed, to ascertain whether the health of the employee

population of that employer is adversely affected by exposure to BD.

(ii) Information learned from medical surveillance activities must be disseminated to covered employees, as defined in (a) of this subsection, in a manner that ensures the confidentiality of individual medical information.

(12) Communication of BD hazards to employees.

(a) Hazard communication. The employer shall communicate the hazards associated with BD exposure in accordance with the requirements of the chemical hazard communication standard, WAC 296-800-170.

(b) Employee information and training.

(i) The employer shall provide all employees exposed to BD with information and training in accordance with the requirements of the chemical hazard communication standard, WAC 296-800-170.

(ii) The employer shall institute a training program for all employees who are potentially exposed to BD at or above the action level or the STEL, ensure employee participation in the program and maintain a record of the contents of such program.

(iii) Training shall be provided prior to or at the time of initial assignment to a job potentially involving exposure to BD at or above the action level or STEL and at least annually thereafter.

(iv) The training program shall be conducted in a manner that the employee is able to understand. The employer shall ensure that each employee exposed to BD over the action level or STEL is informed of the following:

(A) The health hazards associated with BD exposure, and the purpose and a description of the medical screening and surveillance program required by this section;

(B) The quantity, location, manner of use, release, and storage of BD and the specific operations that could result in exposure to BD, especially exposures above the PEL or STEL;

(C) The engineering controls and work practices associated with the employee's job assignment, and emergency procedures and personal protective equipment;

(D) The measures employees can take to protect themselves from exposure to BD;

(E) The contents of this standard and its appendices; and

(F) The right of each employee exposed to BD at or above the action level or STEL to obtain:

(I) Medical examinations as required by subsection (10) of this section at no cost to the employee;

(II) The employee's medical records required to be maintained by subsection (13)(c) of this section; and

(III) All air monitoring results representing the employee's exposure to BD and required to be kept by subsection (13)(b) of this section.

(c) Access to information and training materials.

(i) The employer shall make a copy of this standard and its appendices readily available without cost to all affected employees and their designated representatives and shall provide a copy if requested.

(ii) The employer shall provide to the director, or the designated employee representatives, upon request, all materials relating to the employee information and the training program.

(13) Recordkeeping.

(a) Objective data for exemption from initial monitoring.

(i) Where the processing, use, or handling of products or streams made from or containing BD are exempted from other requirements of this section under subsection (1)(b) of this section, or where objective data have been relied on in lieu of initial monitoring under subsection (4)(b)(ii) of this section, the employer shall establish and maintain a record of the objective data reasonably relied upon in support of the exemption.

(ii) This record shall include at least the following information:

(A) The product or activity qualifying for exemption;

(B) The source of the objective data;

(C) The testing protocol, results of testing, and analysis of the material for the release of BD;

(D) A description of the operation exempted and how the data support the exemption; and

(E) Other data relevant to the operations, materials, processing, or employee exposures covered by the exemption.

(iii) The employer shall maintain this record for the duration of the employer's reliance upon such objective data.

(b) Exposure measurements.

(i) The employer shall establish and maintain an accurate record of all measurements taken to monitor employee exposure to BD as prescribed in subsection (4) of this section.

(ii) The record shall include at least the following information:

(A) The date of measurement;

(B) The operation involving exposure to BD which is being monitored;

(C) Sampling and analytical methods used and evidence of their accuracy;

(D) Number, duration, and results of samples taken;

(E) Type of protective devices worn, if any;

(F) Name, Social Security number and exposure of the employees whose exposures are represented; and

(G) The written corrective action and the schedule for completion of this action required by subsection (4)(g)(ii) of this section.

(iii) The employer shall maintain this record for at least 30 years in accordance with chapter 296-802 WAC.

(c) Medical screening and surveillance.

(i) The employer shall establish and maintain an accurate record for each employee subject to medical screening and surveillance under this section.

(ii) The record shall include at least the following information:

(A) The name and Social Security number of the employee;

(B) Physician's or other licensed health care professional's written opinions as described in subsection (11)(e) of this section;

(C) A copy of the information provided to the physician or other licensed health care professional as required by subsection (11)(e) of this section.

(iii) Medical screening and surveillance records shall be maintained for each employee for the duration of employment plus 30 years, in accordance with chapter 296-802 WAC.

(d) Availability.

(i) The employer, upon written request, shall make all records required to be maintained by this section available for examination and copying to the director.

(ii) Access to records required to be maintained by (a) and (b) of this subsection shall be granted in accordance with chapter 296-802 WAC.

(e) Transfer of records.

(i) Whenever the employer ceases to do business, the employer shall transfer records required by this section to the successor employer. The successor employer shall receive and maintain these records. If there is no successor employer, the employer shall notify the director, at least three months prior to disposal, and transmit them to the director if requested by the director within that period.

(ii) The employer shall transfer medical and exposure records as set forth in chapter 296-802 WAC.

(14) Dates.

(a) Effective date. This section shall become effective (day, month), 1997.

(b) Start-up dates.

(i) The initial monitoring required under subsection (4)(b) of this section shall be completed immediately or within sixty days of the introduction of BD into the workplace.

(ii) The requirements of subsections (3) through (13) of this section, including feasible work practice controls but not including engineering controls specified in subsection (6)(a) of this section, shall be complied with immediately.

(iii) Engineering controls specified by subsection (6)(a) of this section shall be implemented by February 4, 1999, and the exposure goal program specified in subsection (7) of this section shall be implemented by February 4, 2000.

(15) Appendices.

Appendices A, B, C, D, and F to this section are informational and are not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

Appendix A. Substance Safety Data Sheet For 1,3-Butadiene (Non-Mandatory)

(1) Substance Identification.

(a) Substance: 1,3-Butadiene (CH₂=CH-CH=CH₂).

(b) Synonyms: 1,3-Butadiene (BD); butadiene; biethylene; bi-vinyl; divinyl; butadiene-1,3; buta-1,3-diene; erythrene; NCI-C50602; CAS-106-99-0.

(c) BD can be found as a gas or liquid.

(d) BD is used in production of styrene-butadiene rubber and polybutadiene rubber for the tire industry. Other uses include copolymer latexes for carpet backing and paper coating, as well as resins and polymers for pipes and automobile and appliance parts. It is also used as an intermediate in the production of such chemicals as fungicides.

(e) Appearance and odor: BD is a colorless, noncorrosive, flammable gas with a mild aromatic odor at standard ambient temperature and pressure.

(f) Permissible exposure: Exposure may not exceed 1 part BD per million parts of air averaged over the 8-hour workday, nor may short-term exposure exceed 5 parts of BD per million parts of air averaged over any 15-minute period in the 8-hour workday.

(2) Health Hazard Data.

(a) BD can affect the body if the gas is inhaled or if the liquid form, which is very cold (cryogenic), comes in contact with the eyes or skin.

(b) Effects of overexposure: Breathing very high levels of BD for a short time can cause central nervous system effects, blurred vision, nausea, fatigue, headache, decreased blood pressure and pulse rate, and unconsciousness. There are no recorded cases of accidental exposures at high levels that have caused death in humans, but this could occur. Breathing lower levels of BD may cause irritation of the eyes, nose, and throat. Skin contact with liquefied BD can cause irritation and frostbite.

(c) Long-term (chronic) exposure: BD has been found to be a potent carcinogen in rodents, inducing neoplastic lesions at multiple target sites in mice and rats. A recent study of BD-exposed workers showed that exposed workers have an increased risk of developing leukemia. The risk of leukemia increases with increased exposure to BD. OSHA has concluded that there is strong evidence that workplace exposure to BD poses an increased risk of death from cancers of the lymphohematopoietic system.

(d) Reporting signs and symptoms: You should inform your supervisor if you develop any of these signs or symptoms and suspect that they are caused by exposure to BD.

(3) Emergency First-Aid Procedures.

In the event of an emergency, follow the emergency plan and procedures designated for your work area. If you have been trained in first-aid procedures, provide the necessary first aid measures. If necessary, call for additional assistance from co-workers and emergency medical personnel.

(a) Eye and Skin Exposures: If there is a potential that liquefied BD can come in contact with eye or skin, face shields and skin protective equipment must be provided and used. If liquefied BD comes in contact with the eye, immediately flush the eyes with large amounts of water, occasionally lifting the lower and the upper lids. Flush repeatedly. Get medical attention immediately. Contact lenses should not be worn when working with this chemical. In the event of skin contact, which can cause frostbite, remove any contaminated clothing and flush the affected area repeatedly with large amounts of tepid water.

(b) Breathing: If a person breathes in large amounts of BD, move the exposed person to fresh air at once. If breathing has stopped, begin cardiopulmonary resuscitation (CPR) if you have been trained in this procedure. Keep the affected person warm and at rest. Get medical attention immediately.

(c) Rescue: Move the affected person from the hazardous exposure. If the exposed person has been overcome, call for help and begin emergency rescue procedures. Use extreme caution so that you do not become a casualty. Understand the plant's emergency rescue procedures and know the locations of rescue equipment before the need arises.

(4) Respirators and Protective Clothing.

(a) Respirators: Good industrial hygiene practices recommend that engineering and work practice controls be used to reduce environmental concentrations to the permissible exposure level. However, there are some exceptions where respirators may be used to control exposure. Respirators may be used when engineering and work practice controls are not

technically feasible, when such controls are in the process of being installed, or when these controls fail and need to be supplemented or during brief, nonroutine, intermittent exposure. Respirators may also be used in situations involving nonroutine work operations which are performed infrequently and in which exposures are limited in duration, and in emergency situations. In some instances cartridge respirator use is allowed, but only with strict time constraints. For example, at exposure below 5 ppm BD, a cartridge (or canister) respirator, either full or half face, may be used, but the cartridge must be replaced at least every 4 hours, and it must be replaced every 3 hours when the exposure is between 5 and 10 ppm.

If the use of respirators is necessary, the only respirators permitted are those that have been approved by the National Institute for Occupational Safety and Health (NIOSH). In addition to respirator selection, a complete respiratory protection program must be instituted which includes regular training, maintenance, fit testing, inspection, cleaning, and evaluation of respirators. If you can smell BD while wearing a respirator, proceed immediately to fresh air, and change cartridge (or canister) before re-entering an area where there is BD exposure. If you experience difficulty in breathing while wearing a respirator, tell your supervisor.

(b) Protective Clothing: Employees should be provided with and required to use impervious clothing, gloves, face shields (eight-inch minimum), and other appropriate protective clothing necessary to prevent the skin from becoming frozen by contact with liquefied BD (or a vessel containing liquid BD).

Employees should be provided with and required to use splash-proof safety goggles where liquefied BD may contact the eyes.

(5) Precautions for Safe Use, Handling, and Storage.

(a) Fire and Explosion Hazards: BD is a flammable gas and can easily form explosive mixtures in air. It has a lower explosive limit of 2%, and an upper explosive limit of 11.5%. It has an autoignition temperature of 420 deg. C (788 deg. F). Its vapor is heavier than air (vapor density, 1.9) and may travel a considerable distance to a source of ignition and flash back. Usually it contains inhibitors to prevent self-polymerization (which is accompanied by evolution of heat) and to prevent formation of explosive peroxides. At elevated temperatures, such as in fire conditions, polymerization may take place. If the polymerization takes place in a container, there is a possibility of violent rupture of the container.

(b) Hazard: Slightly toxic. Slight respiratory irritant. Direct contact of liquefied BD on skin may cause freeze burns and frostbite.

(c) Storage: Protect against physical damage to BD containers. Outside or detached storage of BD containers is preferred. Inside storage should be in a cool, dry, well-ventilated, noncombustible location, away from all possible sources of ignition. Store cylinders vertically and do not stack. Do not store with oxidizing material.

(d) Usual Shipping Containers: Liquefied BD is contained in steel pressure apparatus.

(e) Electrical Equipment: Electrical installations in Class I hazardous locations, as defined in Article 500 of the National Electrical Code, should be in accordance with Arti-

cle 501 of the Code. If explosion-proof electrical equipment is necessary, it shall be suitable for use in Group B. Group D equipment may be used if such equipment is isolated in accordance with Section 501-5(a) by sealing all conduit 1/2-inch size or larger. See Venting of Deflagrations (NFPA No. 68, 1994), National Electrical Code (NFPA No. 70, 1996), Static Electricity (NFPA No. 77, 1993), Lightning Protection Systems (NFPA No. 780, 1995), and Fire Hazard Properties of Flammable Liquids, Gases and Volatile Solids (NFPA No. 325, 1994).

(f) Fire Fighting: Stop flow of gas. Use water to keep fire-exposed containers cool. Fire extinguishers and quick drenching facilities must be readily available, and you should know where they are and how to operate them.

(g) Spill and Leak: Persons not wearing protective equipment and clothing should be restricted from areas of spills or leaks until clean-up has been completed. If BD is spilled or leaked, the following steps should be taken:

(i) Eliminate all ignition sources.

(ii) Ventilate area of spill or leak.

(iii) If in liquid form, for small quantities, allow to evaporate in a safe manner.

(iv) Stop or control the leak if this can be done without risk. If source of leak is a cylinder and the leak cannot be stopped in place, remove the leaking cylinder to a safe place and repair the leak or allow the cylinder to empty.

(h) Disposal: This substance, when discarded or disposed of, is a hazardous waste according to Federal regulations (40 CFR part 261). It is listed as hazardous waste number D001 due to its ignitability. The transportation, storage, treatment, and disposal of this waste material must be conducted in compliance with 40 CFR parts 262, 263, 264, 268 and 270. Disposal can occur only in properly permitted facilities. Check state and local regulation of any additional requirements as these may be more restrictive than federal laws and regulation.

(i) You should not keep food, beverages, or smoking materials in areas where there is BD exposure, nor should you eat or drink in such areas.

(j) Ask your supervisor where BD is used in your work area and ask for any additional plant safety and health rules.

(6) Medical Requirements.

Your employer is required to offer you the opportunity to participate in a medical screening and surveillance program if you are exposed to BD at concentrations exceeding the action level (0.5 ppm BD as an 8-hour TWA) on 30 days or more a year, or at or above the 8-hr TWA (1 ppm) or STEL (5 ppm for 15 minutes) on 10 days or more a year. Exposure for any part of a day counts. If you have had exposure to BD in the past, but have been transferred to another job, you may still be eligible to participate in the medical screening and surveillance program.

The WISHA rule specifies the past exposures that would qualify you for participation in the program. These past exposure are work histories that suggest the following:

(a) That you have been exposed at or above the PELs on 30 days a year for 10 or more years;

(b) That you have been exposed at or above the action level on 60 days a year for 10 or more years; or

(c) That you have been exposed above 10 ppm on 30 days in any past year.

Additionally, if you are exposed to BD in an emergency situation, you are eligible for a medical examination within 48 hours. The basic medical screening program includes a health questionnaire, physical examination, and blood test. These medical evaluations must be offered to you at a reasonable time and place, and without cost or loss of pay.

(7) Observation of Monitoring.

Your employer is required to perform measurements that are representative of your exposure to BD and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to observe the steps taken in the measurement procedure, and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you or your representative must also be provided with, and must wear, the protective clothing and equipment.

(8) Access to Information.

(a) Each year, your employer is required to inform you of the information contained in this appendix. In addition, your employer must instruct you in the proper work practices for using BD, emergency procedures, and the correct use of protective equipment.

(b) Your employer is required to determine whether you are being exposed to BD. You or your representative has the right to observe employee measurements and to record the results obtained. Your employer is required to inform you of your exposure. If your employer determines that you are being overexposed, he or she is required to inform you of the actions which are being taken to reduce your exposure to within permissible exposure limits and of the schedule to implement these actions.

(c) Your employer is required to keep records of your exposures and medical examinations. These records must be kept by the employer for at least thirty (30) years.

(d) Your employer is required to release your exposure and medical records to you or your representative upon your request.

Appendix B. Substance Technical Guidelines for 1,3-Butadiene (Non-Mandatory)

(1) Physical and Chemical Data.

(a) Substance identification:

(i) Synonyms: 1,3-Butadiene (BD); butadiene; biethylenic; bivinyl; divinyl; butadiene-1,3; buta-1,3-diene; erythrene; NCI-C50620; CAS-106-99-0.

(ii) Formula: $(CH_2)=CH-CH=CH_2$.

(iii) Molecular weight: 54.1.

(b) Physical data:

(i) Boiling point (760 mm Hg): -4.7 deg. C (23.5 deg. F).

(ii) Specific gravity (water = 1): 0.62 at 20 deg. C (68 deg. F).

(iii) Vapor density (air = 1 at boiling point of BD): 1.87.

(iv) Vapor pressure at 20 deg. C (68 deg. F): 910 mm Hg.

(v) Solubility in water, g/100 g water at 20 deg. C (68 deg. F): 0.05.

(vi) Appearance and odor: Colorless, flammable gas with a mildly aromatic odor. Liquefied BD is a colorless liquid with a mildly aromatic odor.

(2) Fire, Explosion, and Reactivity Hazard Data.

(a) Fire:

(i) Flash point: -76 deg. C (-105 deg. F) for take out; liquefied BD; Not applicable to BD gas.

(ii) Stability: A stabilizer is added to the monomer to inhibit formation of polymer during storage. Forms explosive peroxides in air in absence of inhibitor.

(iii) Flammable limits in air, percent by volume: Lower: 2.0; Upper: 11.5.

(iv) Extinguishing media: Carbon dioxide for small fires, polymer or alcohol foams for large fires.

(v) Special fire fighting procedures: Fight fire from protected location or maximum possible distance. Stop flow of gas before extinguishing fire. Use water spray to keep fire-exposed cylinders cool.

(vi) Unusual fire and explosion hazards: BD vapors are heavier than air and may travel to a source of ignition and flash back. Closed containers may rupture violently when heated.

(vii) For purposes of compliance with the requirements of WAC 296-24-330, BD is classified as a flammable gas. For example, 7,500 ppm, approximately one-fourth of the lower flammable limit, would be considered to pose a potential fire and explosion hazard.

(viii) For purposes of compliance with WAC 296-24-585, BD is classified as a Class B fire hazard.

(ix) For purposes of compliance with WAC 296-24-956 and 296-800-280, locations classified as hazardous due to the presence of BD shall be Class I.

(b) Reactivity:

(i) Conditions contributing to instability: Heat. Peroxides are formed when inhibitor concentration is not maintained at proper level. At elevated temperatures, such as in fire conditions, polymerization may take place.

(ii) Incompatibilities: Contact with strong oxidizing agents may cause fires and explosions. The contacting of crude BD (not BD monomer) with copper and copper alloys may cause formations of explosive copper compounds.

(iii) Hazardous decomposition products: Toxic gases (such as carbon monoxide) may be released in a fire involving BD.

(iv) Special precautions: BD will attack some forms of plastics, rubber, and coatings. BD in storage should be checked for proper inhibitor content, for self-polymerization, and for formation of peroxides when in contact with air and iron. Piping carrying BD may become plugged by formation of rubbery polymer.

(c) Warning Properties:

(i) Odor Threshold: An odor threshold of 0.45 ppm has been reported in The American Industrial Hygiene Association (AIHA) Report, Odor Thresholds for Chemicals with Established Occupational Health Standards. (Ex. 32-28C).

(ii) Eye Irritation Level: Workers exposed to vapors of BD (concentration or purity unspecified) have complained of irritation of eyes, nasal passages, throat, and lungs. Dogs and rabbits exposed experimentally to as much as 6700 ppm for 7 1/2 hours a day for 8 months have developed no histologically demonstrable abnormality of the eyes.

(iii) Evaluation of Warning Properties: Since the mean odor threshold is about half of the 1 ppm PEL, and more than

10-fold below the 5 ppm STEL, most wearers of air purifying respirators should still be able to detect breakthrough before a significant overexposure to BD occurs.

(3) Spill, Leak, and Disposal Procedures.

(a) Persons not wearing protective equipment and clothing should be restricted from areas of spills or leaks until cleanup has been completed. If BD is spilled or leaked, the following steps should be taken:

(i) Eliminate all ignition sources.

(ii) Ventilate areas of spill or leak.

(iii) If in liquid form, for small quantities, allow to evaporate in a safe manner.

(iv) Stop or control the leak if this can be done without risk. If source of leak is a cylinder and the leak cannot be stopped in place, remove the leaking cylinder to a safe place and repair the leak or allow the cylinder to empty.

(b) Disposal: This substance, when discarded or disposed of, is a hazardous waste according to Federal regulations (40 CFR part 261). It is listed by the EPA as hazardous waste number D001 due to its ignitability. The transportation, storage, treatment, and disposal of this waste material must be conducted in compliance with 40 CFR parts 262, 263, 264, 268 and 270. Disposal can occur only in properly permitted facilities. Check state and local regulations for any additional requirements because these may be more restrictive than federal laws and regulations.

(4) Monitoring and Measurement Procedures.

(a) Exposure above the Permissible Exposure Limit (8-hr TWA) or Short-Term Exposure Limit (STEL):

(i) 8-hr TWA exposure evaluation: Measurements taken for the purpose of determining employee exposure under this standard are best taken with consecutive samples covering the full shift. Air samples must be taken in the employee's breathing zone (air that would most nearly represent that inhaled by the employee).

(ii) STEL exposure evaluation: Measurements must represent 15 minute exposures associated with operations most likely to exceed the STEL in each job and on each shift.

(iii) Monitoring frequencies: Table 1 gives various exposure scenarios and their required monitoring frequencies, as required by the final standard for occupational exposure to butadiene.

Table 1. — Five Exposure Scenarios and Their Associated Monitoring Frequencies

Action Level	8-hr TWA	STEL	Required Monitoring Activity
—*	—	—	No 8-hour TWA or STEL monitoring required.
+*	—	—	No STEL monitoring required. Monitor 8-hr TWA annually.
+	—	—	No STEL monitoring required. Periodic monitoring 8-hour TWA, in accordance with (4)(c)(iii).**

PERMANENT

Action Level	8-hr TWA	STEL	Required Monitoring Activity
+	+	+	Periodic monitoring 8-hour TWA, in accordance with (4)(c)(iii)**. Periodic monitoring STEL in accordance with (4)(c)(iii).
+	—	+	Periodic monitoring STEL, in accordance with (4)(c)(iii). Monitor 8-hour TWA annually.

Footnote (*) Exposure Scenario, Limit Exceeded: + = Yes, - =No.
 Footnote (**) The employer may decrease the frequency of exposure monitoring to annually when at least 2 consecutive measurements taken at least 7 days apart show exposures to be below the 8-hour TWA, but at or above the action level.

(iv) Monitoring techniques: Appendix D describes the validated method of sampling and analysis which has been tested by OSHA for use with BD. The employer has the obligation of selecting a monitoring method which meets the accuracy and precision requirements of the standard under his or her unique field conditions. The standard requires that the method of monitoring must be accurate, to a 95 percent confidence level, to plus or minus 25 percent for concentrations of BD at or above 1 ppm, and to plus or minus 35 percent for concentrations below 1 ppm.

(5) Personal Protective Equipment.

(a) Employees should be provided with and required to use impervious clothing, gloves, face shields (eight-inch minimum), and other appropriate protective clothing necessary to prevent the skin from becoming frozen from contact with liquid BD.

(b) Any clothing which becomes wet with liquid BD should be removed immediately and not reworn until the butadiene has evaporated.

(c) Employees should be provided with and required to use splash proof safety goggles where liquid BD may contact the eyes.

(6) Housekeeping and Hygiene Facilities.

For purposes of complying with WAC 296-800-220 and 296-800-230, the following items should be emphasized:

(a) The workplace should be kept clean, orderly, and in a sanitary condition.

(b) Adequate washing facilities with hot and cold water are to be provided and maintained in a sanitary condition.

(7) Additional Precautions.

(a) Store BD in tightly closed containers in a cool, well-ventilated area and take all necessary precautions to avoid any explosion hazard.

(b) Nonsparking tools must be used to open and close metal containers. These containers must be effectively grounded.

(c) Do not incinerate BD cartridges, tanks or other containers.

(d) Employers must advise employees of all areas and operations where exposure to BD might occur.

Appendix C. Medical Screening and Surveillance for 1,3-Butadiene (Nonmandatory)

(1) Basis for Medical Screening and Surveillance Requirements.

(a) Route of Entry Inhalation.

(b) Toxicology.

Inhalation of BD has been linked to an increased risk of cancer, damage to the reproductive organs, and fetotoxicity. Butadiene can be converted via oxidation to epoxybutene and diepoxybutane, two genotoxic metabolites that may play a role in the expression of BD's toxic effects. BD has been tested for carcinogenicity in mice and rats. Both species responded to BD exposure by developing cancer at multiple primary organ sites. Early deaths in mice were caused by malignant lymphomas, primarily lymphocytic type, originating in the thymus.

Mice exposed to BD have developed ovarian or testicular atrophy. Sperm head morphology tests also revealed abnormal sperm in mice exposed to BD; lethal mutations were found in a dominant lethal test. In light of these results in animals, the possibility that BD may adversely affect the reproductive systems of male and female workers must be considered.

Additionally, anemia has been observed in animals exposed to butadiene. In some cases, this anemia appeared to be a primary response to exposure; in other cases, it may have been secondary to a neoplastic response.

(c) Epidemiology.

Epidemiologic evidence demonstrates that BD exposure poses an increased risk of leukemia. Mild alterations of hematologic parameters have also been observed in synthetic rubber workers exposed to BD.

(2) Potential Adverse Health Effects.

(a) Acute.

Skin contact with liquid BD causes characteristic burns or frostbite. BD in gaseous form can irritate the eyes, nasal passages, throat, and lungs. Blurred vision, coughing, and drowsiness may also occur. Effects are mild at 2,000 ppm and pronounced at 8,000 ppm for exposures occurring over the full workshift.

At very high concentrations in air, BD is an anesthetic, causing narcosis, respiratory paralysis, unconsciousness, and death. Such concentrations are unlikely, however, except in an extreme emergency because BD poses an explosion hazard at these levels.

(b) Chronic.

The principal adverse health effects of concern are BD-induced lymphoma, leukemia and potential reproductive toxicity. Anemia and other changes in the peripheral blood cells may be indicators of excessive exposure to BD.

(c) Reproductive.

Workers may be concerned about the possibility that their BD exposure may be affecting their ability to procreate a healthy child. For workers with high exposures to BD, especially those who have experienced difficulties in conceiving, miscarriages, or stillbirths, appropriate medical and laboratory evaluation of fertility may be necessary to determine if BD is having any adverse effect on the reproductive system or on the health of the fetus.

(3) Medical Screening Components At-A-Glance.

(a) Health Questionnaire.

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The most important goal of the health questionnaire is to elicit information from the worker regarding potential signs or symptoms generally related to leukemia or other blood abnormalities. Therefore, physicians or other licensed health care professionals should be aware of the presenting symptoms and signs of lymphohematopoietic disorders and cancers, as well as the procedures necessary to confirm or exclude such diagnoses. Additionally, the health questionnaire will assist with the identification of workers at greatest risk of developing leukemia or adverse reproductive effects from their exposures to BD.

Workers with a history of reproductive difficulties or a personal or family history of immune deficiency syndromes, blood dyscrasias, lymphoma, or leukemia, and those who are or have been exposed to medicinal drugs or chemicals known to affect the hematopoietic or lymphatic systems may be at higher risk from their exposure to BD. After the initial administration, the health questionnaire must be updated annually.

(b) Complete Blood Count (CBC).

The medical screening and surveillance program requires an annual CBC, with differential and platelet count, to be provided for each employee with BD exposure. This test is to be performed on a blood sample obtained by phlebotomy of the venous system or, if technically feasible, from a fingerstick sample of capillary blood. The sample is to be analyzed by an accredited laboratory.

Abnormalities in a CBC may be due to a number of different etiologies. The concern for workers exposed to BD includes, but is not limited to, timely identification of lymphohematopoietic cancers, such as leukemia and non-Hodgkin's lymphoma. Abnormalities of portions of the CBC are identified by comparing an individual's results to those of an established range of normal values for males and females. A substantial change in any individual employee's CBC may also be viewed as "abnormal" for that individual even if all measurements fall within the population-based range of normal values. It is suggested that a flowsheet for laboratory values be included in each employee's medical record so that comparisons and trends in annual CBCs can be easily made.

A determination of the clinical significance of an abnormal CBC shall be the responsibility of the examining physician, other licensed health care professional, or medical specialist to whom the employee is referred. Ideally, an abnormal CBC should be compared to previous CBC measurements for the same employee, when available. Clinical common sense may dictate that a CBC value that is very slightly outside the normal range does not warrant medical concern. A CBC abnormality may also be the result of a temporary physical stressor, such as a transient viral illness, blood donation, or menorrhagia, or laboratory error. In these cases, the CBC should be repeated in a timely fashion, i.e., within 6 weeks, to verify that return to the normal range has occurred. A clinically significant abnormal CBC should result in removal of the employee from further exposure to BD. Transfer of the employee to other work duties in a BD-free environment would be the preferred recommendation.

(c) Physical Examination.

The medical screening and surveillance program requires an initial physical examination for workers exposed

to BD; this examination is repeated once every three years. The initial physical examination should assess each worker's baseline general health and rule out clinical signs of medical conditions that may be caused by or aggravated by occupational BD exposure. The physical examination should be directed at identification of signs of lymphohematopoietic disorders, including lymph node enlargement, splenomegaly, and hepatomegaly.

Repeated physical examinations should update objective clinical findings that could be indicative of interim development of a lymphohematopoietic disorder, such as lymphoma, leukemia, or other blood abnormality. Physical examinations may also be provided on an as needed basis in order to follow up on a positive answer on the health questionnaire, or in response to an abnormal CBC. Physical examination of workers who will no longer be working in jobs with BD exposure are intended to rule out lymphohematopoietic disorders.

The need for physical examinations for workers concerned about adverse reproductive effects from their exposure to BD should be identified by the physician or other licensed health care professional and provided accordingly. For these workers, such consultations and examinations may relate to developmental toxicity and reproductive capacity.

Physical examination of workers acutely exposed to significant levels of BD should be especially directed at the respiratory system, eyes, sinuses, skin, nervous system, and any region associated with particular complaints. If the worker has received a severe acute exposure, hospitalization may be required to assure proper medical management. Since this type of exposure may place workers at greater risk of blood abnormalities, a CBC must be obtained within 48 hours and repeated at one, two, and three months.

Appendix D: Sampling and Analytical Method for 1,3-Butadiene (Nonmandatory)

OSHA Method No.: 56.

Matrix: Air.

Target concentration: 1 ppm (2.21 mg/m³).

Procedure: Air samples are collected by drawing known volumes of air through sampling tubes containing charcoal adsorbent which has been coated with 4-tert-butylcatechol. The samples are desorbed with carbon disulfide and then analyzed by gas chromatography using a flame ionization detector.

Recommended sampling rate and air volume: 0.05 L/min and 3 L.

Detection limit of the overall procedure: 90 ppb (200 ug/m³) (based on 3 L air volume).

Reliable quantitation limit: 155 ppb (343 ug/m³) (based on 3 L air volume).

Standard error of estimate at the target concentration: 6.5%.

Special requirements: The sampling tubes must be coated with 4-tert-butylcatechol. Collected samples should be stored in a freezer.

Status of method: A sampling and analytical method has been subjected to the established evaluation procedures of the Organic Methods Evaluation Branch, OSHA Analytical Laboratory, Salt Lake City, Utah 84165.

(1) Background.

This work was undertaken to develop a sampling and analytical procedure for BD at 1 ppm. The current method recommended by OSHA for collecting BD uses activated coconut shell charcoal as the sampling medium (Ref. 5.2). This method was found to be inadequate for use at low BD levels because of sample instability.

The stability of samples has been significantly improved through the use of a specially cleaned charcoal which is coated with 4-tert-butylcatechol (TBC). TBC is a polymerization inhibitor for BD (Ref. 5.3).

(a) Toxic effects.

Symptoms of human exposure to BD include irritation of the eyes, nose and throat. It can also cause coughing, drowsiness and fatigue. Dermatitis and frostbite can result from skin exposure to liquid BD. (Ref. 5.1)

NIOSH recommends that BD be handled in the workplace as a potential occupational carcinogen. This recommendation is based on two inhalation studies that resulted in cancers at multiple sites in rats and in mice. BD has also demonstrated mutagenic activity in the presence of a liver microsomal activating system. It has also been reported to have adverse reproductive effects. (Ref. 5.1)

(b) Potential workplace exposure.

About 90% of the annual production of BD is used to manufacture styrene-butadiene rubber and Polybutadiene rubber. Other uses include: Polychloroprene rubber, acrylonitrile butadiene-styrene resins, nylon intermediates, styrene-butadiene latexes, butadiene polymers, thermoplastic elastomers, nitrile resins, methyl methacrylate-butadiene styrene resins and chemical intermediates. (Ref. 5.1)

(c) Physical properties (Ref. 5.1).

CAS No.: 106-99-0

Molecular weight: 54.1

Appearance: Colorless gas

Boiling point: -4.41 deg. C (760 mm Hg)

Freezing point: -108.9 deg. C

Vapor pressure: 2 atm (a) 15.3 deg. C; 5 atm (a) 47 deg. C

Explosive limits: 2 to 11.5% (by volume in air)

Odor threshold: 0.45 ppm

Structural formula: H(2)C:CHCH:CH(2)

Synonyms: BD; biethylene; divinyl; butadiene; divinyl; buta-1,3-diene; alpha-gamma-butadiene; erythrene; NCI-C50602; pyrrolylene; vinylethylene.

(d) Limit defining parameters.

The analyte air concentrations listed throughout this method are based on an air volume of 3 L and a desorption volume of 1 mL. Air concentrations listed in ppm are referenced to 25 deg. C and 760 mm Hg.

(e) Detection limit of the analytical procedure.

The detection limit of the analytical procedure was 304 pg per injection. This was the amount of BD which gave a response relative to the interferences present in a standard.

(f) Detection limit of the overall procedure.

The detection limit of the overall procedure was 0.60 ug per sample (90 ppb or 200 ug/m(3)). This amount was determined graphically. It was the amount of analyte which, when spiked on the sampling device, would allow recovery approximately equal to the detection limit of the analytical procedure.

(g) Reliable quantitation limit.

The reliable quantitation limit was 1.03 ug per sample (155 ppb or 343 ug/m(3)). This was the smallest amount of analyte which could be quantitated within the limits of a recovery of at least 75% and a precision (+/- 1.96 SD) of +/- 25% or better.

(h) Sensitivity.(1)

Footnote (1) The reliable quantitation limit and detection limits reported in the method are based upon optimization of the instrument for the smallest possible amount of analyte. When the target concentration of an analyte is exceptionally higher than these limits, they may not be attainable at the routine operation parameters.

The sensitivity of the analytical procedure over a concentration range representing 0.6 to 2 times the target concentration, based on the recommended air volume, was 387 area units per ug/mL. This value was determined from the slope of the calibration curve. The sensitivity may vary with the particular instrument used in the analysis.

(i) Recovery.

The recovery of BD from samples used in storage tests remained above 77% when the samples were stored at ambient temperature and above 94% when the samples were stored at refrigerated temperature. These values were determined from regression lines which were calculated from the storage data. The recovery of the analyte from the collection device must be at least 75% following storage.

(j) Precision (analytical method only).

The pooled coefficient of variation obtained from replicate determinations of analytical standards over the range of 0.6 to 2 times the target concentration was 0.011.

(k) Precision (overall procedure).

The precision at the 95% confidence level for the refrigerated temperature storage test was +/- 12.7%. This value includes an additional +/- 5% for sampling error. The overall procedure must provide results at the target concentrations that are +/- 25% at the 95% confidence level.

(l) Reproducibility.

Samples collected from a controlled test atmosphere and a draft copy of this procedure were given to a chemist unassociated with this evaluation. The average recovery was 97.2% and the standard deviation was 6.2%.

(2) Sampling procedure.

(a) Apparatus. Samples are collected by use of a personal sampling pump that can be calibrated to within +/- 5% of the recommended 0.05 L/min sampling rate with the sampling tube in line.

(b) Samples are collected with laboratory prepared sampling tubes. The sampling tube is constructed of silane-treated glass and is about 5-cm long. The ID is 4 mm and the OD is 6 mm. One end of the tube is tapered so that a glass wool end plug will hold the contents of the tube in place during sampling. The opening in the tapered end of the sampling tube is at least one-half the ID of the tube (2 mm). The other end of the sampling tube is open to its full 4-mm ID to facilitate packing of the tube. Both ends of the tube are fire-polished for safety. The tube is packed with 2 sections of pre-treated charcoal which has been coated with TBC. The tube is packed with a 50-mg backup section, located nearest the tapered end, and with a 100-mg sampling section of charcoal. The two sections of coated adsorbent are separated and

retained with small plugs of silanized glass wool. Following packing, the sampling tubes are sealed with two 7/32 inch OD plastic end caps. Instructions for the pretreatment and coating of the charcoal are presented in Section 4.1 of this method.

(c) Reagents.

None required.

(d) Technique.

(i) Properly label the sampling tube before sampling and then remove the plastic end caps.

(ii) Attach the sampling tube to the pump using a section of flexible plastic tubing such that the larger front section of the sampling tube is exposed directly to the atmosphere. Do not place any tubing ahead of the sampling tube. The sampling tube should be attached in the worker's breathing zone in a vertical manner such that it does not impede work performance.

(iii) After sampling for the appropriate time, remove the sampling tube from the pump and then seal the tube with plastic end caps. Wrap the tube lengthwise.

(iv) Include at least one blank for each sampling set. The blank should be handled in the same manner as the samples with the exception that air is not drawn through it.

(v) List any potential interferences on the sample data sheet.

(vi) The samples require no special shipping precautions under normal conditions. The samples should be refrigerated if they are to be exposed to higher than normal ambient temperatures. If the samples are to be stored before they are shipped to the laboratory, they should be kept in a freezer. The samples should be placed in a freezer upon receipt at the laboratory.

(e) Breakthrough.

(Breakthrough was defined as the relative amount of analyte found on the backup section of the tube in relation to the total amount of analyte collected on the sampling tube. Five-percent breakthrough occurred after sampling a test atmosphere containing 2.0 ppm BD for 90 min. at 0.05 L/min. At the end of this time 4.5 L of air had been sampled and 20.1 ug of the analyte was collected. The relative humidity of the sampled air was 80% at 23 deg. C.)

Breakthrough studies have shown that the recommended sampling procedure can be used at air concentrations higher than the target concentration. The sampling time, however, should be reduced to 45 min. if both the expected BD level and the relative humidity of the sampled air are high.

(f) Desorption efficiency.

The average desorption efficiency for BD from TBC coated charcoal over the range from 0.6 to 2 times the target concentration was 96.4%. The efficiency was essentially constant over the range studied.

(g) Recommended air volume and sampling rate.

(h) The recommended air volume is 3 L.

(i) The recommended sampling rate is 0.05 L/min. for 1 hour.

(j) Interferences.

There are no known interferences to the sampling method.

(k) Safety precautions.

(i) Attach the sampling equipment to the worker in such a manner that it will not interfere with work performance or safety.

(ii) Follow all safety practices that apply to the work area being sampled.

(3) Analytical procedure.

(a) Apparatus.

(i) A gas chromatograph (GC), equipped with a flame ionization detector (FID).(2)

Footnote (2) A Hewlett-Packard Model 5840A GC was used for this evaluation. Injections were performed using a Hewlett-Packard Model 7671A automatic sampler.

(ii) A GC column capable of resolving the analytes from any interference.(3)

Footnote (3) A 20-ft x 1/8-inch OD stainless steel GC column containing 20% FFAP on 80/100 mesh Chromabsorb W-AW-DMCS was used for this evaluation.

(iii) Vials, glass 2-mL with Teflon-lined caps.

(iv) Disposable Pasteur-type pipets, volumetric flasks, pipets and syringes for preparing samples and standards, making dilutions and performing injections.

(b) Reagents.

(i) Carbon disulfide.(4)

Footnote (4) Fisher Scientific Company A.C.S. Reagent Grade solvent was used in this evaluation.

The benzene contaminant that was present in the carbon disulfide was used as an internal standard (ISTD) in this evaluation.

(ii) Nitrogen, hydrogen and air, GC grade.

(iii) BD of known high purity.(5)

Footnote (5) Matheson Gas Products, CP Grade 1,3-butadiene was used in this study.

(c) Standard preparation.

(i) Prepare standards by diluting known volumes of BD gas with carbon disulfide. This can be accomplished by injecting the appropriate volume of BD into the headspace above the 1-mL of carbon disulfide contained in sealed 2-mL vial. Shake the vial after the needle is removed from the septum.(6)

Footnote (6) A standard containing 7.71 ug/mL (at ambient temperature and pressure) was prepared by diluting 4 uL of the gas with 1-mL of carbon disulfide.

(ii) The mass of BD gas used to prepare standards can be determined by use of the following equations:

$$MV = (760/BP)(273+t)/(273)(22.41)$$

Where:

MV = ambient molar volume

BP = ambient barometric pressure

T = ambient temperature

ug/uL = 54.09/MV

ug/standard = (ug/uL)(uL) BD used to prepare the standard

(d) Sample preparation.

(i) Transfer the 100-mg section of the sampling tube to a 2-mL vial. Place the 50-mg section in a separate vial. If the glass wool plugs contain a significant amount of charcoal, place them with the appropriate sampling tube section.

(ii) Add 1-mL of carbon disulfide to each vial.

(iii) Seal the vials with Teflon-lined caps and then allow them to desorb for one hour. Shake the vials by hand vigorously several times during the desorption period.

(iv) If it is not possible to analyze the samples within 4 hours, separate the carbon disulfide from the charcoal, using a disposable Pasteur-type pipet, following the one hour. This separation will improve the stability of desorbed samples.

(v) Save the used sampling tubes to be cleaned and repacked with fresh adsorbent.

(e) Analysis.

(i) GC Conditions.

Column temperature: 95 deg. C

Injector temperature: 180 deg. C

Detector temperature: 275 deg. C

Carrier gas flow rate: 30 mL/min.

Injection volume: 0.80 uL

GC column: 20-ft x 1/8-in OD stainless steel GC column containing 20%

FFAP on 80/100 Chromabsorb W-AW-DMCS.

(ii) Chromatogram. See Section 4.2.

(iii) Use a suitable method, such as electronic or peak heights, to measure detector response.

(iv) Prepare a calibration curve using several standard solutions of different concentrations. Prepare the calibration curve daily. Program the integrator to report the results in ug/mL.

(v) Bracket sample concentrations with standards.

(f) Interferences (analytical).

(i) Any compound with the same general retention time as the analyte and which also gives a detector response is a potential interference. Possible interferences should be reported by the industrial hygienist to the laboratory with submitted samples.

(ii) GC parameters (temperature, column, etc.) may be changed to circumvent interferences.

(iii) A useful means of structure designation is GC/MS. It is recommended that this procedure be used to confirm samples whenever possible.

(g) Calculations.

(i) Results are obtained by use of calibration curves. Calibration curves are prepared by plotting detector response against concentration for each standard. The best line through the data points is determined by curve fitting.

(ii) The concentration, in ug/mL, for a particular sample is determined by comparing its detector response to the calibration curve. If any analyte is found on the backup section, this amount is added to the amount found on the front section. Blank corrections should be performed before adding the results together.

(iii) The BD air concentration can be expressed using the following equation:

$$\text{mg/m}(3) = (A)(B)/(C)(D)$$

Where:

A = ug/mL from Section 3.7.2

B = volume

C = L of air sampled

D = efficiency

(iv) The following equation can be used to convert results in mg/m(3) to ppm:

$$\text{ppm} = (\text{mg/m}(3))(24.46)/54.09$$

Where:

mg/m(3) = result from Section 3.7.3.

24.46 = molar volume of an ideal gas at 760 mm Hg and 25 deg. C.

(h) Safety precautions (analytical).

(i) Avoid skin contact and inhalation of all chemicals.

(ii) Restrict the use of all chemicals to a fume hood whenever possible.

(iii) Wear safety glasses and a lab coat in all laboratory areas.

(4) Additional Information.

(a) A procedure to prepare specially cleaned charcoal coated with TBC.

(i) Apparatus.

(A) Magnetic stirrer and stir bar.

(B) Tube furnace capable of maintaining a temperature of 700 deg. C and equipped with a quartz tube that can hold 30 g of charcoal.(8)

Footnote (8) A Lindberg Type 55035 Tube furnace was used in this evaluation.

(C) A means to purge nitrogen gas through the charcoal inside the quartz tube.

(D) Water bath capable of maintaining a temperature of 60 deg. C.

(E) Miscellaneous laboratory equipment: One-liter vacuum flask, 1-L Erlenmeyer flask, 350-M1 Buchner funnel with a coarse fitted disc, 4-oz brown bottle, rubber stopper, Teflon tape etc.

(ii) Reagents.

(A) Phosphoric acid, 10% by weight, in water.(9)

Footnote (9) Baker Analyzed Reagent grade was diluted with water for use in this evaluation.

(B) 4-tert-Butylcatechol (TBC).(10)

Footnote (10) The Aldrich Chemical Company 99% grade was used in this evaluation.

(C) Specially cleaned coconut shell charcoal, 20/40 mesh.(11)

Footnote (11) Specially cleaned charcoal was obtained from Supelco, Inc. for use in this evaluation. The cleaning process used by Supelco is proprietary.

(D) Nitrogen gas, GC grade.

(iii) Procedure.

Weigh 30g of charcoal into a 500-mL Erlenmeyer flask. Add about 250 mL of 10% phosphoric acid to the flask and then swirl the mixture. Stir the mixture for 1 hour using a magnetic stirrer. Filter the mixture using a fitted Buchner funnel. Wash the charcoal several times with 250-mL portions of deionized water to remove all traces of the acid. Transfer the washed charcoal to the tube furnace quartz tube. Place the quartz tube in the furnace and then connect the nitrogen gas purge to the tube. Fire the charcoal to 700 deg. C. Maintain that temperature for at least 1 hour. After the charcoal has cooled to room temperature, transfer it to a tared beaker. Determine the weight of the charcoal and then add an amount of TBC which is 10% of the charcoal, by weight.

CAUTION-TBC is toxic and should only be handled in a fume hood while wearing gloves.

Carefully mix the contents of the beaker and then transfer the mixture to a 4-oz bottle. Stopper the bottle with a clean rubber stopper which has been wrapped with Teflon tape. Clamp the bottle in a water bath so that the water level is above the charcoal level. Gently heat the bath to 60 deg. C

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and then maintain that temperature for 1 hour. Cool the charcoal to room temperature and then transfer the coated charcoal to a suitable container.

The coated charcoal is now ready to be packed into sampling tubes. The sampling tubes should be stored in a sealed container to prevent contamination. Sampling tubes should be stored in the dark at room temperature. The sampling tubes should be segregated by coated adsorbent lot number.

(b) Chromatograms.

The chromatograms were obtained using the recommended analytical method. The chart speed was set at 1 cm/min. for the first three min. and then at 0.2 cm/min. for the time remaining in the analysis.

The peak which elutes just before BD is a reaction product between an impurity on the charcoal and TBC. This peak is always present, but it is easily resolved from the analyte. The peak which elutes immediately before benzene is an oxidation product of TBC.

(5) References.

(a) "Current Intelligence Bulletin 41, 1,3-Butadiene", U.S. Dept. of Health and Human Services, Public Health Service, Center for Disease Control, NIOSH.

(b) "NIOSH Manual of Analytical Methods", 2nd ed.; U.S. Dept. of Health Education and Welfare, National Institute for Occupational Safety and Health: Cincinnati, OH. 1977, Vol. 2, Method No. S91 DHEW (NIOSH) Publ. (U.S.), No. 77-157-B.

(c) Hawley, G.C., Ed. "The Condensed Chemical Dictionary", 8th ed.; Van Nostrand Rienhold Company: New York, 1971; 139.5.4. Chem. Eng. News (June 10, 1985), (63), 22-66.

Appendix E: Reserved.

APPENDIX F, MEDICAL QUESTIONNAIRES, (Non-mandatory)

1,3-Butadiene (BD) Initial Health Questionnaire

DIRECTIONS:

You have been asked to answer the questions on this form because you work with BD (butadiene). These questions are about your work, medical history, and health concerns. Please do your best to answer all of the questions. If you need help, please tell the doctor or health care professional who reviews this form.

This form is a confidential medical record. Only information directly related to your health and safety on the job may be given to your employer. Personal health information will not be given to anyone without your consent.

Date: _____
Name: _____ SSN ___/___/___
Last First MI

Job Title: _____
Company's Name: _____
Supervisor's Name: _____
Supervisor's Phone No.: () _____

Work History

1. Please list all jobs you have had in the past, starting with the job you have now and moving back in time to your first job. (For more space, write on the back of this page.)

Main Job Duty
Year
Company Name
City, State

Chemicals

- 1.
2.
3.
4.
5.
6.
7.
8.

2. Please describe what you do during a typical work day. Be sure to tell about your work with BD.

3. Please check any of these chemicals that you work with now or have worked with in the past:

- benzene
glues
toluene
inks, dyes
other solvents, grease cutters
insecticides (like DDT, lindane, etc.)
paints, varnishes, thinners, strippers
dusts
carbon tetrachloride ("carbon tet")
arsine
carbon disulfide
lead
cement
petroleum products
nitrites

4. Please check the protective clothing or equipment you use at the job you have now:

- gloves
coveralls
respirator
dust mask
safety glasses, goggles

Please circle your answer.

5. Does your protective clothing or equipment fit you properly? yes no

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6. Have you ever made changes in your protective clothing or equipment to make it fit better? yes no

7. Have you been exposed to BD when you were not wearing protective clothing or equipment? yes no

8. Where do you eat, drink and/or smoke when you are at work? (Please check all that apply.)

- Cafeteria/restaurant/snack bar _____
- Break room/employee lounge _____
- Smoking lounge _____
- At my work station _____

Please circle your answer.

9. Have you been exposed to radiation (like x-rays or nuclear material) at the job you have now or at past jobs? yes no

10. Do you have any hobbies that expose you to dusts or chemicals (including paints, glues, etc.)? yes no

11. Do you have any second or side jobs? yes no
If yes, what are your duties there?

12. Were you in the military? yes no

If yes, what did you do in the military? _____

Family Health History

1. In the FAMILY MEMBER column, across from the disease name, write which family member, if any, had the disease.

DISEASE	FAMILY MEMBER
Cancer	
Lymphoma	
Sickle Cell Disease or Trait	
Immune Disease	
Leukemia	
Anemia	

2. Please fill in the following information about family health

- Relative
- Alive?
- Age at Death?
- Cause of Death?
- Father
- Mother
- Brother/Sister
- Brother/Sister
- Brother/Sister

Personal Health History

Birth Date ___/___/___ Age ___ Sex ___ Height ___ Weight ___

Please circle your answer.

1. Do you smoke any tobacco products? yes no

2. Have you ever had any kind of surgery or operation? yes no

If yes, what type of surgery:

3. Have you ever been in the hospital for any other reasons? yes no

If yes, please describe the reason _____

4. Do you have any on-going or current medical problems or conditions? yes no

If yes, please describe: _____

5. Do you now have or have you ever had any of the following? Please check all that apply to you.

- unexplained fever _____
- anemia ("low blood") _____
- HIV/AIDS _____
- weakness _____
- sickle cell _____
- miscarriage _____
- skin rash _____
- bloody stools _____
- leukemia/lymphoma _____
- neck mass/swelling _____
- wheezing _____
- yellowing of skin _____
- bruising easily _____
- lupus _____
- weight loss _____
- kidney problems _____
- enlarged lymph nodes _____
- liver disease _____
- cancer _____
- infertility _____
- drinking problems _____
- thyroid problems _____
- night sweats _____
- chest pain _____
- still birth _____
- eye redness _____
- lumps you can feel _____

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- child with birth defect _____
- autoimmune disease _____
- overly tired _____
- lung problems _____
- rheumatoid arthritis _____
- mononucleosis ("mono") _____
- nagging cough _____

Please circle your answer.

6. Do you have any symptoms or health problems that you think may be related to your work with BD? yes no

If yes, please describe: _____

7. Have any of your co-workers had similar symptoms or problems? yes no don't know

If yes, please describe: _____

8. Do you notice any irritation of your eyes, nose, throat, lungs, or skin when working with BD? yes no

9. Do you notice any blurred vision, coughing, drowsiness, nausea, or headache when working with BD? yes no

10. Do you take any medications (including birth control or over-the-counter)? yes no

If yes, please list: _____

11. Are you allergic to any medication, food, or chemicals? yes no

If yes, please list: _____

12. Do you have any health conditions not covered by this questionnaire that you think are affected by your work with BD? yes no

If yes, please explain: _____

13. Did you understand all the questions? yes no

Signature _____

1,3-Butadiene (BD) Health Update Questionnaire

DIRECTIONS:

You have been asked to answer the questions on this form because you work with BD (butadiene). These questions are about your work, medical history, and health concerns. Please do your best to answer all of the questions. If you need help, please tell the doctor or health care professional who reviews this form.

This form is a confidential medical record. Only information directly related to your health and safety on the job may be given to your employer. Personal health information will not be given to anyone without your consent.

Date: _____
Name: _____ SSN ___/___/___
Last First MI

Job Title: _____

Company's Name: _____

Supervisor's Name: _____

Supervisor's Phone No.: () _____ - _____

1. Please describe any NEW duties that you have at your job. _____

2. Please describe any additional job duties you have:

_____	_____
_____	_____
_____	_____

Please circle your answer.

3. Are you exposed to any other chemicals in your work since the last time you were evaluated for exposure to BD? yes no

If yes, please list what they are: _____

4. Does your personal protective equipment and clothing fit you properly? yes no

5. Have you made changes in this equipment or clothing to make it fit better? yes no

6. Have you been exposed to BD when you were not wearing protective clothing or equipment? yes no

7. Are you exposed to any NEW chemicals at home or while working on hobbies? yes no

If yes, please list what they are: _____

8. Since your last BD health evaluation, have you started working any new second or side jobs? yes no

If yes, what are your duties there? _____

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Personal Health History

1. What is your current weight? pounds
2. Have you been diagnosed with any new medical conditions or illness since your last evaluation? yesno

If yes, please tell what they are: _____

3. Since your last evaluation, have you been in the hospital for any illnesses, injuries, or surgery? yes no

If yes, please describe: _____

4. Do you have any of the following? Please place a check for all that apply to you.

- unexplained fever
anemia ("low blood")
HIV/AIDS
weakness
sickle cell
miscarriage
skin rash
bloody stools
leukemia/lymphoma
neck mass/swelling
wheezing
yellowing of skin
bruising easily
lupus
weight loss
kidney problems
enlarged lymph nodes
liver disease
cancer
infertility
drinking problems
thyroid problems
night sweats
chest pain
still birth
eye redness
lumps you can feel
child with birth defect
autoimmune disease
overly tired
lung problems
rheumatoid arthritis
mononucleosis ("mono")
nagging cough

Please circle your answer.

5. Do you have any symptoms or health problems that you think may be related to your work with BD? yes no

If yes, please describe: _____

6. Have any of your co-workers had similar symptoms or problems? yes no don't know

If yes, please describe: _____

7. Do you notice any irritation of your eyes, nose, throat, lungs, or skin when working with BD? yes no

8. Do you notice any blurred vision, coughing, drowsiness, nausea, or headache when working with BD? yes no

9. Have you been taking any NEW medications (including birth control or over-the-counter)? yes no

If yes, please list:

10. Have you developed any new allergies to medications, foods, or chemicals? yes no

If yes, please list:

11. Do you have any health conditions not covered by this questionnaire that you think are affected by your work with BD? yes no

If yes, please explain: _____

12. Do you understand all the questions? yes no

Signature _____

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

WAC 296-62-07521 Lead. (1) Scope and application.

(a) This section applies to all occupational exposure to lead, except as provided in subdivision (1)(b).

(b) This section does not apply to the construction industry or to agricultural operations covered by chapter 296-307 WAC.

(2) Definitions as applicable to this part.

(a) "Action level" - employee exposure, without regard to the use of respirators, to an airborne concentration of lead of thirty micrograms per cubic meter of air (30 µg/m³) averaged over an eight-hour period.

(b) "Director" - the director of the department of labor and industries.

(c) "Lead" - metallic lead, all inorganic lead compounds, and organic lead soaps. Excluded from this definition are all other organic lead compounds.

(3) General requirements.

(a) Employers will assess the hazards of lead in the work place and provide information to the employees about the hazards of the lead exposures to which they may be exposed.

(b) Information provided shall include:

(i) Exposure monitoring (including employee notification);

(ii) Written compliance programs;

(iii) Respiratory protection programs;

(iv) Personnel protective equipment and housekeeping;

(v) Medical surveillance and examinations;

(vi) Training requirements;

(vii) Recordkeeping requirements.

(4) Permissible exposure limit (PEL).

(a) The employer shall assure that no employee is exposed to lead at concentrations greater than fifty micrograms per cubic meter of air ($50 \mu\text{g}/\text{m}^3$) averaged over an eight-hour period.

(b) If an employee is exposed to lead for more than eight hours in any work day, the permissible exposure limit, as a time weighted average (TWA) for that day, shall be reduced according to the following formula:

$$\text{Maximum permissible limit (in } \mu\text{g}/\text{m}^3) = 400 \div \text{hours worked in the day.}$$

(c) When respirators are used to supplement engineering and work practice controls to comply with the PEL and all the requirements of subsection (7) have been met, employee exposure, for the purpose of determining whether the employer has complied with the PEL, may be considered to be at the level provided by the protection factor of the respirator for those periods the respirator is worn. Those periods may be averaged with exposure levels during periods when respirators are not worn to determine the employee's daily TWA exposure.

(5) Exposure monitoring.

(a) General.

(i) For the purposes of subsection (5), employee exposure is that exposure which would occur if the employee were not using a respirator.

(ii) With the exception of monitoring under subdivision (5)(c), the employer shall collect full shift (for at least seven continuous hours) personal samples including at least one sample for each shift for each job classification in each work area.

(iii) Full shift personal samples shall be representative of the monitored employee's regular, daily exposure to lead.

(b) Initial determination. Each employer who has a workplace or work operation covered by this standard shall determine if any employee may be exposed to lead at or above the action level.

(c) Basis of initial determination.

(i) The employer shall monitor employee exposures and shall base initial determinations on the employee exposure monitoring results and any of the following, relevant considerations:

(A) Any information, observations, or calculations which would indicate employee exposure to lead;

(B) Any previous measurements of airborne lead; and

(C) Any employee complaints of symptoms which may be attributable to exposure to lead.

(ii) Monitoring for the initial determination may be limited to a representative sample of the exposed employees who the employer reasonably believes are exposed to the greatest airborne concentrations of lead in the workplace.

(iii) Measurements of airborne lead made in the preceding twelve months may be used to satisfy the requirement to monitor under item (5)(c)(i) if the sampling and analytical methods used meet the accuracy and confidence levels of subdivision (5)(i) of this section.

(d) Positive initial determination and initial monitoring.

(i) Where a determination conducted under subdivision (5)(b) and (5)(c) of this section shows the possibility of any employee exposure at or above the action level, the employer shall conduct monitoring which is representative of the exposure for each employee in the workplace who is exposed to lead.

(ii) Measurements of airborne lead made in the preceding twelve months may be used to satisfy this requirement if the sampling and analytical methods used meet the accuracy and confidence levels of subdivision (5)(i) of this section.

(e) Negative initial determination. Where a determination, conducted under subdivisions (5)(b) and (5)(c) of this section is made that no employee is exposed to airborne concentrations of lead at or above the action level, the employer shall make a written record of such determination. The record shall include at least the information specified in subdivision (5)(c) of this section and shall also include the date of determination, location within the worksite, and the name and social security number of each employee monitored.

(f) Frequency.

(i) If the initial monitoring reveals employee exposure to be below the action level the measurements need not be repeated except as otherwise provided in subdivision (5)(g) of this section.

(ii) If the initial determination or subsequent monitoring reveals employee exposure to be at or above the action level but below the permissible exposure limit the employer shall repeat monitoring in accordance with this subsection at least every six months. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least seven days apart, are below the action level at which time the employer may discontinue monitoring for that employee except as otherwise provided in subdivision (5)(g) of this section.

(iii) If the initial monitoring reveals that employee exposure is above the permissible exposure limit the employer shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least seven days apart, are below the PEL but at or above the action level at which time the employer shall repeat monitoring for that employee at the frequency specified in item (5)(f)(ii), except as otherwise provided in subdivision (5)(g) of this section.

(g) Additional monitoring. Whenever there has been a production, process, control or personnel change which may

result in new or additional exposure to lead, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to lead, additional monitoring in accordance with this subsection shall be conducted.

(h) Employee notification.

(i) Within five working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposure.

(ii) Whenever the results indicate that the representative employee exposure, without regard to respirators, exceeds the permissible exposure limit, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action taken or to be taken to reduce exposure to or below the permissible exposure limit.

(i) Accuracy of measurement. The employer shall use a method of monitoring and analysis which has an accuracy (to a confidence level of ninety-five percent) of not less than plus or minus twenty percent for airborne concentrations of lead equal to or greater than 30 µg/m³.

(6) Methods of compliance.

(a) Engineering and work practice controls.

(i) Where any employee is exposed to lead above the permissible exposure limit for more than thirty days per year, the employer shall implement engineering and work practice controls (including administrative controls) to reduce and maintain employee exposure to lead in accordance with the implementation schedule in Table I below, except to the extent that the employer can demonstrate that such controls are not feasible. Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposure to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest feasible level and shall supplement them by the use of respiratory protection which complies with the requirements of subsection (7) of this section.

(ii) Where any employee is exposed to lead above the permissible exposure limit, but for thirty days or less per year, the employer shall implement engineering controls to reduce exposures to 200 µg/m³, but thereafter may implement any combination of engineering, work practice (including administrative controls), and respiratory controls to reduce and maintain employee exposure to lead to or below 50 µg/m³.

TABLE 1

Industry	Compliance dates: ¹ (50 µg/m ³)
Lead chemicals, secondary copper smelting.	July 19, 1996
Nonferrous foundries	July 19, 1996. ²
Brass and bronze ingot manufacture.	6 years. ³

¹ Calculated by counting from the date the stay on implementation of subsection (6)(a) was lifted by the U.S. Court of Appeals for the District of Columbia, the number of years specified in the 1978 lead standard and subsequent amendments for compliance

with the PEL of 50 µg/m³ for exposure to airborne concentrations of lead levels for the particular industry.

² Large nonferrous foundries (20 or more employees) are required to achieve the PEL of 50 µg/m³ by means of engineering and work practice controls. Small nonferrous foundries (fewer than 20 employees) are required to achieve an 8-hour TWA of 75 µg/m³ by such controls.

³ Expressed as the number of years from the date on which the Court lifts the stay on the implementation of subsection (6)(a) for this industry for employers to achieve a lead in air concentration of 75 µg/m³. Compliance with subsection (6) in this industry is determined by a compliance directive that incorporates elements from the settlement agreement between OSHA and representatives of the industry.

(b) Respiratory protection. Where engineering and work practice controls do not reduce employee exposure to or below the 50 µg/m³ permissible exposure limit, the employer shall supplement these controls with respirators in accordance with subsection (7).

(c) Compliance program.

(i) Each employer shall establish and implement a written compliance program to reduce exposures to or below the permissible exposure limit, and interim levels if applicable, solely by means of engineering and work practice controls in accordance with the implementation schedule in subdivision (6)(a).

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation in which lead is emitted; e.g., machinery used, material processed, controls in place, crew size, employee job responsibilities, operating procedures and maintenance practices;

(B) A description of the specific means that will be employed to achieve compliance, including engineering plans and studies used to determine methods selected for controlling exposure to lead;

(C) A report of the technology considered in meeting the permissible exposure limit;

(D) Air monitoring data which documents the source of lead emissions;

(E) A detailed schedule for implementation of the program, including documentation such as copies of purchase orders for equipment, construction contracts, etc.;

(F) A work practice program which includes items required under subsections (8), (9) and (10) of this regulation;

(G) An administrative control schedule required by subdivision (6)(f), if applicable; and

(H) Other relevant information.

(iii) Written programs shall be submitted upon request to the director, and shall be available at the worksite for examination and copying by the director, any affected employee or authorized employee representatives.

(iv) Written programs shall be revised and updated at least every six months to reflect the current status of the program.

(d) Mechanical ventilation.

(i) When ventilation is used to control exposure, measurements which demonstrate the effectiveness of the system in controlling exposure, such as capture velocity, duct velocity, or static pressure shall be made at least every three months. Measurements of the system's effectiveness in con-

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trolling exposure shall be made within five days of any change in production, process, or control which might result in a change in employee exposure to lead.

(ii) Recirculation of air. If air from exhaust ventilation is recirculated into the workplace, the employer shall assure that (A) the system has a high efficiency filter with reliable back-up filter; and (B) controls to monitor the concentration of lead in the return air and to bypass the recirculation system automatically if it fails are installed, operating, and maintained.

(e) Administrative controls. If administrative controls are used as a means of reducing employees TWA exposure to lead, the employer shall establish and implement a job rotation schedule which includes:

(i) Name or identification number of each affected employee;

(ii) Duration and exposure levels at each job or work station where each affected employee is located; and

(iii) Any other information which may be useful in assessing the reliability of administrative controls to reduce exposure to lead.

(7) Respiratory protection.

(a) General. For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of this subsection. Respirators must be used during:

(i) Period necessary to install or implement engineering or work-practice controls;

(ii) Work operations for which engineering and work-practice controls are not sufficient to reduce exposures to or below the permissible exposure limit;

(iii) Periods when an employee requests a respirator.

(b) Respirator program.

(i) The employer must implement a respiratory protection program as required by chapter ~~((296-62 WAC, Part E (except WAC 296-62-07130(1) and 296-62-07150 through 296-62-07156)))~~ 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(ii) If an employee has breathing difficulty during fit testing or respirator use, the employer must provide the employee with a medical examination as required by subsection (11)(c)(ii)(C) of this section to determine whether or not the employee can use a respirator while performing the required duty.

(c) Respirator selection.

(i) The employer must select the appropriate respirator or combination of respirators from Table II of this section.

(ii) The employer must provide a powered air-purifying respirator instead of the respirator specified in Table II of this section when an employee chooses to use this type of respirator and that such a respirator provides adequate protection to the employee.

TABLE II

RESPIRATORY PROTECTION FOR LEAD AEROSOLS

Airborne Concentration of Lead or Condition of Use	Required Respirator ¹
Not in excess of 0.5 mg/m ³ (10X PEL).	Half-mask, air-purifying respirator equipped with high efficiency filters. ^{2,3}

TABLE II

RESPIRATORY PROTECTION FOR LEAD AEROSOLS

Airborne Concentration of Lead or Condition of Use	Required Respirator ¹
Not in excess of 2.5 mg/m ³ (50X PEL).	Full facepiece, air-purifying respirator with high efficiency filters. ³
Not in excess of 50 mg/m ³ (1000X PEL).	(1) Any powered, air-purifying respirator with high efficiency filters ³ ; or (2) Half-mask supplied-air respirator operated in positive-pressure mode. ²
Not in excess of 100 mg/m ³ (2000X PEL).	Supplied-air respirators with full facepiece, hood, helmet, or suit, operated in positive pressure mode.
Greater than 100 mg/m ³ , unknown concentration or fire fighting.	Full facepiece, self-contained breathing apparatus operated in positive-pressure mode.

Note: ¹ Respirators specified for high concentrations can be used at lower concentrations of lead.

² Full facepiece is required if the lead aerosols cause eye or skin irritation at the use concentrations.

³ A high efficiency particulate filter means 99.97 percent efficient against 0.3 micron size particles.

(8) Protective work clothing and equipment.

(a) Provision and use. If an employee is exposed to lead above the PEL, without regard to the use of respirators or where the possibility of skin or eye irritation exists, the employer shall provide at no cost to the employee and assure that the employee uses appropriate protective work clothing and equipment such as, but not limited to:

(i) Coveralls or similar full-body work clothing;

(ii) Gloves, hats, and shoes or disposable shoe coverlets; and

(iii) Face shields, vented goggles, or other appropriate protective equipment which complies with WAC 296-800-160.

(b) Cleaning and replacement.

(i) The employer shall provide the protective clothing required in subdivision (8)(a) of this section in a clean and dry condition at least weekly, and daily to employees whose exposure levels without regard to a respirator are over 200 µg/m³ of lead as an eight-hour TWA.

(ii) The employer shall provide for the cleaning, laundering, or disposal of protective clothing and equipment required by subdivision (8)(a) of this section.

(iii) The employer shall repair or replace required protective clothing and equipment as needed to maintain their effectiveness.

(iv) The employer shall assure that all protective clothing is removed at the completion of a work shift only in change rooms provided for that purpose as prescribed in subdivision (10)(b) of this section.

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(v) The employer shall assure that contaminated protective clothing which is to be cleaned, laundered, or disposed of, is placed in a closed container in the change-room which prevents dispersion of lead outside the container.

(vi) The employer shall inform in writing any person who cleans or launders protective clothing or equipment of the potentially harmful effects of exposure to lead.

(vii) The employer shall assure that the containers of contaminated protective clothing and equipment required by subdivision (8)(b)(v) are labeled as follows:

CAUTION: CLOTHING CONTAMINATED WITH LEAD.
DO NOT REMOVE DUST BY BLOWING OR SHAKING.
DISPOSE OF LEAD CONTAMINATED WASH WATER IN ACCORDANCE WITH APPLICABLE LOCAL, STATE, OR FEDERAL REGULATIONS.

(viii) The employer shall prohibit the removal of lead from protective clothing or equipment by blowing, shaking, or any other means which disperses lead into the air.

(9) Housekeeping.

(a) Surfaces. All surfaces shall be maintained as free as practicable of accumulations of lead.

(b) Cleaning floors.

(i) Floors and other surfaces where lead accumulates may not be cleaned by the use of compressed air.

(ii) Shoveling, dry or wet sweeping, and brushing may be used only where vacuuming or other equally effective methods have been tried and found not to be effective.

(c) Vacuuming. Where vacuuming methods are selected, the vacuums shall be used and emptied in a manner which minimizes the reentry of lead into the workplace.

(10) Hygiene facilities and practices.

(a) The employer shall assure that in areas where employees are exposed to lead above the PEL, without regard to the use of respirators, food or beverage is not present or consumed, tobacco products are not present or used, and cosmetics are not applied, except in change rooms, lunchrooms, and showers required under subdivision (10)(b) through (10)(d) of this section.

(b) Change rooms.

(i) The employer shall provide clean change rooms for employees who work in areas where their airborne exposure to lead is above the PEL, without regard to the use of respirators.

(ii) The employer shall assure that change rooms are equipped with separate storage facilities for protective work clothing and equipment and for street clothes which prevent cross-contamination.

(c) Showers.

(i) The employer shall assure that employees who work in areas where their airborne exposure to lead is above the PEL, without regard to the use of respirators, shower at the end of the work shift.

(ii) The employer shall provide shower facilities in accordance with WAC 296-800-230.

(iii) The employer shall assure that employees who are required to shower pursuant to item (10)(c)(i) do not leave the workplace wearing any clothing or equipment worn during the work shift.

(d) Lunchrooms.

(i) The employer shall provide lunchroom facilities for employees who work in areas where their airborne exposure to lead is above the PEL, without regard to the use of respirators.

(ii) The employer shall assure that lunchroom facilities have a temperature controlled, positive pressure, filtered air supply, and are readily accessible to employees.

(iii) The employer shall assure that employees who work in areas where their airborne exposure to lead is above the PEL without regard to the use of a respirator wash their hands and face prior to eating, drinking, smoking or applying cosmetics.

(iv) The employer shall assure that employees do not enter lunchroom facilities with protective work clothing or equipment unless surface lead dust has been removed by vacuuming, downdraft booth, or other cleaning method.

(e) Lavatories. The employer shall provide an adequate number of lavatory facilities which comply with WAC 296-800-230.

(11) Medical surveillance.

(a) General.

(i) The employer shall institute a medical surveillance program for all employees who are or may be exposed above the action level for more than thirty days per year.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician.

(iii) The employer shall provide the required medical surveillance including multiple physician review under item (11)(c)(iii) without cost to employees and at a reasonable time and place.

(b) Biological monitoring.

(i) Blood lead and ZPP level sampling and analysis. The employer shall make available biological monitoring in the form of blood sampling and analysis for lead and zinc protoporphyrin levels to each employee covered under item (11)(a)(i) of this section on the following schedule:

(A) At least every six months to each employee covered under item (11)(a)(i) of this section;

(B) At least every two months for each employee whose last blood sampling and analysis indicated a blood lead level at or above 40 µg/100 g of whole blood. This frequency shall continue until two consecutive blood samples and analyses indicate a blood lead level below 40 µg/100 g of whole blood; and

(C) At least monthly during the removal period of each employee removed from exposure to lead due to an elevated blood lead level.

(ii) Follow-up blood sampling tests. Whenever the results of a blood lead level test indicate that an employee's blood lead level exceeds the numerical criterion for medical removal under item (12)(a)(i)(A), the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.

(iii) Accuracy of blood lead level sampling and analysis. Blood lead level sampling and analysis provided pursuant to this section shall have an accuracy (to a confidence level of ninety-five percent) within plus or minus fifteen percent or 6 µg/100 ml, whichever is greater, and shall be conducted by a

laboratory licensed by the Center for Disease Control (CDC), United States Department of Health, Education and Welfare or which has received a satisfactory grade in blood lead proficiency testing from CDC in the prior twelve months.

(iv) Employee notification. Within five working days after the receipt of biological monitoring results, the employer shall notify in writing each employee whose blood lead level exceeds 40 µg/100 g: (A) of that employee's blood lead level and (B) that the standard requires temporary medical removal with medical removal protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under item (12)(a)(i) of this section.

(c) Medical examinations and consultations.

(i) Frequency. The employer shall make available medical examinations and consultations to each employee covered under item (11)(a)(i) of this section on the following schedule:

(A) At least annually for each employee for whom a blood sampling test conducted at any time during the preceding twelve months indicated a blood lead level at or above 40 µg/100 g;

(B) Prior to assignment for each employee being assigned for the first time to an area in which airborne concentrations of lead are at or above the action level;

(C) As soon as possible, upon notification by an employee either that the employee has developed signs or symptoms commonly associated with lead intoxication, that the employee desires medical advice concerning the effects of current or past exposure to lead on the employee's ability to procreate a healthy child, or that the employee has demonstrated difficulty in breathing during a respirator fitting test or during use; and

(D) As medically appropriate for each employee either removed from exposure to lead due to a risk of sustaining material impairment to health, or otherwise limited pursuant to a final medical determination.

(ii) Content. Medical examinations made available pursuant to subitems (11)(c)(i)(A) through (B) of this section shall include the following elements:

(A) A detailed work history and a medical history, with particular attention to past lead exposure (occupational and nonoccupational), personal habits (smoking, hygiene), and past gastrointestinal, hematologic, renal, cardiovascular, reproductive and neurological problems;

(B) A thorough physical examination, with particular attention to teeth, gums, hematologic, gastrointestinal, renal, cardiovascular, and neurological systems. Pulmonary status should be evaluated if respiratory protection will be used;

(C) A blood pressure measurement;

(D) A blood sample and analysis which determines:

(I) Blood lead level;

(II) Hemoglobin and hematocrit determinations, red cell indices, and examination of peripheral smear morphology;

(III) Zinc protoporphyrin;

(IV) Blood urea nitrogen; and

(V) Serum creatinine;

(E) A routine urinalysis with microscopic examination; and

(F) Any laboratory or other test which the examining physician deems necessary by sound medical practice.

The content of medical examinations made available pursuant to subitems (11)(c)(i)(C) through (D) of this section shall be determined by an examining physician and, if requested by an employee, shall include pregnancy testing or laboratory evaluation of male fertility.

(iii) Multiple physician review mechanism.

(A) If the employer selects the initial physician who conducts any medical examination or consultation provided to an employee under this section, the employee may designate a second physician:

(I) To review any findings, determinations or recommendations of the initial physician; and

(II) To conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(B) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen days after receipt of the foregoing notification, or receipt of the initial physician's written opinion, whichever is later:

(I) The employee informing the employer that he or she intends to seek a second medical opinion, and

(II) The employee initiating steps to make an appointment with a second physician.

(C) If the findings, determinations or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(D) If the two physicians have been unable to quickly resolve their disagreement, then the employer and the employee through their respective physicians shall designate a third physician:

(I) To review any findings, determinations or recommendations of the prior physicians; and

(II) To conduct such examinations, consultations, laboratory tests and discussions with the prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(E) The employer shall act consistent with the findings, determinations and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(iv) Information provided to examining and consulting physicians.

(A) The employer shall provide an initial physician conducting a medical examination or consultation under this section with the following information:

(I) A copy of this regulation for lead including all appendices;

(II) A description of the affected employee's duties as they relate to the employee's exposure;

(III) The employee's exposure level or anticipated exposure level to lead and to any other toxic substance (if applicable);

(IV) A description of any personal protective equipment used or to be used;

(V) Prior blood lead determinations; and

(VI) All prior written medical opinions concerning the employee in the employer's possession or control.

(B) The employer shall provide the foregoing information to a second or third physician conducting a medical examination or consultation under this section upon request either by the second or third physician, or by the employee.

(v) Written medical opinions.

(A) The employer shall obtain and furnish the employee with a copy of a written medical opinion from each examining or consulting physician which contains the following information:

(I) The physician's opinion as to whether the employee has any detected medical condition which would place the employee at increased risk of material impairment of the employee's health from exposure to lead;

(II) Any recommended special protective measures to be provided to the employee, or limitations to be placed upon the employee's exposure to lead;

(III) Any recommended limitation upon the employee's use of respirators, including a determination of whether the employee can wear a powered air purifying respirator if a physician determines that the employee cannot wear a negative pressure respirator; and

(IV) The results of the blood lead determinations.

(B) The employer shall instruct each examining and consulting physician to:

(I) Not reveal either in the written opinion, or in any other means of communication with the employer, findings, including laboratory results, or diagnoses unrelated to an employee's occupational exposure to lead; and

(II) Advise the employee of any medical condition, occupational or nonoccupational, which dictates further medical examination or treatment.

(vi) Alternate physician determination mechanisms. The employer and an employee or authorized employee representative may agree upon the use of any expeditious alternate physician determination mechanism in lieu of the multiple physician review mechanism provided by this subsection so long as the alternate mechanism otherwise satisfies the requirements contained in this subsection.

(d) Chelation.

(i) The employer shall assure that any person whom he retains, employs, supervises or controls does not engage in prophylactic chelation of any employee at any time.

(ii) If therapeutic or diagnostic chelation is to be performed by any person in item (11)(d)(i), the employer shall assure that it be done under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring and that the employee is notified in writing prior to its occurrence.

(12) Medical removal protection.

(a) Temporary medical removal and return of an employee.

(i) Temporary removal due to elevated blood lead levels.

(A) The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that a periodic and a follow-up blood sampling

test conducted pursuant to this section indicate that the employee's blood lead level is at or above 60 $\mu\text{g}/100$ g of whole blood; and

(B) The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six months, whichever is longer) indicates that the employee's blood lead level is at or above 50 $\mu\text{g}/100$ g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level at or below 40 $\mu\text{g}/100$ g of whole blood.

(ii) Temporary removal due to a final medical determination.

(A) The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that a final medical determination results in a medical finding, determination, or opinion that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead.

(B) For the purposes of this section, the phrase "final medical determination" shall mean the outcome of the multiple physician review mechanism or alternate medical determination mechanism used pursuant to the medical surveillance provisions of this section.

(C) Where a final medical determination results in any recommended special protective measures for an employee, or limitations on an employee's exposure to lead, the employer shall implement and act consistent with the recommendation.

(iii) Return of the employee to former job status.

(A) The employer shall return an employee to his or her former job status:

(I) For an employee removed due to a blood lead level at or above 60 $\mu\text{g}/100$ g, or due to an average blood lead level at or above 50 $\mu\text{g}/100$ g, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below 40 $\mu\text{g}/100$ g of whole blood;

(II) For an employee removed due to a final medical determination, when a subsequent final medical determination results in a medical finding, determination, or opinion that the employee no longer has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead.

(B) For the purposes of this section, the requirement that an employer return an employee to his or her former job status is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

(iv) Removal of other employee special protective measure or limitations. The employer shall remove any limitations placed on an employee or end any special protective measures provided to an employee pursuant to a final medical determination when a subsequent final medical determination indicates that the limitations or special protective measures are no longer necessary.

(v) Employer options pending a final medical determination. Where the multiple physician review mechanism, or alternate medical determination mechanism used pursuant to the medical surveillance provisions of this section, has not yet resulted in a final medical determination with respect to an employee, the employer shall act as follows:

(A) Removal. The employer may remove the employee from exposure to lead, provide special protective measures to the employee, or place limitations upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status.

(B) Return. The employer may return the employee to his or her former job status, end any special protective measures provided to the employee, and remove any limitations placed upon the employee, consistent with the medical findings, determinations, or recommendations of any of the physicians who have reviewed the employee's health status, with two exceptions. If:

(I) The initial removal, special protection, or limitation of the employee resulted from a final medical determination which differed from the findings, determinations, or recommendations of the initial physician; or

(II) The employee has been on removal status for the preceding eighteen months due to an elevated blood lead level, then the employer shall await a final medical determination.

(b) Medical removal protection benefits.

(i) Provision of medical removal protection benefits. The employer shall provide to an employee up to eighteen months of medical removal protection benefits on each occasion that an employee is removed from exposure to lead or otherwise limited pursuant to this section.

(ii) Definition of medical removal protection benefits. For the purposes of this section, the requirement that an employer provide medical removal protection benefits means that the employer shall maintain the earnings, seniority and other employment rights and benefits of an employee as though the employee had not been removed from normal exposure to lead or otherwise limited.

(iii) Follow-up medical surveillance during the period of employee removal or limitation. During the period of time that an employee is removed from normal exposure to lead or otherwise limited, the employer may condition the provision of medical removal protection benefits upon the employee's participation in follow-up medical surveillance made available pursuant to this section.

(iv) Workers' compensation claims. If a removed employee files a claim for workers' compensation payments for a lead-related disability, then the employer shall continue to provide medical removal protection benefits pending disposition of the claim. To the extent that an award is made to the employee for earnings lost during the period of removal, the employer's medical removal protection obligation shall be reduced by such amount. The employer shall receive no credit for workers' compensation payments received by the employee for treatment related expenses.

(v) Other credits. The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives

compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program, or receives income from employment with another employer made possible by virtue of the employee's removal.

(vi) Employees whose blood lead levels do not adequately decline within eighteen months of removal. The employer shall take the following measures with respect to any employee removed from exposure to lead due to an elevated blood lead level whose blood lead level has not declined within the past eighteen months of removal so that the employee has been returned to his or her former job status:

(A) The employer shall make available to the employee a medical examination pursuant to this section to obtain a final medical determination with respect to the employee;

(B) The employer shall assure that the final medical determination obtained indicates whether or not the employee may be returned to his or her former job status, and if not, what steps should be taken to protect the employee's health;

(C) Where the final medical determination has not yet been obtained, or once obtained indicates that the employee may not yet be returned to his or her former job status, the employer shall continue to provide medical removal protection benefits to the employee until either the employee is returned to former job status, or a final medical determination is made that the employee is incapable of ever safely returning to his or her former job status.

(D) Where the employer acts pursuant to a final medical determination which permits the return of the employee to his or her former job status despite what would otherwise be an unacceptable blood lead level, later questions concerning removing the employee again shall be decided by a final medical determination. The employer need not automatically remove such an employee pursuant to the blood lead level removal criteria provided by this section.

(vii) Voluntary removal or restriction of an employee. Where an employer, although not required by this section to do so, removes an employee from exposure to lead or otherwise places limitations on an employee due to the effects of lead exposure on the employee's medical condition, the employer shall provide medical removal protection benefits to the employee equal to that required by item (12)(b)(i) of this section.

(13) Employee information and training.

(a) Training program.

(i) Each employer who has a workplace in which there is a potential exposure to airborne lead at any level shall inform employees of the content of Appendices A and B of this regulation.

(ii) The employer shall institute a training program for and assure the participation of all employees who are subject to exposure to lead at or above the action level or for whom the possibility of skin or eye irritation exists.

(iii) The employer shall provide initial training by one hundred eighty days from the effective date for those employees covered by item (13)(a)(ii) on the standard's effective date and prior to the time of initial job assignment for those employees subsequently covered by this subsection.

(iv) The training program shall be repeated at least annually for each employee.

(v) The employer shall assure that each employee is informed of the following:

(A) The content of this standard and its appendices;

(B) The specific nature of the operations which could result in exposure to lead above the action level;

(C) The purpose, proper use, limitations, and other training requirements for respiratory protection as required by chapter 296-62 WAC, Part E;

(D) The purpose and a description of the medical surveillance program, and the medical removal protection program including information concerning the adverse health effects associated with excessive exposure to lead (with particular attention to the adverse reproductive effects on both males and females);

(E) The engineering controls and work practices associated with the employee's job assignment;

(F) The contents of any compliance plan in effect; and

(G) Instructions to employees that chelating agents should not routinely be used to remove lead from their bodies and should not be used at all except under the direction of a licensed physician.

(b) Access to information and training materials.

(i) The employer shall make readily available to all affected employees a copy of this standard and its appendices.

(ii) The employer shall provide, upon request, all materials relating to the employee information and training program to the director.

(iii) In addition to the information required by item (13)(a)(v), the employer shall include as part of the training program, and shall distribute to employees, any materials pertaining to the Occupational Safety and Health Act, the regulations issued pursuant to the act, and this lead standard, which are made available to the employer by the director.

(14) Signs.

(a) General.

(i) The employer may use signs required by other statutes, regulations or ordinances in addition to, or in combination with, signs required by this subsection.

(ii) The employer shall assure that no statement appears on or near any sign required by this subsection which contradicts or detracts from the meaning of the required sign.

(b) Signs.

(i) The employer shall post the following warning signs in each work area where the PEL is exceeded:

WARNING
LEAD WORK AREA
POISON
NO SMOKING OR EATING

(ii) The employer shall assure that signs required by this subsection are illuminated and cleaned as necessary so that the legend is readily visible.

(15) Recordkeeping.

(a) Exposure monitoring.

(i) The employer shall establish and maintain an accurate record of all monitoring required in subsection (5) of this section.

(ii) This record shall include:

(A) The date(s), number, duration, location and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure where applicable;

(B) A description of the sampling and analytical methods used and evidence of their accuracy;

(C) The type of respiratory protective devices worn, if any;

(D) Name, social security number, and job classification of the employee monitored and of all other employees whose exposure the measurement is intended to represent; and

(E) The environmental variables that could affect the measurement of employee exposure.

(iii) The employer shall maintain these monitoring records for at least forty years or for the duration of employment plus twenty years, whichever is longer.

(b) Medical surveillance.

(i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by subsection (11) of this section.

(ii) This record shall include:

(A) The name, social security number, and description of the duties of the employee;

(B) A copy of the physician's written opinions;

(C) Results of any airborne exposure monitoring done for that employee and the representative exposure levels supplied to the physician; and

(D) Any employee medical complaints related to exposure to lead.

(iii) The employer shall keep, or assure that the examining physician keeps, the following medical records:

(A) A copy of the medical examination results including medical and work history required under subsection (11) of this section;

(B) A description of the laboratory procedures and a copy of any standards or guidelines used to interpret the test results or references to that information; and

(C) A copy of the results of biological monitoring.

(iv) The employer shall maintain or assure that the physician maintains those medical records for at least forty years, or for the duration of employment plus twenty years, whichever is longer.

(c) Medical removals.

(i) The employer shall establish and maintain an accurate record for each employee removed from current exposure to lead pursuant to subsection (12) of this section.

(ii) Each record shall include:

(A) The name and social security number of the employee;

(B) The date on each occasion that the employee was removed from current exposure to lead as well as the corresponding date on which the employee was returned to his or her former job status;

(C) A brief explanation of how each removal was or is being accomplished; and

(D) A statement with respect to each removal indicating whether or not the reason for the removal was an elevated blood lead level.

(iii) The employer shall maintain each medical removal record for at least the duration of an employee's employment.

(d) Availability.

(i) The employer shall make available upon request all records required to be maintained by subsection (15) of this section to the director for examination and copying.

(ii) Environmental monitoring, medical removal, and medical records required by this subsection shall be provided upon request to employees, designated representatives, and the assistant director in accordance with chapter 296-802 WAC. Medical removal records shall be provided in the same manner as environmental monitoring records.

(iii) Upon request, the employer shall make an employee's medical records required to be maintained by this section available to the affected employee or former employee or to a physician or other individual designated by such affected employee or former employees for examination and copying.

(e) Transfer of records.

(i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by subsection (15) of this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records required to be maintained by this section for the prescribed period, these records shall be transmitted to the director.

(iii) At the expiration of the retention period for the records required to be maintained by this section, the employer shall notify the director at least three months prior to the disposal of such records and shall transmit those records to the director if requested within the period.

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in chapter 296-802 WAC.

(16) Observation of monitoring.

(a) Employee observation. The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to lead conducted pursuant to subsection (5) of this section.

(b) Observation procedures.

(i) Whenever observation of the monitoring of employee exposure to lead requires entry into an area where the use of respirators, protective clothing or equipment is required, the employer shall provide the observer with and assure the use of such respirators, clothing and such equipment, and shall require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled to:

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the monitoring of lead performed at the place of exposure; and

(C) Record the results obtained or receive copies of the results when returned by the laboratory.

(17) Appendices. The information contained in the appendices to this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation.

(a) Appendix A. Substance Data Sheet for Occupational Exposure to Lead.

(i) Substance identification.

(A) Substance. Pure lead (Pb) is a heavy metal at room temperature and pressure and is a basic chemical element. It can combine with various other substances to form numerous lead compounds.

(B) Compounds covered by the standard. The word "lead" when used in this standard means elemental lead, all inorganic lead compounds (except those which are not biologically available due to either solubility or specific chemical interaction), and a class of organic lead compounds called lead soaps. This standard does not apply to other organic lead compounds.

(C) Uses. Exposure to lead occurs in at least 120 different occupations, including primary and secondary lead smelting, lead storage battery manufacturing, lead pigment manufacturing and use, solder manufacturing and use, shipbuilding and ship repairing, auto manufacturing, and printing.

(D) Permissible exposure. The Permissible Exposure Limit (PEL) set by the standard is 50 micrograms of lead per cubic meter of air ($50 \mu\text{g}/\text{m}^3$), averaged over an eight-hour work day.

(E) Action level. The standard establishes an action level of 30 micrograms per cubic meter of air ($30 \mu\text{g}/\text{m}^3$) time weighted average, based on an eight-hour work day. The action level initiates several requirements of the standard, such as exposure monitoring, medical surveillance, and training and education.

(ii) Health hazard data.

(A) Ways in which lead enters your body.

(I) When absorbed into your body in certain doses lead is a toxic substance. The object of the lead standard is to prevent absorption of harmful quantities of lead. The standard is intended to protect you not only from the immediate toxic effects of lead, but also from the serious toxic effects that may not become apparent until years of exposure have passed.

(II) Lead can be absorbed into your body by inhalation (breathing) and ingestion (eating). Lead (except for certain organic lead compounds not covered by the standard, such as tetraethyl lead) is not absorbed through your skin. When lead is scattered in the air as a dust, fume or mist, it can be inhaled and absorbed through your lungs and upper respiratory tract. Inhalation of airborne lead is generally the most important source of occupational lead absorption. You can also absorb lead through your digestive system if lead gets into your mouth and is swallowed. If you handle food, cigarettes, chewing tobacco, or make-up which have lead on them or handle them with hands contaminated with lead, this will contribute to ingestion.

(III) A significant portion of the lead that you inhale or ingest gets into your blood stream. Once in your blood stream lead is circulated throughout your body and stored in various organs and body tissues. Some of this lead is quickly filtered out of your body and excreted, but some remains in your

blood and other tissue. As exposure to lead continues, the amount stored in your body will increase if you are absorbing more lead than your body is excreting. Even though you may not be aware of any immediate symptoms of disease, this lead stored in your tissues can be slowly causing irreversible damage, first to individual cells, then to your organs and whole body systems.

(B) Effects of overexposure to lead.

(I) Short-term (acute) overexposure. Lead is a potent, systemic poison that serves no known useful function once absorbed by your body. Taken in large enough doses, lead can kill you in a matter of days. A condition affecting the brain called acute encephalopathy may arise which develops quickly to seizures, coma, and death from cardiorespiratory arrest. A short-term dose of lead can lead to acute encephalopathy. Short-term occupational exposures of this magnitude are highly unusual, but not impossible. Similar forms of encephalopathy may, however arise from extended, chronic exposure to lower doses of lead. There is no sharp dividing line between rapidly developing acute effects of lead, and chronic effects which take longer to acquire. Lead adversely affects numerous body systems, and causes forms of health impairment and disease which arise after periods of exposure as short as days or as long as several years.

(II) Long-term (chronic) overexposure.

a) Chronic overexposure to lead may result in severe damage to your blood-forming, nervous, urinary and reproductive systems. Some common symptoms of chronic overexposure include loss of appetite, metallic taste in the mouth, anxiety, constipation, nausea, pallor, excessive tiredness, weakness, insomnia, headache, nervous irritability, muscle and joint pain or soreness, fine tremors, numbness, dizziness, hyperactivity and colic. In lead colic there may be severe abdominal pain.

b) Damage to the central nervous system in general and the brain (encephalopathy) in particular is one of the most severe forms of lead poisoning. The most severe, often fatal, form of encephalopathy may be preceded by vomiting, a feeling of dullness progressing to drowsiness and stupor, poor memory, restlessness, irritability, tremor, and convulsions. It may arise suddenly with the onset of seizures, followed by coma, and death. There is a tendency for muscular weakness to develop at the same time. This weakness may progress to paralysis often observed as a characteristic "wrist drop" or "foot drop" and is a manifestation of a disease to the nervous system called peripheral neuropathy.

c) Chronic overexposure to lead also results in kidney disease with few, if any, symptoms appearing until extensive and most likely permanent kidney damage has occurred. Routine laboratory tests reveal the presence of this kidney disease only after about two-thirds of kidney function is lost. When overt symptoms of urinary dysfunction arise, it is often too late to correct or prevent worsening conditions, and progression of kidney dialysis or death is possible.

d) Chronic overexposure to lead impairs the reproductive systems of both men and women. Overexposure to lead may result in decreased sex drive, impotence and sterility in men. Lead can alter the structure of sperm cells raising the risk of birth defects. There is evidence of miscarriage and stillbirth in women whose husbands were exposed to lead or

who were exposed to lead themselves. Lead exposure also may result in decreased fertility, and abnormal menstrual cycles in women. The course of pregnancy may be adversely affected by exposure to lead since lead crosses the placental barrier and poses risks to developing fetuses. Children born of parents either one of whom were exposed to excess lead levels are more likely to have birth defects, mental retardation, behavioral disorders or die during the first year of childhood.

e) Overexposure to lead also disrupts the blood-forming system resulting in decreased hemoglobin (the substance in the blood that carries oxygen to the cells) and ultimately anemia. Anemia is characterized by weakness, pallor and fatigability as a result of decreased oxygen carrying capacity in the blood.

(III) Health protection goals of the standard.

a) Prevention of adverse health effects for most workers from exposure to lead throughout a working lifetime requires that worker blood lead (PbB) levels be maintained at or below forty micrograms per one hundred grams of whole blood (40 $\mu\text{g}/100\text{g}$). The blood lead levels of workers (both male and female workers) who intend to have children should be maintained below 30 $\mu\text{g}/100\text{g}$ to minimize adverse reproductive health effects to the parents and to the developing fetus.

b) The measurement of your blood lead level is the most useful indicator of the amount of lead absorbed by your body. Blood lead levels (PbB) are most often reported in units of milligrams (mg) or micrograms (μg) of lead (1 mg = 1000 μg) per 100 grams (100g), 100 milliliters (100 ml) or deciliter (dl) of blood. These three units are essentially the same. Sometimes PbB's are expressed in the form of mg% or $\mu\text{g}\%$. This is a shorthand notation for 100g, 100ml, or dl.

c) PbB measurements show the amount of lead circulating in your blood stream, but do not give any information about the amount of lead stored in your various tissues. PbB measurements merely show current absorption of lead, not the effect that lead is having on your body or the effects that past lead exposure may have already caused. Past research into lead-related diseases, however, has focused heavily on associations between PbBs and various diseases. As a result, your PbB is an important indicator of the likelihood that you will gradually acquire a lead-related health impairment or disease.

d) Once your blood lead level climbs above 40 $\mu\text{g}/100\text{g}$, your risk of disease increases. There is a wide variability of individual response to lead, thus it is difficult to say that a particular PbB in a given person will cause a particular effect. Studies have associated fatal encephalopathy with PbBs as low as 150 $\mu\text{g}/100\text{g}$. Other studies have shown other forms of disease in some workers with PbBs well below 80 $\mu\text{g}/100\text{g}$. Your PbB is a crucial indicator of the risks to your health, but one other factor is extremely important. This factor is the length of time you have had elevated PbBs. The longer you have an elevated PbB, the greater the risk that large quantities of lead are being gradually stored in your organs and tissues (body burden). The greater your overall body burden, the greater the chances of substantial permanent damage.

e) The best way to prevent all forms of lead-related impairments and diseases—both short-term and long-term—is to maintain your PbB below 40 $\mu\text{g}/100\text{g}$. The provisions of the standard are designed with this end in mind. Your employer has prime responsibility to assure that the provisions of the standard are complied with both by the company and by individual workers. You as a worker, however, also have a responsibility to assist your employer in complying with the standard. You can play a key role in protecting your own health by learning about the lead hazards and their control, learning what the standard requires, following the standard where it governs your own action, and seeing that your employer complies with the provisions governing his actions.

(IV) Reporting signs and symptoms of health problems. You should immediately notify your employer if you develop signs or symptoms associated with lead poisoning or if you desire medical advice concerning the effects of current or past exposure to lead on your ability to have a healthy child. You should also notify your employer if you have difficulty breathing during a respirator fit test or while wearing a respirator. In each of these cases your employer must make available to you appropriate medical examinations or consultations. These must be provided at no cost to you and at a reasonable time and place.

(b) Appendix B. Employee Standard Summary. This appendix summarizes key provisions of the standard that you as a worker should become familiar with. The appendix discusses the entire standard.

(i) Permissible exposure limit (PEL). The standard sets a permissible exposure limit (PEL) of fifty micrograms of lead per cubic meter of air ($50 \mu\text{g}/\text{m}^3$), averaged over an eight-hour workday. This is the highest level of lead in air to which you may be permissibly exposed over an eight-hour workday. Since it is an eight-hour average it permits short exposures above the PEL so long as for each eight-hour workday your average exposure does not exceed the PEL.

(ii) Exposure monitoring.

(A) If lead is present in the work place where you work in any quantity, your employer is required to make an initial determination of whether the action level is exceeded for any employee. The initial determination must include instrument monitoring of the air for the presence of lead and must cover the exposure of a representative number of employees who are reasonably believed to have the highest exposure levels. If your employer has conducted appropriate air sampling for lead in the past year he may use these results. If there have been any employee complaints of symptoms which may be attributable to exposure to lead or if there is any other information or observations which would indicate employee exposure to lead, this must also be considered as part of the initial determination. If this initial determination shows that a reasonable possibility exists that any employee may be exposed, without regard to respirators, over the action level ($30 \mu\text{g}/\text{m}^3$) your employer must set up an air monitoring program to determine the exposure level of every employee exposed to lead at your work place.

(B) In carrying out this air monitoring program, your employer is not required to monitor the exposure of every employee, but he or she must monitor a representative number of employees and job types. Enough sampling must be

done to enable each employee's exposure level to be reasonably represented by at least one full shift (at least seven hours) air sample. In addition, these air samples must be taken under conditions which represent each employee's regular, daily exposure to lead.

(C) If you are exposed to lead and air sampling is performed, your employer is required to quickly notify you in writing of air monitoring results which represent your exposure. If the results indicate your exposure exceeds the PEL (without regard to your use of respirators), then your employer must also notify you of this in writing, and provide you with a description of the corrective action that will be taken to reduce your exposure.

(D) Your exposure must be rechecked by monitoring every six months if your exposure is over the action level but below the PEL. Air monitoring must be repeated every three months if you are exposed over the PEL. Your employer may discontinue monitoring for you if two consecutive measurements, taken at least two weeks apart, are below the action level. However, whenever there is a production, process, control, or personnel change at your work place which may result in new or additional exposure to lead, or whenever there is any other reason to suspect a change which may result in new or additional exposure to lead, your employer must perform additional monitoring.

(iii) Methods of compliance. Your employer is required to assure that no employee is exposed to lead in excess of the PEL. The standard establishes a priority of methods to be used to meet the PEL.

(iv) Respiratory protection.

(A) Your employer is required to provide and assure your use of respirators when your exposure to lead is not controlled below the PEL by other means. The employer must pay the cost of the respirator. Whenever you request one, your employer is also required to provide you a respirator even if your air exposure level does not exceed the PEL. You might desire a respirator when, for example, you have received medical advice that your lead absorption should be decreased. Or, you may intend to have children in the near future, and want to reduce the level of lead in your body to minimize adverse reproductive effects. While respirators are the least satisfactory means of controlling your exposure, they are capable of providing significant protection if properly chosen, fitted, worn, cleaned, maintained, and replaced when they stop providing adequate protection.

(B) Your employer is required to select respirators from the seven types listed in Table II of the respiratory protection section of this standard (see subsection (7)(c) of this section). Any respirator chosen must be certified by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 42 CFR part 84. This respirator selection table will enable your employer to choose a type of respirator which will give you a proper amount of protection based on your airborne lead exposure. Your employer may select a type of respirator that provides greater protection than that required by the standard; that is, one recommended for a higher concentration of lead than is present in your work place. For example, a powered air purifying respirator (PAPR) is much more protective than a typical negative-pressure respirator, and may also be more comfortable to wear. A

PAPR has a filter, cartridge or canister to clean the air, and a power source which continuously blows filtered air into your breathing zone. Your employer might make a PAPR available to you to ease the burden of having to wear a respirator for long periods of time. The standard provides that you can obtain a PAPR upon request.

(C) Your employer must also start a respiratory protection program. This program must include written procedures for the proper selection, use, cleaning, storage, and maintenance of respirators.

(D) Your employer must assure that your respirator facepiece fits properly. Proper fit of a respirator facepiece is critical to your protection against air borne lead. Obtaining a proper fit on each employee may require your employer to make available several different types of respirator masks. To ensure that your respirator fits properly and that facepiece leakage is minimal, your employer must give you either a qualitative or quantitative fit test as required in chapter ((296-62)) 296-842 WAC((Part E)).

(E) You must also receive from your employer proper training in the use of respirators. Your employer is required to teach you how to wear a respirator, to know why it is needed, and to understand its limitations.

(F) The standard provides that if your respirator uses filter elements, you must be given an opportunity to change the filter elements whenever an increase in breathing resistance is detected. You also must be permitted to periodically leave your work area to wash your face and respirator facepiece whenever necessary to prevent skin irritation. If you ever have difficulty breathing during a fit test or while using a respirator, your employer must make a medical examination available to you to determine whether you can safely wear a respirator. The result of this examination may be to give you a positive pressure respirator (which reduces breathing resistance) or to provide alternative means of protection.

(v) Protective work clothing and equipment. If you are exposed to lead above the PEL, or if you are exposed to lead compounds such as lead arsenate or lead azide which can cause skin and eye irritation, your employer must provide you with protective work clothing and equipment appropriate for the hazard. If work clothing is provided, it must be provided in a clean and dry condition at least weekly, and daily if your airborne exposure to lead is greater than 200 $\mu\text{g}/\text{m}^3$. Appropriate protective work clothing and equipment can include coveralls or similar full-body work clothing, gloves, hats, shoes or disposable shoe coverlets, and face shields or vented goggles. Your employer is required to provide all such equipment at no cost to you. He or she is responsible for providing repairs and replacement as necessary and also is responsible for the cleaning, laundering or disposal of protective clothing and equipment. Contaminated work clothing or equipment must be removed in change rooms and not worn home or you will extend your exposure and expose your family since lead from your clothing can accumulate in your house, car, etc. Contaminated clothing which is to be cleaned, laundered or disposed of must be placed in closed containers in the change room. At no time may lead be removed from protective clothing or equipment by any means which disperses lead into the work room air.

(vi) Housekeeping. Your employer must establish a housekeeping program sufficient to maintain all surfaces as free as practicable of accumulations of lead dust. Vacuuming is the preferred method of meeting this requirement, and the use of compressed air to clean floors and other surfaces is absolutely prohibited. Dry or wet sweeping, shoveling, or brushing may not be used except where vacuuming or other equally effective methods have been tried and do not work. Vacuums must be used and emptied in a manner which minimizes the reentry of lead into the work place.

(vii) Hygiene facilities and practices.

(A) The standard requires that change rooms, showers and filtered air lunchrooms be constructed and made available to workers exposed to lead above the PEL. When the PEL is exceeded, the employer must assure that food and beverage is not present or consumed, tobacco products are not present or used, and cosmetics are not applied, except in these facilities. Change rooms, showers and lunchrooms, must be used by workers exposed in excess of the PEL. After showering, no clothing or equipment worn during the shift may be worn home and this includes shoes and underwear. Your own clothing worn during the shift should be carried home and cleaned carefully so that it does not contaminate your home. Lunchrooms may not be entered with protective clothing or equipment unless surface dust has been removed by vacuuming, downdraft booth or other cleaning methods. Finally, workers exposed above the PEL must wash both their hands and faces prior to eating, drinking, smoking or applying cosmetics.

(B) All of the facilities and hygiene practices just discussed are essential to minimize additional sources of lead absorption from inhalation or ingestion of lead that may accumulate on you, your clothes or your possessions. Strict compliance with these provisions can virtually eliminate several sources of lead exposure which significantly contribute to excessive lead absorption.

(viii) Medical surveillance.

(A) The medical surveillance program is part of the standard's comprehensive approach to the prevention of lead-related disease. Its purpose is to supplement the main thrust of the standard which is aimed at minimizing airborne concentrations of lead and sources of ingestion. Only medical surveillance can determine if the other provisions of the standard have effectively protected you as an individual. Compliance with the standard's provision will protect most workers from the adverse effects of lead exposure, but may not be satisfactory to protect individual workers (I) who have high body burdens of lead acquired over past years, (II) who have additional uncontrolled sources of nonoccupational lead exposure, (III) who exhibit unusual variations in lead absorption rates, or (IV) who have specific nonwork related medical conditions which could be aggravated by lead exposure (e.g., renal disease, anemia). In addition, control systems may fail, or hygiene and respirator programs may be inadequate. Periodic medical surveillance of individual workers will help detect those failures. Medical surveillance will also be important to protect your reproductive ability - regardless of whether you are a man or a woman.

(B) All medical surveillance required by the standard must be performed by or under the supervision of a licensed

physician. The employer must provide required medical surveillance without cost to employees and at a reasonable time and place. The standard's medical surveillance program has two parts - periodic biological monitoring, and medical examinations.

(C) Your employer's obligation to offer medical surveillance is triggered by the results of the air monitoring program. Medical surveillance must be made available to all employees who are exposed in excess of the action level for more than 30 days a year. The initial phase of the medical surveillance program, which included blood lead level tests and medical examinations, must be completed for all covered employees no later than 180 days from the effective date of this standard. Priority within this first round of medical surveillance must be given to employees whom the employer believes to be at greatest risk from continued exposure (for example, those with the longest prior exposure to lead, or those with the highest current exposure). Thereafter, the employer must periodically make medical surveillance - both biological monitoring and medical examinations - available to all covered employees.

(D) Biological monitoring under the standard consists of blood lead level (PbB) and zinc protoporphyrin tests at least every six months after the initial PbB test. A zinc protoporphyrin (ZPP) test is a very useful blood test which measures an effect of lead on your body. If a worker's PbB exceeds 40 $\mu\text{g}/100\text{g}$, the monitoring frequency must be increased from every six months to at least every two months and not reduced until two consecutive PbBs indicate a blood lead level below 40 $\mu\text{g}/100\text{g}$. Each time your PbB is determined to be over 40 $\mu\text{g}/100\text{g}$, your employer must notify you of this in writing within five working days of the receipt of the test results. The employer must also inform you that the standard requires temporary medical removal with economic protection when your PbB exceeds certain criteria (see Discussion of Medical Removal Protection - subsection (12)). During the first year of the standard, this removal criterion is 80 $\mu\text{g}/100\text{g}$. Anytime your PbB exceeds 80 $\mu\text{g}/100\text{g}$ your employer must make available to you a prompt follow-up PbB test to ascertain your PbB. If the two tests both exceed 80 $\mu\text{g}/100\text{g}$ and you are temporarily removed, then your employer must make successive PbB tests available to you on a monthly basis during the period of your removal.

(E) Medical examinations beyond the initial one must be made available on an annual basis if your blood lead levels exceeds 40 $\mu\text{g}/100\text{g}$ at any time during the preceding year. The initial examination will provide information to establish a baseline to which subsequent data can be compared. An initial medical examination must also be made available (prior to assignment) for each employee being assigned for the first time to an area where the airborne concentration of lead equals or exceeds the action level. In addition, a medical examination or consultation must be made available as soon as possible if you notify your employer that you are experiencing signs or symptoms commonly associated with lead poisoning or that you have difficulty breathing while wearing a respirator or during a respirator fit test. You must also be provided a medical examination or consultation if you notify your employer that you desire medical advice concerning the

effects of current or past exposure to lead on your ability to procreate a healthy child.

(F) Finally, appropriate follow-up medical examinations or consultations may also be provided for employees who have been temporarily removed from exposure under the medical removal protection provisions of the standard (see item (ix) below).

(G) The standard specifies the minimum content of pre-assignment and annual medical examinations. The content of other types of medical examinations and consultations is left up to the sound discretion of the examining physician. Pre-assignment and annual medical examinations must include (I) a detailed work history and medical history, (II) a thorough physical examination, and (III) a series of laboratory tests designed to check your blood chemistry and your kidney function. In addition, at any time upon your request, a laboratory evaluation of male fertility will be made (microscopic examination of a sperm sample), or a pregnancy test will be given.

(H) The standard does not require that you participate in any of the medical procedures, tests, etc., which your employer is required to make available to you. Medical surveillance can, however, play a very important role in protecting your health. You are strongly encouraged, therefore, to participate in a meaningful fashion. Generally, your employer will choose the physician who conducts medical surveillance under the lead standard - unless you and your employer can agree on the choice of a physician or physicians. Some companies and unions have agreed in advance, for example, to use certain independent medical laboratories or panels of physicians. Any of these arrangements are acceptable so long as required medical surveillance is made available to workers.

(I) The standard requires your employer to provide certain information to a physician to aid in his or her examination of you. This information includes (I) the standard and its appendices, (II) a description of your duties as they relate to lead exposure, (III) your exposure level, (IV) a description of personal protective equipment you wear, (V) prior blood level results, and (VI) prior written medical opinions concerning you that the employer has. After a medical examination or consultation the physician must prepare a written report which must contain (I) the physician's opinion as to whether you have any medical conditions which places you at increased risk of material impairment to health from exposure to lead, (II) any recommended special protective measures to be provided to you, (III) any blood lead level determinations, and (IV) any recommended limitation on your use of respirators. This last element must include a determination of whether you can wear a powered air purifying respirator (PAPR) if you are found unable to wear a negative pressure respirator.

(J) The medical surveillance program of the lead standard may at some point in time serve to notify certain workers that they have acquired a disease or other adverse medical condition as a result of occupational lead exposure. If this is true these workers might have legal rights to compensation from public agencies, their employers, firms that supply hazardous products to their employers, or other persons. Some states have laws, including worker compensation laws, that

disallow a worker to learn of a job-related health impairment to sue, unless the worker sues within a short period of time after learning of the impairment. (This period of time may be a matter of months or years.) An attorney can be consulted about these possibilities. It should be stressed that WISHA is in no way trying to either encourage or discourage claims or lawsuits. However, since results of the standard's medical surveillance program can significantly affect the legal remedies of a worker who has acquired a job-related disease or impairment, it is proper for WISHA to make you aware of this.

(K) The medical surveillance section of the standard also contains provisions dealing with chelation. Chelation is the use of certain drugs (administered in pill form or injected into the body) to reduce the amount of lead absorbed in body tissues. Experience accumulated by the medical and scientific communities has largely confirmed the effectiveness of this type of therapy for the treatment of very severe lead poisoning. On the other hand it has also been established that there can be a long list of extremely harmful side effects associated with the use of chelating agents. The medical community has balanced the advantages and disadvantages resulting from the use of chelating agents in various circumstances and has established when the use of these agents is acceptable. The standard includes these accepted limitations due to a history of abuse of chelation therapy by some lead companies. The most widely used chelating agents are calcium disodium EDTA, (Ca Na₂EDTA), Calcium Disodium Versenate (Versenate), and d-penicillamine (penicillamine or Cupramine).

(L) The standard prohibits "prophylactic chelation" of any employee by any person the employer retains, supervises or controls. "Prophylactic chelation" is the routine use of chelating or similarly acting drugs to prevent elevated blood levels in workers who are occupationally exposed to lead, or the use of these drugs to routinely lower blood lead levels to predesignated concentrations believed to be safe. It should be emphasized that where an employer takes a worker who has no symptoms of lead poisoning and has chelation carried out by a physician (either inside or outside of a hospital) solely to reduce the worker's blood lead level, that will generally be considered prophylactic chelation. The use of a hospital and a physician does not mean that prophylactic chelation is not being performed. Routine chelation to prevent increased or reduce current blood lead levels is unacceptable whatever the setting.

(M) The standard allows the use of "therapeutic" or "diagnostic" chelation if administered under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring. Therapeutic chelation responds to severe lead poisoning where there are marked symptoms. Diagnostic chelation, involves giving a patient a dose of the drug then collecting all urine excreted for some period of time as an aid to the diagnosis of lead poisoning.

(N) In cases where the examining physician determines that chelation is appropriate, you must be notified in writing of this fact before such treatment. This will inform you of a potentially harmful treatment, and allow you to obtain a second opinion.

(ix) Medical removal protection.

(A) Excessive lead absorption subjects you to increased risk of disease. Medical removal protection (MRP) is a means of protecting you when for whatever reasons, other methods, such as engineering controls, work practices, and respirators, have failed to provide the protection you need. MRP involves the temporary removal of a worker from his or her regular job to a place of significantly lower exposure without any loss of earnings, seniority, or other employment rights of benefits. The purpose of this program is to cease further lead absorption and allow your body to naturally excrete lead which has previously been absorbed. Temporary medical removal can result from an elevated blood lead level, or a medical opinion. Up to eighteen months of protection is provided as a result of either form of removal. The vast majority of removed workers, however, will return to their former jobs long before this eighteen month period expires. The standard contains special provisions to deal with the extraordinary but possible case where a long-term worker's blood lead level does not adequately decline during eighteen months of removal.

(B) During the first year of the standard, if your blood lead level is 80 $\mu\text{g}/100\text{g}$ or above you must be removed from any exposure where your air lead level without a respirator would be 100 $\mu\text{g}/\text{m}^3$ or above. If you are removed from your normal job you may not be returned until your blood lead level declines to at least 60 $\mu\text{g}/100\text{g}$. These criteria for removal and return will change according to the following schedule:

TABLE 1

Effective Date	Removal Blood Level ($\mu\text{g}/100\text{g}$)	Air Lead ($\mu\text{g}/\text{m}^3$)	Return Blood Lead ($\mu\text{g}/100\text{g}$)
9/6/81	At or above 70	50 or above	At or below 50
9/6/82	At or above 60	30 or above	At or below 40
9/6/84	At or above 50 averaged over six months	30 or above	At or below 40

(C) You may also be removed from exposure even if your blood lead levels are below these criteria if a final medical determination indicates that you temporarily need reduced lead exposure for medical reasons. If the physician who is implementing your employer's medical program makes a final written opinion recommending your removal or other special protective measures, your employer must implement the physician's recommendation. If you are removed in this manner, you may only be returned when the physician indicates it is safe for you to do so.

(D) The standard does not give specific instructions dealing with what an employer must do with a removed worker. Your job assignment upon removal is a matter for you, your employer and your union (if any) to work out consistent with existing procedures for job assignments. Each removal must be accomplished in a manner consistent with existing collective bargaining relationships. Your employer is given broad discretion to implement temporary removals so long as no

attempt is made to override existing agreements. Similarly, a removed worker is provided no right to veto an employer's choice which satisfies the standard.

(E) In most cases, employers will likely transfer removed employees to other jobs with sufficiently low lead exposure. Alternatively, a worker's hours may be reduced so that the time weighted average exposure is reduced, or he or she may be temporarily laid off if no other alternative is feasible.

(F) In all of these situations, MRP benefits must be provided during the period of removal - i.e., you continue to receive the same earnings, seniority, and other rights and benefits you would have had if you had not been removed. Earnings include more than just your base wage; it includes overtime, shift differentials, incentives, and other compensation you would have earned if you had not been removed. During the period of removal you must also be provided with appropriate follow-up medical surveillance. If you were removed because your blood lead level was too high, you must be provided with a monthly blood test. If a medical opinion caused your removal, you must be provided medical tests or examinations that the physician believes to be appropriate. If you do not participate in this follow-up medical surveillance, you may lose your eligibility for MRP benefits.

(G) When you are medically eligible to return to your former job, your employer must return you to your "former job status." This means that you are entitled to the position, wages, benefits, etc., you would have had if you had not been removed. If you would still be in your old job if no removal had occurred, that is where you go back. If not, you are returned consistent with whatever job assignment discretion your employer would have had if no removal had occurred. MRP only seeks to maintain your rights, not expand them or diminish them.

(H) If you are removed under MRP and you are also eligible for worker compensation or other compensation for lost wages, your employer's MRP benefits obligation is reduced by the amount that you actually receive from these other sources. This is also true if you obtain other employment during the time you are laid off with MRP benefits.

(I) The standard also covers situations where an employer voluntarily removes a worker from exposure to lead due to the effects of lead on the employee's medical condition, even though the standard does not require removal. In these situations MRP benefits must still be provided as though the standard required removal. Finally, it is important to note that in all cases where removal is required, respirators cannot be used as a substitute. Respirators may be used before removal becomes necessary, but not as an alternative to a transfer to a low exposure job, or to a lay-off with MRP benefits.

(x) Employee information and training.

(A) Your employer is required to provide an information and training program for all employees exposed to lead above the action level or who may suffer skin or eye irritation from lead. This program must inform these employees of the specific hazards associated with their work environment, protective measures which can be taken, the danger of lead to their bodies (including their reproductive systems), and their rights under the standard. In addition, your employer must make

readily available to all employees, including those exposed below the action level, a copy of the standard and its appendices and must distribute to all employees any materials provided to the employer under the Washington Industrial Safety and Health Act (WISHA).

(B) Your employer is required to complete this training for all employees by March 4, 1981. After this date, all new employees must be trained prior to initial assignment to areas where there is possibility of exposure over the action level. This training program must also be provided at least annually thereafter.

(xi) Signs. The standard requires that the following warning sign be posted in work areas where the exposure to lead exceeds the PEL:

WARNING
LEAD WORK AREA
NO SMOKING OR EATING

(xii) Recordkeeping.

(A) Your employer is required to keep all records of exposure monitoring for airborne lead. These records must include the name and job classification of employees measured, details of the sampling and analytic techniques, the results of this sampling and the type of respiratory protection being worn by the person sampled. Your employer is also required to keep all records of biological monitoring and medical examination results. These must include the names of the employees, the physician's written opinion and a copy of the results of the examination. All of the above kinds of records must be kept for 40 years, or for at least 20 years after your termination of employment, whichever is longer.

(B) Recordkeeping is also required if you are temporarily removed from your job under the MRP program. This record must include your name and social security number, the date of your removal and return, how the removal was or is being accomplished, and whether or not the reason for the removal was an elevated blood lead level. Your employer is required to keep each medical removal record only for as long as the duration of an employee's employment.

(C) The standard requires that if you request to see or copy environmental monitoring, blood lead level monitoring, or medical removal records, they must be made available to you or to a representative that you authorize. Your union also has access to these records. Medical records other than PbBs must also be provided to you upon request, to your physician or to any other person whom you may specifically designate. Your union does not have access to your personal medical records unless you authorize their access.

(xiii) Observations of monitoring. When air monitoring for lead is performed at your work place as required by this standard, your employer must allow you or someone you designate to act as an observer of the monitoring. Observers are entitled to an explanation of the measurement procedure, and to record the results obtained. Since results will not normally be available at the time of the monitoring, observers are entitled to record or receive the results of the monitoring when returned by the laboratory. Your employer is required to provide the observer with any personal protective devices required to be worn by employees working in the areas that is being monitored. The employer must require the observer to

wear all such equipment and to comply with all other applicable safety and health procedures.

(xiv) Effective date. The standard's effective date is September 6, 1980, and the employer's obligation under the standard begin to come into effect as of that date. The standard was originally adopted as WAC 296-62-07349 and later recodified to WAC 296-62-07521.

(c) Appendix C. Medical Surveillance Guidelines.

(i) Introduction.

(A) The primary purpose of the Washington Industrial Safety and Health Act of 1973 is to assure, so far as possible, safe and healthful working conditions for every working man and woman. The occupational health standard for inorganic lead* was promulgated to protect workers exposed to inorganic lead including metallic lead, all inorganic lead compounds and organic lead soaps.

*The term inorganic lead used throughout the medical surveillance appendices is meant to be synonymous with the definition of lead set forth in the standard.

(B) Under this final standard in effect as of September 6, 1980, occupational exposure to inorganic lead is to be limited to 50 $\mu\text{g}/\text{m}^3$ (micrograms per cubic meter) based on an eight-hour time-weighted average (TWA). This level of exposure eventually must be achieved through a combination of engineering, work practice and other administrative controls. Periods of time ranging from one to ten years are provided for different industries to implement these controls which are based on individual industry considerations. Until these controls are in place, respirators must be used to meet the 50 $\mu\text{g}/\text{m}^3$ exposure limit.

(C) The standard also provides for a program of biological monitoring and medical surveillance for all employees exposed to levels of inorganic lead above the action level of 30 $\mu\text{g}/\text{m}^3$ for more than thirty days per year.

(D) The purpose of this document is to outline the medical surveillance provisions of the standard for inorganic lead, and to provide further information to the physician regarding the examination and evaluation of workers exposed to inorganic lead.

(E) Item (ii) provides a detailed description of the monitoring procedure including the required frequency of blood testing for exposed workers, provisions for medical removal protection (MRP), the recommended right of the employee to a second medical opinion, and notification and recordkeeping requirements of the employer. A discussion of the requirements for respirator use and respirator monitoring and WISHA's position on prophylactic chelation therapy are also included in this section.

(F) Item (iii) discusses the toxic effects and clinical manifestations of lead poisoning and effects of lead intoxication on enzymatic pathways in heme synthesis. The adverse effects on both male and female reproductive capacity and on the fetus are also discussed.

(G) Item (iv) outlines the recommended medical evaluation of the worker exposed to inorganic lead including details of the medical history, physical examination, and recommended laboratory tests, which are based on the toxic effects of lead as discussed in item (ii).

(H) Item (v) provides detailed information concerning the laboratory tests available for the monitoring of exposed

workers. Included also is a discussion of the relative value of each test and the limitations and precautions which are necessary in the interpretation of the laboratory results.

(I) Airborne levels to be achieved without reliance or respirator protection through a combination of engineering and work practice or other administrative controls are illustrated in the following table:

Industry	Permissible Lead Level/Compliance Date		
	200 $\mu\text{g}/\text{m}^3$	100 $\mu\text{g}/\text{m}^3$	50 $\mu\text{g}/\text{m}^3$
Primary Lead Production	1973	06/29/84	06/29/91
Secondary Lead Production	1973	06/29/84	06/29/91
Lead Acid Battery Manufacturing	1973	06/29/83	06/29/91
Automobile Mfg./Solder, Grinding	1973	N/A	03/08/97
Electronics, Gray Iron Foundries, Ink Mfg., Paints and Coatings Mfg., Can Mfg., Wallpaper Mfg., and Printing.	1973	N/A	06/29/91
Lead Chemical Mfg., Nonferrous Foundries, Leaded Steel Mfg., Battery Breaking in the Collection and Processing of Scrap (when not a part of secondary lead smelter) Secondary Copper Smelter, Brass and Bronze Ingot Production.	1973	N/A	N/A ^{1*}
All Other Industries	1973	N/A	09/08/92

* Feasibility of achieving the PEL by engineering and work practice controls for these industries has yet to be resolved in court, therefore no date has been scheduled.

(ii) Medical surveillance and monitoring requirements for workers exposed to inorganic lead.

(A) Under the occupational health standard for inorganic lead, a program of biological monitoring and medical surveillance is to be made available to all employees exposed to lead above the action level of 30 $\mu\text{g}/\text{m}^3$ TWA for more than thirty days each year. This program consists of periodic blood sampling and medical evaluation to be performed on a schedule

which is defined by previous laboratory results, worker complaints or concerns, and the clinical assessment of the examining physician.

(B) Under this program, the blood lead level of all employees who are exposed to lead above the action level of 30 µg/m³ is to be determined at least every six months. The frequency is increased to every two months for employees whose last blood lead level was between 40µg/100g whole blood and the level requiring employee medical removal to be discussed below. For employees who are removed from exposure to lead due to an elevated blood lead, a new blood lead level must be measured monthly. Zinc protoporphyrin (ZPP) measurement is required on each occasion that a blood lead level measurement is made.

(C) An annual medical examination and consultation performed under the guidelines discussed in item (iv) is to be made available to each employee for whom a blood test conducted at any time during the preceding twelve months indicated a blood lead level at or above 40 µg/100g. Also, an examination is to be given to all employees prior to their assignment to an area in which airborne lead concentrations reach or exceed the action level. In addition, a medical examination must be provided as soon as possible after notification

by an employee that the employee has developed signs or symptoms commonly associated with lead intoxication, that the employee desires medical advice regarding lead exposure and the ability to procreate a healthy child, or that the employee has demonstrated difficulty in breathing during a respirator fitting test or during respirator use. An examination is also to be made available to each employee removed from exposure to lead due to a risk of sustaining material impairment to health, or otherwise limited or specially protected pursuant to medical recommendations.

(D) Results of biological monitoring or the recommendations of an examining physician may necessitate removal of an employee from further lead exposure pursuant to the standard's medical removal program (MRP). The object of the MRP program is to provide temporary medical removals to workers either with substantially elevated blood lead levels or otherwise at risk of sustaining material health impairment from continued substantial exposure to lead. The following guidelines which are summarized in Table 10 were created under the standard for the temporary removal of an exposed employee and his or her subsequent return to work in an exposure area.

TABLE 10
EFFECTIVE DATE

	Sept. 6, 1980	Sept. 6, 1981	Sept. 6, 1982	Sept. 6, 1983	Sept. 6, 1984
A. Blood lead level requiring employee medical removal (level must be confirmed with second follow-up blood lead level within two weeks of first report).	>80 µg/100g.	>70 µg/100g.	>60 µg/100g.	>60 µg/100g.	>60 µg/100g or average of last three blood samples or all blood samples over previous 6 months (whichever is over a longer time period) is 50 µg/100g. or greater unless last sample is 40 µg/100g or less.
B. Frequency which employees exposed is action level of lead (30 µg/m ³ TWA) must have blood lead level checked. (ZPP is also required in each occasion that a blood test is obtained):					

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TABLE 10
EFFECTIVE DATE

	Sept. 6, 1980	Sept. 6, 1981	Sept. 6, 1982	Sept. 6, 1983	Sept. 6, 1984
1. Last blood lead level less than 40 µg/100g	Every 6 months.	Every 6 months.	Every 6 months.	Every 6 months.	Every 6 months.
2. Last blood lead level between 40 µg/100g and level requiring medical removal (see A above)	Every 2 months.	Every 2 months.	Every 2 months.	Every 2 months.	Every 2 months.
3. Employees removed from exposure to lead because of an elevated blood lead level	Every 1 month.	Every 1 month.	Every 1 month.	Every 1 month.	Every 1 month.
C. Permissible airborne exposure limit for workers removed from work due to an elevated blood lead level (without regard to respirator protection).	100 µg/m ³ 8 hr TWA	50 µg/m ³ 8 hr TWA	30 µg/m ³ 8 hr TWA	30 µg/m ³ 8 hr TWA	30 µg/m ³ 8 hr TWA
D. Blood lead level confirmed with a second blood analysis, at which employee may return to work. Permissible exposure without regard to respirator protection is listed by industry in Table 1.	60 µg/100g	50 µg/100g	40 µg/100g	40 µg/100g	40 µg/100g

Note: Where medical opinion indicates that an employee is at risk of material impairment from exposure to lead, the physician can remove an employee from exposure exceeding the action level (or less) or recommend special protective measures as deemed appropriate and necessary. Medical monitoring during the medical removal period can be more stringent than noted in the table above if the physician so specifies. Return to work or removal of limitations and special protections is permitted when the physician indicates that the worker is no longer at risk of material impairment.

(E) Under the standard's ultimate worker removal criteria, a worker is to be removed from any work having any eight-hour TWA exposure to lead of 30 µg/m³ or more whenever either of the following circumstances apply. (I) a blood lead level of 60 µg/100g or greater is obtained and confirmed by a second follow-up blood lead level performed within two weeks after the employer receives the results of the first blood sample test, or (II) the average of the previous three blood lead determinations or the average of all blood lead determinations conducted during the previous six months, whichever encompasses the longest time period, equals or exceeds 50 µg/100g, unless the last blood sample indicates a blood lead level at or below 40 µg/100g, in which case the employee need not be removed. Medical removal is to continue until two consecutive blood lead levels are 40 µg/100g or less.

(F) During the first two years that the ultimate removal criteria are being phased in, the return criteria have been set to assure that a worker's blood lead level has substantially declined during the period of removal. From March 1, 1979, to March 1, 1980, the blood lead level requiring employee medical removal is 80 µg/100g. Workers found to have a confirmed blood lead at this level or greater need only be removed from work having a daily eight hour TWA exposure to lead at or above 100 µg/m³. Workers so removed are to be returned to work when their blood lead levels are at or below 60 µg/100g of whole blood. From March 1, 1980, to March 1, 1981, the blood lead level requiring medical removal is 70 µg/100g. During this period workers need only be removed from jobs having a daily eight hour TWA exposure to lead at or above 50 µg/m³ and are to be returned to work when a level of 50 µg/100g is achieved. Beginning March 1, 1981,

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return depends on the worker's blood lead level declining to 40 µg/100g of whole blood.

(G) As part of the standard, the employer is required to notify in writing each employee whose whole blood lead level exceeds 40 µg/100g. In addition, each such employee is to be informed that the standard requires medical removal with MRP benefits, discussed below, when an employee's blood lead level exceeds the above defined limits.

(H) In addition to the above blood lead level criteria, temporary worker removal may also take place as a result of medical determinations and recommendations. Written medical opinions must be prepared after each examination pursuant to the standard. If the examining physician includes medical finding, determination or opinion that the employee has a medical condition which places the employee at increased risk of material health impairment from exposure to lead, then the employee must be removed from exposure to lead at or above the action level. Alternatively, if the examining physician recommends special protective measures for an employee (e.g., use of a powered air purifying respirator) or recommends limitations on an employee's exposure to lead, then the employer must implement these recommendations. Recommendations may be more stringent than the specific provisions of the standard. The examining physician, therefore, is given broad flexibility to tailor special protective procedures to the needs of individual employees. This flexibility extends to the evaluation and management of pregnant workers and male and female workers who are planning to conceive children. Based on the history, physical examination, and laboratory studies, the physician might recommend special protective measures or medical removal for an employee who is pregnant or who is planning to conceive a child when, in the physician's judgment, continued exposure to lead at the current job would pose a significant risk. The return of the employee to his or her former job status, or the removal of special protections or limitations, depends upon the examining physician determining that the employee is no longer at increased risk of material impairment or that the special measures are no longer needed.

(I) During the period of any form of special protection or removal, the employer must maintain the worker's earnings, seniority, and other employment rights and benefits (as though the worker has not been removed) for a period of up to eighteen months. This economic protection will maximize meaningful worker participation in the medical surveillance program, and is appropriate as part of the employer's overall obligation to provide a safe and healthful work place. The provisions of MRP benefits during the employee's removal period may, however, be conditioned upon participation in medical surveillance.

(J) On rare occasions, an employee's blood lead level may not acceptably decline within eighteen months of removal. This situation will arise only in unusual circumstances, thus the standard relies on an individual medical examination to determine how to protect such an employee. This medical determination is to be based on both laboratory values, including lead levels, zinc protoporphyrin levels, blood counts, and other tests felt to be warranted, as well as the physician's judgment that any symptoms or findings on physical examination are a result of lead toxicity. The medi-

cal determination may be that the employee is incapable of ever safely returning to his or her former job status. The medical determination may provide additional removal time past eighteen months for some employees or specify special protective measures to be implemented.

(K) The lead standard provides for a multiple physician review in cases where the employee wishes a second opinion concerning potential lead poisoning or toxicity. If an employee wishes a second opinion, he or she can make an appointment with a physician of his or her choice. This second physician will review the findings, recommendations or determinations of the first physician and conduct any examinations, consultations or tests deemed necessary in an attempt to make a final medical determination. If the first and second physicians do not agree in their assessment they must try to resolve their differences. If they cannot reach an agreement then they must designate a third physician to resolve the dispute.

(L) The employer must provide examining and consulting physicians with the following specific information: A copy of the lead regulations and all appendices, a description of the employee's duties as related to exposure, the exposure level to lead and any other toxic substances (if applicable), a description of personal protective equipment used, blood lead levels, and all prior written medical opinions regarding the employee in the employer's possession or control. The employer must also obtain from the physician and provide the employee with a written medical opinion containing blood lead levels, the physician's opinion as to whether the employee is at risk of material impairment to health, any recommended protective measures for the employee if further exposure is permitted, as well as any recommended limitations upon an employee's use of respirators.

(M) Employers must instruct each physician not to reveal to the employer in writing or in any other way his or her findings, laboratory results, or diagnoses which are felt to be unrelated to occupational lead exposure. They must also instruct each physician to advise the employee of any occupationally or nonoccupationally related medical condition requiring further treatment or evaluation.

(N) The standard provides for the use of respirators when engineering and other primary controls have not been fully implemented. However, the use of respirator protection shall not be used in lieu of temporary medical removal due to elevated blood lead levels or findings that an employee is at risk of material health impairment. This is based on the numerous inadequacies of respirators including skin rash where the facepiece makes contact with the skin, unacceptable stress to breathing in some workers with underlying cardiopulmonary impairment, difficulty in providing adequate fit, the tendency for respirators to create additional hazards by interfering with vision, hearing, and mobility, and the difficulties of assuring the maximum effectiveness of a complicated work practice program involving respirators. Respirators do, however, serve a useful function where engineering and work practice are inadequate by providing interim or short-term protection, provided they are properly selected for the environment in which the employee will be working, properly fitted to the employee, maintained and cleaned periodically, and worn by the employee when required.

(O) In its final standard on occupational exposure to inorganic lead, WISHA has prohibited prophylactic chelation. Diagnostic and therapeutic chelation are permitted only under the supervision of a licensed physician with appropriate medical monitoring in an acceptable clinical setting. The decision to initiate chelation therapy must be made on an individual basis and take into account the severity of symptoms felt to be a result of lead toxicity along with blood lead levels, ZPP levels and other laboratory tests as appropriate. EDTA and penicillamine, which are the primary chelating agents used in the therapy of occupational lead poisoning, have significant potential side effects and their use must be justified on the basis of expected benefits to the worker.

(P) Unless frank and severe symptoms are present, therapeutic chelation is not recommended given the opportunity to remove a worker from exposure and allow the body to naturally excrete accumulated lead. As a diagnostic aid, the chelation mobilization test using CA-EDTA has limited applicability. According to some investigators, the tests can differentiate between lead-induced and other nephropathies. The test may also provide an estimation of the mobile fraction of the total body lead burden.

(Q) Employers are required to assure that accurate records are maintained on exposure monitoring, medical surveillance, and medical removal for each employee. Exposure monitoring and medical surveillance records must be kept for forty years or the duration of employment plus twenty years, whichever is longer, while medical removal records must be maintained for the duration of employment. All records required under the standard must be made available upon request to representatives of the director of the department of labor and industries. Employers must also make environmental and biological monitoring and medical removal records available to affected employees and to former employees or their authorized employee representatives. Employees or their specifically designated representatives have access to their entire medical surveillance records.

(R) In addition, the standard requires that the employer inform all workers exposed to lead at or above the action level of the provisions of the standard and all its appendices, the purpose and description of medical surveillance and provisions for medical removal protection if temporary removal is required. An understanding of the potential health effects of lead exposure by all exposed employees along with full understanding of their rights under the lead standard is essential for an effective monitoring program.

(iii) Adverse health effects of inorganic lead.

(A) Although the toxicity of lead has been known for 2,000 years, the knowledge of the complex relationship between lead exposure and human response is still being refined. Significant research into the toxic properties of lead continues throughout the world, and it should be anticipated that our understanding of thresholds of effects and margins of safety will be improved in future years. The provisions of the lead standard are founded on two prime medical judgments; first, the prevention of adverse health effects from exposure to lead throughout a working lifetime requires that worker blood lead levels be maintained at or below 40 $\mu\text{g}/100\text{g}$, and second, the blood lead levels of workers, male or female, who intend to parent in the near future should be maintained

below 30 $\mu\text{g}/100\text{g}$ to minimize adverse reproduction health effects to the parent and developing fetus. The adverse effects of lead on reproduction are being actively researched and WISHA encourages the physician to remain abreast of recent developments in the area to best advise pregnant workers or workers planning to conceive children.

(B) The spectrum of health effects caused by lead exposure can be subdivided into five developmental states; normal, physiological changes of uncertain significance, pathophysiological changes, overt symptoms (morbidity), and mortality. Within this process there are no sharp distinctions, but rather a continuum of effects. Boundaries between categories overlap due to the wide variation of individual responses and exposures in the working population. WISHA's development of the lead standard focused on pathophysiological changes as well as later stages of disease.

(I) Heme synthesis inhibition.

a) The earliest demonstrated effect of lead involves its ability to inhibit at least two enzymes of the heme synthesis pathway at very low blood levels. Inhibition of delta aminolevulinic acid dehydrase (ALA-D) which catalyzes the conversion of delta-aminolevulinic acid (ALA) to protoporphyrin is observed at a blood lead level below 20 $\mu\text{g}/100\text{g}$ whole blood. At a blood lead level of 40 $\mu\text{g}/100\text{g}$, more than twenty percent of the population would have seventy percent inhibition of ALA-D. There is an exponential increase in ALA excretion at blood lead levels greater than 40 $\mu\text{g}/100\text{g}$.

b) Another enzyme, ferrochelatase, is also inhibited at low blood lead levels. Inhibition of ferrochelatase leads to increased free erythrocyte protoporphyrin (FEP) in the blood which can then bind to zinc to yield zinc protoporphyrin. At a blood lead level of 50 $\mu\text{g}/100\text{g}$ or greater, nearly 100 percent of the population will have an increase FEP. There is also an exponential relationship between blood lead levels greater than 40 $\mu\text{g}/100\text{g}$ and the associated ZPP level, which has led to the development of the ZPP screening test for lead exposure.

c) While the significance of these effects is subject to debate, it is WISHA's position that these enzyme disturbances are early stages of a disease process which may eventually result in the clinical symptoms of lead poisoning. Whether or not the effects do progress to the later stages of clinical disease, disruption of these enzyme processes over a working lifetime is considered to be a material impairment of health.

d) One of the eventual results of lead-induced inhibition of enzymes in the heme synthesis pathway is anemia which can be asymptomatic if mild but associated with a wide array of symptoms including dizziness, fatigue, and tachycardia when more severe. Studies have indicated that lead levels as low as 50 $\mu\text{g}/100\text{g}$ can be associated with a definite decreased hemoglobin, although most cases of lead-induced anemia, as well as shortened red-cell survival times, occur at lead levels exceeding 80 $\mu\text{g}/100\text{g}$. Inhibited hemoglobin synthesis is more common in chronic cases whereas shortened erythrocyte life span is more common in acute cases.

e) In lead-induced anemias, there is usually a reticulocytosis along with the presence of basophilic stippling, and

ringed sideroblasts, although none of the above are pathognomonic for lead-induced anemia.

(II) Neurological effects.

a) Inorganic lead had been found to have toxic effects on both the central and peripheral nervous systems. The earliest stage of lead-induced central nervous system effects first manifest themselves in the form of behavioral disturbances and central nervous system symptoms including irritability, restlessness, insomnia and other sleep disturbances, fatigue, vertigo, headache, poor memory, tremor, depression, and apathy. With more severe exposure, symptoms can progress to drowsiness, stupor, hallucinations, delirium, convulsions and coma.

b) The most severe and acute form of lead poisoning which usually follows ingestion or inhalation of large amounts of lead is acute encephalopathy which may arise precipitously with the onset of intractable seizures, coma, cardiorespiratory arrest, and death within 48 hours.

c) While there is disagreement about what exposure levels are needed to produce the earliest symptoms, most experts agree that symptoms definitely can occur at blood lead levels of 60 $\mu\text{g}/100\text{g}$ whole blood and therefore recommend a 40 $\mu\text{g}/100\text{g}$ maximum. The central nervous system effects frequently are not reversible following discontinued exposure or chelation therapy and when improvement does occur, it is almost always only partial.

d) The peripheral neuropathy resulting from lead exposure characteristically involves only motor function with minimal sensory damage and has a marked predilection for the extensor muscles of the most active extremity. The peripheral neuropathy can occur with varying degrees of severity. The earliest and mildest form which can be detected in workers with blood lead levels as low as 50 $\mu\text{g}/100\text{g}$ is manifested by slowing or motor nerve conduction velocity often without clinical symptoms. With progression of the neuropathy there is development of painless extensor muscle weakness usually involving the extensor muscles of the fingers and hand in the most active upper extremity, followed in severe cases by wrist drop, much less commonly, foot drop.

e) In addition to slowing of nerve conduction, electromyographical studies in patients with blood lead levels greater than 50 $\mu\text{g}/100\text{g}$ have demonstrated a decrease in the number of acting motor unit potentials, an increase in the duration of motor unit potentials, and spontaneous pathological activity including fibrillations and fasciculation. Whether these effects occur at levels of 40 $\mu\text{g}/100\text{g}$ is undetermined.

f) While the peripheral neuropathies can occasionally be reversed with therapy, again such recovery is not assured particularly in the more severe neuropathies and often improvement is only partial. The lack of reversibility is felt to be due in part to segmental demyelination.

(III) Gastrointestinal. Lead may also effect the gastrointestinal system producing abdominal colic or diffuse abdominal pain, constipation, obstipation, diarrhea, anorexia, nausea and vomiting. Lead colic rarely develops at blood lead levels below 80 $\mu\text{g}/100\text{g}$.

(IV) Renal.

a) Renal toxicity represents one of the most serious health effects of lead poisoning. In the early stages of disease nuclear inclusion bodies can frequently be identified in prox-

imal renal tubular cells. Renal functions remain normal and the changes in this stage are probably reversible. With more advanced disease there is progressive interstitial fibrosis and impaired renal function. Eventually extensive interstitial fibrosis ensues with sclerotic glomeruli and dilated and atrophied proximal tubules; all represent end stage kidney disease. Azotemia can be progressive, eventually resulting in frank uremia necessitating dialysis. There is occasionally associated hypertension and hyperuricemia with or without gout.

b) Early kidney disease is difficult to detect. The urinalysis is normal in early lead nephropathy and the blood urea nitrogen and serum creatinine increase only when two-thirds of kidney function is lost. Measurement of creatinine clearance can often detect earlier disease as can other methods of measurement of glomerular filtration rate. An abnormal Ca-EDTA mobilization test has been used to differentiate between lead-induced and other nephropathies, but this procedure is not widely accepted. A form of Fanconi syndrome with aminoaciduria, glycosuria, and hyperphosphaturia indicating severe injury to the proximal renal tubules is occasionally seen in children.

(V) Reproductive effects.

a) Exposure to lead can have serious effects on reproductive function in both males and females. In male workers exposed to lead there can be a decrease in sexual drive, impotence, decreased ability to produce healthy sperm, and sterility. Malformed sperm (teratospermia), decreased number of sperm (hypospermia), and sperm with decreased motility (asthenospermia) can occur. Teratospermia has been noted at mean blood lead levels of 53 $\mu\text{g}/100\text{g}$ and hypospermia and asthenospermia at 41 $\mu\text{g}/100\text{g}$. Furthermore, there appears to be a dose-response relationship for teratospermia in lead exposed workers.

b) Women exposed to lead may experience menstrual disturbances including dysmenorrhea, menorrhagia and amenorrhea. Following exposure to lead, women have a higher frequency of sterility, premature births, spontaneous miscarriages, and stillbirths.

c) Germ cells can be affected by lead and cause genetic damage in the egg or sperm cells before conception and result in failure to implant, miscarriage, stillbirth, or birth defects.

d) Infants of mothers with lead poisoning have a higher mortality during the first year and suffer from lowered birth weights, slower growth, and nervous system disorders.

e) Lead can pass through the placental barrier and lead levels in the mother's blood are comparable to concentrations of lead in the umbilical cord at birth. Transplacental passage becomes detectable at 12-14 weeks of gestation and increases until birth.

f) There is little direct data on damage to the fetus from exposure to lead but it is generally assumed that the fetus and newborn would be at least as susceptible to neurological damage as young children. Blood lead levels of 50-60 $\mu\text{g}/100\text{g}$ in children can cause significant neurobehavioral impairments, and there is evidence of hyperactivity at blood levels as low as 25 $\mu\text{g}/100\text{g}$. Given the overall body of literature concerning the adverse health effects of lead in children, WISHA feels that the blood lead level in children should be maintained below 30 $\mu\text{g}/100\text{g}$ with a population mean of 15

µg/100g. Blood lead levels in the fetus and newborn likewise should not exceed 30 µg/100g.

g) Because of lead's ability to pass through the placental barrier and also because of the demonstrated adverse effects of lead on reproductive function in both males and females as well as the risk of genetic damage of lead on both the ovum and sperm, WISHA recommends a 30 µg/100g maximum permissible blood lead level in both males and females who wish to bear children.

(IV) Other toxic effects.

a) Debate and research continue on the effects of lead on the human body. Hypertension has frequently been noted in occupationally exposed individuals although it is difficult to assess whether this is due to lead's adverse effects on the kidneys or if some other mechanism is involved.

b) Vascular and electrocardiographic changes have been detected but have not been well characterized. Lead is thought to impair thyroid function and interfere with the pituitary-adrenal axis, but again these effects have not been well defined.

(iv) Medical evaluation.

(A) The most important principle in evaluating a worker for any occupational disease including lead poisoning is a high index of suspicion on the part of the examining physician. As discussed in Section (ii), lead can affect numerous organ systems and produce a wide array of signs and symptoms, most of which are nonspecific and subtle in nature at least in the early stages of disease. Unless serious concern for lead toxicity is present, many of the early clues to diagnosis may easily be overlooked.

(B) The crucial initial step in the medical evaluation is recognizing that a worker's employment can result in exposure to lead. The worker will frequently be able to define exposures to lead and lead-containing materials but often will not volunteer this information unless specifically asked. In other situations the worker may not know of any exposures to lead but the suspicion might be raised on the part of the physician because of the industry or occupation of the worker. Potential occupational exposure to lead and its compounds occur in at least 120 occupations, including lead smelting, the manufacture of lead storage batteries, the manufacture of lead pigments and products containing pigments, solder manufacture, shipbuilding and ship repair, auto manufacturing, construction, and painting.

(C) Once the possibility for lead exposure is raised, the focus can then be directed toward eliciting information from the medical history, physical exam, and finally from laboratory data to evaluate the worker for potential lead toxicity.

(D) A complete and detailed work history is important in the initial evaluation. A listing of all previous employment with information on work processes, exposure to fumes or dust, known exposures to lead or other toxic substances, respiratory protection used, and previous medical surveillance should all be included in the worker's record. Where exposure to lead is suspected, information concerning on-the-job personal hygiene, smoking or eating habits in work areas, laundry procedures, and use of any protective clothing or respiratory protection equipment should be noted. A complete work history is essential in the medical evaluation of a worker with

suspected lead toxicity, especially when long-term effects such as neurotoxicity and nephrotoxicity are considered.

(E) The medical history is also of fundamental importance and should include a listing of all past and current medical conditions, current medications including proprietary drug intake, previous surgeries and hospitalizations, allergies, smoking history, alcohol consumption, and also nonoccupational lead exposures such as hobbies (hunting, riflery). Also known childhood exposures should be elicited. Any previous history of hematological, neurological, gastrointestinal, renal, psychological, gynecological, genetic, or reproductive problems should be specifically noted.

(F) A careful and complete review of systems must be performed to assess both recognized complaints and subtle or slowly acquired symptoms which the worker might not appreciate as being significant. The review of symptoms should include the following:

General	- weight loss, fatigue, decreased appetite.
Head, Eyes, Ears, Nose, Throat (HEENT)	- headaches, visual disturbance or decreased visual acuity, hearing deficits or tinnitus, pigmentation of the oral mucosa, or metallic taste in mouth.
Cardiopulmonary	- shortness of breath, cough, chest pains, palpitations, or orthopnea.
Gastrointestinal	- nausea, vomiting, heartburn, abdominal pain, constipation or diarrhea.
Neurologic	- irritability, insomnia, weakness (fatigue), dizziness, loss of memory, confusion, hallucinations, incoordination, ataxia, decreased strength in hands or feet, disturbance in gait, difficulty in climbing stairs, or seizures.
Hematologic	- pallor, easy fatigability, abnormal blood loss, melena.
Reproductive (male or female and spouse where relevant)	- history of infertility, impotence, loss of libido, abnormal menstrual periods, history of miscarriages, stillbirths, or children with birth defects.
Musculoskeletal	- muscle and joint pains.

(G) The physical examination should emphasize the neurological, gastrointestinal, and cardiovascular systems. The worker's weight and blood pressure should be recorded and the oral mucosa checked for pigmentation characteristic of a possible Burtonian or lead line on the gingiva. It should be noted, however, that the lead line may not be present even in severe lead poisoning if good oral hygiene is practiced.

(H) The presence of pallor on skin examination may indicate an anemia, which if severe might also be associated with a tachycardia. If an anemia is suspected, an active search for blood loss should be undertaken including potential blood loss through the gastrointestinal tract.

(I) A complete neurological examination should include an adequate mental status evaluation including a search for behavioral and psychological disturbances, memory testing, evaluation for irritability, insomnia, hallucinations, and mental clouding. Gait and coordination should be examined along with close observation for tremor. A detailed evaluation of peripheral nerve function including careful sensory and motor function testing is warranted. Strength testing particularly of extensor muscle groups of all extremities is of fundamental importance.

(J) Cranial nerve evaluation should also be included in the routine examination.

(K) The abdominal examination should include auscultation for bowel sounds and abnormal bruits and palpation for organomegaly, masses, and diffuse abdominal tenderness.

(L) Cardiovascular examination should evaluate possible early signs of congestive heart failure. Pulmonary status should be addressed particularly if respirator protection is contemplated.

(M) As part of the medical evaluation, the lead standard requires the following laboratory studies.

(I) Blood lead level.

(II) Hemoglobin and hematocrit determinations, red cell indices, and examination of the peripheral blood smear to evaluate red blood cell morphology.

(III) Blood urea nitrogen.

(IV) Serum creatinine.

(V) Routine urinalysis with microscopic examination.

(VI) A zinc protoporphyrin level.

(N) In addition to the above, the physician is authorized to order any further laboratory or other tests which he or she deems necessary in accordance with sound medical practice. The evaluation must also include pregnancy testing or laboratory evaluation of male fertility if requested by the employee.

(O) Additional tests which are probably not warranted on a routine basis but may be appropriate when blood lead and ZPP levels are equivocal include delta aminolevulinic acid and coproporphyrin concentrations in the urine, and dark-field illumination for detection of basophilic stippling in red blood cells.

(P) If an anemia is detected further studies including a careful examination of the peripheral smear, reticulocyte count, stool for occult blood, serum iron, total iron binding capacity, bilirubin, and, if appropriate vitamin B12 and folate may be of value in attempting to identify the cause of the anemia.

(Q) If a peripheral neuropathy is suspected, nerve conduction studies are warranted both for diagnosis and as a basis to monitor any therapy.

(R) If renal disease is questioned, a 24-hour urine collection for creatinine clearance, protein, and electrolytes may be indicated. Elevated uric acid levels may result from lead-induced renal disease and a serum uric acid level might be performed.

(S) An electrocardiogram and chest X ray may be obtained as deemed appropriate.

(T) Sophisticated and highly specialized testing should not be done routinely and where indicated should be under the direction of a specialist.

(v) Laboratory evaluation.

(A) The blood level at present remains the single most important test to monitor lead exposure and is the test used in the medical surveillance program under the lead standard to guide employee medical removal. The ZPP has several advantages over the blood lead level. Because of its relatively recent development and the lack of extensive data concerning its interpretation, the ZPP currently remains an ancillary test.

(B) This section will discuss the blood lead level and ZPP in detail and will outline their relative advantages and disadvantages. Other blood tests currently available to evaluate lead exposure will also be reviewed.

(C) The blood lead level is a good index of current or recent lead absorption when there is no anemia present and when the worker has not taken any chelating agents. However, blood lead levels along with urinary lead levels do not necessarily indicate the total body burden of lead and are not adequate measures of past exposure. One reason for this is that lead has a high affinity for bone and up to 90 percent of the body's total lead is deposited there. A very important component of the total lead body burden is lead in soft tissue (liver, kidneys, and brain). This fraction of the lead body burden, the biologically active lead, is not entirely reflected by blood lead levels since it is a function of the dynamics of lead absorption, distribution, deposition in bone and excretion. Following discontinuation of exposure to lead, the excess body burden is only slowly mobilized from bone and other relatively stable stores and excreted. Consequently, a high blood lead level may only represent recent heavy exposure to lead without a significant total body excess and likewise a low blood lead level does not exclude an elevated total body burden of lead.

(D) Also due to its correlation with recent exposures, the blood lead level may vary considerably over short time intervals.

(E) To minimize laboratory error and erroneous results due to contamination, blood specimens must be carefully collected after thorough cleaning of the skin with appropriate methods using lead-free containers and analyzed by a reliable laboratory. Under the standard, samples must be analyzed in laboratories which are approved by the Center for Disease Control (CDC) or which have received satisfactory grades in proficiency testing by the CDC in the previous year. Analysis is to be made using atomic absorption spectrophotometry anodic stripping; voltammetry or any method which meets the accuracy requirements set forth by the standard.

(F) The determination of lead in urine is generally considered a less reliable monitoring technique than analysis of whole blood primarily due to individual variability in urinary excretion capacity as well as the technical difficulty of obtaining accurate 24 hour urine collections. In addition, workers with renal insufficiency, whether due to lead or some other cause, may have decreased lead clearance and consequently urine lead levels may underestimate the true lead bur-

den. Therefore, urine lead levels should not be used as a routine test.

(G) The zinc protoporphyrin test, unlike the blood lead determination, measures an adverse metabolic effect of lead and as such is a better indicator of lead toxicity than the level of blood lead itself. The level of ZPP reflects lead absorption over the preceding three to four months, and therefore is a better indicator of lead body burden. The ZPP requires more time than the blood lead to read significantly elevated levels; the return to normal after discontinuing lead exposure is also slower. Furthermore, the ZPP test is simpler, faster, and less expensive to perform and no contamination is possible. Many investigators believe it is the most reliable means of monitoring chronic lead absorption.

(H) Zinc protoporphyrin results from the inhibition of the enzyme ferrochelatase which catalyzes the insertion of an iron molecule into the protoporphyrin molecule, which then becomes heme. If iron is not inserted into the molecule then zinc, having a greater affinity for protoporphyrin, takes place in the iron, forming ZPP.

(I) An elevation in the level of circulating ZPP may occur at blood lead levels as low as 20-30 $\mu\text{g}/100\text{g}$ in some workers. Once the blood lead level has reached 40 $\mu\text{g}/100\text{g}$ there is more marked rise in the ZPP value from its normal range of less than 100 $\mu\text{g}/100\text{ml}$. Increases in blood lead levels beyond 40 $\mu\text{g}/100\text{g}$ are associated with exponential increases in ZPP.

(J) Whereas blood lead levels fluctuate over short time spans, ZPP levels remain relatively stable. ZPP is measured directly in red blood cells and is present for the cell's entire 120 day lifespan. Therefore, the ZPP level in blood reflects the average ZPP production over the previous three to four months and consequently the average lead exposure during that time interval.

(K) It is recommended that a hematocrit be determined whenever a confirmed ZPP of 50 $\mu\text{g}/100\text{ml}$ whole blood is obtained to rule out a significant underlying anemia. If the ZPP is in excess of 100 $\mu\text{g}/100\text{ml}$ and not associated with abnormal elevations in blood lead levels, the laboratory should be checked to be sure the blood leads were determined using atomic absorption spectrophotometry, anodic stripping voltammetry or any method which meets the accuracy requirements set forth by the standard, by a CDC approved laboratory which is experienced in lead level determinations. Repeat periodic blood lead studies should be obtained in all individuals with elevated ZPP levels to be certain that an associated elevated blood lead level has not been missed due to transient fluctuations in blood leads.

(L) ZPP has characteristic fluorescence spectrum with a peak at 594nm which is detectable with a hematofluorimeter. The hematofluorimeter is accurate and portable and can provide on-site, instantaneous results for workers who can be frequently tested via a finger prick.

(M) However, careful attention must be given to calibration and quality control procedures. Limited data on blood lead -ZPP correlations and the ZPP levels which are associated with the adverse health effects discussed in item (ii) are the major limitations of the test. Also it is difficult to correlate ZPP levels with environmental exposure and there is some variation of response with age and sex. Nevertheless, the ZPP

promises to be an important diagnostic test for the early detection of lead toxicity and its value will increase as more data is collected regarding its relationship to other manifestations of lead poisoning.

(N) Levels of delta-aminolevulinic acid (ALA) in the urine are also used as a measure of lead exposure. Increasing concentrations of ALA are believed to result from the inhibition of the enzyme delta-aminolevulinic acid dehydrase (ALA-D). Although the test is relatively easy to perform, inexpensive, and rapid, the disadvantages include variability in results, the necessity to collect a complete 24 hour urine sample which has a specific gravity greater than 1.010, and also the fact that ALA decomposes in the presence of light.

(O) The pattern of porphyrin excretion in the urine can also be helpful in identifying lead intoxication. With lead poisoning, the urine concentrations of coproporphyrins I and II, porphobilinogen and uroporphyrin I rise. The most important increase, however, is that of coproporphyrin III; levels may exceed 5,000 $\mu\text{g}/\text{l}$ in the urine in lead poisoned individuals, but its correlation with blood lead levels and ZPP are not as good as those of ALA. Increases in urinary porphyrins are not diagnostic of lead toxicity and may be seen in porphyria, some liver diseases, and in patients with high reticulocyte counts.

(vi) Summary.

(A) The WISHA standard for inorganic lead places significant emphasis on the medical surveillance of all workers exposed to levels of inorganic lead above the action level of 30 $\mu\text{g}/\text{m}^3$ TWA. The physician has a fundamental role in this surveillance program, and in the operation of the medical removal protection program.

(B) Even with adequate worker education on the adverse health effects of lead and appropriate training in work practices, personal hygiene and other control measures, the physician has a primary responsibility for evaluating potential lead toxicity in the worker. It is only through a careful and detailed medical and work history, a complete physical examination and appropriate laboratory testing that an accurate assessment can be made. Many of the adverse health effects of lead toxicity are either irreversible or only partially reversible and therefore early detection of disease is very important.

(C) This document outlines the medical monitoring program as defined by the occupational safety and health standard for inorganic lead. It reviews the adverse health effects of lead poisoning and describes the important elements of the history and physical examinations as they relate to these adverse effects.

(D) It is hoped that this review and discussion will give the physician a better understanding of the WISHA standard with the ultimate goal of protecting the health and well-being of the worker exposed to lead under his or her care.

(d) Appendix D. Recommendations to employers concerning high-risk tasks (nonmandatory).

The department advises employers that the following tasks have a high risk for lead overexposure (this list is not complete; other tasks also can result in lead over-exposure):

- Any open flame operation involving lead-containing solder in a manner producing molten solder, including the manufacture or repair of motor vehicle radiators;
- Sanding, cutting or grinding of lead-containing solder;

- Breaking, recycling or manufacture of lead-containing batteries;
- Casting objects using lead, brass, or lead-containing alloys;
- Where lead-containing coatings or paints are present:
 - abrasive blasting
 - welding
 - cutting
 - torch burning
 - manual demolition of structures
 - manual scraping
 - manual sanding
 - heat gun applications
 - power tool cleaning
 - rivet busting
 - clean-up activities where dry expendable abrasives are used
 - abrasive blasting enclosure movement and removal;
- Spray-painting with lead-containing paint;
- Using lead-containing mortar;
- Lead burning;
- Operation or cleaning of shooting facilities where lead bullets are used;
- Formulation or processing of lead-containing pigments or paints;
- Cutting, burning, or melting of lead-containing materials.

The department recommends that annual blood lead testing be offered to all employees potentially overexposed to lead, including those performing the tasks listed above, regardless of air lead levels. Research has shown that air lead levels often do not accurately predict workers' lead overexposure. The blood lead testing will provide the most information if performed during a period of peak lead exposure.

Employers should be aware that the United States Public Health Service has set a goal of eliminating occupational exposures which result in whole blood lead levels of 25 µg/dl or greater. This goal should guide whether employees' blood lead levels indicate lead overexposure.

If blood lead levels are elevated in an employee performing a task associated with lead overexposure, employers should assess the maintenance and effectiveness of exposure controls, hygiene facilities, respiratory protection program, the employee's work practices and personal hygiene, and the employee's respirator use, if any. If a deficiency exists in any of these areas, the employer should correct the problem.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

WAC 296-62-07540 Formaldehyde. (1) Scope and application. This standard applies to all occupational exposures to formaldehyde, i.e., from formaldehyde gas, its solutions, and materials that release formaldehyde.

(2) Definitions. For purposes of this standard, the following definitions shall apply:

(a) "Action level" means a concentration of 0.5 part formaldehyde per million parts of air (0.5 ppm) calculated as an 8-hour time-weighted average (TWA) concentration.

(b) "Approved" means approved by the director of the department of labor and industries or his/her authorized representative: Provided, however, That should a provision of this chapter state that approval by an agency or organization other than the department of labor and industries is required, such as Underwriters' Laboratories or the Mine Safety and Health Administration and the National Institute for Occupational Safety and Health, the provision of WAC 296-800-370 shall apply.

(c) "Authorized person" means any person required by work duties to be present in regulated work areas, or authorized to do so by the employer, by this section of the standard, or by the WISHA Act.

(d) "Director" means the director of the department of labor and industries, or his/her designated representative.

(e) "Emergency" is any occurrence, such as but not limited to equipment failure, rupture of containers, or failure of control equipment that results in an uncontrolled release of a significant amount of formaldehyde.

(f) "Employee exposure" means the exposure to airborne formaldehyde which would occur without corrections for protection provided by any respirator that is in use.

(g) "Formaldehyde" means the chemical substance, HCHO, Chemical Abstracts Service Registry No. 50-00-0.

(3) Permissible exposure limit (PEL).

(a) TWA: The employer shall assure that no employee is exposed to an airborne concentration of formaldehyde which exceeds 0.75 part formaldehyde per million parts of air as an 8-hour TWA.

(b) Short term exposure limit (STEL): The employer shall assure that no employee is exposed to an airborne concentration of formaldehyde which exceeds two parts formaldehyde per million parts of air (2 ppm) as a fifteen-minute STEL.

(4) Exposure monitoring.

(a) General.

(i) Each employer who has a workplace covered by this standard shall monitor employees to determine their exposure to formaldehyde.

(ii) Exception. Where the employer documents, using objective data, that the presence of formaldehyde or formaldehyde-releasing products in the workplace cannot result in airborne concentrations of formaldehyde that would cause any employee to be exposed at or above the action level or the STEL under foreseeable conditions of use, the employer will not be required to measure employee exposure to formaldehyde.

(iii) When an employee's exposure is determined from representative sampling, the measurements used shall be representative of the employee's full shift or short-term exposure to formaldehyde, as appropriate.

(iv) Representative samples for each job classification in each work area shall be taken for each shift unless the employer can document with objective data that exposure levels for a given job classification are equivalent for different workshifts.

(b) Initial monitoring. The employer shall identify all employees who may be exposed at or above the action level or at or above the STEL and accurately determine the exposure of each employee so identified.

(i) Unless the employer chooses to measure the exposure of each employee potentially exposed to formaldehyde, the employer shall develop a representative sampling strategy and measure sufficient exposures within each job classification for each workshift to correctly characterize and not underestimate the exposure of any employee within each exposure group.

(ii) The initial monitoring process shall be repeated each time there is a change in production, equipment, process, personnel, or control measures which may result in new or additional exposure to formaldehyde.

(iii) If the employer receives reports or signs or symptoms of respiratory or dermal conditions associated with formaldehyde exposure, the employer shall promptly monitor the affected employee's exposure.

(c) Periodic monitoring.

(i) The employer shall periodically measure and accurately determine exposure to formaldehyde for employees shown by the initial monitoring to be exposed at or above the action level or at or above the STEL.

(ii) If the last monitoring results reveal employee exposure at or above the action level, the employer shall repeat monitoring of the employees at least every six months.

(iii) If the last monitoring results reveal employee exposure at or above the STEL, the employer shall repeat monitoring of the employees at least once a year under worst conditions.

(d) Termination of monitoring. The employer may discontinue periodic monitoring for employees if results from two consecutive sampling periods taken at least seven days apart show that employee exposure is below the action level and the STEL. The results must be statistically representative and consistent with the employer's knowledge of the job and work operation.

(e) Accuracy of monitoring. Monitoring shall be accurate, at the ninety-five percent confidence level, to within plus or minus twenty-five percent for airborne concentrations of formaldehyde at the TWA and the STEL and to within plus or minus thirty-five percent for airborne concentrations of formaldehyde at the action level.

(f) Employee notification of monitoring results. Within fifteen days of receiving the results of exposure monitoring conducted under this standard, the employer shall notify the affected employees of these results. Notification shall be in writing, either by distributing copies of the results to the employees or by posting the results. If the employee exposure is over either PEL, the employer shall develop and implement a written plan to reduce employee exposure to or below both PELs, and give written notice to employees. The written notice shall contain a description of the corrective action being taken by the employer to decrease exposure.

(g) Observation of monitoring.

(i) The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to formaldehyde required by this standard.

(ii) When observation of the monitoring of employee exposure to formaldehyde requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the clothing and equipment to the observer, require the observer to use such clothing and equipment, and assure that the observer complies with all other applicable safety and health procedures.

(5) Regulated areas.

(a) The employer shall establish regulated areas where the concentration of airborne formaldehyde exceeds either the TWA or the STEL and post all entrances and accessways with signs bearing the following information:

DANGER
FORMALDEHYDE
IRRITANT AND POTENTIAL CANCER HAZARD
AUTHORIZED PERSONNEL ONLY

(b) The employer shall limit access to regulated areas to authorized persons who have been trained to recognize the hazards of formaldehyde.

(c) An employer at a multiemployer worksite who establishes a regulated area shall communicate the access restrictions and locations of these areas to other employers with work operations at that worksite.

(6) Methods of compliance.

(a) Engineering controls and work practices. The employer shall institute engineering and work practice controls to reduce and maintain employee exposures to formaldehyde at or below the TWA and the STEL.

(b) Exception. Whenever the employer has established that feasible engineering and work practice controls cannot reduce employee exposure to or below either of the PELs, the employer shall apply these controls to reduce employee exposures to the extent feasible and shall supplement them with respirators which satisfy this standard.

(7) Respiratory protection.

(a) General. For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of this subsection. Respirators must be used during:

(i) Periods necessary to install or implement feasible engineering and work-practice controls;

(ii) Work operations, such as maintenance and repair activities or vessel cleaning, for which the employer establishes that engineering and work-practice controls are not feasible;

(iii) Work operations for which feasible engineering and work-practice controls are not yet sufficient to reduce exposure to or below the PELs;

(iv) Emergencies.

(b) Respirator program.

(i) The employer must implement a respiratory protection program as required by chapter ((296-62-WAC, Part E (except WAC 296-62-07130(1), 296-62-07131(4), and 296-62-07150 through 296-62-07156))) 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(ii) If air-purifying chemical-cartridge respirators are used, the employer must:

(A) Replace the cartridge after three hours of use or at the end of the workshift, whichever occurs first, unless the cartridge contains a NIOSH-certified end-of-service-life indicator (ESLI) to show when breakthrough occurs.

(B) Unless the canister contains a NIOSH-certified ESLI to show when breakthrough occurs, replace canisters used in atmospheres up to 7.5 ppm (10 x PEL) every four hours and industrial-sized canisters used in atmospheres up to 75 ppm (100 x PEL) every two hours, or at the end of the workshift, whichever occurs first.

(c) Respirator selection.

(i) The employer must select appropriate respirators from Table 1 of this section.

TABLE 1
MINIMUM REQUIREMENTS FOR RESPIRATORY PROTECTION
AGAINST FORMALDEHYDE

Condition of use or formaldehyde concentration (ppm)	Minimum respirator required ¹
Up to 7.5 ppm (10 x PEL)	Full facepiece with cartridges or canisters specifically approved for protection against formaldehyde ² .
Up to 75 ppm (100 x PEL) . . .	Full-face mask with chin style or chest or back mounted type industrial size canister specifically approved for protection against formaldehyde. Type C supplied-air respirator pressure demand or continuous flow type, with full facepiece, hood, or helmet.
Above 75 ppm or unknown (emergencies) (100 x PEL)	Self-contained breathing apparatus (SCBA) with positive-pressure full facepiece. Combination supplied-air, full facepiece positive-pressure respirator with auxiliary self-contained air supply.
Fire fighting	SCBA with positive-pressure in full facepiece.
Escape	SCBA in demand or pressure demand mode. Full-face mask with chin style or front or back mounted type industrial size canister specifically approved for protection against formaldehyde.

¹ Respirators specified for use at higher concentrations may be used at lower concentrations.

² A half-mask respirator with cartridges specifically approved for protection against formaldehyde can be substituted for the full facepiece respirator providing that effective gas-proof goggles are provided and used in combination with the half-mask respirator.

(ii) The employer must provide a powered air-purifying respirator adequate to protect against formaldehyde exposure to any employee who has difficulty using a negative-pressure respirator.

(8) Protective equipment and clothing. Employers shall comply with the provisions of WAC 296-800-160. When protective equipment or clothing is provided under these provisions, the employer shall provide these protective devices at no cost to the employee and assure that the employee wears them.

(a) Selection. The employer shall select protective clothing and equipment based upon the form of formaldehyde to be encountered, the conditions of use, and the hazard to be prevented.

(i) All contact of the eyes and skin with liquids containing one percent or more formaldehyde shall be prevented by the use of chemical protective clothing made of material impervious to formaldehyde and the use of other personal protective equipment, such as goggles and face shields, as appropriate to the operation.

(ii) Contact with irritating or sensitizing materials shall be prevented to the extent necessary to eliminate the hazard.

(iii) Where a face shield is worn, chemical safety goggles are also required if there is a danger of formaldehyde reaching the area of the eye.

(iv) Full body protection shall be worn for entry into areas where concentrations exceed 100 ppm and for emergency reentry into areas of unknown concentration.

(b) Maintenance of protective equipment and clothing.

(i) The employer shall assure that protective equipment and clothing that has become contaminated with formaldehyde is cleaned or laundered before its reuse.

(ii) When ventilating formaldehyde-contaminated clothing and equipment, the employer shall establish a storage area so that employee exposure is minimized. Containers for contaminated clothing and equipment and storage areas shall have labels and signs containing the following information:

DANGER
FORMALDEHYDE-CONTAMINATED (CLOTHING) EQUIPMENT
AVOID INHALATION AND SKIN CONTACT

(iii) The employer shall assure that only persons trained to recognize the hazards of formaldehyde remove the contaminated material from the storage area for purposes of cleaning, laundering, or disposal.

(iv) The employer shall assure that no employee takes home equipment or clothing that is contaminated with formaldehyde.

(v) The employer shall repair or replace all required protective clothing and equipment for each affected employee as necessary to assure its effectiveness.

(vi) The employer shall inform any person who launders, cleans, or repairs such clothing or equipment of formaldehyde's potentially harmful effects and of procedures to safely handle the clothing and equipment.

(9) Hygiene protection.

(a) The employer shall provide change rooms, as described in WAC 296-24-120 for employees who are

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required to change from work clothing into protective clothing to prevent skin contact with formaldehyde.

(b) If employees' skin may become splashed with solutions containing one percent or greater formaldehyde, for example because of equipment failure or improper work practices, the employer shall provide conveniently located quick drench showers and assure that affected employees use these facilities immediately.

(c) If there is any possibility that an employee's eyes may be splashed with solutions containing 0.1 percent or greater formaldehyde, the employer shall provide acceptable eye-wash facilities within the immediate work area for emergency use.

(10) Housekeeping. For operations involving formaldehyde liquids or gas, the employer shall conduct a program to detect leaks and spills, including regular visual inspections.

(a) Preventative maintenance of equipment, including surveys for leaks, shall be undertaken at regular intervals.

(b) In work areas where spillage may occur, the employer shall make provisions to contain the spill, to decontaminate the work area, and to dispose of the waste.

(c) The employer shall assure that all leaks are repaired and spills are cleaned promptly by employees wearing suitable protective equipment and trained in proper methods for cleanup and decontamination.

(d) Formaldehyde-contaminated waste and debris resulting from leaks or spills shall be placed for disposal in sealed containers bearing a label warning of formaldehyde's presence and of the hazards associated with formaldehyde.

(11) Emergencies. For each workplace where there is the possibility of an emergency involving formaldehyde, the employer shall assure appropriate procedures are adopted to minimize injury and loss of life. Appropriate procedures shall be implemented in the event of an emergency.

(12) Medical surveillance.

(a) Employees covered.

(i) The employer shall institute medical surveillance programs for all employees exposed to formaldehyde at concentrations at or exceeding the action level or exceeding the STEL.

(ii) The employer shall make medical surveillance available for employees who develop signs and symptoms of overexposure to formaldehyde and for all employees exposed to formaldehyde in emergencies. When determining whether an employee may be experiencing signs and symptoms of possible overexposure to formaldehyde, the employer may rely on the evidence that signs and symptoms associated with formaldehyde exposure will occur only in exceptional circumstances when airborne exposure is less than 0.1 ppm and when formaldehyde is present in materials in concentrations less than 0.1 percent.

(b) Examination by a physician. All medical procedures, including administration of medical disease questionnaires, shall be performed by or under the supervision of a licensed physician and shall be provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(c) Medical disease questionnaire. The employer shall make the following medical surveillance available to employees prior to assignment to a job where formaldehyde exposure is at or above the action level or above the STEL

and annually thereafter. The employer shall also make the following medical surveillance available promptly upon determining that an employee is experiencing signs and symptoms indicative of possible overexposure to formaldehyde.

(i) Administration of a medical disease questionnaire, such as in Appendix D, which is designed to elicit information on work history, smoking history, any evidence of eye, nose, or throat irritation; chronic airway problems or hyperreactive airway disease; allergic skin conditions or dermatitis; and upper or lower respiratory problems.

(ii) A determination by the physician, based on evaluation of the medical disease questionnaire, of whether a medical examination is necessary for employees not required to wear respirators to reduce exposure to formaldehyde.

(d) Medical examinations. Medical examinations shall be given to any employee who the physician feels, based on information in the medical disease questionnaire, may be at increased risk from exposure to formaldehyde and at the time of initial assignment and at least annually thereafter to all employees required to wear a respirator to reduce exposure to formaldehyde. The medical examination shall include:

(i) A physical examination with emphasis on evidence of irritation or sensitization of the skin and respiratory system, shortness of breath, or irritation of the eyes.

(ii) Laboratory examinations for respirator wearers consisting of baseline and annual pulmonary function tests. As a minimum, these tests shall consist of forced vital capacity (FVC), forced expiratory volume in one second (FEV1), and forced expiratory flow (FEF).

(iii) Any other test which the examining physician deems necessary to complete the written opinion.

(iv) Counseling of employees having medical conditions that would be directly or indirectly aggravated by exposure to formaldehyde on the increased risk of impairment of their health.

(e) Examinations for employees exposed in an emergency. The employer shall make medical examinations available as soon as possible to all employees who have been exposed to formaldehyde in an emergency.

(i) The examination shall include a medical and work history with emphasis on any evidence of upper or lower respiratory problems, allergic conditions, skin reaction or hypersensitivity, and any evidence of eye, nose, or throat irritation.

(ii) Other examinations shall consist of those elements considered appropriate by the examining physician.

(f) Information provided to the physician. The employer shall provide the following information to the examining physician:

(i) A copy of this standard and Appendices A, C, D, and E;

(ii) A description of the affected employee's job duties as they relate to the employee's exposure to formaldehyde;

(iii) The representative exposure level for the employee's job assignment;

(iv) Information concerning any personal protective equipment and respiratory protection used or to be used by the employee; and

(v) Information from previous medical examinations of the affected employee within the control of the employer.

(vi) In the event of a nonroutine examination because of an emergency, the employer shall provide to the physician as soon as possible: A description of how the emergency occurred and the exposure the victim may have received.

(g) Physician's written opinion.

(i) For each examination required under this standard, the employer shall obtain a written opinion from the examining physician. This written opinion shall contain the results of the medical examination except that it shall not reveal specific findings or diagnoses unrelated to occupational exposure to formaldehyde. The written opinion shall include:

(A) The physician's opinion as to whether the employee has any medical condition that would place the employee at an increased risk of material impairment of health from exposure to formaldehyde;

(B) Any recommended limitations on the employee's exposure or changes in the use of personal protective equipment, including respirators;

(C) A statement that the employee has been informed by the physician of any medical conditions which would be aggravated by exposure to formaldehyde, whether these conditions may have resulted from past formaldehyde exposure or from exposure in an emergency, and whether there is a need for further examination or treatment.

(ii) The employer shall provide for retention of the results of the medical examination and tests conducted by the physician.

(iii) The employer shall provide a copy of the physician's written opinion to the affected employee within fifteen days of its receipt.

(h) Medical removal.

(i) The provisions of this subdivision apply when an employee reports significant irritation of the mucosa of the eyes or of the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization attributed to workplace formaldehyde exposure. Medical removal provisions do not apply in case of dermal irritation or dermal sensitization when the product suspected of causing the dermal condition contains less than 0.05% formaldehyde.

(ii) An employee's report of signs or symptoms of possible overexposure to formaldehyde shall be evaluated by a physician selected by the employer pursuant to (c) of this subsection. If the physician determines that a medical examination is not necessary under (c)(ii) of this subsection, there shall be a two-week evaluation and remediation period to permit the employer to ascertain whether the signs or symptoms subside untreated or with the use of creams, gloves, first-aid treatment, or personal protective equipment. Industrial hygiene measures that limit the employee's exposure to formaldehyde may also be implemented during this period. The employee shall be referred immediately to a physician prior to expiration of the two-week period if the signs or symptoms worsen. Earnings, seniority, and benefits may not be altered during the two-week period by virtue of the report.

(iii) If the signs or symptoms have not subsided or been remedied by the end of the two-week period, or earlier if signs or symptoms warrant, the employee shall be examined by a physician selected by the employer. The physician shall presume, absent contrary evidence, that observed dermal irritation or dermal sensitization are not attributable to formalde-

hyde when products to which the affected employee is exposed contain less than 0.1% formaldehyde.

(iv) Medical examinations shall be conducted in compliance with the requirements of (e)(i) and (ii) of this subsection. Additional guidelines for conducting medical exams are contained in WAC 296-62-07546, Appendix C.

(v) If the physician finds that significant irritation of the mucosa of the eyes or the upper airways, respiratory sensitization, dermal irritation, or dermal sensitization result from workplace formaldehyde exposure and recommends restrictions or removal. The employer shall promptly comply with the restrictions or recommendations of removal. In the event of a recommendation of removal, the employer shall remove the affected employee from the current formaldehyde exposure and if possible, transfer the employee to work having no or significantly less exposure to formaldehyde.

(vi) When an employee is removed pursuant to item (v) of this subdivision, the employer shall transfer the employee to comparable work for which the employee is qualified or can be trained in a short period (up to six months), where the formaldehyde exposures are as low as possible, but not higher than the action level. The employer shall maintain the employee's current earnings, seniority, and other benefits. If there is no such work available, the employer shall maintain the employee's current earnings, seniority, and other benefits until such work becomes available, until the employee is determined to be unable to return to workplace formaldehyde exposure, until the employee is determined to be able to return to the original job status, or for six months, whichever comes first.

(vii) The employer shall arrange for a follow-up medical examination to take place within six months after the employee is removed pursuant to this subsection. This examination shall determine if the employee can return to the original job status, or if the removal is to be permanent. The physician shall make a decision within six months of the date the employee was removed as to whether the employee can be returned to the original job status, or if the removal is to be permanent.

(viii) An employer's obligation to provide earnings, seniority, and other benefits to a removed employee may be reduced to the extent that the employee receives compensation for earnings lost during the period of removal either from a publicly or employer-funded compensation program or from employment with another employer made possible by virtue of the employee's removal.

(ix) In making determinations of the formaldehyde content of materials under this subsection the employer may rely on objective data.

(i) Multiple physician review.

(i) After the employer selects the initial physician who conducts any medical examination or consultation to determine whether medical removal or restriction is appropriate, the employee may designate a second physician to review any findings, determinations, or recommendations of the initial physician and to conduct such examinations, consultations, and laboratory tests as the second physician deems necessary and appropriate to evaluate the effects of formaldehyde exposure and to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician conducts a medical examination or consultation for the purpose of medical removal or restriction.

(iii) The employer may condition its participation in, and payment for, the multiple physician review mechanism upon the employee doing the following within fifteen days after receipt of the notification of the right to seek a second medical opinion, or receipt of the initial physician's written opinion, whichever is later:

(A) The employee informs the employer of the intention to seek a second medical opinion; and

(B) The employee initiates steps to make an appointment with a second physician.

(iv) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve the disagreement. If the two physicians are unable to quickly resolve their disagreement, then the employer and the employee through their respective physicians shall designate a third physician who shall be a specialist in the field at issue:

(A) To review the findings, determinations, or recommendations of the prior physicians; and

(B) To conduct such examinations, consultations, laboratory tests, and discussions with prior physicians as the third physician deems necessary to resolve the disagreement of the prior physicians.

(v) In the alternative, the employer and the employee or authorized employee representative may jointly designate such third physician.

(vi) The employer shall act consistent with the findings, determinations, and recommendations of the third physician, unless the employer and the employee reach an agreement which is otherwise consistent with the recommendations of at least one of the three physicians.

(13) Hazard communication.

(a) General. Notwithstanding any exemption granted in WAC 296-800-170 for wood products, each employer who has a workplace covered by this standard shall comply with the requirements of WAC 296-800-170. The definitions of the chemical hazard communication standard shall apply under this standard.

(i) The following shall be subject to the hazard communication requirements of this section: Formaldehyde gas, all mixtures or solutions composed of greater than 0.1 percent formaldehyde, and materials capable of releasing formaldehyde into the air under reasonably foreseeable concentrations reaching or exceeding 0.1 ppm.

(ii) As a minimum, specific health hazards that the employer shall address are: Cancer, irritation and sensitization of the skin and respiratory system, eye and throat irritation, and acute toxicity.

(b) Manufacturers and importers who produce or import formaldehyde or formaldehyde-containing products shall provide downstream employers using or handling these products with an objective determination through the required labels and MSDSs as required by chapter 296-839 WAC.

(c) Labels.

(i) The employer shall assure that hazard warning labels complying with the requirements of WAC 296-800-170 are affixed to all containers of materials listed in (a)(i) of this subsection, except to the extent that (a)(i) of this subsection is inconsistent with this item.

(ii) Information on labels. As a minimum, for all materials listed in (a)(i) of this subsection, capable of releasing formaldehyde at levels of 0.1 ppm to 0.5 ppm, labels shall identify that the product contains formaldehyde: List the name and address of the responsible party; and state that physical and health hazard information is readily available from the employer and from material safety data sheets.

(iii) For materials listed in (a)(i) of this subsection, capable of releasing formaldehyde at levels above 0.5 ppm, labels shall appropriately address all the hazards as defined in WAC 296-800-170, and Appendices A and B, including respiratory sensitization, and shall contain the words "Potential Cancer Hazard."

(iv) In making the determinations of anticipated levels of formaldehyde release, the employer may rely on objective data indicating the extent of potential formaldehyde release under reasonably foreseeable conditions of use.

(v) Substitute warning labels. The employer may use warning labels required by other statutes, regulations, or ordinances which impart the same information as the warning statements required by this subitem.

(d) Material safety data sheets.

(i) Any employer who uses formaldehyde-containing materials listed in (a)(i) of this subsection shall comply with the requirements of WAC 296-800-170 with regard to the development and updating of material safety data sheets.

(ii) Manufacturers, importers, and distributors of formaldehyde containing materials listed in (a)(i) of this subsection shall assure that material safety data sheets and updated information are provided to all employers purchasing such materials at the time of the initial shipment and at the time of the first shipment after a material safety data sheet is updated.

(e) Written hazard communication program. The employer shall develop, implement, and maintain at the workplace, a written hazard communication program for formaldehyde exposures in the workplace, which at a minimum describes how the requirements specified in this section for labels and other forms of warning and material safety data sheets, and subsection (14) of this section for employee information and training, will be met. Employees in multiemployer workplaces shall comply with the requirements of WAC 296-800-170.

(14) Employee information and training.

(a) Participation. The employer shall assure that all employees who are assigned to workplaces where there is a health hazard from formaldehyde participate in a training program, except that where the employer can show, using objective data, that employees are not exposed to formaldehyde at or above 0.1 ppm, the employer is not required to provide training.

(b) Frequency. Employers shall provide such information and training to employees at the time of their initial assignment and whenever a new exposure to formaldehyde is introduced into their work area. The training shall be repeated at least annually.

(c) Training program. The training program shall be conducted in a manner which the employee is able to understand and shall include:

(i) A discussion of the contents of this regulation and the contents of the material safety data sheet;

(ii) The purpose for and a description of the medical surveillance program required by this standard, including:

(A) A description of the potential health hazards associated with exposure to formaldehyde and a description of the signs and symptoms of exposure to formaldehyde.

(B) Instructions to immediately report to the employer the development of any adverse signs or symptoms that the employee suspects is attributable to formaldehyde exposure.

(iii) Description of operations in the work area where formaldehyde is present and an explanation of the safe work practices appropriate for limiting exposure to formaldehyde in each job;

(iv) The purpose for, proper use of, and limitations of personal protective clothing;

(v) Instructions for the handling of spills, emergencies, and clean-up procedures;

(vi) An explanation of the importance of engineering and work practice controls for employee protection and any necessary instruction in the use of these controls;

(vii) A review of emergency procedures including the specific duties or assignments of each employee in the event of an emergency; and

(viii) The purpose, proper use, limitations, and other training requirements for respiratory protection as required by chapter ~~((296-62))~~ 296-842 WAC(~~(, Part E)~~).

(d) Access to training materials.

(i) The employer shall inform all affected employees of the location of written training materials and shall make these materials readily available, without cost, to the affected employees.

(ii) The employer shall provide, upon request, all training materials relating to the employee training program to the director of labor and industries, or his/her designated representative.

(15) Recordkeeping.

(a) Exposure measurements. The employer shall establish and maintain an accurate record of all measurements taken to monitor employee exposure to formaldehyde. This record shall include:

(i) The date of measurement;

(ii) The operation being monitored;

(iii) The methods of sampling and analysis and evidence of their accuracy and precision;

(iv) The number, durations, time, and results of samples taken;

(v) The types of protective devices worn; and

(vi) The names, job classifications, Social Security numbers, and exposure estimates of the employees whose exposures are represented by the actual monitoring results.

(b) Exposure determinations. Where the employer has determined that no monitoring is required under this standard, the employer shall maintain a record of the objective data relied upon to support the determination that no employee is exposed to formaldehyde at or above the action level.

(c) Medical surveillance. The employer shall establish and maintain an accurate record for each employee subject to medical surveillance under this standard. This record shall include:

(i) The name and Social Security number of the employee;

(ii) The physician's written opinion;

(iii) A list of any employee health complaints that may be related to exposure to formaldehyde; and

(iv) A copy of the medical examination results, including medical disease questionnaires and results of any medical tests required by the standard or mandated by the examining physician.

(d) Record retention. The employer shall retain records required by this standard for at least the following periods:

(i) Exposure records and determinations shall be kept for at least thirty years; and

(ii) Medical records shall be kept for the duration of employment plus thirty years.

(e) Availability of records.

(i) Upon request, the employer shall make all records maintained as a requirement of this standard available for examination and copying to the director of labor and industries, or his/her designated representative.

(ii) The employer shall make employee exposure records, including estimates made from representative monitoring and available upon request for examination and copying, to the subject employee, or former employee, and employee representatives in accordance with chapter 296-802 WAC.

(iii) Employee medical records required by this standard shall be provided upon request for examination and copying, to the subject employee, or former employee, or to anyone having the specific written consent of the subject employee or former employee in accordance with chapter 296-802 WAC.

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-62-07615 Respiratory protection. (1) General. For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of this subsection. Respirators must be used during:

(a) Periods necessary to install or implement feasible engineering and work-practice controls;

(b) Work operations for which the employer establishes that engineering and work-practice controls are not feasible;

(c) Work operations for which feasible engineering and work-practice controls are not yet sufficient to reduce exposure to or below the PEL;

(d) Emergencies.

(2) Respirator program. The employer must implement a respiratory protection program as required by chapter ~~((296-62 WAC, Part E (except WAC 296-62-07130(1) and 296-62-07150 through 296-62-07156)))~~ 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(3) Respirator selection.

(a) The employer must select, and ensure that employees use, the appropriate respirator from Table 1 of this section.

Table 1.—Respiratory Protection for MDA

Airborne concentration of MDA or condition of use	Respirator type
a. Less than or equal to 10xPEL	(1) Half-mask respirator with HEPA ¹ cartridge ² .
b. Less than or equal to 50xPEL	(1) Full facepiece respirator with HEPA ¹ cartridge or canister ² .
c. Less than or equal to 1000xPEL	(1) Full facepiece powered air-purifying respirator with HEPA ¹ cartridges ² .
d. Greater than 1000xPEL or	(1) Self-contained breathing unknown concentrations apparatus with full facepiece in positive pressure mode; (2) Full facepiece positive pressure demand supplied-air respirator with auxiliary self-contained air supply.
e. Escape	(1) Any full facepiece air-purifying respirator with HEPA ¹ cartridges ² ; (2) Any positive pressure or continuous flow self-contained breathing apparatus with full facepiece or hood.
f. Fire fighting	(1) Full facepiece self-contained breathing apparatus in positive pressure demand mode.

Note: Respirators assigned for higher environmental concentrations may be used at lower concentrations.

¹ High efficiency particulate in air filter (HEPA) means a filter that is at least 99.97 percent efficient against mono-dispersed particles of 0.3 micrometers or larger.

² Combination HEPA/organic vapor cartridges shall be used whenever MDA in liquid form or a process requiring heat is used.

(b) Any employee who cannot use a negative-pressure respirator must be given the option of using a positive-pressure respirator, or a supplied-air respirator operated in the continuous-flow or pressure-demand mode.

AMENDATORY SECTION (Amending WSR 00-06-075, filed 3/1/00, effective 4/10/00)

WAC 296-62-07722 Employee information and training. (1) Certification.

(a) Only certified asbestos workers may work on an asbestos project as required in WAC 296-65-010 and 296-65-030.

(b) Only certified asbestos supervisors may supervise asbestos abatement projects as required in WAC 296-65-012 and 296-65-030.

(c) In cases where certification requirements of chapter 296-65 WAC do not apply, all employees must be trained according to the provisions of this section regardless of their exposure levels.

(d) Certification is not required for asbestos work on materials containing less than one percent asbestos.

(2) Training must be provided prior to or at the time of initial assignment, unless the employee has received equivalent training within the previous twelve months, and at least annually thereafter.

(3) Asbestos projects.

(a) Class I work must be considered an asbestos project. Only certified asbestos workers may do this work.

(b) Only certified workers may conduct Class II asbestos work that is considered an asbestos project.

(i) The following Class II asbestos work must be considered asbestos projects:

(A) All Class II asbestos work where critical barriers, equivalent isolation methods, or negative pressure enclosures are required; or

(B) All Class II asbestos work where asbestos containing materials do not stay intact (including removal of vinyl asbestos floor (VAT) or roofing materials by mechanical methods such as chipping, grinding, or sanding).

(ii) The following Class II asbestos work is not considered an asbestos project and is excluded from asbestos worker certification:

(A) All Class II asbestos work involving intact asbestos containing materials (for example, intact roofing materials, bituminous or asphalt pipeline coatings, and intact flooring/decking materials);

(B) All Class II asbestos work of less than one square foot of asbestos containing materials; or

(C) All Class II asbestos work involving asbestos-cement water pipe when the work is done in accordance with training approved by the department through the asbestos certification program (see WAC 296-65-015(4)).

(iii) Asbestos work involving the removal of one square foot or more of intact roofing materials by mechanical sawing or heavy equipment must meet the following requirements:

(A) Only certified asbestos workers may conduct mechanical sawing of intact roofing material;

(B) Noncertified asbestos workers may handle roofing dust, material and debris;

(C) Operators of heavy equipment (such as track hoes with clam shells and excavators) do not need to be certified asbestos workers in the removal or demolition of intact roofing materials.

(c) Only certified asbestos workers may conduct all Class III and Class IV asbestos work that is considered an asbestos project.

(i) The following asbestos work is considered an asbestos project:

(A) All Class III asbestos work where one square foot or more of asbestos containing materials that do not stay intact;

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(B) All Class IV asbestos work where one square foot or more of asbestos containing materials that do not stay intact; or

(C) All Class III and Class IV asbestos work with pipe insulation.

(ii) Except for a project involving pipe insulation work, any project involving only Class III or Class IV asbestos work with less than one square foot of asbestos containing materials is not considered an asbestos project.

(4) Training requirements for asbestos work that is not considered an asbestos project or is excluded from asbestos worker certification.

(a) Class II asbestos work.

(i) Employers must provide eight-hours of training to employees who perform asbestos work on one generic category of asbestos containing materials (ACM). When performing asbestos work in more than one category of asbestos containing materials, additional training must be used to supplement the first eight hour training course.

(ii) The training course must include:

- Hands-on training that applies to the category of asbestos containing materials,
- Specific work practices and engineering controls related to the category of asbestos containing materials present as specified in WAC 296-62-07712, and
- All the minimum elements of subsection (5) of this section.

(b) Class III asbestos work (maintenance and custodial work in buildings containing asbestos containing materials).

(i) Employers must provide training with curriculum and training methods equivalent to the 16-hour operations and maintenance course developed by the EPA. (See 40 CFR 763.92 (a)(2).) For those employees whose only affected work is Class II work as described in subsection (4)(a)(i) of this section, employers must meet this 16-hour training requirement or provide training that meets the eight hours Class II requirements in subsection (4)(a) of this section.

(ii) Sixteen hours of training must include:

- Hands-on training in the use of respiratory protection and work practices, and
- All the minimum elements of subsection (5) of this section.

(c) Class IV asbestos work (maintenance and custodial work in buildings containing asbestos-containing materials).

(i) Employers must provide at least two hours of training with curriculum and training methods equivalent to the awareness training course developed by the EPA.

(ii) Training must include:

- Available information concerning the location of PACM, ACM, asbestos-containing flooring materials or flooring materials where the absence of asbestos has not been certified,
- Instruction on how to recognize damaged, deteriorated, and delimitation of asbestos containing building materials, and
- All of the minimum elements of subsection (5) of this section.

(5) The training program must be conducted in a manner which the employee is able to understand. The employer must ensure that each employee is informed of the following:

(a) The health effects associated with asbestos exposure;

(b) The relationship between smoking and exposure to asbestos producing lung cancer;

(c) Methods of recognizing asbestos and quantity, location, manner of use, release (including the requirements of WAC 296-62-07721 (1)(c) and (2)(b) to presume certain building materials contain asbestos), and storage of asbestos and the specific nature of operations which could result in exposure to asbestos;

(d) The engineering controls and work practices associated with the employee's job assignment;

(e) The specific procedures implemented to protect employees from exposure to asbestos, such as appropriate work practices, housekeeping procedures, hygiene facilities, decontamination procedures, emergency and clean-up procedures (including where Class III and IV work is performed, the contents "Managing Asbestos In Place" (EPA 20T-2003, July 1990) or its equivalent in content), personal protective equipment to be used, waste disposal procedures, and any necessary instructions in the use of these controls and procedures;

(f) The purpose, proper use, and limitations of protective clothing;

(g) The purpose and a description of the medical surveillance program required by WAC 296-62-07725;

(h) The content of this standard, including appendices;

(i) The names, addresses and phone numbers of public health organizations which provide information, materials, and/or conduct programs concerning smoking cessation. The employer may distribute the list of such organizations contained in Appendix I, to comply with this requirement;

(j) The requirements for posting signs and affixing labels and the meaning of the required legends for such signs and labels; and

(k) The purpose, proper use, limitations, and other training requirements for respiratory protection as required by chapter ~~((296-62))~~ 296-842 WAC ~~((Part E))~~ (see WAC ~~((296-62-07117))~~ 296-842-11005, ~~((296-62-07172))~~ 296-842-16005, and ~~((296-62-07186 through 296-62-07190))~~ 296-842-19005).

(6) The employer must also provide, at no cost to employees who perform housekeeping operations in a facility which contains ACM or PACM, an asbestos awareness training course to all employees who are or will work in areas where ACM and/or PACM is present who work in buildings containing asbestos-containing materials, which must, at a minimum, contain the following elements:

- Health effects of asbestos,
- Locations of ACM and PACM in the building/facility,
- Recognition of ACM and PACM damage and deterioration,
- Requirements in this standard relating to housekeeping, and
- Proper response to fiber release episodes.

Each such employee must be so trained at least once a year.

(7) Access to information and training materials.

(a) The employer must make a copy of this standard and its appendices readily available without cost to all affected employees.

(b) The employer must provide, upon request, all materials relating to the employee information and training program to the director.

(c) The employer must inform all employees concerning the availability of self-help smoking cessation program material. Upon employee request, the employer must distribute such material, consisting of NIH Publication No. 89-1647, or equivalent self-help material, which is approved or published by a public health organization listed in Appendix I, WAC 296-62-07751.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

WAC 296-62-14533 Cotton dust. (1) Scope and application.

(a) This section, in its entirety, applies to the control of employee exposure to cotton dust in all workplaces where employees engage in yarn manufacturing, engage in slashing and weaving operations, or work in waste houses for textile operations.

(b) This section does not apply to the handling or processing of woven or knitted materials; to maritime operations covered by chapters 296-56 and 296-304 WAC; to harvesting or ginning of cotton; or to the construction industry.

(c) Only subsection (8) Medical surveillance, subsection (11)(b) Medical surveillance, subsection (11)(c) Availability, subsection (11)(d) Transfer of records, and Appendices B, C, and D of this section apply in all work places where employees exposed to cotton dust engage in cottonseed processing or waste processing operations.

(d) This section applies to yarn manufacturing and slashing and weaving operations exclusively using washed cotton (as defined by subsection (14) of this section) only to the extent specified by subsection (14) of this section.

(e) This section, in its entirety, applies to the control of all employees exposure to the cotton dust generated in the preparation of washed cotton from opening until the cotton is thoroughly wetted.

(f) This section does not apply to knitting, classing or warehousing operations except that employers with these operations, if requested by WISHA, shall grant WISHA access to their employees and workplaces for exposure monitoring and medical examinations for purposes of a health study to be performed by WISHA on a sampling basis.

(2) Definitions applicable to this section:

(a) "Blow down" - the cleaning of equipment and surfaces with compressed air.

(b) "Blow off" - the use of compressed air for cleaning of short duration and usually for a specific machine or any portion of a machine.

(c) "Cotton dust" - dust present in the air during the handling or processing of cotton, which may contain a mixture of many substances including ground-up plant matter, fiber, bacteria, fungi, soil, pesticides, noncotton plant matter and other contaminants which may have accumulated with the

cotton during the growing, harvesting and subsequent processing or storage periods. Any dust present during the handling and processing of cotton through the weaving or knitting of fabrics, and dust present in other operations or manufacturing processes using raw or waste cotton fibers or cotton fiber byproducts from textile mills are considered cotton dust within this definition. Lubricating oil mist associated with weaving operations is not considered cotton dust.

(d) "Director" - the director of labor and industries or his authorized representative.

(e) "Equivalent instrument" - a cotton dust sampling device that meets the vertical elutriator equivalency requirements as described in subsection (4)(a)(iii) of this section.

(f) "Lint-free respirable cotton dust" - particles of cotton dust of approximately 15 microns or less aerodynamic equivalent diameter.

(g) "Vertical elutriator cotton dust sampler" or "vertical elutriator" - a dust sampler which has a particle size cut-off at approximately 15 microns aerodynamic equivalent diameter when operating at the flow rate of 7.4 ± 0.2 liters per minute.

(h) "Waste processing" - waste recycling (sorting, blending, cleaning and willowing) and garning.

(i) "Yarn manufacturing" - all textile mill operations from opening to, but not including, slashing and weaving.

(3) Permissible exposure limits and action levels.

(a) Permissible exposure limits (PEL).

(i) The employer shall assure that no employee who is exposed to cotton dust in yarn manufacturing and cotton washing operations is exposed to airborne concentrations of lint-free respirable cotton dust greater than $200 \mu\text{g}/\text{m}^3$ mean concentration, averaged over an eight-hour period, as measured by a vertical elutriator or an equivalent instrument.

(ii) The employer shall assure that no employee who is exposed to cotton dust in textile mill waste house operations or is exposed in yarn manufacturing to dust from "lower grade washed cotton" as defined in subsection (14)(e) of this section is exposed to airborne concentrations of lint-free respirable cotton dust greater than $500 \mu\text{g}/\text{m}^3$ mean concentration, averaged over an eight-hour period, as measured by a vertical elutriator or an equivalent instrument.

(iii) The employer shall assure that no employee who is exposed to cotton dust in the textile processes known as slashing and weaving is exposed to airborne concentrations of lint-free respirable cotton dust greater than $750 \mu\text{g}/\text{m}^3$ mean concentration, averaged over an eight-hour period, as measured by a vertical elutriator or an equivalent instrument.

(b) Action levels.

(i) The action level for yarn manufacturing and cotton washing operations is an airborne concentration of lint-free respirable cotton dust of $100 \mu\text{g}/\text{m}^3$ mean concentration, averaged over an eight-hour period, as measured by a vertical elutriator or an equivalent instrument.

(ii) The action level for waste houses for textile operations is an airborne concentration of lint-free respirable cotton dust of $250 \mu\text{g}/\text{m}^3$ mean concentration, averaged over an eight-hour period, as measured by a vertical elutriator or an equivalent instrument.

(iii) The action level for the textile processes known as slashing and weaving is an airborne concentration of lint-free

respirable cotton dust of 375 $\mu\text{g}/\text{m}^3$ mean concentration, averaged over an eight-hour period, as measured by a vertical elutriator or an equivalent instrument.

(4) Exposure monitoring and measurement.

(a) General.

(i) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(ii) The sampling device to be used shall be either the vertical elutriator cotton dust sampler or an equivalent instrument.

(iii) If an alternative to the vertical elutriator cotton dust sampler is used, the employer shall establish equivalency by demonstrating that the alternative sampling devices:

(A) It collects respirable particulates in the same range as the vertical elutriator (approximately 15 microns);

(B) Replicate exposure data used to establish equivalency are collected in side-by-side field and laboratory comparisons; and

(C) A minimum of 100 samples over the range of 0.5 to 2 times the permissible exposure limit are collected, and ninety percent of these samples have an accuracy range of plus or minus twenty-five percent of the vertical elutriator reading with a ninety-five percent confidence level as demonstrated by a statistically valid protocol. (An acceptable protocol for demonstrating equivalency is described in Appendix E of this section.)

(iv) WISHA will issue a written opinion stating that an instrument is equivalent to a vertical elutriator cotton dust sampler if:

(A) A manufacturer or employer requests an opinion in writing and supplies the following information:

(I) Sufficient test data to demonstrate that the instrument meets the requirements specified in this paragraph and the protocol specified in Appendix E of this section;

(II) Any other relevant information about the instrument and its testing requested by WISHA; and

(III) A certification by the manufacturer or employer that the information supplied is accurate, and

(B) If WISHA finds, based on information submitted about the instrument, that the instrument meets the requirements for equivalency specified by this subsection.

(b) Initial monitoring. Each employer who has a place of employment within the scope of subsections (1)(a), (d) or (e) of this section shall conduct monitoring by obtaining measurements which are representative of the exposure of all employees to airborne concentrations of lint-free respirable cotton dust over an eight-hour period. The sampling program shall include at least one determination during each shift for each work area.

(c) Periodic monitoring.

(i) If the initial monitoring required by (4)(b) of this section or any subsequent monitoring reveals employee exposure to be at or below the permissible exposure limit, the employer shall repeat the monitoring for those employees at least annually.

(ii) If the initial monitoring required by (4)(b) of this section or any subsequent monitoring reveals employee exposure to be above the PEL, the employer shall repeat the monitoring for those employees at least every six months.

(iii) Whenever there has been a production, process, or control change which may result in new or additional exposure to cotton dust, or whenever the employer has any other reason to suspect an increase in employee exposure, the employer shall repeat the monitoring and measurements for those employees affected by the change or increase.

(d) Employee notification.

(i) Within twenty working days after the receipt of monitoring results, the employer shall notify each employee in writing of the exposure measurements which represent that employee's exposure.

(ii) Whenever the results indicate that the employee's exposure exceeds the applicable permissible exposure limit specified in subsection (3) of this section, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action taken to reduce exposure below the permissible exposure limit.

(5) Methods of compliance.

(a) Engineering and work practice controls. The employer shall institute engineering and work practice controls to reduce and maintain employee exposure to cotton dust at or below the permissible exposure limit specified in subsection (3) of this section, except to the extent that the employer can establish that such controls are not feasible.

(b) Whenever feasible engineering and work practice controls are not sufficient to reduce employee exposure to or below the permissible exposure limit, the employer shall nonetheless institute these controls to immediately reduce exposure to the lowest feasible level, and shall supplement these controls with the use of respirators which shall comply with the provisions of subsection (6) of this section.

(c) Compliance program.

(i) Where the most recent exposure monitoring data indicates that any employee is exposed to cotton dust levels greater than the permissible exposure limit, the employer shall establish and implement a written program sufficient to reduce exposures to or below the permissible exposure limit solely by means of engineering controls and work practices as required by (a) of this subsection.

(ii) The written program shall include at least the following:

(A) A description of each operation or process resulting in employee exposure to cotton dust;

(B) Engineering plans and other studies used to determine the controls for each process;

(C) A report of the technology considered in meeting the permissible exposure limit;

(D) Monitoring data obtained in accordance with subsection (4) of this section;

(E) A detailed schedule for development and implementation of engineering and work practice controls, including exposure levels projected to be achieved by such controls;

(F) Work practice program; and

(G) Other relevant information.

(iii) The employer's schedule as set forth in the compliance program, shall project completion of the implementation of the compliance program no later than March 27, 1984 or as soon as possible if monitoring after March 27, 1984

reveals exposures over the PEL, except as provided in (13)(b)(ii)(B) of this section.

(iv) The employer shall complete the steps set forth in his program by the dates in the schedule.

(v) Written programs shall be submitted, upon request, to the director, and shall be available at the worksite for examination and copying by the director, and any affected employee or their designated representatives.

(vi) The written programs required under subsection (5)(c) of this section shall be revised and updated at least every six months to reflect the current status of the program and current exposure levels.

(d) Mechanical ventilation. When mechanical ventilation is used to control exposure, measurements which demonstrate the effectiveness of the system to control exposure, such as capture velocity, duct velocity, or static pressure shall be made at reasonable intervals.

(6) Use of respirators.

(a) General. For employees who are required to use respirators by this section, the employer must provide respirators that comply with the requirements of this section. Respirators must be used during:

(i) Periods necessary to install or implement feasible engineering controls and work-practice controls;

(ii) Maintenance and repair activities for which engineering and work-practice controls are not feasible;

(iii) Work operations for which feasible engineering and work-practice controls are not yet sufficient to reduce employee exposure to or below the permissible exposure limits;

(iv) Work operations specified under subsection (7)(a) of this section;

(v) Periods for which an employee requests a respirator.

(b) Respirator program.

(i) The employer must implement a respiratory protection program as required by chapter ~~((296-62-WAC, Part E (except WAC 296-62-07130(1) and 296-62-07150 through 296-62-07156)))~~ 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(ii) Whenever a physician determines that an employee who works in an area in which the cotton-dust concentration exceeds the PEL is unable to use a respirator, including a powered air-purifying respirator, the employee must be given the opportunity to transfer to an available position, or to a position that becomes available later, that has a cotton-dust concentration at or below the PEL. The employer must ensure that such employees retain their current wage rate or other benefits as a result of the transfer.

(c) Respirator selection.

(i) The employer must select the appropriate respirator from Table 1 of this section.

TABLE - 1

Cotton dust concentration	Required respirator
Not greater than—	
(a) 5 x the applicable permissible exposure limit (PEL).	A disposable respirator with a particulate filter.

TABLE - 1

Cotton dust concentration	Required respirator
(b) 10 x the applicable PEL.	A quarter or half-mask respirator, other than a disposable respirator, equipped with particulate filters.
(c) 100 x the applicable PEL.	A full facepiece respirator equipped with high-efficiency particulate filters.
(d) Greater than 100 x the applicable PEL.	A powered air-purifying respirator equipped with high-efficiency particulate filters.

- Notes
1. A disposable respirator means the filter element is an inseparable part of the respirator.
 2. Any respirators permitted at higher environmental concentrations can be used at lower concentrations.
 3. Self-contained breathing apparatus are not required respirators but are permitted respirators.
 4. Supplied air respirators are not required but are permitted under the following conditions: Cotton dust concentration not greater than 10X the PEL—Any supplied air respirator; not greater than 100X the PEL—Any supplied air respirator with full facepiece, helmet or hood; greater than 100X the PEL—A supplied air respirator operated in positive pressure mode.

(ii) Whenever respirators are required by this section for cotton-dust concentrations that do not exceed the applicable permissible exposure limit by a multiple of 100 (100 x), the employer must, when requested by an employee, provide a powered air-purifying respirator with a high-efficiency particulate filter instead of the respirator specified in (a), (b), or (c) of Table 1 of this section.

(7) Work practices. Each employer shall, regardless of the level of employee exposure, immediately establish and implement a written program of work practices which shall minimize cotton dust exposure. The following shall be included where applicable:

(a) Compressed air "blow down" cleaning shall be prohibited, where alternative means are feasible. Where compressed air is used for cleaning, the employees performing the "blow down" or "blow off" shall wear suitable respirators. Employees whose presence is not required to perform "blow down" or "blow off" shall be required to leave the area affected by the "blow down" or "blow off" during this cleaning operation.

(b) Cleaning of clothing or floors with compressed air shall be prohibited.

(c) Floor sweeping shall be performed with a vacuum or with methods designed to minimize dispersal of dust.

(d) In areas where employees are exposed to concentrations of cotton dust greater than the permissible exposure limit, cotton and cotton waste shall be stacked, sorted, baled, dumped, removed or otherwise handled by mechanical means, except where the employer can show that it is infeasible to do so. Where infeasible, the method used for handling cotton and cotton waste shall be the method which reduces exposure to the lowest level feasible.

(8) Medical surveillance.

PERMANENT

(a) General.

(i) Each employer covered by the standard shall institute a program of medical surveillance for all employees exposed to cotton dust.

(ii) The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician and are provided without cost to the employee.

(iii) Persons other than licensed physicians, who administer the pulmonary function testing required by this section shall have completed a NIOSH approved training course in spirometry.

(b) Initial examinations. The employer shall provide medical surveillance to each employee who is or may be exposed to cotton dust. For new employees' this examination shall be provided prior to initial assignment. The medical surveillance shall include at least the following:

(i) A medical history;

(ii) The standardized questionnaire contained in WAC 296-62-14537; and

(iii) A pulmonary function measurement, including a determination of forced vital capacity (FVC) and forced expiratory volume in one second (FEV_1), the FEV_1/FVC ratio, and the percentage that the measured values of FEV_1 and FVC differ from the predicted values, using the standard tables in WAC 296-62-14539. These determinations shall be made for each employee before the employee enters the workplace on the first day of the work week, preceded by at least thirty-five hours of no exposure to cotton dust. The tests shall be repeated during the shift, no less than four hours and no more than ten hours after the beginning of the work shift; and, in any event, no more than one hour after cessation of exposure. Such exposure shall be typical of the employee's usual workplace exposure. The predicted FEV_1 and FVC for blacks shall be multiplied by 0.85 to adjust for ethnic differences.

(iv) Based upon the questionnaire results, each employee shall be graded according to Schilling's byssinosis classification system.

(c) Periodic examinations.

(i) The employer shall provide at least annual medical surveillance for all employees exposed to cotton dust above the action level in yarn manufacturing, slashing and weaving, cotton washing and waste house operations. The employer shall provide medical surveillance at least every two years for all employees exposed to cotton dust at or below the action level, for all employees exposed to cotton dust from washed cotton (except from washed cotton defined in subsection (9)(c) of this section), and for all employees exposed to cotton dust in cottonseed processing and waste processing operations. Periodic medical surveillance shall include at least an update of the medical history, standardized questionnaire (Appendix B-111), Schilling byssinosis grade, and the pulmonary function measurements in (b)(iii) of this subsection.

(ii) Medical surveillance as required in (c)(i) of this subsection shall be provided every six months for all employees in the following categories:

(A) An FEV_1 of greater than eighty percent of the predicted value, but with an FEV_1 decrement of five percent or 200 ml. on a first working day;

(B) An FEV_1 of less than eighty percent of the predicted value; or

(C) Where, in the opinion of the physician, any significant change in questionnaire findings, pulmonary function results, or other diagnostic tests have occurred.

(iii) An employee whose FEV_1 is less than sixty percent of the predicted value shall be referred to a physician for a detailed pulmonary examination.

(iv) A comparison shall be made between the current examination results and those of previous examinations and a determination made by the physician as to whether there has been a significant change.

(d) Information provided to the physician. The employer shall provide the following information to the examining physician:

(i) A copy of this regulation and its appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's exposure level or anticipated exposure level;

(iv) A description of any personal protective equipment used or to be used; and

(v) Information from previous medical examinations of the affected employee which is not readily available to the examining physician.

(e) Physician's written opinion.

(i) The employer shall obtain and furnish the employee with a copy of a written opinion from the examining physician containing the following:

(A) The results of the medical examination and tests including the FEV_1 , FVC, and FEV_1/FVC ratio;

(B) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from exposure to cotton dust;

(C) The physician's recommended limitations upon the employee's exposure to cotton dust or upon the employee's use of respirators including a determination of whether an employee can wear a negative pressure respirator, and where the employee cannot, a determination of the employee's ability to wear a powered air purifying respirator; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposure.

(9) Employee education and training.

(a) Training program.

(i) The employer shall provide a training program for all employees exposed to cotton dust and shall assure that each employee is informed of the following:

(A) The acute and long term health hazards associated with exposure to cotton dust;

(B) The names and descriptions of jobs and processes which could result in exposure to cotton dust at or above the PEL.

(C) The measures, including work practices required by subsection (7) of this section, necessary to protect the

employee from exposures in excess of the permissible exposure limit;

(D) The purpose, proper use, limitations, and other training requirements for respiratory protection as required by subsection (6) of this section and chapter ((296-62)) 296-842 WAC(, Part E) (see WAC ((296-62-07117, 296-62-07172, and 296-62-01786 through 296-62-07190)) 296-842-11005, 296-842-16005 and 296-842-19005);

(E) The purpose for and a description of the medical surveillance program required by subsection (8) of this section and other information which will aid exposed employees in understanding the hazards of cotton dust exposure; and

(F) The contents of this standard and its appendices.

(ii) The training program shall be provided prior to initial assignment and shall be repeated annually for each employee exposed to cotton dust, when job assignments or work processes change and when employee performance indicates a need for retraining.

(b) Access to training materials.

(i) Each employer shall post a copy of this section with its appendices in a public location at the workplace, and shall, upon request, make copies available to employees.

(ii) The employer shall provide all materials relating to the employee training and information program to the director upon request.

(10) Signs. The employer shall post the following warning sign in each work area where the permissible exposure limit for cotton dust is exceeded:

WARNING
COTTON DUST WORK AREA
MAY CAUSE ACUTE OR DELAYED LUNG INJURY
(BYSSINOSIS)
RESPIRATORS REQUIRED IN THIS AREA

(11) Recordkeeping.

(a) Exposure measurements.

(i) The employer shall establish and maintain an accurate record of all measurements required by subsection (4) of this section.

(ii) The record shall include:

(A) A log containing the items listed in WAC 296-62-14535 (4)(a), and the dates, number, duration, and results of each of the samples taken, including a description of the procedure used to determine representative employee exposures;

(B) The type of protective devices worn, if any, and length of time worn; and

(C) The names, social security number, job classifications, and exposure levels of employees whose exposure the measurement is intended to represent.

(iii) The employer shall maintain this record for at least twenty years.

(b) Medical surveillance.

(i) The employer shall establish and maintain an accurate medical record for each employee subject to medical surveillance required by subsection (8) of this section.

(ii) The record shall include:

(A) The name and social security number and description of the duties of the employee;

(B) A copy of the medical examination results including the medical history, questionnaire response, results of all tests, and the physician's recommendation;

(C) A copy of the physician's written opinion;

(D) Any employee medical complaints related to exposure to cotton dust;

(E) A copy of this standard and its appendices, except that the employer may keep one copy of the standard and the appendices for all employees, provided that he references the standard and appendices in the medical surveillance record of each employee; and

(F) A copy of the information provided to the physician as required by subsection (8)(d) of this section.

(iii) The employer shall maintain this record for at least twenty years.

(c) Availability.

(i) The employer shall make all records required to be maintained by subsection (11) of this section available to the director for examination and copying.

(ii) Employee exposure measurement records and employee medical records required by this subsection shall be provided upon request to employees, designated representatives, and the assistant director in accordance with chapter 296-802 WAC.

(d) Transfer of records.

(i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by subsection (11) of this section.

(ii) Whenever the employer ceases to do business, and there is no successor employer to receive and retain the records for the prescribed period, these records shall be transmitted to the director.

(iii) At the expiration of the retention period for the records required to be maintained by this section, the employer shall notify the director at least three months prior to the disposal of such records and shall transmit those records to the director if he requests them within that period.

(iv) The employer shall also comply with any additional requirements involving transfer of records set forth in chapter 296-802 WAC.

(12) Observation of monitoring.

(a) The employer shall provide affected employees or their designated representatives an opportunity to observe any measuring or monitoring of employee exposure to cotton dust conducted pursuant to subsection (4) of this section.

(b) Whenever observation of the measuring or monitoring of employee exposure to cotton dust requires entry into an area where the use of personal protective equipment is required, the employer shall provide the observer with and assure the use of such equipment and shall require the observer to comply with all other applicable safety and health procedures.

(c) Without interfering with the measurement, observers shall be entitled to:

(i) An explanation of the measurement procedures;

(ii) An opportunity to observe all steps related to the measurement of airborne concentrations of cotton dust performed at the place of exposure; and

(iii) An opportunity to record the results obtained.

(13) Washed cotton.

(a) Exemptions. Cotton, after it has been washed by the processes described in this section is exempt from all or parts of this section as specified if the requirements of this section are met.

(b) Initial requirements.

(i) In order for an employer to qualify as exempt or partially exempt from this standard for operations using washed cotton, the employer must demonstrate that the cotton was washed in a facility which is open to inspection by the director and the employer must provide sufficient accurate documentary evidence to demonstrate that the washing methods utilized meet the requirements of this section.

(ii) An employer who handles or processes cotton which has been washed in a facility not under the employer's control and claims an exemption or partial exemption under this paragraph, must obtain from the cotton washer and make available at the worksite, to the director, or his designated representative, to any affected employee, or to their designated representative the following:

(A) A certification by the washer of the cotton of the grade of cotton, the type of washing process, and that the batch meets the requirements of this section:

(B) Sufficient accurate documentation by the washer of the cotton grades and washing process; and

(C) An authorization by the washer that the director may inspect the washer's washing facilities and documentation of the process.

(c) Medical and dyed cotton. Medical grade (USP) cotton, cotton that has been scoured, bleached and dyed, and mercerized yarn shall be exempt from all provisions of this standard.

(d) Higher grade washed cotton. The handling or processing of cotton classed as "low middling light spotted or better" (color grade 52 or better and leaf grade code 5 or better according to the 1993 USDA classification system) shall be exempt from all provisions of the standard except requirements of subsection (8) of this section, medical surveillance; subsection (11)(b) through (d) of this section, recordkeeping-medical records, and Appendices B, C, and D of this section, if they have been washed on one of the following systems:

(i) On a continuous batt system or a rayon rinse system including the following conditions:

(A) With water;

(B) At a temperature of no less than 60°C;

(C) With a water-to-fiber ratio of no less than 40:1; and

(D) With the bacterial levels in the wash water controlled to limit bacterial contamination of the cotton.

(ii) On a batch kier washing system including the following conditions:

(A) With water;

(B) With cotton fiber mechanically opened and thoroughly pretwetted before forming the cake;

(C) For low-temperature processing, at a temperature of no less than 60°C with a water-to-fiber ratio of no less than 40:1; or, for high-temperature processing, at a temperature of no less than 93°C with a water-to-fiber ratio of no less than 15:1;

(D) With a minimum of one wash cycle followed by two rinse cycles for each batch, using fresh water in each cycle; and

(E) With bacterial levels in the wash water controlled to limit bacterial contamination of the cotton.

(e) Lower grade washed cotton. The handling and processing of cotton of grades lower than "low middling light spotted," that has been washed as specified in (d) of this subsection and has also been bleached, shall be exempt from all provisions of the standard except the requirements of subsection (3)(a) Permissible exposure limits, subsection (4) Exposure monitoring and measurement, subsection (8) Medical surveillance, subsection (11) Recordkeeping, and Appendices B, C and D of this section.

(f) Mixed grades of washed cotton. If more than one grade of washed cotton is being handled or processed together, the requirements of the grade with the most stringent exposure limit, medical and monitoring requirements shall be followed.

(14) Appendices.

(a) Appendix B (B-I, B-II and B-III), WAC 296-62-14537, Appendix C, WAC 296-62-14539 and Appendix D, WAC 296-62-14541 are incorporated as part of this chapter and the contents of these appendices are mandatory.

(b) Appendix A of this chapter, WAC 296-62-14535 contains information which is not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

(c) Appendix E of this chapter is a protocol which may be followed in the validation of alternative measuring devices as equivalent to the vertical elutriator cotton dust sampler. Other protocols may be used if it is demonstrated that they are statistically valid, meet the requirements in subsection (4)(a)(iii) of this section, and are appropriate for demonstrating equivalency.

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-62-20011 Respiratory protection. (1) General.

For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of this section. Compliance with the permissible exposure limit may not be achieved by the use of respirators except during:

(a) Periods necessary to install or implement feasible engineering and work-practice controls;

(b) Work operations, such as maintenance and repair activity, for which engineering and work-practice controls are technologically not feasible;

(c) Work operations for which feasible engineering and work-practice controls are not yet sufficient to reduce employee exposure to or below the permissible exposure limit;

(d) Emergencies.

(2) Respirator program. The employer must implement a respiratory protection program as required by chapter ((296-62-WAC, Part E (except WAC 296-62-07130(1) and 296-62-07150 through 296-62-07156))) 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(3) Respirator selection. The employer must select appropriate respirators or combination of respirators from Table I of this section.

TABLE I
RESPIRATORY PROTECTION FOR COKE
OVEN EMISSIONS

Airborne concentration of coke oven emissions	Required respirator
(i) Any concentration.	(A) A Type C supplied air respirator operated in pressure demand or other positive pressure or continuous flow mode; or (B) A powered air-purifying particulate filter respirator for dust, mist, and fume; or (C) A powered air-purifying particulate filter respirator combination chemical cartridge and particulate filter respirator for coke oven emissions.
(ii) Concentrations not greater than 1500 µg/m ³ .	(A) Any particulate filter respirator for dust, mist and fume, except single-use respirator; or (B) Any particulate filter respirator or combination chemical cartridge and particulate filter respirator for coke oven emissions; or (C) Any respirator listed in subsection (2)(a)(i) of this section.

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-62-20019 Employee information and training. (1) Training program.

(a) The employer shall institute a training program for employees who are employed in the regulated area and shall assure their participation.

(b) The training program shall be provided as of January 20, 1977, for employees who are employed in the regulated area at that time or at the time of initial assignment to a regulated area.

(c) The training program shall be provided at least annually for all employees who are employed in the regulated area, except that training regarding the occupational safety and health hazards associated with exposure to coke oven emissions and the purpose, proper use, and limitations of respiratory protective devices shall be provided at least quarterly until January 20, 1978.

(d) The training program shall include informing each employee of:

- (i) The information contained in the substance information sheet for coke oven emissions (Appendix A);
- (ii) The purpose, proper use, and limitations of respiratory protective devices in addition to other information as

required by chapter ~~((296-62)) 296-842~~ WAC ~~(, Part E)~~ (see WAC ~~((296-62-07117)) 296-842-11005, ((296-62-07172)) 296-842-16005, and ((296-62-07186 through 296-62-07190)) 296-842-19005).~~

(iii) The purpose for and a description of the medical surveillance program required by WAC 296-62-20017 including information on the occupational safety and health hazards associated with exposure to coke oven emissions;

(iv) A review of all written procedures and schedules required under WAC 296-62-20009; and

(v) A review of this standard.

(2) Access to training materials.

(a) The employer shall make a copy of this standard and its appendixes readily available to all employees who are employed in the regulated area.

(b) The employer shall provide all materials relating to the employee information and training program to the director.

AMENDATORY SECTION (Amending WSR 99-07-097, filed 3/23/99, effective 6/23/99)

WAC 296-62-3060 Engineering controls, work practices, and personal protective equipment for employee protection. (1) Engineering controls, work practices, personal protective equipment, or a combination of these must be implemented in accordance with this section to protect employees from exposure to hazardous substances and health hazards.

(a) Engineering controls, work practices, and PPE for substances regulated in chapters ~~296-62 and 296-841~~ WAC.

Engineering controls and work practices must be instituted to reduce and maintain employee exposure to or below the permissible exposure limits for substances regulated by this chapter, except to the extent that such controls and practices are not feasible.

Note: Engineering controls which may be feasible include the use of pressurized cabs or control booths on equipment, and/or the use of remotely operated material handling equipment. Work practices which may be feasible are removing all nonessential employees from potential exposure during opening of drums, wetting down dusty operations, and locating employees upwind of possible hazards.

(b) Whenever engineering controls and work practices are not feasible, or not required, any reasonable combination of engineering controls, work practices, and PPE must be used to reduce and maintain exposures to or below the permissible exposure limits or dose limits for substances regulated by chapters ~~296-62 and 296-841~~ WAC.

(c) The employer must not implement a schedule of employee rotation as a means of compliance with permissible exposure limits or dose limits except when there is no other feasible way of complying with the airborne or dermal dose limits for ionizing radiation.

(d) The provisions of WAC 296-62-080 through 296-62-09013, 296-62-09015 through 296-62-09055, and 296-62-100 through 296-62-130 must be followed.

(2) Engineering controls, work practices, and personal protective equipment for substances not regulated in chapters ~~296-62 and 296-841~~ WAC. An appropriate combination of engineering controls, work practices, and personal protective

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equipment must be used to reduce and maintain employee exposure to or below published exposure levels for hazardous substances and health hazards not regulated by chapter 296-62 WAC. The employer may use the published literature and MSDS as a guide in making the employer's determination as to what level of protection the employer believes is appropriate for hazardous substances and health hazards for which there is no permissible exposure limit or published exposure level.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-62-3195 Appendix E—Training curriculum guidelines. The following nonmandatory general criteria may be used for assistance in developing site-specific training curriculum used to meet the training requirements of WAC 296-62-3040 through 296-62-30465, 296-62-31435 through 296-62-31445, 296-62-31465, 296-62-4102 through 296-62-41021, and 296-62-41023.

These are generic guidelines and they are not presented as a complete training curriculum for any specific employer. Site-specific training programs must be developed on the basis of a needs assessment of the hazardous waste site, RCRA/TSD, or emergency response operation in accordance with this chapter (chapter 296-62 WAC, Part P and Part R).

The guidance set forth here presents a highly effective program that in the areas covered would meet or exceed the regulatory requirements. In addition, other approaches could meet the regulatory requirements.

Suggested general criteria:

Definitions:

"Competent" means possessing the skills, knowledge, experience, and judgment to perform assigned tasks or activities satisfactorily as determined by the employer.

"Demonstration" means the showing by actual use of equipment or procedures.

"Hands-on training" means training in a simulated work environment that permits each student to have experience performing tasks, making decisions, or using equipment appropriate to the job assignment for which the training is being conducted.

"Initial training" means training required prior to beginning work.

"Lecture" means an interactive discourse with a class lead by an instructor.

"Proficient" means meeting a stated level of achievement.

"Site-specific" means individual training directed to the operations of a specific job site.

"Training hours" means the number of hours devoted to lecture, learning activities, small group work sessions, demonstration, evaluations, or hands-on experience.

Suggested core criteria:

(1) Training facility. The training facility should have available sufficient resources, equipment, and site locations to perform concise and hands-on training when appropriate. Training facilities should have sufficient organization, sup-

port staff, and services to conduct training in each of the courses offered.

(2) Training director. Each training program should be under the direction of a training director who is responsible for the program. The training director should have a minimum of two years of employee education experience.

(3) Instructors. Instructors should be deemed competent on the basis of previous documented experience in their area of instruction, successful completion of a "train-the-trainer" program specific to the topics they will teach, and an evaluation of instructional competence by the training director.

(a) Instructors should be required to maintain professional competency by participating in continuing education or professional development programs or by successfully completing an annual refresher course and having an annual review by the training director.

(b) The annual review by the training director should include observation of an instructor's delivery, a review of those observations with the trainer, and an analysis of any instructor or class evaluations completed by the students during the previous year.

(4) Course materials. The training director should approve all course materials to be used by the training provider. Course materials should be reviewed and updated at least annually. Materials and equipment should be in good working order and maintained properly.

(a) All written and audio-visual materials in training curricula should be peer reviewed by technically competent outside reviewers or by a standing advisory committee.

(b) Reviewers should possess expertise in the following disciplines were applicable: Occupational health, industrial hygiene and safety, chemical/environmental engineering, employee education, or emergency response. One or more of the peer reviewers should be an employee experienced in the work activities to which the training is directed.

(5) Students. The program for accepting students should include:

(a) Assurance that the student is or will be involved in work where chemical exposures are likely and that the student possesses the skills necessary to perform the work.

(b) A policy on the necessary medical clearance.

(6) Ratios. Student-instructor ratios should not exceed thirty students per instructor. Hands-on activity requiring the use of personal protective equipment should have the following student-instructor ratios: For Level C or Level D personal protective equipment the ratio should be ten students per instructor. For Level A or Level B personal protective equipment the ratio should be five students per instructor.

(7) Proficiency assessment. Proficiency should be evaluated and documented by the use of a written assessment and a skill demonstration selected and developed by the training director and training staff. The assessment and demonstration should evaluate the knowledge and individual skills developed in the course of training. The level of minimum achievement necessary for proficiency must be specified in writing by the training director.

(a) If a written test is used, there should be a minimum of fifty questions. If a written test is used in combination with a skills demonstration, a minimum of twenty-five questions should be used. If a skills demonstration is used, the tasks

chosen and the means to rate successful completion should be fully documented by the training director.

(b) The content of the written test or of the skill demonstration must be relevant to the objectives of the course.

The written test and skill demonstration should be updated as necessary to reflect changes in the curriculum and any update should be approved by the training director.

(c) The proficiency assessment methods, regardless of the approach or combination of approaches used, should be justified, documented and approved by the training director.

(d) The proficiency of those taking the additional courses for supervisors should be evaluated and documented by using proficiency assessment methods acceptable to the training director. These proficiency assessment methods must reflect the additional responsibilities borne by supervisory personnel in hazardous waste operations or emergency response.

(8) Course certificate. Written documentation should be provided to each student who satisfactorily completes the training course. The documentation should include:

(a) Student's name.

(b) Course title.

(c) Course date.

(d) Statement that the student has successfully completed the course.

(e) Name and address of the training provider.

(f) An individual identification number for the certificate.

(g) List of the levels of personal protective equipment used by the student to complete the course.

(i) This documentation may include a certificate and an appropriate wallet-sized laminated card with a photograph of the student and the above information.

(ii) When such course certificate cards are used, the individual identification number for the training certificate should be shown on the card.

(9) Recordkeeping. Training providers should maintain records listing the dates courses were presented, the names of the individual course attendees, the names of those students successfully completing each course, and the number of training certificates issued to each successful student. These records should be maintained for a minimum of five years after the date an individual participated in a training program offered by the training provider. These records should be available and provided upon the student's request or as mandated by law.

(10) Program quality control. The training director should conduct or direct an annual written audit of the training program. Program modifications to address deficiencies, if any, should be documented, approved, and implemented by the training provider. The audit and the program modification documents should be maintained at the training facility.

Suggested Program Quality Control Criteria:

Factors listed here are suggested criteria for determining the quality and appropriateness of employee health and safety training for hazardous waste operations and emergency response.

(1) Training plan. Adequacy and appropriateness of the training program's curriculum development, instructor training, distribution of course materials, and direct student training should be considered, including:

(a) The duration of training, course content, and course schedules/agendas;

(b) The different training requirements of the various target populations, as specified in the appropriate generic training curriculum;

(c) The process for the development of curriculum, which includes appropriate technical input, outside review, evaluation, program pretesting.

(d) The adequate and appropriate inclusion of hands-on, demonstration, and instruction methods;

(e) Adequate monitoring of student safety, progress, and performance during the training.

(2) Program management, training director, staff, and consultants. Adequacy and appropriateness of staff performance and delivering an effective training program should be considered, including:

(a) Demonstration of the training director's leadership in assuring quality of health and safety training;

(b) Demonstration of the competency of the staff to meet the demands of delivering high quality hazardous waste employee health and safety training;

(c) Organization charts establishing clear lines of authority;

(d) Clearly defined staff duties including the relationship of the training staff to the overall program;

(e) Evidence that the training organizational structure suits the needs of the training program;

(f) Appropriateness and adequacy of the training methods used by the instructors;

(g) Sufficiency of the time committed by the training director and staff to the training program;

(h) Adequacy of the ratio of training staff to students;

(i) Availability and commitment of the training program of adequate human and equipment resources in the areas of:

(i) Health effects;

(ii) Safety;

(iii) Personal protective equipment (PPE);

(iv) Operational procedures;

(v) Employee protection practices/procedures;

(j) Appropriateness of management controls;

(k) Adequacy of the organization and appropriate resources assigned to assure appropriate training;

(l) In the case of multiple-site training programs, adequacy of management of the satellite centers.

(3) Training facilities and resources. Adequacy and appropriateness of the facilities and resources for supporting the training program should be considered, including:

(a) Space and equipment to conduct the training;

(b) Facilities for representative hands-on training;

(c) In the case of multiple-site programs, equipment and facilities at the satellite centers;

(d) Adequacy and appropriateness of the quality control and evaluations program to account for instructor performance;

(e) Adequacy and appropriateness of the quality control and evaluation program to ensure appropriate course evaluation, feedback, updating, and corrective action;

(f) Adequacy and appropriateness of disciplines and expertise being used within the quality control and evaluation program;

(g) Adequacy and appropriateness of the role of student evaluations to provide feedback for training program improvement.

(4) Quality control and evaluation. Adequacy and appropriateness of quality control and evaluation plans for training programs should be considered, including:

(a) A balanced advisory committee and/or competent outside reviewers to give overall policy guidance;

(b) Clear and adequate definition of the composition and active programmatic role of the advisory committee or outside reviewers;

(c) Adequacy of the minutes or reports of the advisory committee or outside reviewers' meetings or written communication;

(d) Adequacy and appropriateness of the quality control and evaluations program to account for instructor performance;

(e) Adequacy and appropriateness of the quality control and evaluation program to ensure appropriate course evaluation, feedback, updating, and corrective action;

(f) Adequacy and appropriateness of disciplines and expertise being used within the quality control and evaluation program;

(g) Adequacy and appropriateness of the role of student evaluations to provide feedback for training program improvement.

(5) Students. Adequacy and appropriateness of the program for accepting students should be considered, including:

(a) Assurance that the student already possess the necessary skills for their job, including necessary documentation;

(b) Appropriateness of methods the program uses to ensure that recruits are capable of satisfactorily completing training;

(c) Review and compliance with any medical clearance policy.

(6) Institutional environment and administrative support. The adequacy and appropriateness of the institutional environment and administrative support system for the training program should be considered, including:

(a) Adequacy of the institutional commitment to the employee training program;

(b) Adequacy and appropriateness of the administrative structure and administrative support.

(7) Summary of evaluation questions. Key questions for evaluating the quality and appropriateness of an overall training program should include the following:

(a) Are the program objectives clearly stated?

(b) Is the program accomplishing its objectives?

(c) Are appropriate facilities and staff available?

(d) Is there an appropriate mix of classroom, demonstration, and hands-on training?

(e) Is the program providing quality employee health and safety training that fully meets the intent of regulatory requirements?

(f) What are the program's main strengths?

(g) What are the program's main weaknesses?

(h) What is recommended to improve the program?

(i) Are instructors instructing according to their training outlines?

(j) Is the evaluation tool current and appropriate for the program content?

(k) Is the course material current and relevant to the target group?

Suggested Training Curriculum Guidelines:

The following training curriculum guidelines are for those operations specifically identified in this Part P, as requiring training. Issues such as qualifications of instructors, training certification, and similar criteria appropriate to all categories of operations addressed in this Part P, have been covered in the preceding section and are not readdressed in each of the generic guidelines. Basic core requirements for training programs that are addressed include: (1) *General hazardous waste operations*; (2) *RCRA operations—Treatment, storage, and disposal facilities*.

(1) General hazardous waste operations and site-specific training.

(a) Off-site training. Training course content for hazardous waste operations, required by WAC 296-62-3040 through 296-62-30465, should include the following topics or procedures:

(i) Regulatory knowledge.

(A) A review of this Part P and the core elements of an occupational safety and health program.

(B) The content of a medical surveillance program as outlined in WAC 296-62-3050 through 296-62-30535.

(C) The content of an effective site safety and health plan consistent with the requirements of WAC 296-62-30135(2).

(D) Emergency response plan and procedures as outlined in WAC 296-24-567 and 296-62-3110 through 296-62-31110.

(E) Adequate illumination.

(F) Sanitation recommendation and equipment.

(G) Review and explanation of WISHA's hazard-communication standard WAC 296-800-170, and chapter 296-24 WAC, Part A-4, safety procedures for the control of hazardous energy (lockout/tagout).

(H) Review of other applicable standards including but not limited to those in the construction standards, chapter 296-155 WAC.

(I) Rights and responsibilities of employers and employees under applicable WISHA/OSHA and department of ecology (DOE)/Environmental Protection Association (EPA) regulations and laws.

(ii) Technical knowledge.

(A) Type of potential exposures to chemical, biological, and radiological hazards; types of human responses to these hazards and recognition of those responses; principles of toxicology and information about acute and chronic hazards; health and safety considerations of new technology.

(B) Fundamentals of chemical hazards including but not limited to vapor pressure, boiling points, flash points, pH, other physical and chemical properties.

(C) Fire and explosion hazards of chemicals.

(D) General safety hazards such as but not limited to electrical hazards, powered equipment hazards, motor vehicle hazards, walking-working surface hazards, excavation hazards, and hazards associated with working in hot and cold temperature extremes.

(E) Review and knowledge of confined space entry procedures in chapter 296-62 WAC, Part M.

(F) Work practices to minimize employee risk from site hazards.

(G) Safe use of engineering controls, equipment, and any new relevant safety technology or safety procedures.

(H) Review and demonstration of competency with air sampling and monitoring equipment that may be used in a site monitoring program.

(I) Container sampling procedures and safeguarding; general drum and container handling procedures including special requirement for laboratory waste packs, shock-sensitive wastes, and radioactive wastes.

(J) The elements of a spill control program.

(K) Proper use and limitations of material handling equipment.

(L) Procedures for safe and healthful preparation of containers for shipping and transport.

(M) Methods of communication including those used while wearing respiratory protection.

(iii) Technical skills.

(A) Selection, use maintenance, and limitations of personal protective equipment including the components and procedures for carrying out a respirator program to comply with chapter ((296-62)) 296-842 WAC ((Part E, Respiratory Protection)), Respirators.

(B) Instruction in decontamination programs including personnel, equipment, and hardware; hands-on training including Levels A, B, and C ensembles and appropriate decontamination lines; field activities including the donning and doffing of protective equipment to a level commensurate with the employee's anticipated job function and responsibility and to the degree required by potential hazards.

(C) Sources for additional hazard information; exercises using relevant manuals and hazard coding systems.

(iv) Additional suggested items.

(A) A laminated, dated card or certificate with photo, denoting limitations and level of protection for which the employee is trained should be issued to those students successfully completing a course.

(B) Attendance should be required at all training modules, with successful completion of exercises and a final written or oral examination with at least fifty questions.

(C) A minimum of one-third of the program should be devoted to hands-on exercises.

(D) A curriculum should be established for the eight-hour refresher training required by WAC 296-62-30460, with delivery of such courses directed toward those areas of previous training that need improvement or reemphasis.

(E) A curriculum should be established for the required eight-hour training for supervisors. Demonstrated competency in the skills and knowledge provided in forty-hour and eighty-hour courses should be prerequisites for supervisor training.

(b) Refresher training. The eight-hour annual refresher training required in WAC 296-62-30460 should be conducted by qualified training providers. Refresher training should include at a minimum the following topics and procedures:

(i) Review of and retraining on relevant topics covered in the forty-hour and eighty-hour programs, as appropriate, using reports by the students on their work experiences.

(ii) Update on developments with respect to material covered in the forty-hour and eighty-hour courses.

(iii) Review of changes to pertinent provisions of DOE/EPA or WISHA/OSHA standards or laws.

(iv) Introduction of additional subject areas as appropriate.

(v) Hands-on review of new or altered PPE or decontamination equipment or procedures. Review of new developments in personal protective equipment.

(vi) Review of newly developed air and contaminant monitoring equipment.

(c) On-site training. The employer should provide employees engaged in hazardous waste site activities with information and training prior to initial assignment into their work area, as follows:

(i) The requirements of the hazard communication program including the location and availability of the written program, required lists of hazardous chemicals, and material safety data sheets.

(ii) Activities and locations in their work area where hazardous substance may be present.

(iii) Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearances, or other evidence (sight, sound or smell)) of hazardous chemicals being released, and applicable alarms from monitoring devices that record chemical releases.

(iv) The physical and health hazards of substances known or potentially present in the work area.

(v) The measures employees can take to help protect themselves from worksite hazards, including specific procedures the employer has implemented.

(vi) An explanation of the labeling system and material safety data sheets and how employees can obtain and use appropriate hazard information.

(vii) The elements of the confined space program including special PPE, permits, monitoring requirements, communication procedures, emergency response, and applicable lockout procedures.

(d) The employer should provide hazardous waste employees with information and training and should provide a review and access to the site safety and health plan as follows:

(i) Names of personnel and alternate responsible for site safety and health.

(ii) Safety and health hazards present on the site.

(iii) Selection, use, maintenance, and limitations of personal protective equipment specific to the site.

(iv) Work practices by which the employee can minimize risks from hazards.

(v) Safe use of engineering controls and equipment available on site.

(vi) Safe decontamination procedures established to minimize employee contact with hazardous substances, including:

(A) Employee decontamination;

(B) Clothing decontamination; and

(C) Equipment decontamination.

(vii) Elements of the site emergency response plan, including:

(A) Preemergency planning.

(B) Personnel roles and lines of authority and communication.

(C) Emergency recognition and prevention.

(D) Safe distances and places of refuge.

(E) Site security and control.

(F) Evacuation routes and procedures.

(G) Decontamination procedures not covered by the site safety and health plan.

(H) Emergency medical treatment and first aid.

(I) Emergency equipment and procedures for handling emergency incidents.

(e) The employer should provide hazardous waste employees with information and training on personal protective equipment used at the site, such as the following:

(i) PPE to be used based upon known or anticipated site hazards.

(ii) PPE limitations of materials and construction; limitations during temperature extremes, heat stress, and other appropriate medical considerations; use and limitations of respirator equipment as well as documentation procedures as outlined in chapter ((296-62)) 296-842 WAC, ((Part E, Respiratory Protection)) Respirators.

(iii) PPE inspection procedures prior to, during, and after use.

(iv) PPE donning and doffing procedures.

(v) PPE decontamination and disposal procedures.

(vi) PPE maintenance and storage.

(vii) Task duration as related to PPE limitations.

(f) The employer should instruct the employee about the site medical surveillance program relative to the particular site, including:

(i) Specific medical surveillance programs that have been adapted for the site.

(ii) Specific signs and symptoms related to exposure to hazardous materials on the site.

(iii) The frequency and extent of periodic medical examinations that will be used on the site.

(iv) Maintenance and availability of records.

(v) Personnel to be contacted and procedures to be followed when signs and symptoms of exposures are recognized.

(g) The employees will review and discuss the site safety and health plan as part of the training program. The location of the site safety and health plan and all written programs should be discussed with employees including a discussion of the mechanisms for access, review, and references described.

(2) RCRA operations training for treatment, storage and disposal facilities.

(a) As a minimum, the training course required in WAC 296-62-31435 through 296-62-31440 and 296-62-31465 should include the following topics:

(i) Review of the applicable parts of this Part P and the elements of the employer's occupational safety and health plan.

(ii) Review of relevant hazards such as, but not limited to, chemical, biological, and radiological exposures; fire and explosion hazards; thermal extremes; and physical hazards.

(iii) General safety hazards including those associated with electrical hazards, powered equipment hazards, lockout/tagout procedures, motor vehicle hazards and walking-working surface hazards.

(iv) Confined space hazards and procedures.

(v) Work practices to minimize employee risk from workplace hazards.

(vi) Emergency response plan and procedures including first aid meeting the requirements of WAC 296-62-31450.

(vii) A review of procedures to minimize exposure to hazardous waste and various type of waste streams, including the materials handling program and spill containment program.

(viii) A review of chemical hazard communication programs meeting the requirements of WAC 296-800-170.

(ix) A review of medical surveillance programs meeting the requirements of WAC 296-62-3050 and 296-62-31415 including the recognition of signs and symptoms of overexposure to hazardous substance including known synergistic interactions.

(x) A review of decontamination programs and procedures meeting the requirements of WAC 296-62-3100 and 296-62-31420.

(xi) A review of an employer's requirements to implement a training program and its elements.

(xii) A review of the criteria and programs for proper selection and use of personal protective equipment, including respirators.

(xiii) A review of the applicable appendices to this Part P (Appendices A through E).

(xiv) Principles of toxicology and biological monitoring as they pertain to occupational health.

(xv) Rights and responsibilities of employees and employers under applicable WISHA/OSHA and DOE/EPA regulations and laws.

(xvi) Hands-on exercises and demonstrations of competency with equipment to illustrate the basic equipment principles that may be used during the performance of work duties, including the donning and doffing of PPE.

(xvii) Sources of reference, efficient use of relevant manuals, and knowledge of hazard coding systems to include information contained in hazardous waste manifests.

(xviii) At least eight hours of hands-on training.

(xix) Training in the job skills required for an employee's job function and responsibility before they are permitted to participate in or supervise field activities.

(b) The individual employer should provide hazardous waste employees with information and training prior to an employee's initial assignment into a work area. The training and information should cover the following topics:

(i) The emergency response plan and procedures including first aid.

(ii) A review of the employer's hazardous waste handling procedures including the materials handling program and elements of the spill containment program, location of spill response kits or equipment, and the names of those trained to respond to releases.

(iii) The hazardous communication program meeting the requirements of WAC 296-800-170.

(iv) A review of the employer's medical surveillance program including the recognition of signs and symptoms of exposure to relevant hazardous substance including known synergistic interactions.

(v) A review of the employer's decontamination program and procedures.

(vi) A review of the employer's training program and the parties responsible for that program.

(vii) A review of the employer's personal protective equipment program including the proper selection and use of PPE based upon specific site hazards.

(viii) All relevant site-specific procedures addressing potential safety and health hazards. This may include, as appropriate, biological and radiological exposures, fire and explosion hazards, thermal hazards, and physical hazards such as electrical hazards, powered equipment hazards, lockout/tagout hazards, motor vehicle hazards, and walking-working surface hazards.

(ix) Safe use of engineering controls and equipment on-site.

(x) Names of personnel and alternates responsible for safety and health.

AMENDATORY SECTION (Amending Order 90-10, filed 8/13/90, effective 9/24/90)

WAC 296-62-40001 Scope and application. (1) This section shall apply to all employers and employees engaged in the laboratory use of hazardous chemicals as follows:

(a) Where this section applies, it shall supersede, for laboratories, the requirements of all other WISHA health standards in chapters 296-62 and 296-841 WAC, except for any WISHA health standard, only the requirement to limit employee exposure to the specific permissible exposure limit shall apply for laboratories, unless that particular standard states otherwise or unless the conditions of subdivision (c) of this section apply.

(b) Prohibition of eye and skin contact where specified by any WISHA health standard shall be observed.

(c) Where the action level (or in the absence of an action level, the permissible exposure limit) is routinely exceeded for a WISHA regulated substance with exposure monitoring and medical surveillance requirements, of WAC 296-62-40007.

(2) This section shall not apply to:

(a) Uses of hazardous chemicals which do not meet the definition of laboratory use, and in such cases, the employer shall comply with the relevant standard in WAC 296-62-075, even if such use occurs in a laboratory.

(b) Laboratory uses of hazardous chemicals which provide no potential for employee exposure. Examples of such conditions might include:

(i) Procedures using chemically-impregnated test media such as Dip-and-Read tests where a reagent strip is dipped into the specimen to be tested and the results are interpreted by comparing the color reaction to a color chart supplied by the manufacturer of the test strip; and

(ii) Commercially prepared kits such as those used in performing pregnancy tests in which all of the reagents needed to conduct the test are contained in the kit.

AMENDATORY SECTION (Amending Order 90-10, filed 8/13/90, effective 9/24/90)

WAC 296-62-40007 Employee exposure determination. (1) Initial monitoring. The employer shall measure the employee's exposure to any substance regulated by a standard which requires monitoring if there is reason to believe that exposure levels for that substance routinely exceed the action level (or in the absence of an action level, the PEL).

(2) Periodic monitoring. If the initial monitoring prescribed by subsection (1) of this section discloses employee exposure over the action level (or in the absence of an action level, the PEL), the employer shall immediately comply with the exposure monitoring provisions of chapters 296-62 and 296-841 WAC.

(3) Termination of monitoring. Monitoring may be terminated in accordance with chapters 296-62 and 296-841 WAC.

(4) Employee notification of monitoring results. The employer shall, within 15 working days after the receipt of any monitoring results, notify the employee of these results in writing either individually or by posting results in an appropriate location that is accessible to employees.

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-78-665 Sanding machines. (1) Each belt sanding machine shall have both pulleys enclosed in such a manner as to guard the points where the belt runs onto the pulleys. The edges of the unused run of belt shall be enclosed or otherwise guarded from contact by employees.

(2) Each drum sanding machine shall be provided with a guard so arranged as to completely enclose the revolving drum except such portion required for the application of the material to be finished. Guards with hinges to facilitate the insertion of sandpaper may be installed. The exhaust hood may form part or all of this guard. When so used, the hood shall conform to the specifications as given under exhaust systems in WAC 296-78-710.

(3) All standard stationary sanding machines shall be provided with exhaust systems in conformity with the section of this code dealing with exhaust systems.

(4) All portable sanding machines shall be provided with means of removing excessive dust, or employees using equipment shall be provided with such necessary respiratory protective equipment as will conform to the requirements of the general occupational health standards, chapter ((296-62)) 296-842 WAC((Part E)).

(5) The requirements of WAC 296-24-16533, general safety and health standards, shall be applicable to sanding machines.

AMENDATORY SECTION (Amending WSR 02-15-102, filed 7/17/02, effective 10/1/02)

WAC 296-78-71015 Tanks and chemicals. (1) All open vats and tanks into which workers may fall shall be guarded with standard railings or screen guards in all cases where such guarding is possible with regard to practical operation.

(2) Foundations of elevated tanks shall be accessible for inspections. When the tank platform is more than five feet above the ground a stairway or ladder shall be permanently attached.

(3) Every open tank over five feet in height shall be equipped with fixed standard ladders both inside and out, extending from the bottom to the rim of the tank arranged to be accessible to each other, so far as local conditions permit.

(4) The use of chemicals for treating of lumber for prevention of sap stain or mold or as preservatives, shall conform to the requirements of chapter 296-835 WAC, Dipping and coating operations (dip tanks).

(a) Storage, handling, and use of chemicals. Threshold limits. Employees shall not be exposed to airborne concentration of toxic dusts, vapors, mists or gases that exceed the threshold limit values set forth in chapter 296-62 WAC, Part H, and chapter 296-62 WAC, Part E, general occupational health standards.

(b) Protective equipment. The use of chemicals shall be controlled so as to protect employees from harmful exposure to toxic materials. Where necessary, employees shall be provided with and required to wear such protective equipment as will afford adequate protection against harmful exposure as required by WAC 296-800-160, and chapter ((296-62)) 296-842 WAC, ((Part E,)) general occupational health standards.

(5)(a) Means shall be provided and used to collect any excess of chemicals used in treating lumber so as to protect workers from accidental contact with harmful concentrations of toxic chemicals or fumes.

(b) Dip tanks containing flammable or combustible liquids shall be constructed, maintained and used in accordance with chapter 296-835 WAC, Dipping and coating operations (dip tanks).

(c) An evacuation plan shall be developed and implemented for all employees working in the vicinity of dip tanks using flammable and/or combustible liquids. A copy of the plan shall be available at the establishment for inspection at all times. Every employee shall be made aware of the evacuation plan and know what to do in the event of an emergency and be evacuated in accordance with the plan. The plan shall be reviewed with employees at least quarterly and documented.

(d) When automatic foam, automatic carbon dioxide or automatic dry chemical extinguishing systems are used, an alarm device shall be activated to alert employees in the dip tank area before and during the activation of the system. The following combinations of extinguishment systems when used in conjunction with the evacuation plan as stated above will be acceptable in lieu of bottom drains:

(i) A dip tank cover with an automatic foam extinguishing system under the cover, or an automatic carbon dioxide system, or an automatic dry chemical extinguishing system, or an automatic water spray extinguishing system;

(ii) An automatic dry chemical extinguishing system with an automatic carbon dioxide system or a second automatic dry chemical extinguishing system or an automatic foam extinguishing system;

(iii) An automatic carbon dioxide system with a second automatic carbon dioxide system or an automatic foam extinguishing system.

(e) The automatic water spray extinguishing systems, automatic foam extinguishing systems, and dip tank covers shall conform with the requirements of chapter 296-835 WAC, Dipping and coating operations (dip tanks). The automatic carbon dioxide systems and dry chemical extinguishing system shall conform with the requirements of WAC 296-24-615 and 296-24-620.

(6) Where workers are engaged in the treating of lumber with chemicals or are required to handle lumber or other materials so treated, the workers shall be provided with, at no cost to the worker, and required to use such protective equipment as will provide complete protection against contact with toxic chemicals or fumes therefrom.

(7) Sanitation requirements. The requirements of WAC 296-800-220 and 296-800-230 (safety and health core rules), shall govern sanitation practices.

(8) The sides of steam vats and soaking pits unless otherwise guarded shall extend forty-two inches above the floor level. The floor adjacent thereto shall be of nonslip construction.

(9) Large steam vats or soaking pits, divided into sections, shall be provided with substantial walkways between each section, each walkway to be provided with standard railings which may be removable if necessary.

(10) Covers shall be removed only from that portion of the steaming vats on which workers are working and a portable railing shall be placed at this point to protect the operators.

(11) Workers shall not ride or step on logs in steam vats.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-78-71019 Exhaust systems. (1) Air requirements in buildings, where persons are habitually employed, shall meet the requirements of the general occupational health standard, WAC 296-62-100 through 296-62-11013.

(2) Where the natural ventilation is not sufficient to remove dust, fumes or vapors that create or constitute a hazard, additional means of removal shall be provided.

(3) All mills containing one or more machines whose operations create dust, shavings, chips or slivers during a period of time equal to or greater than one-fourth of the working day or shift, shall be equipped with a collecting system either continuous or automatic in action and of sufficient strength and capacity to thoroughly remove such refuse from the points of operation of the machines and the work areas.

(4) Each woodworking machine that creates dust, shavings, chips, or slivers shall be equipped with an exhaust or conveyor system located and adjusted to remove the maximum amount of refuse from the point of operation and immediate vicinity.

(5) Blower, collecting and exhaust systems shall be designed, constructed and maintained in accordance with American National Standards Z33.1 - 1961 (for the installation of blower and exhaust systems for dust, stock and vapor removal or conveying) and Z12.2 - 1962 (R1969) (code for the prevention of dust explosions in woodworking and wood flour manufacturing plants).

(6) Fans used for ventilating shall be of ample capacity, as evidenced by the performance schedules of the manufacturers, and shall be guarded when exposed to contact. Hoods, dust conveyors, dust collectors and other accessory equipment shall be large enough to insure free intake and discharge.

(7) The outlet or discharge of all ventilating equipment shall be so arranged that at no time will the dust, vapors, gases or other air borne impurities discharged, create or constitute a hazard.

(8) Where a hood is used to form a part or all of the guard required on a given machine, it shall be constructed of not less than ten U.S. gauge sheet metal, or if of cast iron it shall be not less than three-sixteenths inches in thickness.

(9) All exhaust pipes shall be of such construction and internal dimensions as to minimize the possibility of clogging. They shall be readily accessible for cleaning.

(10) All exhaust pipes shall empty into settling or dust chambers which shall effectively prevent the dust or refuse from entering any work area. Such settling or dust chambers shall be so designed and operated as to reduce to a minimum the danger of fire or dust explosions.

(11) In lieu of a general ventilating system, exhaust or blower units may be installed on the dust or fume producing machine, provided the required protection is secured thereby.

(12) When proper ventilation is not provided, and temporary hazardous conditions are therefore encountered, the employer shall furnish approved respiratory and visual equipment: Provided, however, That the exposure to such hazard shall not be for more than two hours duration. Protective measures and equipment shall meet the requirements of the general occupational health standard, chapter ((296-62)) 296-842 WAC((,-Part E)).

(13) Provisions for the daily removal of refuse shall be made in all operations not required to have an exhaust system, or having refuse too heavy, or bulky, or otherwise unsuitable to be handled by an exhaust system.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-78-84005 Dry kilns. (1) Transfer, kiln and dolly tracks shall be properly maintained at all times and shall have a grade of not more than one and one-fourth percent. Bumpers or stops shall be installed at the ends of all tracks capable of stopping a normal load for which the track is installed. A means shall be provided for chocking or blocking cars.

(2) Doors.

(a) Main kiln doors. Main kiln doors shall be provided with a method of holding them open while kiln is being loaded.

(b) Counterweights on vertical lift doors shall be boxed or otherwise guarded.

(c) Means shall be provided to firmly secure main doors, when they are disengaged from carriers and hangers, to prevent toppling.

(3) Kilns whose operation requires inside inspection shall be maintained with not less than eighteen inches clearance between loaded cars and the walls of the kiln. The requirements for personal protective equipment specified in WAC 296-800-160, safety and health core rules, and chapter ((296-62)) 296-842 WAC, ((Part E,)) general occupational health standards, shall be complied with.

(4) Kiln loads shall be equipped or arranged for easy attachment and detachment of transfer cables. Means for stopping kiln cars shall be available at all times.

(5) Cars shall not be moved until tracks are clear and workers are out of the sight of transfer lines.

(6) When kiln or dolly loads of lumber are permitted to coast through or adjacent to any work area, audible warning shall be given.

(7) Stickers shall not be allowed to protrude more than two inches from the sides of kiln stacks.

(8) Yards and storage areas shall be kept reasonably free of debris and unnecessary obstruction. Warning signs shall be conspicuously posted wherever there is danger from moving vehicles or equipment.

AMENDATORY SECTION (Amending WSR 99-16-083, filed 8/3/99, effective 11/3/99)

WAC 296-79-29007 Bleach plant. (1) Work areas used for preparation and processing of bleaching mixtures must be equipped with properly designed exhaust ventilation systems capable of clearing the area of toxic gases. See chapters 296-62 and 296-841 WAC, ((Part H and)) Part L.

(2) Bleaching containers, such as cells, towers, etc., except the Bellmer type, must be completely covered on the top, with the exception of one small opening large enough to allow filling but too small to admit a person.

AMENDATORY SECTION (Amending Order 94-07, filed 7/20/94, effective 9/20/94)

WAC 296-155-160 Gases, vapors, fumes, dusts, and mists. (1) Exposure of employees to inhalation, ingestion, skin absorption, or contact with any material or substance at a concentration above those specified in the general occupational health standards, WAC 296-62-07515 shall be avoided.

(2) To achieve compliance with subsection (1) of this section, administrative or engineering controls must first be implemented whenever feasible. When such controls are not feasible to achieve full compliance, protective equipment or other protective measures shall be used to keep the exposure of employees to air contaminants within the limits prescribed in WAC 296-62-07515. Any equipment and technical measures used for this purpose must first be approved for each particular use by a competent industrial hygienist or other technically qualified person. Whenever respirators are used, their use shall comply with WAC 296-155-220.

(3) Whenever internal combustion equipment exhausts in enclosed spaces, tests shall be made and recorded to ensure that employees are not exposed to unsafe concentrations of toxic gases or oxygen deficient atmospheres. See chapter 296-62 WAC, the general occupational health standards and chapter 296-841 WAC, identifying and controlling respiratory hazards.

(4) Whenever any employee is exposed to asbestos, the provisions of the general occupational health standards, chapter 296-62 WAC shall apply.

(5) Subsections (1) and (2) of this section do not apply to the exposure of employees to formaldehyde. Whenever any employee is exposed to formaldehyde, the requirements of WAC 296-62-07540 shall apply.

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-155-17317 Respiratory protection. (1) General. For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of this section. Respirators must be used during:

(a) Periods necessary to install or implement feasible engineering and work-practice controls.

(b) Work operations, such as maintenance and repair activities and spray application processes, for which engineering and work-practice controls are not feasible.

(c) Work operations for which feasible engineering and work-practice controls are not yet sufficient to reduce employee exposure to or below the PELs.

(d) Emergencies.

(2) Respirator program. The employer must implement a respiratory protection program as required by chapter ((296-62 WAC, Part E (except WAC 296-62-07130(1) and 296-62-07150 through 296-62-07156))) 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(3) Respirator selection.

(a) The employer must select the appropriate respirator from Table 1 of this section.

Table 1.—Respiratory Protection for MDA

Airborne concentration of MDA or condition of use	Respirator type
a. Less than or equal to 10xPEL	(1)Half-mask respirator with HEPA ¹ cartridge. ²
b. Less than or equal to 50xPEL	(1)Full facepiece respirator with HEPA ¹ cartridge or canister. ²
c. Less than or equal to 1000xPEL	(1)Full facepiece powered air-purifying respirator with HEPA ¹ cartridges. ²
d. Greater than 1000xPEL or unknown	(1)Self-contained breathing concentration apparatus with full facepiece in positive pressure mode;

Table 1.—Respiratory Protection for MDA

Airborne concentration of MDA or condition of use	Respirator type
e. Escape	(2)Full facepiece positive-pressure demand supplied-air respirator with auxiliary self-contained air supply. (1)Any full facepiece air-purifying respirator with HEPA ¹ cartridges; ² (2)Any positive pressure or continuous flow self-contained breathing apparatus with full facepiece or hood.
f. Fire fighting	(1)Full facepiece self-contained breathing apparatus in positive pressure mode.

Note: Respirators assigned for higher environmental concentration may be used at lower concentrations.

¹High efficiency particulate in air filter (HEPA) means a filter that is at least 99.97 percent efficient against mono-dispersed particles of 0.3 micrometers or larger.

²Combination HEPA/organic vapor cartridges shall be used whenever MDA in liquid form or a process requiring heat is used.

(b) An employee who cannot use a negative-pressure respirator must be given the option of using a positive-pressure respirator, or a supplied-air respirator operated in the continuous-flow or pressure-demand mode.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

WAC 296-155-174 Cadmium. (1) Scope. This standard applies to all occupational exposures to cadmium and cadmium compounds, in all forms, in all construction work where an employee may potentially be exposed to cadmium. Construction work is defined as work involving construction, alteration, and/or repair, including but not limited to the following:

(a) Wrecking, demolition, or salvage of structures where cadmium or materials containing cadmium are present;

(b) Use of cadmium containing-paints and cutting, brazing, burning, grinding, or welding on surfaces that were painted with cadmium-containing paints;

(c) Construction, alteration, repair, maintenance, or renovation of structures, substrates, or portions thereof, that contain cadmium, or materials containing cadmium;

(d) Cadmium welding; cutting and welding cadmium-plated steel; brazing or welding with cadmium alloys;

(e) Installation of products containing cadmium;

(f) Electrical grounding with cadmium-welding, or electrical work using cadmium-coated conduit;

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- (g) Maintaining or retrofitting cadmium-coated equipment;
- (h) Cadmium contamination/emergency cleanup; and
- (i) Transportation, disposal, storage, or containment of cadmium or materials containing cadmium on the site or location at which construction activities are performed.

(2) Definitions.

(a) Action level (AL) is defined as an airborne concentration of cadmium of 2.5 micrograms per cubic meter of air (2.5 $\mu\text{g}/\text{m}^3$), calculated as an 8-hour time-weighted average (TWA).

(b) Authorized person means any person authorized by the employer and required by work duties to be present in regulated areas or any person authorized by WISHA or regulations issued under it to be in regulated areas.

(c) Competent person, in accordance with WAC 296-155-012(4), means a person designated by the employer to act on the employer's behalf who is capable of identifying existing and potential cadmium hazards in the workplace and the proper methods to control them in order to protect workers, and has the authority necessary to take prompt corrective measures to eliminate or control such hazards. The duties of a competent person include at least the following: Determining prior to the performance of work whether cadmium is present in the workplace; establishing, where necessary, regulated areas and assuring that access to and from those areas is limited to authorized employees; assuring the adequacy of any employee exposure monitoring required by this standard; assuring that all employees exposed to air cadmium levels above the PEL wear appropriate personal protective equipment and are trained in the use of appropriate methods of exposure control; assuring that proper hygiene facilities are provided and that workers are trained to use those facilities; and assuring that the engineering controls required by this standard are implemented, maintained in proper operating condition, and functioning properly.

(d) Director means the director of the department of labor and industries or authorized representative.

(e) Employee exposure and similar language referring to the air cadmium level to which an employee is exposed means the exposure to airborne cadmium that would occur if the employee were not using respiratory protective equipment.

(f) Final medical determination is the written medical opinion of the employee's health status by the examining physician under subsection (12)(c) through (l) of this section or, if multiple physician review under subsection (12)(m) of this section or the alternative physician determination under subsection (12)(n) of this section is invoked, it is the final, written medical finding, recommendation or determination that emerges from that process.

(g) High-efficiency particulate air (HEPA) filter means a filter capable of trapping and retaining at least 99.97 percent of mono-dispersed particles of 0.3 micrometers in diameter.

(h) Regulated area means an area demarcated by the employer where an employee's exposure to airborne concentrations of cadmium exceeds, or can reasonably be expected to exceed the permissible exposure limit (PEL).

(i) This section means this cadmium standard.

(3) Permissible exposure limit (PEL). The employer shall assure that no employee is exposed to an airborne concentration of cadmium in excess of five micrograms per cubic meter of air (5 $\mu\text{g}/\text{m}^3$), calculated as an 8-hour time-weighted average exposure (TWA).

(4) Exposure monitoring

(a) General.

(i) Prior to the performance of any construction work where employees may be potentially exposed to cadmium, the employer shall establish the applicability of this standard by determining whether cadmium is present in the workplace and whether there is the possibility that employee exposures will be at or above the action level. The employer shall designate a competent person who shall make this determination. Investigation and material testing techniques shall be used, as appropriate, in the determination. Investigation shall include a review of relevant plans, past reports, material safety data sheets, and other available records, and consultations with the property owner and discussions with appropriate individuals and agencies.

(ii) Where cadmium has been determined to be present in the workplace, and it has been determined that there is a possibility the employee's exposure will be at or above the action level, the competent person shall identify employees potentially exposed to cadmium at or above the action level.

(iii) Determinations of employee exposure shall be made from breathing-zone air samples that reflect the monitored employee's regular, daily 8-hour TWA exposure to cadmium.

(iv) Eight-hour TWA exposures shall be determined for each employee on the basis of one or more personal breathing-zone air samples reflecting full shift exposure on each shift, for each job classification, in each work area. Where several employees perform the same job tasks, in the same job classification, on the same shift, in the same work area, and the length, duration, and level of cadmium exposures are similar, an employer may sample a representative fraction of the employees instead of all employees in order to meet this requirement. In representative sampling, the employer shall sample the employee(s) expected to have the highest cadmium exposures.

(b) Specific.

(i) Initial monitoring. Except as provided for in (b)(iii) of this subsection, where a determination conducted under (a)(i) of this subsection shows the possibility of employee exposure to cadmium at or above the action level, the employer shall conduct exposure monitoring as soon as practicable that is representative of the exposure for each employee in the workplace who is or may be exposed to cadmium at or above the action level.

(ii) In addition, if the employee periodically performs tasks that may expose the employee to a higher concentration of airborne cadmium, the employee shall be monitored while performing those tasks.

(iii) Where the employer has objective data, as defined in subsection (14)(b) of this section, demonstrating that employee exposure to cadmium will not exceed airborne concentrations at or above the action level under the expected conditions of processing, use, or handling, the employer may rely upon such data instead of implementing initial monitoring.

(iv) Where a determination conducted under (a) or (b) of this subsection is made that a potentially exposed employee is not exposed to airborne concentrations of cadmium at or above the action level, the employer shall make a written record of such determination. The record shall include at least the monitoring data developed under (b)(i) through (iii) of this subsection, where applicable, and shall also include the date of determination, and the name and Social Security number of each employee.

(c) Monitoring frequency (periodic monitoring).

(i) If the initial monitoring or periodic monitoring reveals employee exposures to be at or above the action level, the employer shall monitor at a frequency and pattern needed to assure that the monitoring results reflect with reasonable accuracy the employee's typical exposure levels, given the variability in the tasks performed, work practices, and environmental conditions on the job site, and to assure the adequacy of respiratory selection and the effectiveness of engineering and work practice controls.

(ii) If the initial monitoring or the periodic monitoring indicates that employee exposures are below the action level and that result is confirmed by the results of another monitoring taken at least seven days later, the employer may discontinue the monitoring for those employees whose exposures are represented by such monitoring.

(d) Additional monitoring. The employer also shall institute the exposure monitoring required under (b)(i) and (c) of this subsection whenever there has been a change in the raw materials, equipment, personnel, work practices, or finished products that may result in additional employees being exposed to cadmium at or above the action level or in employees already exposed to cadmium at or above the action level being exposed above the PEL, or whenever the employer or competent person has any reason to suspect that any other change might result in such further exposure.

(e) Employee notification of monitoring results.

(i) No later than five working days after the receipt of the results of any monitoring performed under this section, the employer shall notify each affected employee individually in writing of the results. In addition, within the same time period, the employer shall post the results of the exposure monitoring in an appropriate location that is accessible to all affected employees.

(ii) Wherever monitoring results indicate that employee exposure exceeds the PEL, the employer shall include in the written notice a statement that the PEL has been exceeded and a description of the corrective action being taken by the employer to reduce employee exposure to or below the PEL.

(f) Accuracy of measurement. The employer shall use a method of monitoring and analysis that has an accuracy of not less than plus or minus 25 percent ($\pm 25\%$), with a confidence level of 95 percent, for airborne concentrations of cadmium at or above the action level and the permissible exposure limit.

(5) Regulated areas.

(a) Establishment. The employer shall establish a regulated area wherever an employee's exposure to airborne concentrations of cadmium is, or can reasonably be expected to be in excess of the permissible exposure limit (PEL).

(b) Demarcation. Regulated areas shall be demarcated from the rest of the workplace in any manner that adequately establishes and alerts employees of the boundaries of the regulated area, including employees who are or may be incidentally in the regulated areas, and that protects persons outside the area from exposure to airborne concentrations of cadmium in excess of the PEL.

(c) Access. Access to regulated areas shall be limited to authorized persons.

(d) Provision of respirators. Each person entering a regulated area shall be supplied with and required to use a respirator, selected in accordance with subsection (7)(b) of this section.

(e) Prohibited activities. The employer shall assure that employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in regulated areas, or carry the products associated with any of these activities into regulated areas or store such products in those areas.

(6) Methods of compliance.

(a) Compliance hierarchy.

(i) Except as specified in (a)(ii) of this subsection, the employer shall implement engineering and work practice controls to reduce and maintain employee exposure to cadmium at or below the PEL, except to the extent that the employer can demonstrate that such controls are not feasible.

(ii) The requirement to implement engineering controls to achieve the PEL does not apply where the employer demonstrates the following:

(A) The employee is only intermittently exposed; and

(B) The employee is not exposed above the PEL on 30 or more days per year (12 consecutive months).

(iii) Wherever engineering and work practice controls are not sufficient to reduce employee exposure to or below the PEL, the employer nonetheless shall implement such controls to reduce exposures to the lowest levels achievable. The employer shall supplement such controls with respiratory protection that complies with the requirements of subsection (7) of this section and the PEL.

(iv) The employer shall not use employee rotation as a method of compliance.

(b) Specific operations.

(i) Abrasive blasting. Abrasive blasting on cadmium or cadmium-containing materials shall be conducted in a manner that will provide adequate protection.

(ii) Heating cadmium and cadmium-containing materials. Welding, cutting, and other forms of heating of cadmium or cadmium-containing materials shall be conducted in accordance with the requirements of WAC 296-155-415 and 296-155-420, where applicable.

(c) Prohibitions.

(i) High speed abrasive disc saws and similar abrasive power equipment shall not be used for work on cadmium or cadmium-containing materials unless they are equipped with appropriate engineering controls to minimize emissions, if the exposure levels are above the PEL.

(ii) Materials containing cadmium shall not be applied by spray methods, if exposures are above the PEL, unless employees are protected with supplied-air respirators with full facepiece, hood, helmet, suit, operated in positive pres-

sure mode and measures are instituted to limit overspray and prevent contamination of adjacent areas.

(d) Mechanical ventilation.

(i) When ventilation is used to control exposure, measurements that demonstrate the effectiveness of the system in controlling exposure, such as capture velocity, duct velocity, or static pressure shall be made as necessary to maintain its effectiveness.

(ii) Measurements of the system's effectiveness in controlling exposure shall be made as necessary within five working days of any change in production, process, or control that might result in a significant increase in employee exposure to cadmium.

(iii) Recirculation of air. If air from exhaust ventilation is recirculated into the workplace, the system shall have a high efficiency filter and be monitored to assure effectiveness.

(iv) Procedures shall be developed and implemented to minimize employee exposure to cadmium when maintenance of ventilation systems and changing of filters is being conducted.

(e) Compliance program.

(i) Where employee exposure to cadmium exceeds the PEL and the employer is required under (a) of this subsection to implement controls to comply with the PEL, prior to the commencement of the job the employer shall establish and implement a written compliance program to reduce employee exposure to or below the PEL. To the extent that engineering and work practice controls cannot reduce exposures to or below the PEL, the employer shall include in the written compliance program the use of appropriate respiratory protection to achieve compliance with the PEL.

(ii) Written compliance programs shall be reviewed and updated as often and as promptly as necessary to reflect significant changes in the employer's compliance status or significant changes in the lowest air cadmium level that is technologically feasible.

(iii) A competent person shall review the comprehensive compliance program initially and after each change.

(iv) Written compliance programs shall be provided upon request for examination and copying to the director, or authorized representatives, affected employees, and designated employee representatives.

(7) Respirator protection.

(a) General. For employees who use respirators required by this section, the employer must provide respirators that comply with the requirements of this section. Respirators must be used during:

(i) Periods necessary to install or implement feasible engineering and work-practice controls when employee exposures exceed the PEL.

(ii) Maintenance and repair activities, and brief or intermittent operations, for which employee exposures exceed the PEL and engineering and work-practice controls are not feasible or are not required.

(iii) Work operations in regulated areas specified in subsection (5) of this section.

(iv) Work operations for which the employer has implemented all feasible engineering and work-practice controls, and such controls are not sufficient to reduce exposures to or below the PEL.

(v) Emergencies.

(vi) Work operations for which an employee, who is exposed to cadmium at or above the action level, requests a respirator.

(vii) Work operations for which engineering controls are not required under (a)(ii) of this subsection to reduce employee exposures that exceed the PEL.

(b) Respirator program.

(i) The employer must implement a respiratory protection program as required by chapter ~~((296-62-WAC, Part E (except WAC 296-62-07130(1) and 296-62-07150 through 296-62-07156)))~~ 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(ii) If an employee has breathing difficulty during fit testing or respirator use, the employer must provide the employee with a medical examination as required by subsection (12)(f)(ii) of this section to determine if the employee can use a respirator while performing the required duties.

(iii) No employees must use a respirator when, based on their recent medical examination, the examining physician determines that the employee will be unable to continue to function normally while using a respirator. If the physician determines the employee must be limited in, or removed from, their current job because of the employee's inability to use a respirator, the job limitation or removal must be conducted as required by (k) and (l) of this subsection.

(c) Respirator selection.

(i) The employer must select the appropriate respirator from Table 1 of this section.

Table 1

Respiratory Protection for Cadmium

Airborne concentration or condition of use ^a	Required respirator type ^b
10 x or less	A half-mask, air-purifying respirator equipped with a HEPA ^c filter. ^d
25 x or less	A powered air-purifying respirator ("PAPR") with a loose-fitting hood or helmet equipped with a HEPA filter, or a supplied-air respirator with a loose-fitting hood or helmet facepiece operated in the continuous flow mode.
50 x or less	A full facepiece air-purifying respirator equipped with a HEPA filter, or a powered air-purifying respirator with a tight-fitting half-mask equipped with a HEPA filter, or a supplied air respirator with a tight-fitting half-mask operated in the continuous flow mode.

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Table 1
Respiratory Protection for Cadmium

Airborne concentration or condition of use ^a	Required respirator type ^b
250 x or less	A powered air-purifying respirator with a tight-fitting full facepiece equipped with a HEPA filter, or a supplied-air respirator with a tight-fitting full facepiece operated in the continuous flow mode.
1000 x or less	A supplied-air respirator with half-mask or full facepiece operated in the pressure demand or other positive pressure mode.
>1000 x or unknown concentrations	A self-contained breathing apparatus with a full facepiece operated in the pressure demand or other positive pressure mode and equipped with an auxiliary escape type self-contained breathing apparatus operated in the pressure demand mode.
Fire fighting	A self-contained breathing apparatus with full facepiece operated in the pressure demand or other positive pressure mode.

Note: ^a Concentrations expressed as multiple of the PEL.
^b Respirators assigned for higher environmental concentrations may be used at lower exposure levels. Quantitative fit testing is required for all tight-fitting air purifying respirators where airborne concentration of cadmium exceeds 10 times the TWA PEL ($10 \times 5 \mu\text{g}/\text{m}^3 = 50 \mu\text{g}/\text{m}^3$). A full facepiece respirator is required when eye irritation is experienced.
^c HEPA means High Efficiency Particulate Air.
^d Fit testing, qualitative or quantitative, is required.
 Source: Respiratory Decision Logic, NIOSH, 1987.

(ii) The employer shall provide a powered, air-purifying respirator (PAPR) instead of a negative-pressure respirator when an employee entitled to a respirator chooses to use this type of respirator and such a respirator will provide adequate protection to the employee.

(8) Emergency situations. The employer shall develop and implement a written plan for dealing with emergency situations involving substantial releases of airborne cadmium. The plan shall include provisions for the use of appropriate respirators and personal protective equipment. In addition, employees not essential to correcting the emergency situation shall be restricted from the area and normal operations halted in that area until the emergency is abated.

(9) Protective work clothing and equipment

(a) Provision and use. If an employee is exposed to airborne cadmium above the PEL or where skin or eye irritation is associated with cadmium exposure at any level, the employer shall provide at no cost to the employee, and assure that the employee uses, appropriate protective work clothing and equipment that prevents contamination of the employee and the employee's garments. Protective work clothing and equipment includes, but is not limited to:

- (i) Coveralls or similar full-body work clothing;
- (ii) Gloves, head coverings, and boots or foot coverings; and
- (iii) Face shields, vented goggles, or other appropriate protective equipment that complies with WAC 296-155-215.

(b) Removal and storage.
 (i) The employer shall assure that employees remove all protective clothing and equipment contaminated with cadmium at the completion of the work shift and do so only in change rooms provided in accordance with subsection (10)(a) of this section.

(ii) The employer shall assure that no employee takes cadmium-contaminated protective clothing or equipment from the workplace, except for employees authorized to do so for purposes of laundering, cleaning, maintaining, or disposing of cadmium-contaminated protective clothing and equipment at an appropriate location or facility away from the workplace.

(iii) The employer shall assure that contaminated protective clothing and equipment, when removed for laundering, cleaning, maintenance, or disposal, is placed and stored in sealed, impermeable bags or other closed, impermeable containers that are designed to prevent dispersion of cadmium dust.

(iv) The employer shall assure that containers of contaminated protective clothing and equipment that are to be taken out of the change rooms or the workplace for laundering, cleaning, maintenance or disposal shall bear labels in accordance with subsection (13)(c) of this section.

(c) Cleaning, replacement, and disposal.

(i) The employer shall provide the protective clothing and equipment required by (a) of this subsection in a clean and dry condition as often as necessary to maintain its effectiveness, but in any event at least weekly. The employer is responsible for cleaning and laundering the protective clothing and equipment required by this subsection to maintain its effectiveness and is also responsible for disposing of such clothing and equipment.

(ii) The employer also is responsible for repairing or replacing required protective clothing and equipment as needed to maintain its effectiveness. When rips or tears are detected while an employee is working they shall be immediately mended, or the worksuit shall be immediately replaced.

(iii) The employer shall prohibit the removal of cadmium from protective clothing and equipment by blowing, shaking, or any other means that disperses cadmium into the air.

(iv) The employer shall assure that any laundering of contaminated clothing or cleaning of contaminated equipment in the workplace is done in a manner that prevents the release of airborne cadmium in excess of the permissible exposure limit prescribed in subsection (3) of this section.

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(v) The employer shall inform any person who launders or cleans protective clothing or equipment contaminated with cadmium of the potentially harmful effects of exposure to cadmium, and that the clothing and equipment should be laundered or cleaned in a manner to effectively prevent the release of airborne cadmium in excess of the PEL.

(10) Hygiene areas and practices.

(a) General. For employees whose airborne exposure to cadmium is above the PEL, the employer shall provide clean change rooms, handwashing facilities, showers, and lunchroom facilities that comply with WAC 296-155-140.

(b) Change rooms. The employer shall assure that change rooms are equipped with separate storage facilities for street clothes and for protective clothing and equipment, which are designed to prevent dispersion of cadmium and contamination of the employee's street clothes.

(c) Showers and handwashing facilities.

(i) The employer shall assure that employees whose airborne exposure to cadmium is above the PEL shower during the end of the work shift.

(ii) The employer shall assure that employees who are exposed to cadmium above the PEL wash their hands and faces prior to eating, drinking, smoking, chewing tobacco or gum, or applying cosmetics.

(d) Lunchroom facilities.

(i) The employer shall assure that the lunchroom facilities are readily accessible to employees, that tables for eating are maintained free of cadmium, and that no employee in a lunchroom facility is exposed at any time to cadmium at or above a concentration of $2.5 \mu\text{g}/\text{m}^3$.

(ii) The employer shall assure that employees do not enter lunchroom facilities with protective work clothing or equipment unless surface cadmium has been removed from the clothing and equipment by HEPA vacuuming or some other method that removes cadmium dust without dispersing it.

(11) Housekeeping.

(a) All surfaces shall be maintained as free as practicable of accumulations of cadmium.

(b) All spills and sudden releases of material containing cadmium shall be cleaned up as soon as possible.

(c) Surfaces contaminated with cadmium shall, wherever possible, be cleaned by vacuuming or other methods that minimize the likelihood of cadmium becoming airborne.

(d) HEPA-filtered vacuuming equipment or equally effective filtration methods shall be used for vacuuming. The equipment shall be used and emptied in a manner that minimizes the reentry of cadmium into the workplace.

(e) Shoveling, dry or wet sweeping, and brushing may be used only where vacuuming or other methods that minimize the likelihood of cadmium becoming airborne have been tried and found not to be effective.

(f) Compressed air shall not be used to remove cadmium from any surface unless the compressed air is used in conjunction with a ventilation system designed to capture the dust cloud created by the compressed air.

(g) Waste, scrap, debris, bags, containers, personal protective equipment, and clothing contaminated with cadmium and consigned for disposal shall be collected and disposed of in sealed impermeable bags or other closed, impermeable

containers. These bags and containers shall be labeled in accordance with subsection (13)(b) of this section.

(12) Medical surveillance.

(a) General.

(i) Scope.

(A) Currently exposed—The employer shall institute a medical surveillance program for all employees who are or may be exposed at or above the action level and all employees who perform the following tasks, operations, or jobs: Electrical grounding with cadmium-welding; cutting, brazing, burning, grinding, or welding on surfaces that were painted with cadmium-containing paints; electrical work using cadmium-coated conduit; use of cadmium containing paints; cutting and welding cadmium-plated steel; brazing or welding with cadmium alloys; fusing of reinforced steel by cadmium welding; maintaining or retrofitting cadmium-coated equipment; and, wrecking and demolition where cadmium is present. A medical surveillance program will not be required if the employer demonstrates that the employee:

(I) Is not currently exposed by the employer to airborne concentrations of cadmium at or above the action level on 30 or more days per year (twelve consecutive months); and

(II) Is not currently exposed by the employer in those tasks on 30 or more days per year (twelve consecutive months).

(B) Previously exposed—The employer shall also institute a medical surveillance program for all employees who might previously have been exposed to cadmium by the employer prior to the effective date of this section in tasks specified under (a)(i)(A) of this subsection, unless the employer demonstrates that the employee did not in the years prior to the effective date of this section work in those tasks for the employer with exposure to cadmium for an aggregated total of more than 12 months.

(ii) To determine an employee's fitness for using a respirator, the employer shall provide the limited medical examination specified in (f) of this subsection.

(iii) The employer shall assure that all medical examinations and procedures required by this section are performed by or under the supervision of a licensed physician, who has read and is familiar with the health effects WAC 296-62-07441, Appendix A, the regulatory text of this section, the protocol for sample handling and lab selection in WAC 296-62-07451, Appendix F, and the questionnaire of WAC 296-62-07447, Appendix D.

(iv) The employer shall provide the medical surveillance required by this section, including multiple physician review under (m) of this subsection without cost to employees, and at a time and place that is reasonable and convenient to employees.

(v) The employer shall assure that the collecting and handling of biological samples of cadmium in urine (CdU), cadmium in blood (CdB), and beta-2 microglobulin in urine (B₂-M) taken from employees under this section is done in a manner that assures their reliability and that analysis of biological samples of cadmium in urine (CdU), cadmium in blood (CdB), and beta-2 microglobulin in urine (B₂-M) taken from employees under this section is performed in laboratories with demonstrated proficiency to perform the particular analysis. (See WAC 296-62-07451, Appendix F.)

(b) Initial examination.

(i) For employees covered by medical surveillance under (a)(i) of this subsection, the employer shall provide an initial medical examination. The examination shall be provided to those employees within 30 days after initial assignment to a job with exposure to cadmium or no later than 90 days after the effective date of this section, whichever date is later.

(ii) The initial medical examination shall include:

(A) A detailed medical and work history, with emphasis on: Past, present, and anticipated future exposure to cadmium; any history of renal, cardiovascular, respiratory, hematopoietic, reproductive, and/or musculo-skeletal system dysfunction; current usage of medication with potential nephrotoxic side-effects; and smoking history and current status; and

(B) Biological monitoring that includes the following tests:

(I) Cadmium in urine (CdU), standardized to grams of creatinine (g/Cr);

(II) Beta-2 microglobulin in urine (B₂-M), standardized to grams of creatinine (g/Cr), with pH specified, as described in WAC 296-62-07451, Appendix F; and

(III) Cadmium in blood (CdB), standardized to liters of whole blood (lwb).

(iii) Recent examination: An initial examination is not required to be provided if adequate records show that the employee has been examined in accordance with the requirements of (b)(ii) of this subsection within the past 12 months. In that case, such records shall be maintained as part of the employee's medical record and the prior exam shall be treated as if it were an initial examination for the purposes of (c) and (d) of this subsection.

(c) Actions triggered by initial biological monitoring.

(i) If the results of the biological monitoring tests in the initial examination show the employee's CdU level to be at or below 3 µg/g Cr, B₂-M level to be at or below 300 µg/g Cr and CdB level to be at or below 5 µg/lwb, then:

(A) For employees who are subject to medical surveillance under (a)(i)(A) of this subsection because of current or anticipated exposure to cadmium, the employer shall provide the minimum level of periodic medical surveillance in accordance with the requirements in (d)(i) of this subsection; and

(B) For employees who are subject to medical surveillance under (a)(i)(B) of this subsection because of prior but not current exposure, the employer shall provide biological monitoring for CdU, B₂-M, and CdB one year after the initial biological monitoring and then the employer shall comply with the requirements of (d)(vi) of this subsection.

(ii) For all employees who are subject to medical surveillance under (a)(i) of this subsection, if the results of the initial biological monitoring tests show the level of CdU to exceed 3 µg/g Cr, the level of B₂-M to be in excess of 300 µg/g Cr, or the level of CdB to be in excess of 5 µg/lwb, the employer shall:

(A) Within two weeks after receipt of biological monitoring results, reassess the employee's occupational exposure to cadmium as follows:

(I) Reassess the employee's work practices and personal hygiene;

(II) Reevaluate the employee's respirator use, if any, and the respirator program;

(III) Review the hygiene facilities;

(IV) Reevaluate the maintenance and effectiveness of the relevant engineering controls;

(V) Assess the employee's smoking history and status;

(B) Within 30 days after the exposure reassessment, specified in (c)(ii)(A) of this subsection, take reasonable steps to correct any deficiencies found in the reassessment that may be responsible for the employee's excess exposure to cadmium; and

(C) Within 90 days after receipt of biological monitoring results, provide a full medical examination to the employee in accordance with the requirements of (d)(ii) of this subsection. After completing the medical examination, the examining physician shall determine in a written medical opinion whether to medically remove the employee. If the physician determines that medical removal is not necessary, then until the employee's CdU level falls to or below 3 µg/g Cr, B₂-M level falls to or below 300 µg/g Cr and CdB level falls to or below 5 µg/lwb, the employer shall:

(I) Provide biological monitoring in accordance with (b)(ii)(B) of this subsection on a semiannual basis; and

(II) Provide annual medical examinations in accordance with (d)(ii) of this subsection.

(iii) For all employees who are subject to medical surveillance under (a)(i) of this subsection, if the results of the initial biological monitoring tests show the level of CdU to be in excess of 15 µg/g Cr, or the level of CdB to be in excess of 15 µg/lwb, or the level of B₂-M to be in excess of 1,500 µg/g Cr, the employer shall comply with the requirements of (c)(ii)(A) and (B) of this subsection. Within 90 days after receipt of biological monitoring results, the employer shall provide a full medical examination to the employee in accordance with the requirements of (d)(ii) of this subsection. After completing the medical examination, the examining physician shall determine in a written medical opinion whether to medically remove the employee. However, if the initial biological monitoring results and the biological monitoring results obtained during the medical examination both show that: CdU exceeds 15 µg/g Cr; or CdB exceeds 15 µg/lwb; or B₂-M exceeds 1500 µg/g Cr, and in addition CdU exceeds 3 µg/g Cr or CdB exceeds 5 µg/liter of whole blood, then the physician shall medically remove the employee from exposure to cadmium at or above the action level. If the second set of biological monitoring results obtained during the medical examination does not show that a mandatory removal trigger level has been exceeded, then the employee is not required to be removed by the mandatory provisions of this section. If the employee is not required to be removed by the mandatory provisions of this section or by the physician's determination, then until the employee's CdU level falls to or below 3 µg/g Cr, B₂-M level falls to or below 300 µg/g Cr and CdB level falls to or below 5 µg/lwb, the employer shall:

(A) Periodically reassess the employee's occupational exposure to cadmium;

(B) Provide biological monitoring in accordance with (b)(ii)(B) of this subsection on a quarterly basis; and

(C) Provide semiannual medical examinations in accordance with (d)(ii) of this subsection.

(iv) For all employees to whom medical surveillance is provided, beginning on January 1, 1999, and in lieu of (c)(iii) of this subsection, whenever the results of initial biological monitoring tests show the employee's CdU level to be in excess of 7 $\mu\text{g/g}$ Cr, or B₂-M level to be in excess of 750 $\mu\text{g/g}$ Cr, or CdB level to be in excess of 10 $\mu\text{g/lwb}$, the employer shall comply with the requirements of (c)(ii)(A) and (B) of this subsection. Within 90 days after receipt of biological monitoring results, the employer shall provide a full medical examination to the employee in accordance with the requirements of (d)(ii) of this subsection. After completing the medical examination, the examining physician shall determine in a written medical opinion whether to medically remove the employee. However, if the initial biological monitoring results and the biological monitoring results obtained during the medical examination both show that: CdU exceeds 7 $\mu\text{g/g}$ Cr; or CdB exceeds 10 $\mu\text{g/lwb}$; or B₂-M exceeds 750 $\mu\text{g/g}$ Cr, and in addition CdU exceeds 3 $\mu\text{g/g}$ Cr or CdB exceeds 5 $\mu\text{g/liter}$ of whole blood, then the physician shall medically remove the employee from exposure to cadmium at or above the action level. If the second set of biological monitoring results obtained during the medical examination does not show that a mandatory removal trigger level has been exceeded, then the employee is not required to be removed by the mandatory provisions of this section. If the employee is not required to be removed by the mandatory provisions of this section or by the physician's determination, then until the employee's CdU level falls to or below 3 $\mu\text{g/g}$ Cr, B₂-M level falls to or below 300 $\mu\text{g/g}$ Cr and CdB level falls to or below 5 $\mu\text{g/lwb}$, the employer shall:

(A) Periodically reassess the employee's occupational exposure to cadmium;

(B) Provide biological monitoring in accordance with (b)(ii)(B) of this subsection on a quarterly basis; and

(C) Provide semiannual medical examinations in accordance with (d)(ii) of this subsection.

(d) Periodic medical surveillance.

(i) For each employee who is covered by medical surveillance under (a)(i)(A) of this subsection because of current or anticipated exposure to cadmium, the employer shall provide at least the minimum level of periodic medical surveillance, which consists of periodic medical examinations and periodic biological monitoring. A periodic medical examination shall be provided within one year after the initial examination required by (b) of this subsection and thereafter at least biennially. Biological sampling shall be provided at least annually either as part of a periodic medical examination or separately as periodic biological monitoring.

(ii) The periodic medical examination shall include:

(A) A detailed medical and work history, or update thereof, with emphasis on: Past, present, and anticipated future exposure to cadmium; smoking history and current status; reproductive history; current use of medications with potential nephrotoxic side-effects; any history of renal, cardiovascular, respiratory, hematopoietic, and/or musculoskeletal system dysfunction; and as part of the medical and work history, for employees who wear respirators, questions

3 through 11 and 25 through 32 in WAC 296-62-07447, Appendix D;

(B) A complete physical examination with emphasis on: Blood pressure, the respiratory system, and the urinary system;

(C) A 14 inch by 17 inch, or a reasonably standard sized posterior-anterior chest X ray (after the initial X ray, the frequency of chest X rays is to be determined by the examining physician);

(D) Pulmonary function tests, including forced vital capacity (FVC) and forced expiratory volume at 1 second (FEV1);

(E) Biological monitoring, as required in (b)(ii)(B) of this subsection;

(F) Blood analysis, in addition to the analysis required under (b)(ii)(B) of this subsection, including blood urea nitrogen, complete blood count, and serum creatinine;

(G) Urinalysis, in addition to the analysis required under (b)(ii)(B) of this subsection, including the determination of albumin, glucose, and total and low molecular weight proteins;

(H) For males over 40 years old, prostate palpation, or other at least as effective diagnostic test(s); and

(I) Any additional tests or procedures deemed appropriate by the examining physician.

(iii) Periodic biological monitoring shall be provided in accordance with (b)(ii)(B) of this subsection.

(iv) If the results of periodic biological monitoring or the results of biological monitoring performed as part of the periodic medical examination show the level of the employee's CdU, B₂-M, or CdB to be in excess of the levels specified in (c)(ii) and (iii) of this subsection; or, beginning on January 1, 1999, in excess of the levels specified in (c)(ii) or (iv) of this subsection, the employer shall take the appropriate actions specified in (c)(ii) through (iv) of this subsection, respectively.

(v) For previously exposed employees under (a)(i)(B) of this subsection:

(A) If the employee's levels of CdU did not exceed 3 $\mu\text{g/g}$ Cr, CdB did not exceed 5 $\mu\text{g/lwb}$, and B₂-M did not exceed 300 $\mu\text{g/g}$ Cr in the initial biological monitoring tests, and if the results of the follow-up biological monitoring required by (c)(i)(B) of this subsection one year after the initial examination confirm the previous results, the employer may discontinue all periodic medical surveillance for that employee.

(B) If the initial biological monitoring results for CdU, CdB, or B₂-M were in excess of the levels specified in (c)(i) of this subsection, but subsequent biological monitoring results required by (c)(ii) through (iv) of this subsection show that the employee's CdU levels no longer exceed 3 $\mu\text{g/g}$ Cr, CdB levels no longer exceed 5 $\mu\text{g/lwb}$, and B₂-M levels no longer exceed 300 $\mu\text{g/g}$ Cr, the employer shall provide biological monitoring for CdU, CdB, and B₂-M one year after these most recent biological monitoring results. If the results of the follow-up biological monitoring specified in this section, confirm the previous results, the employer may discontinue all periodic medical surveillance for that employee.

(C) However, if the results of the follow-up tests specified in (d)(v)(A) or (B) of this subsection indicate that the level of the employee's CdU, B₂-M, or CdB exceeds these same levels, the employer is required to provide annual medical examinations in accordance with the provisions of (d)(ii) of this subsection until the results of biological monitoring are consistently below these levels or the examining physician determines in a written medical opinion that further medical surveillance is not required to protect the employee's health.

(vi) A routine, biennial medical examination is not required to be provided in accordance with (c)(i) and (d) of this subsection if adequate medical records show that the employee has been examined in accordance with the requirements of (d)(ii) of this subsection within the past 12 months. In that case, such records shall be maintained by the employer as part of the employee's medical record, and the next routine, periodic medical examination shall be made available to the employee within two years of the previous examination.

(e) Actions triggered by medical examinations. If the results of a medical examination carried out in accordance with this section indicate any laboratory or clinical finding consistent with cadmium toxicity that does not require employer action under (b), (c), or (d) of this subsection, the employer shall take the following steps and continue to take them until the physician determines that they are no longer necessary.

(i) Periodically reassess: The employee's work practices and personal hygiene; the employee's respirator use, if any; the employee's smoking history and status; the respiratory protection program; the hygiene facilities; the maintenance and effectiveness of the relevant engineering controls; and take all reasonable steps to correct the deficiencies found in the reassessment that may be responsible for the employee's excess exposure to cadmium.

(ii) Provide semiannual medical reexaminations to evaluate the abnormal clinical sign(s) of cadmium toxicity until the results are normal or the employee is medically removed; and

(iii) Where the results of tests for total proteins in urine are abnormal, provide a more detailed medical evaluation of the toxic effects of cadmium on the employee's renal system.

(f) Examination for respirator use.

(i) To determine an employee's fitness for respirator use, the employer shall provide a medical examination that includes the elements specified in (f)(i)(A) through (D) of this subsection. This examination shall be provided prior to the employee's being assigned to a job that requires the use of a respirator or no later than 90 days after this section goes into effect, whichever date is later, to any employee without a medical examination within the preceding 12 months that satisfies the requirements of this section.

(A) A detailed medical and work history, or update thereof, with emphasis on: Past exposure to cadmium; smoking history and current status; any history of renal, cardiovascular, respiratory, hematopoietic, and/or musculo-skeletal system dysfunction; a description of the job for which the respirator is required; and questions 3 through 11 and 25 through 32 in WAC 296-62-07447, Appendix D;

(B) A blood pressure test;

(C) Biological monitoring of the employee's levels of CdU, CdB and B₂-M in accordance with the requirements of (b)(ii)(B) of this subsection, unless such results already have been obtained within the twelve months; and

(D) Any other test or procedure that the examining physician deems appropriate.

(ii) After reviewing all the information obtained from the medical examination required in (f)(i) of this subsection, the physician shall determine whether the employee is fit to wear a respirator.

(iii) Whenever an employee has exhibited difficulty in breathing during a respirator fit test or during use of a respirator, the employer, as soon as possible, shall provide the employee with a periodic medical examination in accordance with (d)(ii) of this subsection to determine the employee's fitness to wear a respirator.

(iv) Where the results of the examination required under (f)(i), (ii), or (iii) of this subsection are abnormal, medical limitation or prohibition of respirator use shall be considered. If the employee is allowed to wear a respirator, the employee's ability to continue to do so shall be periodically evaluated by a physician.

(g) Emergency examinations.

(i) In addition to the medical surveillance required in (b) through (f) of this subsection, the employer shall provide a medical examination as soon as possible to any employee who may have been acutely exposed to cadmium because of an emergency.

(ii) The examination shall include the requirements of (d)(ii), of this subsection, with emphasis on the respiratory system, other organ systems considered appropriate by the examining physician, and symptoms of acute overexposure, as identified in Appendix A, WAC 296-62-07441 (2)(b)(i) and (ii) and (4).

(h) Termination of employment examination.

(i) At termination of employment, the employer shall provide a medical examination in accordance with (d)(ii) of this subsection, including a chest X ray where necessary, to any employee to whom at any prior time the employer was required to provide medical surveillance under (a)(i) or (g) of this subsection. However, if the last examination satisfied the requirements of (d)(ii) of this subsection and was less than six months prior to the date of termination, no further examination is required unless otherwise specified in (c) or (e) of this subsection;

(ii) In addition, if the employer has discontinued all periodic medical surveillance under (d)(v) of this subsection, no termination of employment medical examination is required.

(i) Information provided to the physician. The employer shall provide the following information to the examining physician:

(i) A copy of this standard and appendices;

(ii) A description of the affected employee's former, current, and anticipated duties as they relate to the employee's occupational exposure to cadmium;

(iii) The employee's former, current, and anticipated future levels of occupational exposure to cadmium;

(iv) A description of any personal protective equipment, including respirators, used or to be used by the employee,

including when and for how long the employee has used that equipment; and

(v) Relevant results of previous biological monitoring and medical examinations.

(j) Physician's written medical opinion.

(i) The employer shall promptly obtain a written, signed, medical opinion from the examining physician for each medical examination performed on each employee. This written opinion shall contain:

(A) The physician's diagnosis for the employee;

(B) The physician's opinion as to whether the employee has any detected medical condition(s) that would place the employee at increased risk of material impairment to health from further exposure to cadmium, including any indications of potential cadmium toxicity;

(C) The results of any biological or other testing or related evaluations that directly assess the employee's absorption of cadmium;

(D) Any recommended removal from, or limitation on the activities or duties of the employee or on the employee's use of personal protective equipment, such as respirators;

(E) A statement that the physician has clearly and carefully explained to the employee the results of the medical examination, including all biological monitoring results and any medical conditions related to cadmium exposure that require further evaluation or treatment, and any limitation on the employee's diet or use of medications.

(ii) The employer shall promptly obtain a copy of the results of any biological monitoring provided by an employer to an employee independently of a medical examination under (b) and (d) of this subsection, and, in lieu of a written medical opinion, an explanation sheet explaining those results.

(iii) The employer shall instruct the physician not to reveal orally or in the written medical opinion given to the employer specific findings or diagnoses unrelated to occupational exposure to cadmium.

(k) Medical removal protection (MRP).

(i) General.

(A) The employer shall temporarily remove an employee from work where there is excess exposure to cadmium on each occasion that medical removal is required under (c), (d), or (f) of this subsection and on each occasion that a physician determines in a written medical opinion that the employee should be removed from such exposure. The physician's determination may be based on biological monitoring results, inability to wear a respirator, evidence of illness, other signs or symptoms of cadmium-related dysfunction or disease, or any other reason deemed medically sufficient by the physician.

(B) The employer shall medically remove an employee in accordance with (k) of this subsection regardless of whether at the time of removal a job is available into which the removed employee may be transferred.

(C) Whenever an employee is medically removed under (k) of this subsection, the employer shall transfer the removed employee to a job where the exposure to cadmium is within the permissible levels specified in subsection (12) of this section as soon as one becomes available.

(D) For any employee who is medically removed under the provisions of (k)(i) of this subsection, the employer shall provide follow-up medical examinations semiannually until, in a written medical opinion, the examining physician determines that either the employee may be returned to his/her former job status or the employee must be permanently removed from excess cadmium exposure.

(E) The employer may not return an employee who has been medically removed for any reason to his/her former job status until a physician determines in a written medical opinion that continued medical removal is no longer necessary to protect the employee's health.

(ii) Where an employee is found unfit to wear a respirator under (f)(ii) of this subsection, the employer shall remove the employee from work where exposure to cadmium is above the PEL.

(iii) Where removal is based upon any reason other than the employee's inability to wear a respirator, the employer shall remove the employee from work where exposure to cadmium is at or above the action level.

(iv) Except as specified in (k)(v) of this subsection, no employee who was removed because his/her level of CdU, CdB and/or B₂-M exceeded the trigger levels in (c) or (d) of this subsection may be returned to work with exposure to cadmium at or above the action level until the employee's levels of CdU fall to or below 3 µg/g Cr, CdB fall to or below 5 µg/lwb, and B₂-M fall to or below 300 µg/g Cr.

(v) However, when in the examining physician's opinion continued exposure to cadmium will not pose an increased risk to the employee's health and there are special circumstances that make continued medical removal an inappropriate remedy, the physician shall fully discuss these matters with the employee, and then in a written determination may return a worker to his/her former job status despite what would otherwise be unacceptably high biological monitoring results. Thereafter and until such time as the employee's biological monitoring results have decreased to levels where he/she could have been returned to his/her former job status, the returned employee shall continue medical surveillance as if he/she were still on medical removal. Until such time, the employee is no longer subject to mandatory medical removal. Subsequent questions regarding the employee's medical removal shall be decided solely by a final medical determination.

(vi) Where an employer, although not required by this section to do so, removes an employee from exposure to cadmium or otherwise places limitations on an employee due to the effects of cadmium exposure on the employee's medical condition, the employer shall provide the same medical removal protection benefits to that employee under (l) of this subsection as would have been provided had the removal been required under (k) of this subsection.

(l) Medical removal protection benefits.

(i) The employer shall provide medical removal protection benefits to an employee for up to a maximum of 18 months each time, and while the employee is temporarily medically removed under (k) of this subsection.

(ii) For purposes of this section, the requirement that the employer provide medical removal protection benefits means that the employer shall maintain the total normal earnings,

seniority, and all other employee rights and benefits of the removed employee, including the employee's right to his/her former job status, as if the employee had not been removed from the employee's job or otherwise medically limited.

(iii) Where, after 18 months on medical removal because of elevated biological monitoring results, the employee's monitoring results have not declined to a low enough level to permit the employee to be returned to his/her former job status:

(A) The employer shall make available to the employee a medical examination pursuant to this section in order to obtain a final medical determination as to whether the employee may be returned to his/her former job status or must be permanently removed from excess cadmium exposure; and

(B) The employer shall assure that the final medical determination indicates whether the employee may be returned to his/her former job status and what steps, if any, should be taken to protect the employee's health.

(iv) The employer may condition the provision of medical removal protection benefits upon the employee's participation in medical surveillance provided in accordance with this section.

(m) Multiple physician review.

(i) If the employer selects the initial physician to conduct any medical examination or consultation provided to an employee under this section, the employee may designate a second physician to:

(A) Review any findings, determinations, or recommendations of the initial physician; and

(B) Conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician provided by the employer conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, multiple physician review upon the employee doing the following within fifteen (15) days after receipt of this notice, or receipt of the initial physician's written opinion, whichever is later:

(A) Informing the employer that he or she intends to seek a medical opinion; and

(B) Initiating steps to make an appointment with a second physician.

(iii) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(iv) If the two physicians have been unable to quickly resolve their disagreement, then the employer and the employee, through their respective physicians, shall designate a third physician to:

(A) Review any findings, determinations, or recommendations of the other two physicians; and

(B) Conduct such examinations, consultations, laboratory tests, and discussions with the other two physicians as

the third physician deems necessary to resolve the disagreement among them.

(v) The employer shall act consistently with the findings, determinations, and recommendations of the third physician, unless the employer and the employee reach an agreement that is consistent with the recommendations of at least one of the other two physicians.

(n) Alternate physician determination. The employer and an employee or designated employee representative may agree upon the use of any alternate form of physician determination in lieu of the multiple physician review provided by (m) of this subsection, so long as the alternative is expeditious and at least as protective of the employee.

(o) Information the employer must provide the employee.

(i) The employer shall provide a copy of the physician's written medical opinion to the examined employee within five working days after receipt thereof.

(ii) The employer shall provide the employee with a copy of the employee's biological monitoring results and an explanation sheet explaining the results within five working days after receipt thereof.

(iii) Within 30 days after a request by an employee, the employer shall provide the employee with the information the employer is required to provide the examining physician under (i) of this subsection.

(p) Reporting. In addition to other medical events that are required to be reported on the OSHA Form No. 200, the employer shall report any abnormal condition or disorder caused by occupational exposure to cadmium associated with employment as specified in Chapter (V)(E) of the Bureau of Labor Statistics Recordkeeping Guidelines for Occupational Injuries and Illnesses.

(13) Communication of cadmium hazards to employees

(a) General. In communications concerning cadmium hazards, employers shall comply with the requirements of WISHA's Hazard Communication Standard, chapter 296-62 WAC, Part C, including but not limited to the requirements concerning warning signs and labels, material safety data sheets (MSDS), and employee information and training. In addition, employers shall comply with the following requirements:

(b) Warning signs.

(i) Warning signs shall be provided and displayed in regulated areas. In addition, warning signs shall be posted at all approaches to regulated areas so that an employee may read the signs and take necessary protective steps before entering the area.

(ii) Warning signs required by (b)(i) of this subsection shall bear the following information:

Danger, Cadmium, Cancer Hazard, Can Cause Lung and
Kidney Disease, Authorized Personnel Only, Respirators
Required in This Area

(iii) The employer shall assure that signs required by this section are illuminated, cleaned, and maintained as necessary so that the legend is readily visible.

(c) Warning labels.

(i) Shipping and storage containers containing cadmium, cadmium compounds, or cadmium contaminated clothing, equipment, waste, scrap, or debris shall bear appropriate warning labels, as specified in (c)(ii) of this subsection.

(ii) The warning labels shall include at least the following information:

Danger, Contains Cadmium, Cancer Hazard, Avoid Creating Dust, Can Cause Lung and Kidney Disease

(iii) Where feasible, installed cadmium products shall have a visible label or other indication that cadmium is present.

(d) Employee information and training.

(i) The employer shall institute a training program for all employees who are potentially exposed to cadmium, assure employee participation in the program, and maintain a record of the contents of such program.

(ii) Training shall be provided prior to or at the time of initial assignment to a job involving potential exposure to cadmium and at least annually thereafter.

(iii) The employer shall make the training program understandable to the employee and shall assure that each employee is informed of the following:

(A) The health hazards associated with cadmium exposure, with special attention to the information incorporated in WAC 296-62-07441, Appendix A;

(B) The quantity, location, manner of use, release, and storage of cadmium in the workplace and the specific nature of operations that could result in exposure to cadmium, especially exposures above the PEL;

(C) The engineering controls and work practices associated with the employee's job assignment;

(D) The measures employees can take to protect themselves from exposure to cadmium, including modification of such habits as smoking and personal hygiene, and specific procedures the employer has implemented to protect employees from exposure to cadmium such as appropriate work practices, emergency procedures, and the provision of personal protective equipment;

(E) The purpose, proper selection, fitting, proper use, and limitations of respirators and protective clothing;

(F) The purpose and a description of the medical surveillance program required by subsection (12) of this section;

(G) The contents of this section and its appendices; and

(H) The employee's rights of access to records under chapter 296-62 WAC, Part B.

(iv) Additional access to information and training program and materials.

(A) The employer shall make a copy of this section and its appendices readily available to all affected employees and shall provide a copy without cost if requested.

(B) Upon request, the employer shall provide to the director or authorized representative, all materials relating to the employee information and the training program.

(e) Multiemployer workplace. In a multiemployer workplace, an employer who produces, uses, or stores cadmium in a manner that may expose employees of other employers to cadmium shall notify those employers of the potential hazard in accordance with WAC 296-800-170 of the chemical hazard communication program standard.

(14) Recordkeeping.

(a) Exposure monitoring.

(i) The employer shall establish and keep an accurate record of all air monitoring for cadmium in the workplace.

(ii) This record shall include at least the following information:

(A) The monitoring date, shift, duration, air volume, and results in terms of an 8-hour TWA of each sample taken, and if cadmium is not detected, the detection level;

(B) The name, Social Security number, and job classification of all employees monitored and of all other employees whose exposures the monitoring result is intended to represent, including, where applicable, a description of how it was determined that the employee's monitoring result could be taken to represent other employee's exposures;

(C) A description of the sampling and analytical methods used and evidence of their accuracy;

(D) The type of respiratory protective device, if any, worn by the monitored employee and by any other employee whose exposure the monitoring result is intended to represent;

(E) A notation of any other conditions that might have affected the monitoring results;

(F) Any exposure monitoring or objective data that were used and the levels.

(iii) The employer shall maintain this record for at least thirty (30) years, in accordance with chapter 296-802 WAC.

(iv) The employer shall also provide a copy of the results of an employee's air monitoring prescribed in subsection (4) of this section to an industry trade association and to the employee's union, if any, or, if either of such associations or unions do not exist, to another comparable organization that is competent to maintain such records and is reasonably accessible to employers and employees in the industry.

(b) Objective data for exemption from requirement for initial monitoring.

(i) For purposes of this section, objective data are information demonstrating that a particular product or material containing cadmium or a specific process, operation, or activity involving cadmium cannot release dust or fumes in concentrations at or above the action level even under the worst-case release conditions. Objective data can be obtained from an industry-wide study or from laboratory product test results from manufacturers of cadmium-containing products or materials. The data the employer uses from an industry-wide survey must be obtained under workplace conditions closely resembling the processes, types of material, control methods, work practices, and environmental conditions in the employer's current operations.

(ii) The employer shall maintain the record for at least 30 years of the objective data relied upon.

(c) Medical surveillance.

(i) The employer shall establish and maintain an accurate record for each employee covered by medical surveillance under (a)(i) of this subsection.

(ii) The record shall include at least the following information about the employee:

(A) Name, Social Security number, and description of duties;

(B) A copy of the physician's written opinions and of the explanation sheets for biological monitoring results;

(C) A copy of the medical history, and the results of any physical examination and all test results that are required to be provided by this section, including biological tests, X rays, pulmonary function tests, etc., or that have been obtained to further evaluate any condition that might be related to cadmium exposure;

(D) The employee's medical symptoms that might be related to exposure to cadmium; and

(E) A copy of the information provided to the physician as required by subsection (12)(i) of this section.

(iii) The employer shall assure that this record is maintained for the duration of employment plus thirty (30) years, in accordance with chapter 296-802 WAC.

(iv) At the employee's request, the employer shall promptly provide a copy of the employee's medical record, or update as appropriate, to a medical doctor or a union specified by the employee.

(d) Training. The employer shall certify that employees have been trained by preparing a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The certification records shall be prepared at the completion of training and shall be maintained on file for one (1) year beyond the date of training of that employee.

(e) Availability.

(i) Except as otherwise provided for in this section, access to all records required to be maintained by (a) through (d) of this subsection shall be in accordance with the provisions of chapter 296-802 WAC.

(ii) Within 15 days after a request, the employer shall make an employee's medical records required to be kept by (c) of this subsection available for examination and copying to the subject employee, to designated representatives, to anyone having the specific written consent of the subject employee, and after the employee's death or incapacitation, to the employee's family members.

(f) Transfer of records. Whenever an employer ceases to do business and there is no successor employer or designated organization to receive and retain records for the prescribed period, the employer shall comply with the requirements concerning transfer of records set forth in chapter 296-802 WAC.

(15) Observation of monitoring.

(a) Employee observation. The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to cadmium.

(b) Observation procedures. When observation of monitoring requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with that clothing and equipment and shall assure that the observer uses such clothing and equipment and complies with all other applicable safety and health procedures.

(16) Appendices.

(a) Compliance with the fit testing requirements in WAC ((296-62-07201 through 296-62-07248, Appendices A-1, A-

2 and A-3 of chapter 296-62-WAC, Part E,)) 296-842-15005 are mandatory.

(b) Except where portions of WAC 296-62-07441, 296-62-07443, 296-62-07447, 296-62-07449, and 296-62-07451, Appendices A, B, D, E, and F, respectively, to this section are expressly incorporated in requirements of this section, these appendices are purely informational and are not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-155-17613 Respiratory protection. (1) General. For employees who use respirators required by WAC 296-155-176, the employer must provide respirators that comply with the requirements of this section. Respirators must be used during:

(a) Periods when an employee's exposure to lead exceeds the PEL.

(b) Work operations for which engineering controls and work-practices are not sufficient to reduce employee exposures to or below the PEL.

(c) Periods when an employee requests a respirator.

(d) Periods when respirators are required to provide interim protection of employees while they perform the operations as specified in WAC 296-155-17609(2).

(2) Respirator program.

(a) The employer must implement a respiratory protection program as required by chapter ((296-62-WAC, Part E (except WAC 296-62-07130(1) and 296-62-07150 through 296-62-07156))) 296-842 WAC, except WAC 296-842-13005 and 296-842-14005.

(b) If an employee has breathing difficulty during fit testing or respirator use, the employer must provide the employee with a medical examination as required by WAC 296-155-17621 (3)(a)(ii) to determine whether or not the employee can use a respirator while performing the required duty.

(3) Respirator selection.

(a) The employer must select the appropriate respirator or combination of respirators from Table I of this section.

(b) The employer must provide a powered air-purifying respirator when an employee chooses to use such a respirator and it will provide adequate protection to the employee.

Table I.— Respiratory Protection for Lead Aerosols

Airborne concentration of lead or condition of use	Required respirator ^a
Not in excess of 500 µg/m ³	1/2 mask air purifying respirator with high efficiency filters. ^{b, c} 1/2 mask supplied air respirator operated in demand (negative pressure) mode.

PERMANENT

Airborne concentration of lead or condition of use

Not in excess of 1,250 $\mu\text{g}/\text{m}^3$

Not in excess of 2,500 $\mu\text{g}/\text{m}^3$

Not in excess of 50,000 $\mu\text{g}/\text{m}^3$

Not in excess of 100,000 $\mu\text{g}/\text{m}^3$

Greater than 100,000 $\mu\text{g}/\text{m}^3$ unknown concentration, or fire fighting

Required respirator ^a

Loose fitting hood or helmet powered air purifying respirator with high efficiency filters.^c

Hood or helmet supplied air respirator operated in a continuous-flow mode—e.g., type CE abrasive blasting respirators operated in a continuous-flow mode.

Full facepiece air purifying respirator with high efficiency filters.^c

Tight fitting powered air purifying respirator with high efficiency filters.^c

Full facepiece supplied air respirator operated in demand mode.

1/2 mask or full facepiece supplied air respirator operated in a continuous-flow mode.

Full facepiece self-contained breathing apparatus (SCBA) operated in demand mode.

1/2 mask supplied air respirator operated in pressure demand or other positive-pressure mode.

Full facepiece supplied air respirator operated in pressure demand or other positive-pressure mode—e.g., type CE abrasive blasting respirators operated in a positive-pressure mode.

Full facepiece SCBA operated in pressure demand or other positive pressure mode.

- ^a Respirators specified for higher concentrations can be used at lower concentrations of lead.
- ^b Full facepiece is required if the lead aerosols cause eye or skin irritation at the use concentrations.
- ^c A high efficiency particulate filter (HEPA) means a filter that is 99.97 percent efficient against particles of 0.3 micron size or larger.

material safety data sheets (MSDS), and employee information and training. In addition, employers shall comply with the following requirements:

(b) For all employees who are subject to exposure to lead at or above the action level on any day or who are subject to exposure to lead compounds which may cause skin or eye irritation (e.g., lead arsenate, lead azide), the employer shall provide a training program in accordance with subsection (2) of this section and assure employee participation.

(c) The employer shall provide the training program as initial training prior to the time of job assignment or prior to the start up date for this requirement, whichever comes last.

(d) The employer shall also provide the training program at least annually for each employee who is subject to lead exposure at or above the action level on any day.

(2) Training program. The employer shall assure that each employee is trained in the following:

(a) The content of this standard and its appendices;

(b) The specific nature of the operations which could result in exposure to lead above the action level;

(c) The training requirements for respiratory protection as required by chapter 296-62 WAC, Part E (see WAC ((296-62-07117)) 296-842-110, ((296-62-07172)) 296-842-19005, and ((WAC 296-62-07186 through 296-62-07190)) 296-842-16005);

(d) The purpose and a description of the medical surveillance program, and the medical removal protection program including information concerning the adverse health effects associated with excessive exposure to lead (with particular attention to the adverse reproductive effects on both males and females and hazards to the fetus and additional precautions for employees who are pregnant);

(e) The engineering controls and work practices associated with the employee's job assignment including training of employees to follow relevant good work practices described in Appendix B, WAC 296-155-17652;

(f) The contents of any compliance plan in effect;

(g) Instructions to employees that chelating agents should not routinely be used to remove lead from their bodies and should not be used at all except under the direction of a licensed physician; and

(h) The employee's right of access to records under Part B, chapter 296-62 WAC and chapter 296-800 WAC.

(3) Access to information and training materials.

(a) The employer shall make readily available to all affected employees a copy of this standard and its appendices.

(b) The employer shall provide, upon request, all materials relating to the employee information and training program to affected employees and their designated representatives, and the director.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-155-17625 Employee information and training. (1) General.

(a) The employer shall communicate information concerning lead hazards according to the requirements of WISHA's Hazard Communication Standard for the construction industry, chapter 296-800 WAC, including but not limited to the requirements concerning warning signs and labels,

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-155-17652 Appendix B to WAC 296-155-176—Employee standard summary. This appendix summarizes key provisions of the standard for lead in construction that you as a worker should become familiar with.

PERMANENT

(1) Permissible exposure limit (PEL)—WAC 296-62-17607.

The standard sets a permissible exposure limit (PEL) of 50 micrograms of lead per cubic meter of air ($50 \mu\text{g}/\text{m}^3$), averaged over an 8-hour workday which is referred to as a time-weighted average (TWA). This is the highest level of lead in air to which you may be permissibly exposed over an 8-hour workday. However, since this is an 8-hour average, short exposures above the PEL are permitted so long as for each 8-hour work day your average exposure does not exceed this level. This standard, however, takes into account the fact that your daily exposure to lead can extend beyond a typical 8-hour workday as the result of overtime or other alterations in your work schedule. To deal with this situation, the standard contains a formula which reduces your permissible exposure when you are exposed more than 8 hours. For example, if you are exposed to lead for 10 hours a day, the maximum permitted average exposure would be $40 \mu\text{g}/\text{m}^3$.

(2) Exposure assessment—WAC 296-155-17609.

If lead is present in your workplace in any quantity, your employer is required to make an initial determination of whether any employee's exposure to lead exceeds the action level ($30 \mu\text{g}/\text{m}^3$ averaged over an 8-hour day). Employee exposure is that exposure which would occur if the employee were not using a respirator. This initial determination requires your employer to monitor workers' exposures unless the employee has objective data which can demonstrate conclusively that no employee will be exposed to lead in excess of the action level. Where objective data is used in lieu of actual monitoring the employer must establish and maintain an accurate record, documenting its relevancy in assessing exposure levels for current job conditions. If such objective data is available, the employer need proceed no further on employee exposure assessment until such time that conditions have changed and the determination is no longer valid.

Objective data may be compiled from various sources, e.g., insurance companies and trade associations and information from suppliers or exposure data collected from similar operations. Objective data may also comprise previously-collected sampling data including area monitoring. If it cannot be determined through using objective data that worker exposure is less than the action level, your employer must conduct monitoring or must rely on relevant previous personal sampling, if available. Where monitoring is required for the initial determination, it may be limited to a representative number of employees who are reasonably expected to have the highest exposure levels. If your employer has conducted appropriate air sampling for lead in the past 12 months, they may use these results, provided they are applicable to the same employee tasks and exposure conditions and meet the requirements for accuracy as specified in the standard. As with objective data, if such results are relied upon for the initial determination, your employer must establish and maintain a record as to the relevancy of such data to current job conditions.

If there have been any employee complaints of symptoms which may be attributable to exposure to lead or if there is any other information or observations which would indicate employee exposure to lead, this must also be considered as part of the initial determination. If this initial determina-

tion shows that a reasonable possibility exists that any employee may be exposed, without regard to respirator, over the action level, your employer must set up an air monitoring program to determine the exposure level representative of each employee exposed to lead at your workplace. In carrying out this air monitoring program, your employer is not required to monitor the exposure of every employee, but they must monitor a representative number of employees and job types. Enough sampling must be done to enable each employee's exposure level to be reasonably represent full shift exposure. In addition, these air samples must be taken under conditions which represent each employee's regular, daily exposure to lead. Sampling performed in the past 12 months may be used to determine exposures above the action level if such sampling was conducted during work activities essentially similar to present work conditions.

The standard lists certain tasks which may likely result in exposures to lead in excess of the PEL and, in some cases, exposures in excess of 50 times the PEL. If you are performing any of these tasks, your employer must provide you with appropriate respiratory protection, protective clothing and equipment, change areas, hand washing facilities, biological monitoring, and training until such time that an exposure assessment is conducted which demonstrates that your exposure level is below the PEL.

If you are exposed to lead and air sampling is performed, your employer is required to notify you in writing within 5 working days of the air monitoring results which represent your exposure. If the results indicate that your exposure exceeds the PEL (without regard to your use of a respirator), then your employer must also notify you of this in writing, and provide you with a description of the corrective action that has been taken or will be taken to reduce your exposure.

Your exposure must be rechecked by monitoring, at least every six months if your exposure is at or over the action level but below the PEL. Your employer may discontinue monitoring for you if 2 consecutive measurements, taken at least 7 days apart, are at or below the action level. Air monitoring must be repeated every 3 months if you are exposed over the PEL. Your employer must continue monitoring for you at this frequency until 2 consecutive measurements, taken at least 7 days apart, are below the PEL but above the action level, at which time your employer must repeat monitoring of your exposure every six months and may discontinue monitoring only after your exposure drops to or below the action level. However, whenever there is a change of equipment, process, control, or personnel or a new type of job is added at your workplace which may result in new or additional exposure to lead, your employer must perform additional monitoring.

(3) Methods of compliance—WAC 296-155-17611.

Your employer is required to assure that no employee is exposed to lead in excess of the PEL as an 8-hour TWA. The standard for lead in construction requires employers to institute engineering and work practice controls including administrative controls to the extent feasible to reduce employee exposure to lead. Where such controls are feasible but not adequate to reduce exposures below the PEL they must be used nonetheless to reduce exposures to the lowest level that

can be accomplished by these means and then supplemented with appropriate respiratory protection.

Your employer is required to develop and implement a written compliance program prior to the commencement of any job where employee exposures may reach the PEL as an 8-hour TWA. The standard identifies the various elements that must be included in the plan. For example, employers are required to include a description of operations in which lead is emitted, detailing other relevant information about the operation such as the type of equipment used, the type of material involved, employee job responsibilities, operating procedures and maintenance practices. In addition, your employer's compliance plan must specify the means that will be used to achieve compliance and, where engineering controls are required, include any engineering plans or studies that have been used to select the control methods. If administrative controls involving job rotation are used to reduce employee exposure to lead, the job rotation schedule must be included in the compliance plan. The plan must also detail the type of protective clothing and equipment, including respirator, housekeeping and hygiene practices that will be used to protect you from the adverse effects of exposure to lead.

The written compliance program must be made available, upon request, to affected employees and their designated representatives, and the director.

Finally, the plan must be reviewed and updated at least every 6 months to assure it reflects the current status in exposure control.

(4) Respiratory protection—WAC 296-155-17613.

Your employer is required to select respirator from the types listed in Table I of the Respiratory Protection section of the standard (see WAC 296-155-17613). Any respirator chosen must be certified by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 42 CFR part 84. This respirator selection table will enable your employer to choose a type of respirator that will give you a proper amount of protection based on your airborne lead exposure. Your employer may select a type of respirator that provides greater protection than that required by the standard; that is, one recommended for a higher concentration of lead than is present in your workplace. For example, a powered air-purifying respirator (PAPR) is much more protective than a typical negative pressure respirator, and may also be more comfortable to wear. A PAPR has a filter, cartridge, or canister to clean the air, and a power source which continuously blows filtered air into your breathing zone. Your employer might make a PAPR available to you to ease the burden of having to wear a respirator for long periods of time. The standard provides that you can obtain a PAPR upon request.

Your employer must also start a Respiratory Protection Program. This program must include written procedures for the proper selection, use, cleaning, storage, and maintenance of respirator.

Your employer must ensure that your respirator facepiece fits properly. Proper fit of a respirator facepiece is critical to your protection from airborne lead. Obtaining a proper fit on each employee may require your employer to make available several different types of respirator masks. To ensure that your respirator fits properly and that facepiece leakage is minimal, your employer must give you either a

qualitative or quantitative fit test as specified in WAC ((296-62-07201 through 296-62-07248, Appendices A-1, A-2 and A-3 of chapter 296-62-WAC, Part E)) 296-842-15005.

(5) Protective work clothing and equipment—WAC 296-155-17615.

If you are exposed to lead above the PEL as an 8-hour TWA, without regard to your use of a respirator, or if you are exposed to lead compounds such as lead arsenate or lead azide which can cause skin and eye irritation, your employer must provide you with protective work clothing and equipment appropriate for the hazard. If work clothing is provided, it must be provided in a clean and dry condition at least weekly, and daily if your airborne exposure to lead is greater than 200 µg/m³. Appropriate protective work clothing and equipment can include coveralls or similar full-body work clothing, gloves, hats, shoes or disposable shoe coverlets, and face shields or vented goggles. Your employer is required to provide all such equipment at no cost to you. In addition, your employer is responsible for providing repairs and replacement as necessary, and also is responsible for the cleaning, laundering or disposal of protective clothing and equipment.

The standard requires that your employer assure that you follow good work practices when you are working in areas where your exposure to lead may exceed the PEL. With respect to protective clothing and equipment, where appropriate, the following procedures should be observed prior to beginning work:

- ◆ Change into work clothing and shoe covers in the clean section of the designated changing areas;
- ◆ Use work garments of appropriate protective gear, including respirator before entering the work area; and
- ◆ Store any clothing not worn under protective clothing in the designated changing area.

Workers should follow these procedures upon leaving the work area:

- ◆ HEPA vacuum heavily contaminated protective work clothing while it is still being worn. At no time may lead be removed from protective clothing by any means which result in uncontrolled dispersal of lead into the air;
- ◆ Remove shoe covers and leave them in the work area;
- ◆ Remove protective clothing and gear in the dirty area of the designated changing area. Remove protective coveralls by carefully rolling down the garment to reduce exposure to dust.
- ◆ Remove respirator last; and
- ◆ Wash hands and face.

Workers should follow these procedures upon finishing work for the day (in addition to procedures described above):

- ◆ Where applicable, place disposal coveralls and shoe covers with the abatement waste;
- ◆ Contaminated clothing which is to be cleaned, laundered or disposed of must be placed in closed containers in the change room.
- ◆ Clean protective gear, including respirator, according to standard procedures;
- ◆ Wash hands and face again.

If showers are available, take a shower and wash hair. If shower facilities are not available at the work site, shower immediately at home and wash hair.

(6) Housekeeping—WAC 296-155-17617.

Your employer must establish a housekeeping program sufficient to maintain all surfaces as free as practicable of accumulations of lead dust. Vacuuming is the preferred method of meeting this requirement, and the use of compressed air to clean floors and other surfaces is generally prohibited unless removal with compressed air is done in conjunction with ventilation systems designed to contain dispersal of the lead dust. Dry or wet sweeping, shoveling, or brushing may not be used except where vacuuming or other equally effective methods have been tried and do not work. Vacuums must be used equipped with a special filter called a high-efficiency particulate air (HEPA) filter and emptied in a manner which minimizes the reentry of lead into the workplace.

(7) Hygiene facilities and practices—WAC 296-155-17619.

The standard requires that hand washing facilities be provided where occupational exposure to lead occurs. In addition, change areas, showers (where feasible), and lunchrooms or eating areas are to be made available to workers exposed to lead above the PEL. Your employer must assure that except in these facilities, food and beverage is not present or consumed, tobacco products are not present or used, and cosmetics are not applied, where airborne exposures are above the PEL. Change rooms provided by your employer must be equipped with separate storage facilities for your protective clothing and equipment and street clothes to avoid cross-contamination. After showering, no required protective clothing or equipment worn during the shift may be worn home. It is important that contaminated clothing or equipment be removed in change areas and not be worn home or you will extend your exposure and expose your family since lead from your clothing can accumulate in your house, car, etc.

Lunchrooms or eating areas may not be entered with protective clothing or equipment unless surface dust has been removed by vacuuming, downdraft booth, or other cleaning method. Finally, workers exposed above the PEL must wash both their hands and faces prior to eating, drinking, smoking or applying cosmetics.

All of the facilities and hygiene practices just discussed are essential to minimize additional sources of lead absorption from inhalation or ingestion of lead that may accumulate on you, your clothes, or your possessions. Strict compliance with these provisions can virtually eliminate several sources of lead exposure which significantly contribute to excessive lead absorption.

(8) Medical surveillance—WAC 296-155-17621.

The medical surveillance program is part of the standard's comprehensive approach to the prevention of lead-related disease. Its purpose is to supplement the main thrust of the standard which is aimed at minimizing airborne concentrations of lead and sources of ingestion. Only medical surveillance can determine if the other provisions of the standard have affectively protected you as an individual. Compliance with the standard's provision will protect most workers

from the adverse effects of lead exposure, but may not be satisfactory to protect individual workers:

- ◆ Who have high body burdens of lead acquired over past years,
- ◆ Who have additional uncontrolled sources of nonoccupational lead exposure,
- ◆ Who exhibit unusual variations in lead absorption rates, or
- ◆ Who have specific nonwork related medical conditions which could be aggravated by lead exposure (e.g., renal disease, anemia).

In addition, control systems may fail, or hygiene and respirator programs may be inadequate. Periodic medical surveillance of individual workers will help detect those failures. Medical surveillance will also be important to protect your reproductive ability—regardless of whether you are a man or woman.

All medical surveillance required by the standard must be performed by or under the supervision of a licensed physician. The employer must provide required medical surveillance without cost to employees and at a reasonable time and place. The standard's medical surveillance program has two parts—periodic biological monitoring and medical examinations. Your employer's obligation to offer you medical surveillance is triggered by the results of the air monitoring program. Full medical surveillance must be made available to all employees who are or may be exposed to lead in excess of the action level for more than 30 days a year and whose blood lead level exceeds 40 µg/dl. Initial medical surveillance consisting of blood sampling and analysis for lead and zinc protoporphyrin must be provided to all employees exposed at any time (1 day) above the action level.

Biological monitoring under the standard must be provided at least every 2 months for the first 6 months and every 6 months thereafter until your blood lead level is below 40 µg/dl. A zinc protoporphyrin (ZPP) test is a very useful blood test which measures an adverse metabolic effect of lead on your body and is therefore an indicator of lead toxicity.

If your BLL exceeds 40 µg/dl the monitoring frequency must be increased from every 6 months to at least every 2 months and not reduced until two consecutive BLLs indicate a blood lead level below 40 µg/dl. Each time your BLL is determined to be over 40 µg/dl, your employer must notify you of this in writing within five working days of their receipt of the test results. The employer must also inform you that the standard requires temporary medical removal with economic protection when your BLL exceeds 50 µg/dl. (See Discussion of medical removal protection—WAC 296-155-17623.) Anytime your BLL exceeds 50 µg/dl your employer must make available to you within two weeks of receipt of these test results a second follow-up BLL test to confirm your BLL. If the two tests both exceed 50 µg/dl, and you are temporarily removed, then your employer must make successive BLL tests available to you on a monthly basis during the period of your removal.

Medical examinations beyond the initial one must be made available on an annual basis if your blood lead level exceeds 40 µg/dl at any time during the preceding year and you are being exposed above the airborne action level of 30

$\mu\text{g}/\text{m}^3$ for 30 or more days per year. The initial examination will provide information to establish a baseline to which subsequent data can be compared.

An initial medical examination to consist of blood sampling and analysis for lead and zinc protoporphyrin must also be made available (prior to assignment) for each employee being assigned for the first time to an area where the airborne concentration of lead equals or exceeds the action level at any time. In addition, a medical examination or consultation must be made available as soon as possible if you notify your employer that you are experiencing signs or symptoms commonly associated with lead poisoning or that you have difficulty breathing while wearing a respirator or during a respirator fit test. You must also be provided a medical examination or consultation if you notify your employer that you desire medical advice concerning the effects of current or past exposure to lead on your ability to procreate a healthy child.

Finally, appropriate follow-up medical examinations or consultations may also be provided for employees who have been temporarily removed from exposure under the medical removal protection provisions of the standard. (See subsection (9), below.)

The standard specifies the minimum content of pre-assignment and annual medical examinations. The content of other types of medical examinations and consultations is left up to the sound discretion of the examining physician. Pre-assignment and annual medical examinations must include:

- ◆ A detailed work history and medical history;
- ◆ A thorough physical examination, including an evaluation of your pulmonary status if you will be required to use a respirator;
- ◆ A blood pressure measurement; and
- ◆ A series of laboratory tests designed to check your blood chemistry and your kidney function.

In addition, at any time upon your request, a laboratory evaluation of male fertility will be made (microscopic examination of a sperm sample), or a pregnancy test will be given.

The standard does not require that you participate in any of the medical procedures, tests, etc. which your employer is required to make available to you. Medical surveillance can, however, play a very important role in protecting your health. You are strongly encouraged, therefore, to participate in a meaningful fashion. The standard contains a multiple physician review mechanism which will give you a chance to have a physician of your choice directly participate in the medical surveillance program. If you are dissatisfied with an examination by a physician chosen by your employer, you can select a second physician to conduct an independent analysis. The two doctors would attempt to resolve any differences of opinion, and select a third physician to resolve any firm dispute. Generally your employer will choose the physician who conducts medical surveillance under the lead standard-unless you and your employer can agree on the choice of a physician or physicians. Some companies and unions have agreed in advance, for example, to use certain independent medical laboratories or panels of physicians. Any of these arrangements are acceptable so long as required medical surveillance is made available to workers.

The standard requires your employer to provide certain information to a physician to aid in their examination of you. This information includes:

- ◆ The standard and its appendices,
- ◆ A description of your duties as they relate to occupational lead exposure,
- ◆ Your exposure level or anticipated exposure level,
- ◆ A description of any personal protective equipment you wear,
- ◆ Prior blood lead level results, and
- ◆ Prior written medical opinions concerning you that the employer has.

After a medical examination or consultation the physician must prepare a written report which must contain:

- ◆ The physician's opinion as to whether you have any medical condition which places you at increased risk of material impairment to health from exposure to lead,
- ◆ Any recommended special protective measures to be provided to you,
- ◆ Any blood lead level determinations, and
- ◆ Any recommended limitation on your use of respirator.

This last element must include a determination of whether you can wear a powered air purifying respirator (PAPR) if you are found unable to wear a negative pressure respirator.

The medical surveillance program of the lead standard may at some point in time serve to notify certain workers that they have acquired a disease or other adverse medical condition as a result of occupational lead exposure. If this is true, these workers might have legal rights to compensation from public agencies, their employers, firms that supply hazardous products to their employers, or other persons. Some states have laws, including worker compensation laws, that disallow a worker who learns of a job-related health impairment to sue, unless the worker sues within a short period of time after learning of the impairment. (This period of time may be a matter of months or years.) An attorney can be consulted about these possibilities. It should be stressed that WISHA is in no way trying to either encourage or discourage claims or lawsuits. However, since results of the standard's medical surveillance program can significantly affect the legal remedies of a worker who has acquired a job-related disease or impairment, it is proper for WISHA to make you aware of this.

The medical surveillance section of the standard also contains provisions dealing with chelation. Chelation is the use of certain drugs (administered in pill form or injected into the body) to reduce the amount of lead absorbed in body tissues. Experience accumulated by the medical and scientific communities has largely confirmed the effectiveness of this type of therapy for the treatment of very severe lead poisoning. On the other hand, it has also been established that there can be a long list of extremely harmful side effects associated with the use of chelating agents. The medical community has balanced the advantages and disadvantages resulting from the use of chelating agents in various circumstances and has established when the use of these agents is acceptable. The standard includes these accepted limitations due to a history

of abuse of chelation therapy by some lead companies. The most widely used chelating agents are calcium disodium EDTA, (Ca Na₂ EDTA), Calcium Disodium Versenate (Versenate), and d-penicillamine (penicillamine or Cupramine).

The standard prohibits "prophylactic chelation" of any employee by any person the employer retains, supervises or controls. "Prophylactic chelation" is the routine use of chelating or similarly acting drugs to prevent elevated blood levels in workers who are occupationally exposed to lead, or the use of these drugs to routinely lower blood lead levels to predesignated concentrations believed to be "safe." It should be emphasized that where an employer takes a worker who has no symptoms of lead poisoning and has chelation carried out by a physician (either inside or outside of a hospital) solely to reduce the worker's blood lead level, that will generally be considered prophylactic chelation. The use of a hospital and a physician does not mean that prophylactic chelation is not being performed. Routine chelation to prevent increased or reduce current blood lead levels is unacceptable whatever the setting.

The standard allows the use of "therapeutic" or "diagnostic" chelation if administered under the supervision of a licensed physician in a clinical setting with thorough and appropriate medical monitoring. Therapeutic chelation responds to severe lead poisoning where there are marked symptoms. Diagnostic chelation involved giving a patient a dose of the drug then collecting all urine excreted for some period of time as an aid to the diagnosis of lead poisoning.

In cases where the examining physician determines that chelation is appropriate, you must be notified in writing of this fact before such treatment. This will inform you of a potentially harmful treatment, and allow you to obtain a second opinion.

(9) Medical removal protection—WAC 296-155-17623.

Excessive lead absorption subjects you to increased risk of disease. Medical removal protection (MRP) is a means of protecting you when, for whatever reasons, other methods, such as engineering controls, work practices, and respirator, have failed to provide the protection you need. MRP involves the temporary removal of a worker from their regular job to a place of significantly lower exposure without any loss of earnings, seniority, or other employment rights or benefits. The purpose of this program is to cease further lead absorption and allow your body to naturally excrete lead which has previously been absorbed. Temporary medical removal can result from an elevated blood lead level, or a medical opinion. For up to 18 months, or for as long as the job the employee was removed from lasts, protection is provided as a result of either form of removal. The vast majority of removed workers, however, will return to their former jobs long before this eighteen month period expires.

You may also be removed from exposure even if your blood lead level is below 50 µ/dl if a final medical determination indicates that you temporarily need reduced lead exposure for medical reasons. If the physician who is implementing your employers medical program makes a final written opinion recommending your removal or other special protective measures, your employer must implement the physician's recommendation. If you are removed in this manner, you

may only be returned when the doctor indicates that it is safe for you to do so.

The standard does not give specific instructions dealing with what an employer must do with a removed worker. Your job assignment upon removal is a matter for you, your employer and your union (if any) to work out consistent with existing procedures for job assignments. Each removal must be accomplished in a manner consistent with existing collective bargaining relationships. Your employer is given broad discretion to implement temporary removals so long as no attempt is made to override existing agreements. Similarly, a removed worker is provided no right to veto an employer's choice which satisfies the standard.

In most cases, employers will likely transfer removed employees to other jobs with sufficiently low lead exposure. Alternatively, a worker's hours may be reduced so that the time weighted average exposure is reduced, or they may be temporarily laid off if no other alternative is feasible.

In all of these situation, MRP benefits must be provided during the period of removal—i.e., you continue to receive the same earnings, seniority, and other rights and benefits you would have had if you had not been removed. Earnings includes more than just your base wage; it includes overtime, shift differentials, incentives, and other compensation you would have earned if you had not been removed. During the period of removal you must also be provided with appropriate follow-up medical surveillance. If you were removed because your blood lead level was too high, you must be provided with a monthly blood test. If a medical opinion caused your removal, you must be provided medical tests or examinations that the doctor believes to be appropriate. If you do not participate in this follow up medical surveillance, you may lose your eligibility for MRP benefits.

When you are medically eligible to return to your former job, your employer must return you to your "former job status." This means that you are entitled to the position, wages, benefits, etc., you would have had if you had not been removed. If you would still be in your old job if no removal had occurred that is where you go back. If not, you are returned consistent with whatever job assignment discretion your employer would have had if no removal had occurred. MRP only seeks to maintain your rights, not expand them or diminish them.

If you are removed under MRP and you are also eligible for worker compensation or other compensation for lost wages, your employer's MRP benefits obligation is reduced by the amount that you actually receive from these other sources. This is also true if you obtain other employment during the time you are laid off with MRP benefits.

The standard also covers situations where an employer voluntarily removes a worker from exposure to lead due to the effects of lead on the employee's medical condition, even though the standard does not require removal. In these situations MRP benefits must still be provided as though the standard required removal. Finally, it is important to note that in all cases where removal is required, respirator cannot be used as a substitute. Respirator may be used before removal becomes necessary, but not as an alternative to a transfer to a low exposure job, or to a lay-off with MRP benefits.

(10) Employee information and training—WAC 296-155-17625.

Your employer is required to provide an information and training program for all employees exposed to lead above the action level or who may suffer skin or eye irritation from lead compounds such as lead arsenate or lead azide. The program must train these employees regarding the specific hazards associated with their work environment, protective measures which can be taken, including the contents of any compliance plan in effect, the danger of lead to their bodies (including their reproductive systems), and their rights under the standard. All employees must be trained prior to initial assignment to areas where there is a possibility of exposure over the action level.

This training program must also be provided at least annually thereafter unless further exposure above the action level will not occur.

(11) Signs—WAC 296-155-17627.

The standard requires that the following warning sign be posted in work areas where the exposure to lead exceeds the PEL:

WARNING
LEAD WORK AREA
POISON
NO SMOKING OR EATING

These signs are to be posted and maintained in a manner which assures that the legend is readily visible.

(12) Recordkeeping—WAC 296-155-17629.

Your employer is required to keep all records of exposure monitoring for airborne lead. These records must include the name and job classification of employees measured, details of the sampling and analytical techniques, the results of this sampling, and the type of respiratory protection being worn by the person sampled. Such records are to be retained for at least 30 years. Your employer is also required to keep all records of biological monitoring and medical examination results. These records must include the names of the employees, the physician's written opinion, and a copy of the results of the examination. Medical records must be preserved and maintained for the duration of employment plus 30 years. However, if the employee's duration of employment is less than one year, the employer need not retain that employee's medical records beyond the period of employment if they are provided to the employee upon termination of employment.

Recordkeeping is also required if you are temporarily removed from your job under the medical removal protection program. This record must include your name and Social Security number, the date of your removal and return, how the removal was or is being accomplished, and whether or not the reason for the removal was an elevated blood lead level. Your employer is required to keep each medical removal record only for as long as the duration of an employee's employment.

The standard requires that if you request to see or copy environmental monitoring, blood lead level monitoring, or medical removal records, they must be made available to you or to a representative that you authorize. Your union also has access to these records. Medical records other than BLL's

must also be provided upon request to you, to your physician or to any other person whom you may specifically designate. Your union does not have access to your personal medical records unless you authorize their access.

(13) Observation of monitoring—WAC 296-155-17631.

When air monitoring for lead is performed at your workplace as required by this standard, your employer must allow you or someone you designate to act as an observer of the monitoring. Observers are entitled to an explanation of the measurement procedure, and to record the results obtained. Since results will not normally be available at the time of the monitoring, observers are entitled to record or receive the results of the monitoring when returned by the laboratory. Your employer is required to provide the observer with any personal protective devices required to be worn by employees working in the area that is being monitored. The employer must require the observer to wear all such equipment and to comply with all other applicable safety and health procedures.

(14) Startup date—WAC 296-155-17635.

Employer obligations under the standard begin as of that date with full implementation of engineering controls as soon as possible but no later than within 4 months, and all other provisions completed as soon as possible, but no later than within 2 months from the effective date.

(15) For additional information.

(a) A copy of the standard for lead in construction can be obtained free of charge by calling or writing to the department of labor and industries, Post Office Box 44620, Mailstop 44620, Olympia, Washington 98504-4620: Telephone (360) 956-5527.

(b) Additional information about the standard, its enforcement, and your employer's compliance can be obtained from the nearest office listed in your telephone directory under the state of Washington, department of labor and industries.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-155-20301 Definitions. Confined space means a space that:

- (1) Is large enough and so configured that an employee can bodily enter and perform assigned work; and
- (2) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and
- (3) Is not designed for continuous employee occupancy.

"**Corrosives**" means substances which in contact with living tissue cause destruction of the tissue by chemical action.

"**Hazardous atmosphere**" means an atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (that is, escape unaided from a permit space), injury, or acute illness from one or more of the following causes:

- (1) Flammable gas, vapor, or mist in excess of ten percent of its lower flammable limit (LFL);

(2) Airborne combustible dust at a concentration that meets or exceeds its LFL;

Note: This concentration may be approximated as a condition in which the dust obscures vision at a distance of five feet (1.52m) or less.

(3) Atmospheric oxygen concentration below 19.5 percent or above 23.5 percent;

(4) Atmospheric concentration of any substance for which a dose or a permissible exposure limit is published in chapter 296-62 WAC, general occupational health standards, or chapter 296-841 WAC, identifying and controlling respiratory hazards, and which could result in employee exposure in excess of its dose or permissible exposure limit;

Note: An atmospheric concentration of any substance that is not capable of causing death, incapacitation, impairment of ability to self-rescue, injury, or acute illness due to its health effects is not covered by this provision.

(5) Any other atmospheric condition that is immediately dangerous to life or health.

Note: For air contaminants for which WISHA has not determined a dose or permissible exposure limit, other sources of information, such as material safety data sheets that comply with the Chemical Hazard Communication Standard, WAC 296-800-170, published information, and internal documents can provide guidance in establishing acceptable atmospheric conditions.

"**Irritants**" means substances which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

"**Oxygen deficient atmospheres**" means atmospheres at sea level having less than 19.5% oxygen by volume or having a partial pressure of 148 millimeters of mercury or less. This may deviate when working at higher altitudes and should be determined for an individual location. Factors such as acclimatization, physical condition of persons involved, etc., must be considered for such circumstances and conditions. (See chapter 296-62 WAC, Part M, permit-required confined spaces.)

"**Toxicants**" means substances which have the inherent capacity to produce personal injury or illness to persons by absorption through any body surface.

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-155-220 Respiratory protection. The respiratory protection requirements applicable to construction work under this section are identical to those set forth in chapter ((296-62)) 296-842 WAC((Part E)).

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-155-367 Masonry saws. (1) Guarding.

(a) Masonry saws shall be guarded by semicircular enclosures over the blade.

(b) A method for retaining blade fragments shall be incorporated into the design of the semicircular enclosure.

(2) Safety latch. A safety latch shall be installed on notched saws to prevent the motor and cutting head assembly from lifting out of the notches.

(3) Blade speed. Blade speed shall be maintained in accordance with the manufacturer's specifications.

(4) Exhaust and eye protection.

(a) All table mounted masonry saws shall be equipped with a mechanical means of exhausting dust into a covered receptacle or be provided with water on the saw blade for dust control. The operator and any nearby worker shall wear appropriate eye protection in accordance with WAC 296-155-215.

(b) All portable hand-held masonry saw operators shall wear appropriate eye and respiratory protection in accordance with WAC 296-155-215 and chapter ((296-62)) 296-842 WAC((Part E)).

(5) Grounding. The motor frames of all stationary saws shall be grounded through conduit, water pipe, or a driven ground. Portable saws shall be grounded through three-pole cords attached to grounded electrical systems.

(6) Inspection. Masonry saws shall be inspected at regular intervals and maintained in safe operating condition.

AMENDATORY SECTION (Amending WSR 02-12-098, filed 6/5/02, effective 8/1/02)

WAC 296-155-525 Cranes and derricks. (1) Definitions applicable to this part:

Accessory - a secondary part or assembly of parts which contributes to the overall function and usefulness of a machine.

Administrative or regulatory authority - a governmental agency, or the employer in the absence of governmental jurisdiction.

Angle indicator (boom) - an accessory which measures the angle of the boom to the horizontal.

Appointed - assigned specific responsibilities by the employer or the employer's representative.

Authorized person - means a person approved or assigned by the employer to perform a specific type of duty or duties or be at a specific location or locations at the workplace.

Auxiliary hoist - a secondary hoist rope system used either in conjunction with, or independently of, the main hoist system.

Axis of rotation - the vertical axis around which the crane superstructure rotates.

Axle - the shaft or spindle with which or about which a wheel rotates. On wheel-mounted cranes it refers to a type of axle assembly including housings, gearing, differential, bearings, and mounting appurtenances.

Axle (bogie) - two or more axles mounted in tandem in a frame so as to divide the load between the axles and permit vertical oscillation of the wheels.

Ballast - weight used to supplement the weight of the machine in providing stability for lifting working loads (the term ballast is normally associated with locomotive cranes).

Base, anchor bolt - a crane base that is bolted to a footing.

Base, expendable - for static-mounting cranes, a style of bottom mast section or member that is cast into a concrete footing block; all or part of this component is lost to future installations.

Base, fixed - a crane base that does not travel. It may be expendable, knee braced, or anchor bolted.

Base (mounting) - the traveling base on which the rotating superstructure of a locomotive or crawler crane is mounted.

Base, tower crane - the lowermost supporting component of the crane.

Base, travel - a crane base that is a ballasted platform mounted on trucks that ride along rails.

Boom (crane) - a member hinged at the rotating superstructure and used for supporting the existing tackle.

Boom angle - the angle above or below horizontal of the longitudinal axis of the base boom section.

Boom hoist mechanism - means for supporting the boom and controlling the boom angle.

Boom point - the outer extremity of the crane boom, containing the hoist sheave assembly.

Boom point sheave assembly - an assembly of sheaves and pin built as an integral part of the boom point.

Boom stop - a device used to limit the angle of the boom at the highest recommended position.

Brake - a device used for retarding or stopping motion.

Brace, tower - a structural attachment placed between a crane tower and an adjacent structure to pass loads to the adjacent structure and permit the crane to be erected to greater than free standing height.

Buffer - an energy absorbing device for reducing impact when a moving crane or trolley reaches the end of its permitted travel.

Cab - a housing which covers the rotating superstructure machinery, or the operator's or driver's station.

Climbing frame - a frame used with climbing cranes to transmit operational and climbing reactions to the host building frame.

Climbing ladder - a steel member with crossbars (used in parts) suspended from a climbing frame and used as jacking support points when some cranes climb.

Clutch - a means for engagement or disengagement of power.

Commercial truck vehicle - a commercial motor vehicle designed primarily for the transportation of property in connection with business and industry.

Counterweight - weight used to supplement the weight of the machine in providing stability for lifting working loads.

Counterweight jib - a horizontal member of a crane on which the counterweights and usually the hoisting machinery are mounted.

Crane carrier - the undercarriage of a wheel-mounted crane specifically designed for transporting the rotating crane superstructure. It may or may not provide its own travel mechanism. It is distinguished from a commercial truck vehicle in that it is not designed to transport personnel, materials, or equipment other than the crane-rotating superstructure.

Cross-over points - in multiple layer spooling of rope on a drum, those points of rope contact where the rope crosses the preceding rope layer.

Designated - selected or assigned by the employer or the employer's representative as being competent to perform specific duties.

Drum - the cylindrical member around which a rope is wound for lifting and lowering the load or boom.

Dynamic (loading) - loads introduced into the machine or its components due to accelerating or decelerating forces.

Flange point - a point of contact between rope and drum flange where the rope changes layers.

Free standing height - that height of a crane which is supported by the tower (mast) alone without assistance from braces, guys, or other means.

Gage, track - the horizontal distance between two rails measured perpendicular to the direction of travel.

Gantry (A-frame) - a structural frame, extending above the superstructure, to which the boom support ropes are reeved.

High strength (traction) bolts - high strength tensile bolts used in the assembly of crane sections. The bolts are installed in tension by torquing or other means at a level greater than that produced by in- or out-of-service loads for the purpose of reducing the likelihood of bolt fatigue failure.

Hoist mechanism - a hoist drum and rope reeving system used for lifting and lowering loads.

Jib - an extension attached to the boom point to provide added boom length for lifting specified loads. The jib may be in line with the boom or offset to various angles in the vertical plane of the boom.

Jib backstop - a device which will restrain the jib from turning over backward.

Job site - work area defined by the construction contract.

Limiting device - a mechanical device which is operated by some part of a power driven machine or equipment to control loads or motions of the machine or equipment.

Load (working) - the external load in pounds (kilograms) applied to the crane, including the weight of load-attaching equipment such as lower load block, shackles, and slings.

Load block, lower - the assembly of hook or shackle, swivel, sheaves, pins, and frame suspended by the hoisting ropes.

Load block, upper - the assembly of shackle, swivel, sheaves, pins, and frame suspended from the boom point.

Load ratings - crane ratings in pounds (kilograms) established by the manufacturer.

Mast (boom) - a frame hinged at or near the boom hinge for use in connection with supporting a boom. The head of the mast is usually supported and raised or lowered by the boom hoist ropes.

Mast (jib) - a frame hinged at or near the boom point for use in connection with supporting a jib.

Normal operating conditions.

Cab- or station-operated cranes - conditions during which a crane is performing functions within the manufacturer's operating recommendations. Under these conditions, the operator is at the operating control devices on the crane, and no other persons except those appointed are to be on the crane.

Ground- or floor-operated cranes - conditions during which a crane is performing functions within the manufacturer's operating recommendations. Under these conditions, the operator is at the operating control devices that are mounted to the crane but operated with the operator off the

crane, and no other persons except those appointed are to be on the crane.

Remote-operated cranes - conditions during which a crane is performing functions within the manufacturer's operating recommendations. Under these conditions, the operator is at the operating control devices that are mounted to any part of the crane, and no other persons except those appointed are to be on the crane.

Out-of-service - the condition of a crane when unloaded, without power and with the controls unattended and prepared to endure winds above the in-service level.

Outriggers - extendable or fixed members attached to the mounting base, which rest on supports at the outer ends used to support the crane.

Pawl (dog) - a device for positively holding a member against motion in one or more directions.

Payload - that load or loads being transported by the commercial truck chassis from place to place.

Pendant - a rope or strand of specified length with fixed end connections.

Pitch diameter - the diameter of a sheave or rope drum measured at the center line of the rope.

Power-controlled lowering - a system or device in the power train, other than the load hoist brake, which can control the lowering rate of speed of the load hoist mechanism.

Qualified person - a person who, by possession of a recognized degree or certificate of professional standing, or who, by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems relating to the subject matter and work.

Radius (load) - the horizontal distance from a projection of the axis of rotation to the base of the crane, before loading, to the center of the vertical hoist line or tackle with load applied.

Rail clamp - a tong-like metal device mounted on a locomotive crane car, which can be connected to the track.

Reeving - a rope system in which the rope travels around drums and sheaves.

Remote control station - a location, not on the crane, from which the operator can control all the crane movements.

Repetitive pickup point - when operating on a short cycle operation, the rope being used on a single layer and being spooled repetitively over a short portion of the drum.

Rope - refers to wire rope unless otherwise specified.

Rotation resistant rope - a wire rope consisting of an inner layer of strand laid in one direction covered by a layer of strand laid in the opposite direction. This has the effect of counteracting torque by reducing the tendency of the finished rope to rotate.

Running rope - a rope which travels around sheaves or drums.

Shall - this word indicates that the rule is mandatory and must be followed.

Service, light - service that involves irregular operation with loads generally about one-half or less of the rated load; a service crane at a storage yard or building site would be an example.

Service, normal - service that involves operating occasionally at rated load but normally at less than eighty-five percent of the rated load and not more than ten lift cycles per

hour except for isolated instances; a crane used for concrete placement at a building site would be an example.

Service, heavy - service that involves operating at eighty-five percent to one hundred percent of the rated load or in excess of ten lift cycles per hour as a regular specified procedure; some cranes operating at material yards or in industrial applications may fall into this category.

Sheave - a grooved wheel or pulley used with a rope to change the direction and point of application of a pulling force.

Should - this word indicates that the rule is a recommendation, the advisability of which depends on the facts in each situation.

Side loading - a load applied to an angle to the vertical plane of the boom.

Stabilizer - stabilizers are extendable or fixed members attached to the mounting base to increase the stability of the crane, but which may not have the capability of relieving all of the weight from wheels or tracks.

Standby crane - a crane which is not in regular service but which is used occasionally or intermittently as required.

Standing (guy) rope - a supporting rope which maintains a constant distance between the points of attachment to the two components connected by the rope.

Structural competence - the ability of the machine and its components to withstand the stresses imposed by applied loads.

Superstructure - the rotating upper frame structure of the machine and the operating machinery mounted thereon.

Swing - rotation of the superstructure for movement of loads in a horizontal direction about the axis of rotation.

Swing mechanism - the machinery involved in providing rotation of the superstructure.

Swivel - a load carrying member with thrust bearings to permit rotation under load in a plane perpendicular to the direction of the load.

Swiveling - the rotation of the load attachment portion (hook or shackle) of a load block (lower) or hook assembly about its axis of suspension in relation to the load line(s).

Tackle - an assembly of ropes and sheaves arranged for lifting, lowering, or pulling.

Telescoping boom - consists of a base boom from which one or more boom sections are telescoped for additional length.

Telescoping (tower crane) - a process whereby the height of a traveling or fixed base crane is increased typically by raising the inner tower and then adding sections at the top of the outer tower; there are also cranes that are telescoped by adding to the inner tower from below.

Tower (mast) - a vertical structural frame consisting of columns and bracing capable of supporting an upperstructure with its working and dynamic loads and transmitting them to the supporting surface or structure.

Traction (high strength) bolts - see high strength bolts.

Transit - the moving or transporting of a crane from one job site to another.

Travel - the function of the machine moving under its own power from one location to another on a job site.

Trolley - the device that travels along the load jib and contains the upper load block.

Two-blocking - the condition in which the lower load block or hook assembly comes in contact with the upper load block or boom point sheave assembly.

Weather vaning - wind induced rotation of a crane upperstructure, when out-of-service, to expose minimal surface area to the wind.

Wedge - a tapered wood or steel device used to provide stability to cranes during use as a climber. When the wedges are tightened against the four main legs of the tower, they convert overturning moments into horizontal forces to be resisted by the floor framing or slab.

Wheel base - the distance between centers of front and rear axles. For a multiple axle assembly the axle center for wheel base measurement is taken as the midpoint of the assembly.

Whipline (runner or auxiliary) - a secondary rope system usually of lighter load capacity than that provided by the main rope system.

Winch head - a power driven spool for handling of loads by means of friction between fiber or wire rope and the spool.

(2) General requirements.

(a) The employer shall comply with the manufacturer's specifications and limitations applicable to the operation of any and all cranes and derricks. Where manufacturer's specifications are not available the limitations assigned to the equipment shall be based on the determinations of a qualified engineer, competent in this field and such determinations will be appropriately documented and recorded. Attachments used with cranes shall not exceed the capacity, rating, or scope recommended by the manufacturer.

(b) Rated load capacities, and recommended operating speeds, and special hazard warnings, or instruction, shall be conspicuously posted on all equipment. Instructions or warnings shall be visible to the operator while at the control station.

(c) Hand signals to crane and derrick operators shall be those prescribed by the applicable ANSI standard for the type of crane in use. An illustration of the signals shall be posted at the job site.

(d) The employer shall designate a competent person who shall inspect all machinery and equipment prior to each use, and periodically during use to make sure it is in safe operating condition. Any deficiencies shall be repaired, or defective parts replaced, before continued use.

(e) A thorough, annual inspection of the hoisting machinery shall be made by a competent person, or by a government or private agency recognized by the department. The employer shall maintain a permanent record of the dates and results of all inspections for each hoisting machine and piece of equipment.

(f) A tag line or guide rope shall be used on all loads that swing freely. Guide ropes or tag lines shall be held by experienced persons.

(g) Care shall be taken to guard against injury to workers, or damage to scaffolds or buildings, from swinging loads.

(h) The operator shall avoid carrying loads over people.

(i) When work is stopped or when the derrick is not in operation, the boom shall be lowered to a horizontal position or tied in place to prevent it whipping with the wind or other external force.

(j) Only authorized personnel shall make sling hitches on loads.

(k) Workers shall not be allowed to ride on loads handled by derricks.

(l) Operators shall observe signals only from duly authorized persons. Under no circumstances shall a load be moved until the signal is received from authorized personnel.

(m) Belts, gears, shafts, pulleys, sprockets, spindles, drums, fly wheels, chains, or other reciprocating, rotating, or other moving parts or equipment shall be guarded if such parts are exposed to contact by employees, or otherwise create a hazard. Guarding shall meet the requirements of chapter 296-24 WAC.

(n) A minimum distance of thirty inches clearance shall be maintained between the swing radius of the greatest extension of the crane superstructure or counterweights and a stationary object, including the crane itself, while the crane is in operation. When this clearance cannot be maintained, suitable barricades or safeguards shall be used to isolate the pinch point hazard area.

(o) All exhaust pipes shall be guarded or insulated where contact by employees, in the performance of normal duties, is possible.

(3) Additional requirements.

(a) Whenever internal combustion engine powered equipment exhausts in enclosed spaces, tests shall be made and recorded to see that employees are not exposed to unsafe concentrations of toxic gases or oxygen deficient atmospheres. (See chapter 296-62 WAC, the general occupational health standards and ~~((other applicable standards))~~ chapter 296-841 WAC, identifying and controlling respiratory hazards.)

(b) All cab glazing shall be safety glazing material. Windows shall be provided in the front and on both sides of the cab or operator's compartment with visibility forward and to either side. Visibility forward shall include a vertical range adequate to cover the boom point at all times. The front window may have a section which can be readily removed or held open, if desired. If the section is of the type held in the open position, it shall be secured to prevent inadvertent closure. A windshield wiper should be provided on the front window.

(c)(i) Where necessary for rigging or service requirements, a ladder or steps shall be provided to give access to a cab roof.

(ii) On cranes, guardrails, handholds and steps shall be provided for easy access to the car and cab in accordance with chapter 296-155 WAC, Part C-1 and Part J.

(iii) Platforms and walkways shall have anti-skid surfaces.

(d) Fuel tank filler pipe shall be located in such a position, or protected in such manner, as to not allow spill or overflow to run onto the engine, exhaust, or electrical equipment of any machine being fueled.

(i) An accessible fire extinguisher of 5BC rating, or higher, shall be available at all operator stations or cabs of equipment.

Note: For additional requirements relating to portable fire extinguishers see WAC 296-800-300.

(ii) All fuels shall be transported, stored, and handled to meet the rules of Part D of this chapter. When fuel is transported by vehicles on public highways, department of transportation rules concerning such vehicular transportation are considered applicable.

(e) Except where electrical distribution and transmission lines have been deenergized and visibly grounded at point of work or where insulating barriers, not a part of or an attachment to the equipment or machinery, have been erected to prevent physical contact with the lines, equipment or machines shall be operated proximate to power lines only in accordance with the following:

(i) For lines rated 50 kV. or below, minimum clearance between the lines and any part of the crane or load shall be 10 feet;

(ii) For lines rated over 50 kV., minimum clearance between the lines and any part of the crane or load shall be 10 feet plus 0.4 inch for each 1 kV. over 50 kV., or twice the length of the line insulator, but never less than 10 feet;

(iii) In transit with no load and boom lowered, the equipment clearance shall be a minimum of 4 feet for voltages less than 50 kV., and 10 feet for voltages over 50 kV. up to and including 345 kV., and 16 feet for voltages up to and including 750 kV.;

(iv) A person shall be designated to observe clearance of the equipment and give timely warning to insure that the required separation is maintained for all operations where it is difficult for the operator to maintain the desired clearance by visual means;

(v) Cage-type boom guards, insulating links, or proximity warning devices may be used on cranes, but the use of such devices shall not alter the requirements of any other regulation of this part even if such device is required by law or regulation;

(vi) Any overhead wire shall be considered to be an energized line unless and until the person owning such line or the electrical utility authorities indicate that it is not an energized line and it has been visibly grounded;

(vii) Prior to work near transmitter tower where an electrical charge can be induced in the equipment or materials being handled, the transmitter shall be deenergized or tests shall be made to determine if electrical charge is induced on the crane.

(f) The following precautions shall be taken when necessary to dissipate induced voltage:

(i) The equipment shall be provided with an electrical ground directly to the upper rotating structure supporting the boom; and

(ii) Ground jumper cables shall be attached to materials being handled by boom equipment when electrical charge is induced while working near energized transmitters. Crews shall be provided with nonconductive poles having large alligator clips or other similar protection to attach the ground cable to the load.

(iii) Combustible and flammable materials shall be removed from the immediate area prior to operations.

(g) No modifications or additions which affect the capacity or safe operation of the equipment shall be made by the employer without the manufacturer's or a qualified engineer's written approval. If such modifications or changes are made,

the capacity, operation, and maintenance instruction plates, tags, or decals, shall be changed accordingly. In no case shall the original safety factor of the equipment be reduced.

(h) The employer shall comply with Power Crane and Shovel Association, Mobile Hydraulic Crane Standard No. 2.

(i) Sideboom cranes mounted on wheel or crawler tractors shall meet the requirements of SAE J743a-1964.

(4) Crawler, locomotive, and truck cranes.

(a) All jibs shall have positive stops to prevent their movement of more than 5° above the straight line of the jib and boom on conventional type crane booms. The use of cable type belly slings does not constitute compliance with this standard.

(b) All crawler, truck or locomotive cranes in use shall meet the applicable requirements for design, inspection, construction, testing, maintenance and operation as prescribed in the ANSI B30.5-1989, Safety Code for Crawler, Locomotive and Truck Cranes.

(5) Tower cranes.

(a) Tower cranes shall be erected, jumped and dismantled under the immediate supervision of a competent person, designated by the employer.

(b) Tower cranes shall be erected, maintained and used in accordance with the manufacturer's specifications, recommendations and procedures. All modifications shall be approved by the manufacturer and engineered by a professional engineer. The safety factors shall not be reduced by any modifications. The crane plates and charts shall be changed to reflect any modifications made.

(c) A professional engineer shall certify that the crane foundations and underlying soil are adequate support for the tower crane with its maximum overturning movement.

(d) Tower cranes shall be positioned whereby they can swing 360° without either the counterweight or jib striking any building, structure or other object, except:

(i) If the crane can strike an object or another crane, suitable limit switches shall be installed which will prohibit contact with such objects, or;

(ii) Direct voice communications shall be established between any operator of the tower crane(s) involved and a signalperson so stationed where the boom and/or counterweight movement, and the object with which it may contact can be observed so that the operator(s) can be warned of imminent danger.

(iii) A secondary means of positive communications shall be established as a back-up for possible direct voice communication failure.

(iv) Radio communication systems without tone coded squelch are prohibited. Citizens band radios shall not be used as a means of communications for tower cranes.

(e) Prior to installing a climbing tower crane within an existing building or new construction, a structural engineer shall certify that the building is designed to withstand the torque and floor loading created by the crane to be installed.

(f) Tower cranes erected on a new foundation shall be tested in accordance with ANSI B30.3-1990 Chapter 3-1.

(i) The test shall consist of suspending a load of not less than 110% of the rated capacity for 15 minutes. The load shall be suspended from the furthest point of the length of

boom (jib) to be used. The results of this test shall be within the manufacturer's recommendations and/or specifications.

(ii) A record of each test shall be made and signed by the person responsible for conducting the test. Such records shall be maintained on the construction site for the duration of the construction work for which it was erected and subsequently made a part of the firm's permanent equipment records. Records shall be made available to authorized representatives of the department, upon request.

(g) A capacity chart shall be furnished by each crane manufacturer which shall include a full and complete range of crane load ratings at all stated operating radii for each allowable speed and each recommended counterweight load.

(i) Such chart shall be posted in the operator's cab or at the remote control stand in use. In lieu of the chart at the remote control stand, a minimum of two weight capacity signs shall be affixed to the jib or boom.

(ii) The chart shall be visible and readable to the operator while at the normal operating position.

(h) Operating controls shall be properly marked to indicate the function of the controls in each position.

(i) An operating and maintenance manual written in the English language shall be provided with each tower crane.

(j) Limit switches shall be installed and shall be kept properly adjusted. They shall be protected or isolated in a manner which will prevent unauthorized tampering. Limit switches shall provide the following functions:

(i) Safely limit the travel of the trolley to prevent it from hitting the outer end of the jib.

(ii) Limit the upward travel of the load block to prevent two-blocking.

(iii) Lower over travel limiting devices shall be provided for all load hoists where the hook area is not visible to the operator.

(iv) Limit the load being lifted in a manner whereby no more than 110% of the maximum rated load can be lifted or moved.

(k) The crane shall not be used to pull vehicles of any type, remove piling, loosen form work, pull away loads which are attached to the ground or walls, or for any operation other than the proper handling of freely suspended loads.

(l) When the operator may be exposed to the hazard of falling objects, the tower crane cab and/or remote control station shall have adequate overhead protection.

(m) The operator shall be protected from the weather. If enclosed cabs are provided they shall provide clear visibility in all directions and glass shall be approved safety glass or the equivalent.

(n) An approved and safe means shall be provided for access to operator's cab and machinery platform.

(o) When necessary for inspection or maintenance purposes, ladders, walkways with railing or other devices shall be provided.

(p) Each tower crane shall be provided with a slewing brake capable of preventing the jib or boom from rotating in either direction and stopping the rotation of the jib or boom while loaded, when desired. Such brake shall have a holding device which, when set, will hold the jib or boom in a fixed location without additional attention of the operator. When the crane is out of operation, the jib or boom shall be pointed

downwind and the slewing brake shall be released so as to permit the jib or boom to weathervane, providing the jib or boom has a clear 360 degree rotation. Where a 360 degree rotation is not provided, the jib or boom shall be pointed downwind from the prevailing wind and the slewing brake set.

(q) Each tower crane shall be provided with a braking system on the trolley capable of stopping and holding the trolley in any desired position while carrying a maximum load. This brake shall be capable of being locked in a fixed location without additional attention of the operator. An automatic brake or device shall be installed which will immediately stop and lock the trolley in position in the event of a breakage of the trolley rope.

(r) All electrical equipment shall be properly grounded and protection shall be provided against lightning.

(s) When the operator is actually operating the crane, the operator shall remain in a stationary position.

(t) All crane brakes shall automatically set in event of power failure. Swing brakes shall also function in this manner or be capable of being set manually.

(u) Climbing jack systems used for raising a tower crane shall be equipped with over-pressure relief valves, direct-reading pressure gauges, and pilot-operated hydraulic check valves installed in a manner which will prevent jack from retracting should a hydraulic line or fitting rupture or fail.

(v) During periods of high winds or weather affecting visibility, i.e., fog, etc., only loads shall be handled that are consistent with good safety practices. Good safety practices shall be mutually agreed upon by the operator and the person in charge of the construction job, with due consideration given to manufacturer's specifications and recommendations.

(w) Counterweights shall be securely fastened in place and shall not exceed the weight as recommended by the manufacturer for the length of jib being used. However, an amount of counterweight as recommended by the manufacturer shall be used.

(x) Tower cranes shall be inspected and maintained in accordance with the manufacturer's recommendations or more frequently if there is reason to suspect a possible defect or weakening of any portion of the structure or equipment.

(y) Guy wires, wedges, braces or other supports shall be inspected at the beginning and at midpoint of each working shift to ascertain that they are functioning as intended.

(6) Additional tower crane requirements.

(a) An approved method must be instituted for transmitting signals to the operator. Standard hand signals for crane operations must be used, whenever possible; however, if conditions are such that hand signals are ineffective, radio-controlled or electric-whistle signal or two-way voice communication must be used. (See WAC 296-155-525 (5)(d).)

(b) Tower cranes shall not be erected or raised when the wind velocity at the worksite exceeds 20 m.p.h. or that specified by the manufacturer.

(c) Tower crane operators shall be trained and experienced in tower crane operations; however, for gaining experience, persons may operate the tower crane if under the immediate supervision of an experienced operator.

(d) Adequate clearance shall be maintained between moving and rotating structures of the crane and fixed objects to allow the passage of employees without harm.

(e) Employees required to perform duties on the horizontal boom of hammerhead tower cranes shall be protected against falling by guardrails or by a full body harness and lanyards attached to crane or to lifelines in conformance with Part C-1 of this chapter.

(f) Buffers shall be provided at both ends of travel of the trolley.

(g) Cranes mounted on rail tracks shall be equipped with limit switches limiting the travel of the crane on the track and stops or buffers at each end of the tracks.

(h) All hammerhead tower cranes in use shall meet the applicable requirements for design, construction, installation, testing, maintenance, inspection, and operation as prescribed by the manufacturer.

(i) Access ladders inside the telescoping sections of tower cranes are exempt from those sections of the safety standards pertaining to cleat length and cleat spacing, but shall conform to manufacturer's recommendations and specifications.

(7) Overhead and gantry cranes.

(a) The rated load of the crane shall be plainly marked on each side of the crane, and if the crane has more than one hoisting unit, each hoist shall have its rated load marked on it or its load block, and this marking shall be clearly legible from the ground or floor.

(b) Bridge trucks shall be equipped with sweeps which extend below the top of the rail and project in front of the truck wheels.

(c) Except for floor-operated cranes, a gong or other effective audible warning signal shall be provided for each crane equipped with a power traveling mechanism.

(d) All overhead and gantry cranes in use shall meet the applicable requirements for design, construction, installation, testing, maintenance, inspection, and operation as prescribed in ANSI B30.2.0-1990, Safety Code for Overhead and Gantry Cranes.

(8) Derricks. All derricks in use shall meet the applicable requirements for design, construction, installation, inspection, testing, maintenance, and operation as prescribed in American National Standard Institute B30.6-1990, Safety Code for Derricks.

(9) Floating cranes and derricks.

(a) Mobile cranes mounted on barges.

(i) When a mobile crane is mounted on a barge, the rated load of the crane shall not exceed the original capacity specified by the manufacturer.

(ii) A load rating chart, with clearly legible letters and figures, shall be provided with each crane, and securely fixed at a location easily visible to the operator.

(iii) When load ratings are reduced to stay within the limits for list of the barge with a crane mounted on it, a new load rating chart shall be provided.

(iv) Mobile cranes on barges shall be positively secured.

(b) Permanently mounted floating cranes and derricks.

(i) When cranes and derricks are permanently installed on a barge, the capacity and limitations of use shall be based on competent design criteria.

(ii) A load rating chart with clearly legible letters and figures shall be provided and securely fixed at a location easily visible to the operator.

(iii) Floating cranes and floating derricks in use shall meet the applicable requirements for design, construction, installation, testing, maintenance, and operation as prescribed by the manufacturer.

(c) Protection of employees working on barges. The employer shall comply with the applicable requirements for protection of employees as specified in WAC 296-155-630.

(10) Mobile cranes and excavation machines.

(a) In all power driven shovel operations the person in charge shall issue instructions necessary to prevent accidents, to detect and correct unsafe acts and dangerous conditions, and to enforce all safety rules and regulations.

The person in charge shall also issue instructions on the proper method of using tools and handling material.

(b) Where the ground is soft or uneven, timbering and planking shall be used to provide firm foundation and distribute the load.

(c) In case of a breakdown, the shovel shall be moved away from the foot of the slope before repairs are made.

(d) All persons shall keep away from the range of the shovel's swing and shall not be permitted to stand back of the shovel or in line with the swing of the dipper during operation or moving of shovel.

(e) Unauthorized persons shall not be allowed on the shovel during operations, and the operator shall not converse with other persons while operating machine.

(f) The shovel dipper shall rest on the ground or on blocking during shut down periods.

(g) Shovels shall be inspected daily and all defects promptly repaired.

(h) All rubber tired mobile cranes shall be equipped with outriggers and sufficient blocking to properly stabilize crane while operating.

(i) Rubber tired mobile cranes shall be equipped with rear view mirrors.

(j) Positive boom stops shall be provided on all mobile cranes of the wheel and crawler type.

(k) Length of a crane boom and amount of counterweight shall not exceed manufacturer's rated capacity for equipment involved; except on isolated cases where permission is granted by the department.

(l) On all cranes where wedge brackets are used as terminal connections, the proper size wedge shall be used.

(m) On all mobile cranes, the hoist and boom drums shall be provided with a positive operated pawl or dog which shall be used in addition to the brake to hold the load and boom when they are suspended. Counterweight operated dogs are prohibited.

(n) Oiling and greasing shall be done under safe conditions with machine at rest, except when motion of machine is necessary.

(o) All steps, running boards, and boom ladder shall be of substantial construction and in good repair at all times.

(p) Operators shall not leave the cab while master clutch is engaged.

(q) Fire extinguishers shall be readily accessible and within reach of operator at all times.

(r) All shovel and crane cabs shall be kept clean and free of excess oil and grease on floor and machinery. Oily and greasy rags shall be disposed of immediately after use and not allowed to accumulate.

(s) Tools shall not be left on the cab floor. Spare cans of oil or fuel, and spare parts, shall not be stored in cabs, except in approved racks provided for that purpose.

(t) Mats or planking shall be used in moving shovels or cranes over soft or uneven ground.

(u) Cranes or shovels setting on steep grades shall be securely blocked or secured with a tail hold.

(v) Smoking shall be prohibited while fueling or oiling machines.

(w) Gasoline powered motors shall be stopped during refueling.

(x) Handling of movable feed line (bologna) shall be accomplished with insulated hooks and lineman's rubber gloves.

(y) Where cables cross roads they shall be elevated or placed in a trench.

(z) On all power shovels, including back-hoe types, of one-half cubic yard capacity or over, and on all dragline cranes or all-purpose cranes of the crawler or wheel type, two persons shall constitute the minimum working crew. It is mandatory that one be a qualified operator of the equipment in use. The job title of the other crew member may be oiler, rigger, signal person, or a laborer. The primary purpose of the second crew member is to signal the operator when the operator's vision is impaired or obscured and to be on-hand in case of emergency.

(i) Second-crew persons shall be properly trained in their second-person required skills.

(ii) The second crew member shall be close enough to the machine in operation to be aware of any emergency, if one arises, and to assure the machine is operated with necessary and appropriate signals to the operator.

AMENDATORY SECTION (Amending WSR 99-17-094, filed 8/17/99, effective 12/1/99)

WAC 296-155-655 General protection requirements.

(1) Surface encumbrances. All surface encumbrances that are located so as to create a hazard to employees shall be removed or supported, as necessary, to safeguard employees.

(2) Underground installations.

(a) The location of utility installations, such as sewer, telephone, fuel, electric, water lines, or any other underground installations that reasonably may be expected to be encountered during excavation work, shall be located prior to opening an excavation.

(b) Utility companies or owners shall be contacted within established or customary local response times, advised of the proposed work, and asked to locate the underground utility installation prior to the start of actual excavation.

(c) When excavation operations approach the location of underground installations, the exact location of the installations shall be determined by safe and acceptable means.

(d) While the excavation is open, underground installations shall be protected, supported, or removed as necessary to safeguard employees.

(3) Access and egress.

(a) Structural ramps.

(i) Structural ramps that are used solely by employees as a means of access or egress from excavations shall be designed by a competent person. Structural ramps used for access or egress of equipment shall be designed by a competent person qualified in structural design, and shall be constructed in accordance with the design.

(ii) Ramps and runways constructed of two or more structural members shall have the structural members connected together to prevent displacement.

(iii) Structural members used for ramps and runways shall be of uniform thickness.

(iv) Cleats or other appropriate means used to connect runway structural members shall be attached to the bottom of the runway or shall be attached in a manner to prevent tripping.

(v) Structural ramps used in lieu of steps shall be provided with cleats or other surface treatments on the top surface to prevent slipping.

(b) Means of egress from trench excavations. A stairway, ladder, ramp or other safe means of egress shall be located in trench excavations that are 4 feet (1.22 m) or more in depth so as to require no more than 25 feet (7.62 m) of lateral travel for employees.

(4) Exposure to vehicular traffic. Employees exposed to public vehicular traffic shall be provided with, and shall wear, warning vests or other suitable garments marked with or made of reflectorized or high-visibility material.

(5) Exposure to falling loads. No employee shall be permitted underneath loads handled by lifting or digging equipment. Employees shall be required to stand away from any vehicle being loaded or unloaded to avoid being struck by any spillage or falling materials. Operators may remain in the cabs of vehicles being loaded or unloaded when the vehicles are equipped, in accordance with WAC 296-155-610 (2)(g), to provide adequate protection for the operator during loading and unloading operations.

(6) Warning system for mobile equipment. When mobile equipment is operated adjacent to an excavation, or when such equipment is required to approach the edge of an excavation, and the operator does not have a clear and direct view of the edge of the excavation, a warning system shall be utilized such as barricades, hand or mechanical signals, or stop logs. If possible, the grade should be away from the excavation.

(7) Hazardous atmospheres.

(a) Testing and controls. In addition to the requirements set forth in parts B-1, C, and C-1 of this chapter (296-155 WAC) to prevent exposure to harmful levels of atmospheric contaminants and to assure acceptable atmospheric conditions, the following requirements shall apply:

(i) Where oxygen deficiency (atmospheres containing less than 19.5 percent oxygen) or a hazardous atmosphere exists or could reasonably be expected to exist, such as in excavations in landfill areas or excavations in areas where hazardous substances are stored nearby, the atmospheres in the excavation shall be tested before employees enter excavations greater than 4 feet (1.22 m) in depth.

(ii) Adequate precautions shall be taken to prevent employee exposure to atmospheres containing less than 19.5 percent oxygen and other hazardous atmospheres. These precautions include providing proper respiratory protection or ventilation (~~((in accordance with parts [as required by chapter 296-62 WAC, part E and by part] B-1 [and C] of this chapter [respectively]))~~) in accordance with chapter 296-842 WAC.

(iii) Adequate precaution shall be taken such as providing ventilation, to prevent employee exposure to an atmosphere containing a concentration of a flammable gas in excess of 10 percent of the lower flammable limit of the gas.

(iv) When controls are used that are intended to reduce the level of atmospheric contaminants to acceptable levels, testing shall be conducted as often as necessary to ensure that the atmosphere remains safe.

(b) Emergency rescue equipment.

(i) Emergency rescue equipment, such as breathing apparatus, a safety harness and line, or a basket stretcher, shall be readily available where hazardous atmospheric conditions exist or may reasonably be expected to develop during work in an excavation. This equipment shall be attended when in use.

(ii) Employees entering bell-bottom pier holes, or other similar deep and confined footing excavations, shall wear a harness with a lifeline securely attached to it. The lifeline shall be separate from any line used to handle materials, and shall be individually attended at all times while the employee wearing the lifeline is in the excavation.

Note: See chapter 296-62 WAC, Part M for additional requirements applicable to confined space operations.

(8) Protection from hazards associated with water accumulation.

(a) Employees shall not work in excavations in which there is accumulated water, or in excavations in which water is accumulating, unless adequate precautions have been taken to protect employees against the hazards posed by water accumulation. The precautions necessary to protect employees adequately vary with each situation, but could include special support or shield systems to protect from cave-ins, water removal to control the level of accumulating water, or use of a safety harness and lifeline.

(b) If water is controlled or prevented from accumulating by the use of water removal equipment, the water removal equipment and operations shall be monitored by a competent person to ensure proper operation.

(c) If excavation work interrupts the natural drainage of surface water (such as streams), diversion ditches, dikes, or other suitable means shall be used to prevent surface water from entering the excavation and to provide adequate drainage of the area adjacent to the excavation. Excavations subject to runoff from heavy rains will require an inspection by a competent person and compliance with subdivisions (a) and (b) of this subsection.

(9) Stability of adjacent structures.

(a) Where the stability of adjoining buildings, walls, or other structures is endangered by excavation operations, support systems such as shoring, bracing, or underpinning shall be provided to ensure the stability of such structures for the protection of employees.

(b) Excavation below the level of the base or footing of any foundation or retaining wall that could be reasonably expected to pose a hazard to employees shall not be permitted except when:

(i) A support system, such as underpinning, is provided to ensure the safety of employees and the stability of the structure; or

(ii) The excavation is in stable rock; or

(iii) A registered professional engineer has approved the determination that the structure is sufficiently removed from the excavation so as to be unaffected by the excavation activity; or

(iv) A registered professional engineer has approved the determination that such excavation work will not pose a hazard to employees.

(c) Sidewalks, pavements, and appurtenant structure shall not be undermined unless a support system or another method of protection is provided to protect employees from the possible collapse of such structures.

(10) Protection of employees from loose rock or soil.

(a) Adequate protection shall be provided to protect employees from loose rock or soil that could pose a hazard by falling or rolling from an excavation face. Such protection shall consist of scaling to remove loose material; installation of protective barricades at intervals as necessary on the face to stop and contain falling material; or other means that provide equivalent protection.

(b) Employees shall be protected from excavated or other materials or equipment that could pose a hazard by falling or rolling into excavations. Protection shall be provided by placing and keeping such materials or equipment at least 2 feet (.61 m) from the edge of excavations, or by the use of retaining devices that are sufficient to prevent materials or equipment from falling or rolling into excavations, or by a combination of both if necessary.

(11) Inspections.

(a) Daily inspections of excavations, the adjacent areas, and protective systems shall be made by a competent person for evidence of a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions. An inspection shall be conducted by the competent person prior to the start of work and as needed throughout the shift. Inspections shall also be made after every rainstorm or other hazard increasing occurrence. These inspections are only required when employee exposure can be reasonably anticipated.

(b) Where the competent person finds evidence of a situation that could result in a possible cave-in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed employees shall be removed from the hazardous area until the necessary precautions have been taken to ensure their safety.

(12) Fall protection.

(a) Walkways shall be provided where employees or equipment are required or permitted to cross over excavations. Guardrails which comply with chapter 296-155 WAC, Part K shall be provided where walkways are 4 feet or more above lower levels.

(b) Adequate barrier physical protection shall be provided at all remotely located excavations. All wells, pits,

shafts, etc., shall be barricaded or covered. Upon completion of exploration and similar operations, temporary wells, pits, shafts, etc., shall be backfilled.

AMENDATORY SECTION (Amending WSR 01-17-033, filed 8/8/01, effective 9/1/01)

WAC 296-155-730 Tunnels and shafts. (1) Scope and application.

(a) This section applies to the construction of underground tunnels, shafts, chambers, and passageways. This section also applies to cut-and-cover excavations which are both physically connected to ongoing underground construction operations within the scope of this section, and covered in such a manner as to create conditions characteristic of underground construction.

(b) This section does not apply to excavation and trenching operations covered by Part N of this chapter, such as foundation operations for above-ground structures that are not physically connected to underground construction operations, and surface excavation.

(c) The employer shall comply with the requirements of this part and chapter in addition to applicable requirements of chapter 296-36 WAC, Safety standards—Compressed air work.

(2) Access and egress.

(a) Each operation shall have a check-in/check-out system that will provide positive identification of every employee underground. An accurate record of identification and location of the employees shall be kept on the surface. This procedure is not required when the construction of underground facilities designed for human occupancy has been sufficiently completed so that the permanent environmental controls are effective, and when the remaining construction activity will not cause any environmental hazard, or structural failure within the facilities.

(b) The employer shall provide and maintain safe means of access and egress to all work stations.

(c) The employer shall provide access and egress in such a manner that employees are protected from being struck by excavators, haulage machines, trains, and other mobile equipment.

(d) The employer shall control access to all openings to prevent unauthorized entry underground. Unused chutes, manways, or other openings shall be tightly covered, bulk-headed, or fenced off, and shall be posted with warning signs indicating "keep out" or similar language. Completed or unused sections of the underground facility shall be barricaded.

(3) Safety instruction. All employees shall be instructed in the recognition and avoidance of hazards associated with underground construction activities including, where appropriate, the following subjects:

- (a) Air monitoring;
- (b) Ventilation;
- (c) Confined space entry procedures;
- (d) Permit-required confined space entry procedures;
- (e) Illumination;
- (f) Communications;
- (g) Flood control;

(h) Mechanical equipment;

(i) Personal protective equipment;

(j) Explosives;

(k) Fire prevention and protection; and

(l) Emergency procedures, including evacuation plans and check-in/check-out systems.

(4) Notification.

(a) Oncoming shifts shall be informed of any hazardous occurrences or conditions that have affected, or might affect employee safety, including liberation of gas, equipment failures, earth or rock slides, cave-ins, floodings, fire(s), or explosions.

(b) Information specified in (a) of this subsection shall be recorded in a shift journal which shall be current prior to the end of each shift, and shall be located aboveground.

(c) Oncoming supervisory personnel shall read the notification prior to going underground, and shall signify their understanding of the contents by affixing their respective initials to the log.

(d) The hazard notification log shall be retained on the site until the completion of the project.

(e) The employer shall establish and maintain direct communications for coordination of activities with other employers whose operations at the jobsite affect or may affect the safety of employees underground.

(5) Communications.

(a) When natural unassisted voice communication is ineffective, a power-assisted means of voice communication shall be used to provide communication between the work face, the bottom of the shaft, and the surface.

(b) Two effective means of communication, at least one of which shall be voice communication, shall be provided in all shafts which are being developed or used either for personnel access or for hoisting. Additional requirements for hoist operator communication are contained in subsection (22)(c)(xv) of this section.

(c) Powered communication systems shall operate on an independent power supply, and shall be installed so that the use of or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

(d) Communication systems shall be tested upon initial entry of each shift to the underground, and as often as necessary at later times, to ensure that they are in working order.

(e) Any employee working alone underground in a hazardous location, who is both out of the range of natural unassisted voice communication and not under observation by other persons, shall be provided with an effective means of obtaining assistance in an emergency.

(6) Emergency provisions. Hoisting capability. When a shaft is used as a means of egress, the employer shall make advance arrangements for power-assisted hoisting capability to be readily available in an emergency, unless the regular hoisting means can continue to function in the event of an electrical power failure at the jobsite. Such hoisting means shall be designed so that the load hoist drum is powered in both directions of rotation and so that the brake is automatically applied upon power release or failure.

(7) Self-rescuers. The employer must provide self-rescuers certified by the National Institute for Occupational Safety

and Health under 42 CFR part 84. The respirators must be immediately available to all employees at work stations in underground areas where employees might be trapped by smoke or gas. The selection, issuance, use, and care of respirators must be in accordance with the requirements of chapter ((296-62)) 296-842 WAC((, Part E)).

(8) Designated person. At least one designated person shall be on duty aboveground whenever any employee is working underground. This designated person shall be responsible for securing immediate aid and keeping an accurate record of the number, identification, and location of employees who are underground in case of emergency. The designated person must not be so busy with other responsibilities that the personnel counting and identification function is encumbered.

(9) Emergency lighting. Each employee underground shall have an acceptable portable hand lamp or cap lamp in his or her work area for emergency use, unless natural light or an emergency lighting system provides adequate illumination for escape.

(10) Rescue teams.

(a) On jobsites where 25 or more employees work underground at one time, the employer shall provide (or make arrangements in advance with locally available rescue services to provide) at least two 5-person rescue teams, one on the jobsite or within one-half hour travel time from the entry point, and the other within 2 hours travel time.

(b) On jobsites where less than 25 employees work underground at one time, the employer shall provide (or make arrangements in advance with locally available rescue services to provide) at least one 5-person rescue team to be either on the jobsite or within one-half hour travel time from the entry point.

(c) Rescue team members shall be qualified in rescue procedures, the use and limitations of breathing apparatus, and the use of fire fighting equipment. Qualifications shall be reviewed not less than annually.

(d) On jobsites where flammable or noxious gases are encountered or anticipated in hazardous quantities, rescue team members shall practice donning and using pressure demand mode, self-contained breathing apparatuses monthly.

(e) The employer shall ensure that rescue teams are familiar with conditions at the jobsite.

(11) Hazardous classifications.

(a) Potentially gassy operations. Underground construction operations shall be classified as potentially gassy if either:

(i) Air monitoring discloses 10 percent or more of the lower explosive limit for methane or other flammable gases measured at 12 inches (304.8 mm)+/-0.25 inch (6.35 mm) from the roof, face, floor, or walls in any underground work area for more than a 24-hour period; or

(ii) The history of the geographical area or geological formation indicates that 10 percent or more of the lower explosive limit for methane or other flammable gases is likely to be encountered in such underground operations.

(b) Gassy operations. Underground construction operations shall be classified as gassy if:

(i) Air monitoring discloses 10 percent or more of the lower explosive limit for methane or other flammable gases

measured at 12 inches (304.8 mm)+/-0.25 inch (6.35 mm) from the roof, face, floor, or walls in any underground work area for three consecutive days; or

(ii) There has been an ignition of methane or of other flammable gases emanating from the strata that indicates the presence of such gases; or

(iii) The underground construction operation is both connected to an underground work area which is currently classified as gassy and is also subject to a continuous course of air containing the flammable gas concentration.

(c) Declassification to potentially gassy operations. Underground construction gassy operations may be declassified to potentially gassy when air monitoring results remain under 10 percent of the lower explosive limit for methane or other flammable gases for three consecutive days.

(12) Gassy operations—Additional requirements. Only acceptable equipment, maintained in suitable condition, shall be used in gassy operations.

(a) Mobile diesel-powered equipment used in gassy operations shall be either approved in accordance with the requirements of 30 CFR Part 36 (formerly Schedule 31) by MSHA, or shall be demonstrated by the employer to be fully equivalent to such MSHA-approved equipment, and shall be operated in accordance with that part.

(b) Each entrance to a gassy operation shall be prominently posted with signs notifying all entrants of the gassy classification.

(c) Smoking shall be prohibited in all gassy operations and the employer shall be responsible for collecting all personal sources of ignition, such as matches and lighters, from all persons entering a gassy operation.

(d) A fire watch as described in chapter 296-155 WAC, Part H, shall be maintained when hot work is performed.

(e) Once an operation has met the criteria in subsection (11)(a)(i) of this section, warranting classification as gassy, all operations in the affected area, except the following, shall be discontinued until the operation either is in compliance with all of the gassy operation requirements or has been declassified in accordance with (c) of this subsection:

(i) Operations related to the control of the gas concentration;

(ii) Installation of new equipment, or conversion of existing equipment, to comply with this subsection; and

(iii) Installation of above-ground controls for reversing the air flow.

(13) Air quality and monitoring.

(a) General. Air quality limits and control requirements specified in chapter ((296-62)) 296-841 WAC((, Part H,)) shall apply except as modified by this subsection.

(b) The employer shall assign a competent person who shall perform all air monitoring required by this section.

(c) Where this section requires monitoring of airborne contaminants "as often as necessary," the competent person shall make a reasonable determination as to which substances to monitor and how frequently to monitor, considering at least the following factors:

(i) Location of jobsite: Proximity to fuel tanks, sewers, gas lines, old landfills, coal deposits, and swamps;

(ii) Geology: Geological studies of the jobsite, particularly involving the soil type and its permeability;

(iii) History: Presence of air contaminants in nearby job-sites, changes in levels of substances monitored on the prior shift; and

(iv) Work practices and jobsite conditions: The use of diesel engines, use of explosives, use of fuel gas, volume and flow of ventilation, visible atmospheric conditions, decompression of the atmosphere, welding, cutting and hot work, and employees' physical reactions to working underground.

(d) The employer shall provide testing and monitoring instruments which are capable of achieving compliance with the provisions of this subsection, and:

(i) Shall maintain the testing and monitoring instruments in good condition;

(ii) Shall calibrate the instruments on a frequency not to exceed 6 months.

(e) Exposure to airborne contaminants shall not exceed the levels established by chapter ((296-62)) 296-841 WAC((~~Part H~~)).

(f) Respirators shall not be substituted for environmental control measures. However, where environmental controls have not yet been developed, or when necessary by the nature of the work involved (for example, welding, sand blasting, lead burning), an employee may work for short periods of time in concentrations of airborne contaminants which exceed the limit of permissible exposure referred to in (d) of this subsection, if the employee wears a respiratory protective device certified by MSHA-NIOSH for protection against the particular hazards involved, and the selection and use of respirators complies with the provisions of chapter ((296-62)) 296-842 WAC((~~Part E~~)).

(g) Employees shall be withdrawn from areas in which there is a concentration of an airborne contaminant which exceeds the permissible exposure limit listed for that contaminant, except as modified in (t)(i) and (ii) of this subsection.

(h) The atmosphere in all underground work areas shall be tested as often as necessary to assure that the atmosphere at normal atmospheric pressure contains at least 19.5 percent oxygen and no more than 22 percent oxygen.

(i) Tests for oxygen content shall be made before tests for air contaminants.

(j) Field-type oxygen analyzers, or other suitable devices, shall be used to test for oxygen deficiency.

(k) The atmosphere in all underground work areas shall be tested quantitatively for carbon monoxide, nitrogen dioxide, hydrogen sulfide, and other toxic gases, dust, vapors, mists, and fumes as often as necessary to ensure that the permissible exposure limits prescribed in chapter 296-62 WAC, Part H, are not exceeded.

(l) The atmosphere in all underground work areas shall be tested quantitatively for methane and other flammable gases as often as necessary to determine:

(i) Whether action is to be taken under (q), (r), and (s) of this subsection; and

(ii) Whether an operation is to be classified potentially gassy or gassy under subsection (11) of this section.

(m) If diesel-engine or gasoline-engine driven ventilating fans or compressors are used, an initial test shall be made of the inlet air of the fan or compressor, with the engines operating, to ensure that the air supply is not contaminated by engine exhaust.

(n) Testing shall be performed as often as necessary to ensure that the ventilation requirements of subsection (15) of this section are met.

(o) When rapid excavation machines are used, a continuous flammable gas monitor shall be operated at the face with the sensor(s) placed as high and close to the front of the machine's cutter head as practicable.

(p) Whenever air monitoring indicates the presence of 5 ppm or more of hydrogen sulfide, a test shall be conducted in the affected underground work area(s), at least at the beginning and midpoint of each shift, until the concentration of hydrogen sulfide has been less than 5 ppm for 3 consecutive days.

(i) Whenever hydrogen sulfide is detected in an amount exceeding 10 ppm, a continuous sampling and indicating hydrogen sulfide monitor shall be used to monitor the affected work area.

(ii) Employees shall be informed when a concentration of 10 ppm hydrogen sulfide is exceeded.

(iii) The continuous sampling and indicating hydrogen sulfide monitor shall be designed, installed, and maintained to provide a visual and aural alarm when the hydrogen sulfide concentration reaches 15 ppm to signal that additional measures, such as respirator use, increased ventilation, or evacuation, might be necessary to maintain hydrogen sulfide exposure below the permissible exposure limit.

(q) When the competent person determines, on the basis of air monitoring results or other information, that air contaminants may be present in sufficient quantity to be dangerous to life, the employer shall:

(i) Prominently post a notice at all entrances to the underground jobsite to inform all entrants of the hazardous condition; and

(ii) Immediately increase sampling frequency levels to insure workers are not exposed to identified contaminants in excess of the permissible exposure limit(s); and

(iii) Ensure that all necessary precautions are taken to comply with pertinent requirements of this section, and chapter 296-62 WAC.

(r) Whenever five percent or more of the lower explosive limit for methane or other flammable gases is detected in any underground work area(s) or in the air return, steps shall be taken to increase ventilation air volume or otherwise control the gas concentration, unless the employer is operating in accordance with the potentially gassy or gassy operation requirements. Such additional ventilation controls may be discontinued when gas concentrations are reduced below five percent of the lower explosive limit, but shall be reinstated whenever the five percent level is exceeded.

(s) Whenever 10 percent or more of the lower explosive limit for methane or other flammable gases is detected in the vicinity of welding, cutting, or other hot work, such work shall be suspended until the concentration of such flammable gas is reduced to less than 10 percent of the lower explosive limit.

(t) Whenever 20 percent or more of the lower explosive limit for methane or other flammable gases is detected in any underground work area(s) or in the air return:

(i) All employees, except those necessary to eliminate the hazard, shall be immediately withdrawn to a safe location above ground; and

(ii) Employees who remain underground to correct or eliminate the hazard described in (t) above shall be equipped with approved, pressure demand mode, self-contained breathing apparatus, and shall have received adequate training in the proper use of that equipment.

(iii) Electrical power, except for acceptable pumping and ventilation equipment, shall be cut off to the area endangered by the flammable gas until the concentration of such gas is reduced to less than 20 percent of the lower explosive limit.

(14) Additional monitoring for potentially gassy and gassy operations. Operations which meet the criteria for potentially gassy and gassy operations set forth in subsection (13) of this section shall be subject to the additional monitoring requirements of this subsection.

(a) A test for oxygen content shall be conducted in the affected underground work areas and work areas immediately adjacent to such areas at least at the beginning and midpoint of each shift.

(b) When using rapid excavation machines, continuous automatic flammable gas monitoring equipment shall be used to monitor the air at the heading, on the rib, and in the return air duct. The continuous monitor shall signal the heading, and shut down electric power in the affected underground work area, except for acceptable pumping and ventilation equipment, when 20 percent or more of the lower explosive limit for methane or other flammable gases is encountered.

(i) A manual flammable gas monitor shall be used as needed, but at least at the beginning and midpoint of each shift, to ensure that the limits prescribed in subsections (11) and (13) of this section are not exceeded. In addition, a manual electrical shut down control shall be provided near the heading.

(ii) Local gas tests shall be made prior to and continuously during any welding, cutting, or other hot work.

(iii) In underground operations driven by drill-and-blast methods, the air in the affected area shall be tested for flammable gas prior to re-entry after blasting, and continuously when employees are working underground.

(c) Recordkeeping. A record of all air quality tests shall be maintained above ground at the worksite and be made available to the director or his/her representatives upon request. The record shall include the location, date, time, substance and amount monitored. Records of exposures to toxic substances shall be retained in accordance with Part B, chapter 296-62 WAC. All other air quality test records shall be retained until completion of the project.

(15) Ventilation.

(a)(i) Fresh air shall be supplied to all underground work areas in sufficient quantities to prevent dangerous or harmful accumulation of dust, fumes, mists, vapors, or gases.

(ii) Mechanical ventilation shall be provided in all underground work areas except when the employer can demonstrate that natural ventilation provides the necessary air quality through sufficient air volume and air flow.

(b) A minimum of 200 cubic feet (5.7 m³) of fresh air per minute shall be supplied for each employee underground.

(c) The linear velocity of air flow in the tunnel bore, in shafts, and in all other underground work areas shall be at least 30 feet (9.15 m) per minute where blasting or rock drilling is conducted, or where other conditions likely to produce dust, fumes, mists, vapors, or gases in harmful or explosive quantities are present.

(d) The direction of mechanical air flow shall be reversible.

(e) Air that has passed through underground oil or fuel-storage areas shall not be used to ventilate working areas.

(f) Following blasting, ventilation systems shall exhaust smoke and fumes to the outside atmosphere before work is resumed in affected areas.

(g) Ventilation doors shall be designed and installed so that they remain closed when in use, regardless of the direction of the air flow.

(h) When ventilation has been reduced to the extent that hazardous levels of methane or flammable gas may have accumulated, a competent person shall test all affected areas after ventilation has been restored and shall determine whether the atmosphere is within flammable limits before any power, other than for acceptable equipment, is restored or work is resumed.

(i) Whenever the ventilation system has been shut down with all employees out of the underground area, only competent persons authorized to test for air contaminants shall be allowed underground until the ventilation has been restored and all affected areas have been tested for air contaminants and declared safe.

(j) When drilling rock or concrete, appropriate dust control measures shall be taken to maintain dust levels within limits set in chapter 296-155 WAC, Part B-1. Such measures may include, but are not limited to, wet drilling, the use of vacuum collectors, and water mix spray systems.

(k)(i) Internal combustion engines, except diesel-powered engines on mobile equipment, are prohibited underground.

(ii) Mobile diesel-powered equipment used underground in atmospheres other than gassy operations shall be either approved by MSHA in accordance with the provisions of 30 CFR Part 32 (formerly Schedule 24), or shall be demonstrated by the employer to be fully equivalent to such MSHA-approved equipment, and shall be operated in accordance with that Part. (Each brake horsepower of a diesel engine requires at least 100 cubic feet (28.32 m³) of air per minute for suitable operation in addition to the air requirements for personnel. Some engines may require a greater amount of air to ensure that the allowable levels of carbon monoxide, nitric oxide, and nitrogen dioxide are not exceeded.)

(iii) Application shall be made to the mining/explosives section, department of labor and industries, for permission to use specified diesel equipment in a specified underground area and shall include the following:

(A) The type of construction and complete identification data and specifications including analysis of the undiluted exhaust gases of the diesel equipment.

(B) The location where the diesel equipment is to be used.

(C) Before the diesel equipment is taken underground, written permission shall be obtained from the department of

labor and industries or its duly authorized representative. A satisfactory test on surface, to show that the exhaust gases do not exceed the maximum percentage of carbon monoxide permitted, shall be required.

(D) Diesel equipment shall only be used underground where the ventilation is controlled by mechanical means and shall not be operated if the ventilating current is less than 100 CFM per horsepower based on the maximum brake horsepower of the engines.

(E) Air measurements shall be made at least once daily in the diesel engine working area and the measurements entered in the Underground Diesel Engine Record Book. Permissible maximum amounts of noxious gases are as follows:

At engine exhaust ports	Carbon Monoxide	.10%	1,000 ppm ³
Next to equipment	Carbon Monoxide	.0035%	35 ppm
General atmosphere	Carbon Monoxide	.0035%	35 ppm
General atmosphere	Nitrogen Dioxide	.0001%	1 ppm
General atmosphere	Aldehydes	.0002%	2 ppm

³ Parts of vapor or gas per million parts of contaminated air by volume at 25°C and 760 mm Hg. pressure.

(I) Potentially gassy or gassy operations shall have ventilation systems installed which shall:

- (i) Be constructed of fire-resistant materials; and
 - (ii) Have acceptable electrical systems, including fan motors.
- (m) Gassy operations shall be provided with controls located aboveground for reversing the air flow of ventilation systems.

(n) In potentially gassy or gassy operations, wherever mine-type ventilation systems using an offset main fan installed on the surface are used, they shall be equipped with explosion-doors or a weak-wall having an area at least equivalent to the cross-sectional area of the airway.

(16) Illumination.

(a) Sufficient lighting shall be provided, in accordance with the requirements of chapter 296-155 WAC, Part B-1, to permit safe operations at the face as well as in the general tunnel or shaft area and at the employees' workplace.

(b) Only acceptable portable lighting shall be used within 50 feet (15.24 m) of any underground heading during explosive handling.

(17) Fire prevention and control. Fire prevention and protection requirements applicable to underground construction operations are found in Part D of this chapter except as modified by the following additional standards.

(a) Open flames and fires are prohibited in all underground construction operations except as permitted for welding, cutting, and other hot work operations.

(i) Smoking may be allowed only in areas free of fire and explosion hazards.

(ii) Readily visible signs prohibiting smoking and open flames shall be posted in areas having fire or explosion hazards.

(iii) The carrying of matches, lighters, or other flame-producing smoking materials shall be prohibited in all underground operations where fire or explosion hazards exist.

(b) The employer may store underground no more than a 24-hour supply of diesel fuel for the underground equipment used at the worksite.

(c) The piping of diesel fuel from the surface to an underground location is permitted only if:

(i) Diesel fuel is contained at the surface in a tank whose maximum capacity is no more than the amount of fuel required to supply for a 24-hour period the equipment serviced by the underground fueling station; and

(ii) The surface tank is connected to the underground fueling station by an acceptable pipe or hose system that is controlled at the surface by a valve, and at the shaft bottom by a hose nozzle; and

(iii) The pipe is empty at all times except when transferring diesel fuel from the surface tank to a piece of equipment in use underground; and

(iv) Hoisting operations in the shaft are suspended during refueling operations if the supply piping in the shaft is not protected from damage.

(d)(i) Gasoline shall not be carried, stored, or used underground.

(ii) Acetylene, liquefied petroleum gas, and methylacetylene propadiene stabilized gas may be used underground only for welding, cutting and other hot work, and only in accordance with Part H of this chapter and subsections (13), (15), (17), and (18) of this section.

(e) Oil, grease, and diesel fuel stored underground shall be kept in tightly sealed containers in fire-resistant areas at least 300 feet (91.44 m) from underground explosive magazines, and at least 100 feet (30.48 m) from shaft stations and steeply inclined passageways. Storage areas shall be positioned or diked so that the contents of ruptured or overturned containers will not flow from the storage area.

(f) Flammable or combustible materials shall not be stored above ground within 100 feet (30.48 m) of any access opening to any underground operation. Where this is not feasible because of space limitations at the jobsite, such materials may be located within the 100-foot limit, provided that:

(i) They are located as far as practicable from the opening; and

(ii) Either a fire-resistant barrier of not less than one-hour rating is placed between the stored material and the opening, or additional precautions are taken which will protect the materials from ignition sources.

(g) Fire-resistant hydraulic fluids shall be used in hydraulically-actuated underground machinery and equipment unless such equipment is protected by a fire suppression system or by multipurpose fire extinguisher(s) rated at a sufficient capacity for the type and size of hydraulic equipment involved, but rated at least 4A:4OB:C.

(h)(i) Electrical installations in underground areas where oil, grease, or diesel fuel are stored shall be used only for lighting fixtures.

(ii) Lighting fixtures in storage areas, or within 25 feet (7.62 m) of underground areas where oil, grease, or diesel fuel are stored, shall be approved for Class I, Division 2 locations, in accordance with Part I of this chapter.

(i) Leaks and spills of flammable or combustible fluids shall be cleaned up immediately.

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(j) A fire extinguisher of at least 4A:40B:C rating or other equivalent extinguishing means shall be provided at the head pulley and at the tail pulley of underground belt conveyors, and at 300-foot intervals along the belt.

(k) Any structure located underground or within 100 feet (30.48 m) of an opening to the underground shall be constructed of material having a fire-resistance rating of at least one hour.

(18) Welding, cutting, and other hot work. In addition to the requirements of Part H of this chapter, the following requirements shall apply to underground welding, cutting, and other hot work.

(a) No more than the amount of fuel gas and oxygen cylinders necessary to perform welding, cutting, or other hot work during the next 24-hour period shall be permitted underground.

(b) Noncombustible barriers shall be installed below welding, cutting, or other hot work being done in or over a shaft or raise.

(19) Ground support.

(a) In tunnels (other than hard rock) timber sets, steel rings, steel frames, concrete liners, or other engineered tunnel support systems shall be used. Every tunnel support system shall be designed by a licensed professional engineer. Design specifications shall be available at the worksite.

(b) Portal areas. Portal openings and access areas shall be guarded by shoring, fencing, head walls, shotcreting, or other equivalent protection to ensure safe access of employees and equipment. Adjacent areas shall be scaled or otherwise secured to prevent loose soil, rock, or fractured materials from endangering the portal and access area.

(c) Subsidence areas. The employer shall ensure ground stability in hazardous subsidence areas by shoring, by filling in, or by erecting barricades and posting warning signs to prevent entry.

(d) Underground areas.

(i)(A) A competent person shall inspect the roof, face, and walls of the work area at the start of each shift and as often as necessary to determine ground stability.

(B) Competent persons conducting such inspections shall be protected from loose ground by location, ground support, or equivalent means.

(ii) Ground conditions along haulageways and travelways shall be inspected as frequently as necessary to ensure safe passage.

(iii) Loose ground that might be hazardous to employees shall be taken down, scaled, or supported.

(iv) Torque wrenches shall be used wherever bolts that depend on torsionally applied force are used for ground support.

(v) A competent person shall determine whether rock bolts meet the necessary torque, and shall determine the testing frequency in light of the bolt system, ground conditions, and the distance from vibration sources.

(vi) Suitable protection shall be provided for employees exposed to the hazard of loose ground while installing ground support systems.

(vii) Support sets shall be installed so that the bottoms have sufficient anchorage to prevent ground pressures from dislodging the support base of the sets. Lateral bracing (collar

bracing, tie rods, or spreaders) shall be provided between immediately adjacent sets to ensure added stability.

(viii) Damaged or dislodged ground supports that create a hazardous condition shall be promptly repaired or replaced. When replacing supports, the new supports shall be installed before the damaged supports are removed.

(ix) A shield or other type of support shall be used to maintain a safe travelway for employees working in dead-end areas ahead of any support replacement operation.

(e) Shafts.

(i) Shafts and wells over 4 feet (1.219 m) in depth that employees must enter shall be supported by a steel casing, concrete pipe, timber, solid rock, or other suitable material.

(ii)(A) The full depth of the shaft shall be supported by casing or bracing except where the shaft penetrates into solid rock having characteristics that will not change as a result of exposure. Where the shaft passes through earth into solid rock, or through solid rock into earth, and where there is potential for shear, the casing or bracing shall extend at least 5 feet (1.53 m) into the solid rock. When the shaft terminates in solid rock, the casing or bracing shall extend to the end of the shaft or 5 feet (1.53 m) into the solid rock, whichever is less.

(B) The casing or bracing shall extend 42 inches (1.07 m) plus or minus 3 inches (8 cm) above ground level, except that the minimum casing height may be reduced to 12 inches (0.3 m), provided that a standard railing is installed; that the ground adjacent to the top of the shaft is sloped away from the shaft collar to prevent entry of liquids; and that effective barriers are used to prevent mobile equipment operating near the shaft from jumping over the 12-inch (0.3 m) barrier.

(iii) After blasting operations in shafts, a competent person shall determine if the walls, ladders, timbers, blocking, or wedges have loosened. If so, necessary repairs shall be made before employees other than those assigned to make the repairs are allowed in or below the affected areas.

(f) Blasting. This subsection applies in addition to the requirements for blasting and explosives operations, including handling of misfires, which are found in chapter 296-52 WAC.

(i) Blasting wires shall be kept clear of electrical lines, pipes, rails, and other conductive material, excluding earth, to prevent explosives initiation or employee exposure to electric current.

(ii) Following blasting, an employee shall not enter a work area until the air quality meets the requirements of subsection (13) of this section.

(g) Drilling.

(i) A competent person shall inspect all drilling and associated equipment prior to each use. Equipment defects affecting safety shall be corrected before the equipment is used.

(ii) The drilling area shall be inspected for hazards before the drilling operation is started.

(iii) Employees shall not be allowed on a drill mast while the drill bit is in operation or the drill machine is being moved.

(iv) When a drill machine is being moved from one drilling area to another, drill steel, tools, and other equipment shall be secured and the mast shall be placed in a safe position.

(v) Receptacles or racks shall be provided for storing drill steel located on jumbos.

(vi) Employees working below jumbo decks shall be warned whenever drilling is about to begin.

(vii) Drills on columns shall be anchored firmly before starting drilling, and shall be retightened as necessary thereafter.

(viii) The employer shall provide mechanical means on the top deck of a jumbo for lifting unwieldy or heavy material.

(ix) When jumbo decks are over 10 feet (3.05 m) in height, the employer shall install stairs wide enough for two persons.

(x) Jumbo decks more than 10 feet (3.05 m) in height shall be equipped with guardrails on all open sides, excluding access openings of platforms, unless an adjacent surface provides equivalent fall protection.

(xi) Only employees assisting the operator shall be allowed to ride on jumbos, unless the jumbo meets the requirements of subsection (20)(e) of this section.

Note: For additional requirements relating to portable fire extinguishers see WAC 296-800-300.

(xii) Jumbos shall be chocked to prevent movement while employees are working on them.

(xiii) Walking and working surfaces of jumbos shall be maintained to prevent the hazards of slipping, tripping, and falling.

(xiv) Jumbo decks and stair treads shall be designed to be slip-resistant and secured to prevent accidental displacement.

(xv) Scaling bars shall be available at scaling operations and shall be maintained in good condition at all times. Blunted or severely worn bars shall not be used.

(xvi) Before commencing the drill cycle, the face and lifters shall be examined for misfires (residual explosives) and, if found, they shall be removed before drilling commences at the face. Blasting holes shall not be drilled through blasted rock (muck) or water.

(xvii) Employees in a shaft shall be protected either by location or by suitable barrier(s) if powered mechanical loading equipment is used to remove muck containing unfired explosives.

(xviii) A caution sign reading "buried line," or similar wording shall be posted where air lines are buried or otherwise hidden by water or debris.

(20) Haulage.

(a) A competent person shall inspect haulage equipment before each shift.

(i) Equipment defects affecting safety and health shall be corrected before the equipment is used.

(ii) Powered mobile haulage equipment shall be provided with adequate brakes.

(iii) Power mobile haulage equipment, including trains, shall have audible warning devices to warn employees to stay clear. The operator shall sound the warning device before moving the equipment and whenever necessary during travel.

(iv) The operator shall assure that lights which are visible to employees at both ends of any mobile equipment, including a train, are turned on whenever the equipment is operating.

(v) In those cabs where glazing is used, the glass shall be safety glass, or its equivalent, and shall be maintained and cleaned so that vision is not obstructed.

(b) Antirollback devices or brakes shall be installed on inclined conveyor drive units to prevent conveyors from inadvertently running in reverse. Employees shall not be permitted to ride a power-driven chain, belt, or bucket conveyor unless the conveyor is specifically designed for the transportation of persons.

(c) Endless belt-type manlifts are prohibited in underground construction.

(d) General requirements also applicable to underground construction for use of conveyors in construction are found in chapter 296-155 WAC, Part L.

(e) No employee shall ride haulage equipment unless it is equipped with seating for each passenger and protects passengers from being struck, crushed, or caught between other equipment or surfaces. Members of train crews may ride on a locomotive if it is equipped with handholds and nonslip steps or footboards. Requirements applicable to underground construction for motor vehicle transportation of employees are found in chapter 296-155 WAC, Part M.

(f) Conveyor lockout.

(i) Conveyors shall be de-energized and locked out with a padlock, and tagged out with a "Do Not Operate" tag at any time repair, maintenance, or clean-up work is being performed on the conveyor.

(ii) Tags or push button stops are not acceptable.

(iii) Persons shall not be allowed to walk on conveyors except for emergency purposes and then only after the conveyor has been deenergized and locked out in accordance with (f) above, and persons can do so safely.

(g) Powered mobile haulage equipment, including trains, shall not be left unattended unless the master switch or motor is turned off; operating controls are in neutral or park position; and the brakes are set, or equivalent precautions are taken to prevent rolling.

(h) Whenever rails serve as a return for a trolley circuit, both rails shall be bonded at every joint and crossbonded every 200 feet (60.96 m).

(i) When dumping cars by hand, the car dumps shall have tiedown chains, bumper blocks, or other locking or holding devices to prevent the cars from overturning.

(j) Rocker-bottom or bottom-dump cars shall be equipped with positive locking devices to prevent unintended dumping.

(k) Equipment to be hauled shall be loaded and secured to prevent sliding or dislodgement.

(l)(i) Mobile equipment, including rail-mounted equipment, shall be stopped for manual connecting or service work, and;

(ii) Employees shall not reach between moving cars during coupling operations.

(iii) Couplings shall not be aligned, shifted, or cleaned on moving cars or locomotives.

(iv) Safety chains or other connections shall be used in addition to couplers to connect person cars or powder cars whenever the locomotive is uphill of the cars.

(v) When the grade exceeds one percent and there is a potential for runaway cars, safety chains or other connections

shall be used in addition to couplers to connect haulage cars or, as an alternative, the locomotive must be downhill of the train.

(vi) Such safety chains or other connections shall be capable of maintaining connection between cars in the event of either coupler disconnect, failure or breakage.

(m) Parked rail equipment shall be chocked, blocked, or have brakes set to prevent inadvertent movement.

(n) Berms, bumper blocks, safety hooks, or equivalent means shall be provided to prevent overtravel and overturning of haulage equipment at dumping locations.

(o) Bumper blocks or equivalent stopping devices shall be provided at all track dead ends.

(p)(i) Only small handtools, lunch pails, or similar small items may be transported with employees in person cars, or on top of a locomotive.

(ii) When small hand tools or other small items are carried on top of a locomotive, the top shall be designed or modified to retain them while traveling.

(q)(i) Where switching facilities are available, occupied personnel cars shall be pulled, not pushed. If personnel cars must be pushed and visibility of the track ahead is hampered, then a qualified person shall be stationed in the lead car to give signals to the locomotive operator.

(ii) Crew trips shall consist of personnel loads only.

(21) Electrical safety. This subsection applies in addition to the general requirements for electrical safety which are found in Part I of this chapter.

(a) Electric power lines shall be insulated or located away from water lines, telephone lines, air lines, or other conductive materials so that a damaged circuit will not energize the other systems.

(b) Lighting circuits shall be located so that movement of personnel or equipment will not damage the circuits or disrupt service.

(c) Oil-filled transformers shall not be used underground unless they are located in a fire-resistant enclosure suitably vented to the outside and surrounded by a dike to retain the contents of the transformers in the event of rupture.

(22) Hoisting unique to underground construction except as modified by this section, the following provisions of chapter 296-155 WAC, Part L apply: Requirements for cranes are found in WAC 296-155-525. WAC 296-155-528 contains rules applicable to crane hoisting of personnel, except, that the limitations imposed by WAC 296-155-528(2) do not apply to the routine access of employees to the underground via a shaft. Requirements for personnel hoists, material hoists, and elevators are found in WAC 296-155-530 and in this subsection.

(a) General requirements for cranes and hoists.

(i) Materials, tools, and supplies being raised or lowered, whether within a cage or otherwise, shall be secured or stacked in a manner to prevent the load from shifting, snagging, or falling into the shaft.

(ii) A warning light suitably located to warn employees at the shaft bottom and subsurface shaft entrances shall flash whenever a load is above the shaft bottom or subsurface entrances, or the load is being moved in the shaft. This subsection does not apply to fully enclosed hoistways.

(iii) Whenever a hoistway is not fully enclosed and employees are at the shaft bottom, conveyances or equipment shall be stopped at least 15 feet (4.57 m) above the bottom of the shaft and held there until the signalperson at the bottom of the shaft directs the operator to continue lowering the load, except that the load may be lowered without stopping if the load or conveyance is within full view of a bottom signalperson who is in constant voice communication with the operator.

(iv)(A) Before maintenance, repairs, or other work is commenced in the shaft served by a cage, skip, or bucket, the operator and other employees in the area shall be informed and given suitable instructions.

(B) A sign warning that work is being done in the shaft shall be installed at the shaft collar, at the operator's station, and at each underground landing.

(v) Any connection between the hoisting rope and the cage or skip shall be compatible with the type of wire rope used for hoisting.

(vi) Spin-type connections, where used, shall be maintained in a clean condition and protected from foreign matter that could affect their operation.

(vii) Cage, skip, and load connections to the hoist rope shall be made so that the force of the hoist pull, vibration, misalignment, release of lift force, or impact will not disengage the connection. Only closed shackles shall be used for cage and skip rigging.

(viii) When using wire rope wedge sockets, means shall be provided to prevent wedge escapement and to ensure that the wedge is properly seated.

(b) Additional requirements for cranes. Cranes shall be equipped with a limit switch to prevent overtravel at the boom tip. Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(c) Additional requirements for hoists.

(i) Hoists shall be designed so that the load hoist drum is powered in both directions of rotation, and so that brakes are automatically applied upon power release or failure.

(ii) Control levers shall be of the "deadman type" which return automatically to their center (neutral) position upon release.

(iii) When a hoist is used for both personnel hoisting and material hoisting, load and speed ratings for personnel and for materials shall be assigned to the equipment.

(iv) Hoist machines with cast metal parts shall not be used.

(v) Material hoisting may be performed at speeds higher than the rated speed for personnel hoisting if the hoist and components have been designed for such higher speeds and if shaft conditions permit.

(vi) Employees shall not ride on top of any cage, skip, or bucket except when necessary to perform inspection or maintenance of the hoisting system, in which case they shall be protected by a body belt/harness system to prevent falling.

(vii) Personnel and materials (other than small tools and supplies secured in a manner that will not create a hazard to employees) shall not be hoisted together in the same conveyance. However, if the operator is protected from the shifting of materials, then the operator may ride with materials in

cages or skips which are designed to be controlled by an operator within the cage or skip.

(viii) Line speed shall not exceed the design limitations of the systems.

(ix) Hoists shall be equipped with landing level indicators at the operator's station. Marking of the hoist rope does not satisfy this requirement.

(x) Whenever glazing is used in the hoist house, it shall be safety glass, or its equivalent, and be free of distortions and obstructions.

(xi) A fire extinguisher that is rated at least 2A:10B:C (multipurpose, dry chemical) shall be mounted in each hoist house.

(xii) Hoist controls shall be arranged so that the operator can perform all operating cycle functions and reach the emergency power cutoff without having to reach beyond the operator's normal operating position.

(xiii) Hoists shall be equipped with limit switches to prevent overtravel at the top and bottom of the hoistway.

(xiv) Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(xv) Hoist operators shall be provided with a closed-circuit voice communication system to each landing station, with speaker-microphones so located that the operator can communicate with individual landing stations during hoist use.

(xvi) When sinking shafts 75 feet (22.86 m) or less in depth, cages, skips, and buckets that may swing, bump, or snag against shaft sides or other structural protrusions shall be guided by fenders, rails, ropes, or a combination of those means.

(xvii) When sinking shafts more than 75 feet (22.86 m) in depth, all cages, skips, and buckets shall be rope or rail-guided to within a rail length from the sinking operation.

(xviii) Cages, skips, and buckets in all completed shafts, or in all shafts being used as completed shafts, shall be rope or rail-guided for the full length of their travel.

(xix) Wire rope used in load lines of material hoists shall be capable of supporting, without failure, at least five times the maximum intended load or the factor recommended by the rope manufacturer, whichever is greater. Refer to chapter 296-155 WAC, Part L, for design factors for wire rope used in personnel hoists. The design factors shall be calculated by dividing the breaking strength of wire rope, as reported in the manufacturer's rating tables, by the total static load, including the weight of the wire rope in the shaft when fully extended.

(xx) A competent person shall visually check all hoisting machinery, equipment, anchorages, and hoisting rope at the beginning of each shift and during hoist use, as necessary.

(xxi) Each safety device shall be checked by a competent person at least weekly during hoist use to ensure suitable operation and safe condition.

(xxii) In order to ensure suitable operation and safe condition of all functions and safety devices, each hoist assembly shall be inspected and load-tested to 100 percent of its rated capacity: At the time of installation; after any repairs or alterations affecting its structural integrity; after the operation of any safety device; and annually when in use. The employer shall prepare a certification record which includes the date

each inspection and load-test was performed; the signature of the person who performed the inspection and test; and a serial number or other identifier for the hoist that was inspected and tested. The most recent certification record shall be maintained on file until completion of the project.

(xxiii) Before hoisting personnel or material, the operator shall perform a test run of any cage or skip whenever it has been out of service for one complete shift, and whenever the assembly or components have been repaired or adjusted.

(xiv) Unsafe conditions shall be corrected before using the equipment.

(d) Additional requirements for personnel hoists.

(i) Hoist drum systems shall be equipped with at least two means of stopping the load, each of which shall be capable of stopping and holding 150 percent of the hoist's rated line pull. A broken-rope safety, safety catch, or arrestment device is not a permissible means of stopping under this subsection.

(ii) The operator shall remain within sight and sound of the signals at the operator's station.

(iii) All sides of personnel cages shall be enclosed by one-half inch (12.70 mm) wire mesh (not less than No. 14 gauge or equivalent) to a height of not less than 6 feet (1.83 m). However, when the cage or skip is being used as a work platform, its sides may be reduced in height to 42 inches (1.07 m) when the conveyance is not in motion.

(iv) All personnel cages shall be provided with a positive locking door that does not open outward.

(v) All personnel cages shall be provided with a protective canopy. The canopy shall be made of steel plate, at least 3/16 -inch (4.763 mm) in thickness, or material of equivalent strength and impact resistance. The canopy shall be sloped to the outside, and so designed that a section may be readily pushed upward to afford emergency egress. The canopy shall cover the top in such a manner as to protect those inside from objects falling in the shaft.

(vi) Personnel platforms operating on guide rails or guide ropes shall be equipped with broken-rope safety devices, safety catches, or arrestment devices that will stop and hold 150 percent of the weight of the personnel platform and its maximum rated load.

(vii) During sinking operations in shafts where guides and safeties are not yet used, the travel speed of the personnel platform shall not exceed 200 feet (60.96 m) per minute. Governor controls set for 200 feet (60.96 m) per minute shall be installed in the control system and shall be used during personnel hoisting.

(viii) The personnel platform may travel over the controlled length of the hoistway at rated speeds up to 600 feet (182.88 m) per minute during sinking operations in shafts where guides and safeties are used.

(ix) The personnel platform may travel at rated speeds greater than 600 feet (182.88 m) per minute in complete shafts.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-301-220 Personal protective equipment.

(1) Personal protective equipment. Workers engaged in han-

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dling acids or caustics in bulk, repairing pipe lines containing acids or caustics, etc., shall be provided with personal protective equipment to conform to the requirements of WAC 296-800-160.

(2) Respiratory protection. Employers must provide respiratory protection as required in chapter ((296-62)) 296-842 WAC((,-Part E)).

AMENDATORY SECTION (Amending WSR 95-22-015, filed 10/20/95, effective 1/16/96)

WAC 296-304-02003 Precautions and the order of testing before entering confined and enclosed spaces and other dangerous atmospheres. The employer shall ensure that atmospheric testing is performed in the following sequence: Oxygen content, flammability, toxicity.

(1) Oxygen content.

(a) The employer shall ensure that the following spaces are visually inspected and tested by a competent person to determine the atmosphere's oxygen content prior to initial entry into the space by an employee:

(i) Spaces that have been sealed, such as, but not limited to, spaces that have been coated and closed up, and nonventilated spaces that have been freshly painted;

(ii) Spaces and adjacent spaces that contain or have contained combustible or flammable liquids or gases;

(iii) Spaces and adjacent spaces that contain or have contained liquids, gases, or solids that are toxic, corrosive, or irritant;

(iv) Spaces and adjacent spaces that have been fumigated; and

(v) Spaces containing materials or residues of materials that create an oxygen-deficient atmosphere.

(b) If the space to be entered contains an oxygen deficient atmosphere, the space shall be labeled "not safe for workers" or, if oxygen-enriched, "not safe for workers—not safe for hot work." If an oxygen-deficient or oxygen-enriched atmosphere is found, ventilation shall be provided at volumes and flow rates sufficient to ensure that the oxygen content is maintained at or above 19.5 percent and below 22.0 percent by volume. The warning label may be removed when the oxygen content is equal to or greater than 19.5 and less than 22.0 percent by volume.

(c) An employee may not enter a space where the oxygen content, by volume, is below 19.5 percent or above 22.0 percent.

Exception: An employee may enter for emergency rescue or for a short duration for installation of ventilation equipment necessary to start work in the space provided:

(i) The atmosphere in the space is monitored for oxygen content, by volume, continuously; and

(ii) Respiratory protection and other appropriate personal protective equipment and clothing are provided in accordance with WAC 296-304-090 through 296-304-09007.

Note to (a): Other provisions for work in IDLH atmospheres are located in WAC 296-304-090 through 296-304-09007.

(2) Flammable atmospheres.

(a) The employer shall ensure that spaces and adjacent spaces that contain or have contained combustible or flammable liquids or gases are:

(i) Inspected visually by the competent person to determine the presence of combustible or flammable liquids; and

(ii) Tested by a competent person prior to entry by an employee to determine the concentration of flammable vapors and gases within the space.

(b) If the concentration of flammable vapors or gases in the space to be entered is equal to or greater than 10 percent of the lower explosive limit, the space shall be labeled "not safe for workers" and "not safe for hot work." Ventilation shall be provided at volumes and flow rates sufficient to ensure that the concentration of flammable vapors is maintained below 10 percent of the lower explosive limit. The warning labels may be removed when the concentration of flammable vapors is below 10 percent of the lower explosive limit.

(c) An employee may not enter a space where the concentration of flammable vapors or gases is equal to or greater than 10 percent of the lower explosive limit.

Exception: An employee may enter for emergency rescue or for a short duration for installation of ventilation equipment necessary to start work in the space, provided:

(i) No ignition sources are present;

(ii) The atmosphere in the space is monitored continuously;

(iii) Atmospheres at or above the upper explosive limit are maintained; and

(iv) Respiratory protection and other appropriate personal protective equipment and clothing are provided in accordance with WAC 296-304-090 through 296-304-09007.

Note 1 to (2): Additional provisions for work in IDLH atmospheres are located in WAC 296-304-090 through 296-304-09007.

Note 2 to (2): Additional provisions for work in spaces containing a flammable substance which also has a permissible exposure limit, are located in subsection (3) of this section and chapter ((296-62)) 296-841 WAC((,-Part H)).

(3) Toxic, corrosive, irritant or fumigated atmospheres and residues.

(a) The employer shall ensure that spaces or adjacent spaces that contain or have contained liquids, gases, or solids that are toxic, corrosive or irritant are:

(i) Inspected visually by the competent person to determine the presence of toxic, corrosive, or irritant residue contaminants; and

(ii) Tested by a competent person prior to initial entry by an employee to determine the air concentration of toxics, corrosives, or irritants within the space.

(b) If a space contains an air concentration of a material which exceeds a chapter ((296-62)) 296-841 WAC, ((Part H,)) permissible exposure limit (PEL) or is IDLH, the space shall be labeled "not safe for workers." Ventilation shall be provided at volumes and flow rates which will ensure that air concentrations are maintained within the PEL or, in the case of contaminants for which there is no established PEL, below the IDLH. The warning label may be removed when the concentration of contaminants is maintained within the PEL or below IDLH level.

(c) If a space cannot be ventilated to within the PELs or is IDLH, a marine chemist or CIH must re-test until the space

can be certified "enter with restrictions" or "safe for workers."

(d) An employee may not enter a space whose atmosphere exceeds a PEL or is IDLH.

Exception: An employee may enter for emergency rescue, or for a short duration for installation of ventilation equipment provided:

(i) The atmosphere in the space is monitored continuously;

(ii) Respiratory protection and other necessary and appropriate personal protective equipment and clothing are provided in accordance with WAC 296-304-090 through 296-304-09007.

Note to (3): Other provisions for work in IDLH atmospheres are located in WAC 296-304-090 through 296-304-9007.

(4) Training of employees entering confined and enclosed spaces or other dangerous atmospheres.

(a) The employer shall ensure that each employee that enters a confined or enclosed space and other areas with dangerous atmospheres is trained to perform all required duties safely.

(b) The employer shall ensure that each employee who enters a confined space, enclosed space, or other areas with dangerous atmospheres is trained to:

(i) Recognize the characteristics of the confined space;

(ii) Anticipate and be aware of the hazards that may be faced during entry;

(iii) Recognize the adverse health effects that may be caused by the exposure to a hazard;

(iv) Understand the physical signs and reactions related to exposures to such hazards;

(v) Know what personal protective equipment is needed for safe entry into and exit from the space;

(vi) Use personal protective equipment; and

(vii) Where necessary, be aware of the presence and proper use of barriers that may be needed to protect an entrant from hazards.

(c) The employer shall ensure that each entrant into confined or enclosed spaces or other dangerous atmospheres is trained to exit the space or dangerous atmosphere whenever:

(i) The employer or his or her representative orders evacuation;

(ii) An evacuation signal such as an alarm is activated; or

(iii) The entrant perceives that he or she is in danger.

(d) The employer shall provide each employee with training:

(i) Before the entrant begins work addressed by this chapter; and

(ii) Whenever there is a change in operations or in an employee's duties that presents a hazard about which the employee has not previously been trained.

(e) The employer shall certify that the training required by (a) through (d) of this subsection has been accomplished.

(i) The certification shall contain the employee's name, the name of the certifier, and the date(s) of the certification.

(ii) The certification shall be available for inspection by the director, employees, and their representatives.

(5) Rescue teams. The employer shall either establish a shipyard rescue team or arrange for an outside rescue team which will respond promptly to a request for rescue service.

(a) Shipyard rescue teams shall meet the following criteria:

(i) Each employee assigned to the shipyard team shall be provided with and trained to use the personal protective equipment he or she will need, including respirators and any rescue equipment necessary for making rescues from confined and enclosed spaces and other dangerous atmospheres.

(ii) Each employee assigned to the shipyard rescue team shall be trained to perform his or her rescue functions including confined and enclosed and other dangerous atmosphere entry.

(iii) Shipyard rescue teams shall practice their skills at least once every 12 months. Practice drills shall include the use of mannequins and rescue equipment during simulated rescue operations involving physical facilities that approximate closely those facilities from which rescue may be needed.

Note to (5)(a)(iii): If the team performs an actual rescue during the 12 month period, an additional practice drill for that type of rescue is not required.

(iv) At least one person on each rescue team shall maintain current certification in basic first aid which includes maintenance of an airway, control of bleeding, maintenance of circulation and cardiopulmonary resuscitation (CPR) skills.

(b) The employer shall inform outside rescue teams of the hazards that the team may encounter when called to perform confined and enclosed space or other dangerous atmosphere rescue at the employer's facility so that the rescue team can be trained and equipped.

Note to (5): The criteria for in-house rescue, listed in (5)(a) can be used by the employer in evaluating outside rescue services.

(6) Exchanging hazard information between employers. Each employer whose employees work in confined and enclosed spaces or other dangerous atmospheres shall ensure that all available information on the hazards, safety rules, and emergency procedures concerning those spaces and atmospheres is exchanged with any other employer whose employees may enter the same spaces.

AMENDATORY SECTION (Amending WSR 98-02-006, filed 12/26/97, effective 3/1/98)

WAC 296-304-03001 Toxic cleaning solvents. (1) When toxic solvents are used, the employer shall employ one or more of the following measures to safeguard the health of employees exposed to these solvents.

(a) The cleaning operation shall be completely enclosed to prevent the escape of vapor into the working space.

(b) Either natural ventilation or mechanical exhaust ventilation shall be used to remove the vapor at the source and to dilute the concentration of vapors in the working space to a concentration which is safe for the entire work period.

(c) The employer must ensure that employees are protected against:

• Toxic vapors by suitable respiratory protective equipment that meets the requirements of chapter ((296-62)) 296-842 WAC((, Part E)); and

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• Exposure of skin and eyes to contact with toxic solvents and their vapors by suitable clothing and equipment.

(2) The principles in the threshold limit values to which attention is directed in WAC 296-304-02005 and applicable sections in chapters 296-62 and 296-841 WAC will be used by the department of labor and industries in enforcement proceedings in defining a safe concentration of air contaminants.

(3) When flammable solvents are used, precautions shall be taken in accordance with the requirements of WAC 296-304-03009.

AMENDATORY SECTION (Amending WSR 99-10-071, filed 5/4/99, effective 9/1/99)

WAC 296-304-03005 Mechanical paint removers. (1) Power tools.

(a) The employer must ensure that employees engaged in the removal of paints, preservatives, rusts or other coatings by means of power tools are protected against eye injury by goggles or face shields that meets the requirements of WAC 296-304-09005 (1) and (2).

(b) All portable rotating tools used for the removal of paints, preservatives, rusts or other coatings shall be adequately guarded to protect both the operator and nearby workers from flying missiles.

(c) Portable electric tools shall be grounded in accordance with the requirements of WAC 296-304-08003 (1) and (2).

(d) In a confined space, the employer must provide mechanical exhaust ventilation sufficient to keep the dust concentration to a minimum, or must protect employees by respiratory protective equipment that meets the requirements of chapter ~~((296-62))~~ 296-842 WAC~~((Part E))~~.

(2) Flame removal.

(a) The employer must ensure that when hardened preservative coatings are removed by flame in enclosed spaces, the employees exposed to fumes are protected by air line respirators that meet the requirements of chapter ~~((296-62))~~ 296-842 WAC~~((Part E))~~. Employees performing this operation in the open air, and those exposed to the resulting fumes, must be protected by a fume filter respirator that meets the requirements of WAC 296-62-071.

(b) Flame or heat shall not be used to remove soft and greasy preservative coatings.

(3) Abrasive blasting.

(a) Equipment. Hoses and fittings used for abrasive blasting shall meet the following requirements:

(i) Hoses. Hose of a type to prevent shocks from static electricity shall be used.

(ii) Hose couplings. Hose lengths shall be joined by metal couplings secured to the outside of the hose to avoid erosion and weakening of the couplings.

(iii) Nozzles. Nozzles shall be attached to the hose by fittings that will prevent the nozzle from unintentionally becoming disengaged. Nozzle attachments shall be of metal and shall fit onto the hose externally.

(iv) Dead man control. A dead man control device shall be provided at the nozzle end of the blasting hose either to provide direct cutoff or to signal the pot tender by means of a visual and audible signal to cut off the flow, in the event the

blaster loses control of the hose. The pot tender shall be available at all times to respond immediately to the signal.

(b) Replacement. Hoses and all fittings used for abrasive blasting shall be inspected frequently to insure timely replacement before an unsafe amount of wear has occurred.

(c) Personal protective equipment.

(i) The employer must ensure that abrasive blasters working in enclosed spaces are protected by abrasive blasting respirators that meet the requirements of WAC 296-24-675 and chapter ~~((296-62))~~ 296-842 WAC~~((Part E))~~.

(ii) The employer must ensure that abrasive blasters working in the open are protected as required in subsection (1) of this section.

Exception: When synthetic abrasives containing less than one percent free silica are used, the employer may substitute particulate or dust filter respirators that are approved by the National Institute of Safety and Health (NIOSH) and used according to ~~((WAC 296-62-071))~~ chapter 296-842 WAC.

(iii) The employer must ensure that employees, including machine tenders and abrasive recovery workers, working in areas where unsafe concentrations of abrasive materials and dusts are present are protected by eye and respiratory protective equipment that meets the requirements of WAC 296-304-09005 (1) and (2) and chapter ~~((296-62))~~ 296-842 WAC~~((Part E))~~.

Exception: This requirement does not apply to blasters.

(iv) The employer must ensure that a blaster is protected against injury from exposure to the blast by appropriate protective clothing, including gloves that meet the requirements of WAC 296-304-09015(1).

(v) A surge from a drop in pressure in the hose line can throw a blaster off the staging. To protect against this hazard, the employer must ensure that a blaster is protected by a personal fall arrest system, that meets the requirements of WAC 296-304-09021. The personal fall arrest system must be tied off to the ship or other structure during blasting from elevations where adequate fall protection cannot be provided by railings.

AMENDATORY SECTION (Amending WSR 03-04-099, filed 2/4/03, effective 8/1/03)

WAC 296-304-03007 Painting. All respirators required by this section must meet the requirements of chapter ~~((296-62))~~ 296-842 WAC~~((Part E))~~.

(1) Paints mixed with toxic vehicles or solvents.

(a) When employees spray paints mixed with toxic vehicles or solvents, the employer must ensure that the following conditions are met:

(i) In confined spaces, employees continuously exposed to spraying are protected by air line respirators.

(ii) In tanks or compartments, employees continuously exposed to spraying are protected by air line respirators. Where mechanical ventilation is provided, employees are protected by respirators.

(iii) In large and well ventilated areas, employees exposed to spraying are protected by respirators.

(b) The employer must ensure that where employees apply by brush paints with toxic solvents in confined spaces

or other areas where lack of ventilation creates a hazard, the employees are protected by filter respirators.

(c) When flammable paints or vehicles are used, precautions shall be taken in accordance with the requirements of WAC 296-304-03009.

(d) The metallic parts of air moving devices, including fans, blowers, and jet-type air movers, and all duct work shall be electrically bonded to the vessel's structure.

(2) Paints and tank coatings dissolved in highly volatile, toxic and flammable solvents. Several organic coatings, adhesives and resins are dissolved in highly toxic, flammable and explosive solvents with flash points below 80°F. Work involving such materials shall be done only when all of the following special precautions have been taken:

(a) Sufficient exhaust ventilation shall be provided to keep the concentration of solvent vapors below ten percent of the lower explosive limit. Frequent tests shall be made by a competent person to ascertain the concentration.

(b) If the ventilation fails or if the concentration of solvent vapors reaches or exceeds ten percent of the lower explosive limit, painting shall be stopped and the compartment shall be evacuated until the concentration again falls below ten percent of the lower explosive limit. If the concentration does not fall when painting is stopped, additional ventilation to bring the concentration down to ten percent of the lower explosive limit shall be provided.

(c) Ventilation shall be continued after the completion of painting until the space or compartment is gas free. The final determination as to whether the space or compartment is gas free shall be made after the ventilating equipment has been shut off for a least ten minutes.

(d) Exhaust ducts shall discharge clear of working areas and away from sources of possible ignition. Periodic tests shall be made to ensure that the exhausted vapors are not accumulating in other areas within or around the vessel or dry dock.

(e) All motors and control equipment shall be of the explosion-proof type. Fans shall have nonferrous blades. Portable air ducts shall also be of nonferrous materials. All motors and associated control equipment shall be properly maintained and grounded.

(f) Only nonsparking paint buckets, spray guns and tools shall be used. Metal parts of paint brushes and rollers shall be insulated. Staging shall be erected in a manner which ensures that it is nonsparking.

(g) Only explosion proof lights, approved by the Underwriters' Laboratories for use in Class I, Group D atmospheres, or approved as permissible by the U.S. Bureau of Mines or the U.S. Coast Guard, shall be used.

(h) A competent person shall inspect all power and lighting cables to ensure that the insulation is in excellent condition, free of all cracks and worn spots, that there are no connections within fifty feet of the operation, that lines are not overloaded, and that they are suspended with sufficient slack to prevent undue stress or chafing.

(i) The face, eyes, head, hands and all other exposed parts of the bodies of employees handling highly volatile paints must be protected according to WAC 296-304-090. All footwear must be nonsparking, such as rubbers, rubber boots or rubber soled shoes without nails. Coveralls or other outer

clothing must be made of cotton. Rubber gloves, instead of plastic gloves, must be used to protect against the danger of static sparks.

(j) No matches, lighted cigarettes, cigars, or pipes, and no cigarette lighters or ferrous articles shall be taken into the area where work is being done.

(k) All solvent drums taken into the compartment shall be placed on nonferrous surfaces and shall be grounded to the vessel. Metallic contact shall be maintained between containers and drums when materials are being transferred from one to another.

(l) Spray guns, paint pots, and metallic parts of connecting tubing shall be electrically bonded, and the bonded assembly shall be grounded to the vessel.

(m) The employer must ensure that all employees continuously in a compartment in which such painting is performed, are protected by air line respirators and by suitable protective clothing. Employees entering such compartments for a limited time must be protected by filter cartridge type respirators.

(n) The employer must ensure that all employees doing exterior paint spraying with such paints are protected by suitable filter cartridge type respirators and by suitable protective clothing.

AMENDATORY SECTION (Amending WSR 03-04-099, filed 2/4/03, effective 8/1/03)

WAC 296-304-04001 Ventilation and protection in welding, cutting and heating. (1) Mechanical ventilation requirements.

(a) For the purposes of this section, mechanical ventilation shall meet the following requirements:

(i) Mechanical ventilation shall consist of either general mechanical ventilation systems or local exhaust systems.

(ii) General mechanical ventilation shall be of sufficient capacity and so arranged as to produce the number of air changes necessary to maintain welding fumes and smoke within safe limits.

(iii) Local exhaust ventilation shall consist of freely movable hoods intended to be placed by the welder or burner as close as practicable to the work. This system shall be of sufficient capacity and so arranged as to remove fumes and smoke at the source and keep the concentration of them in the breathing zone within safe limits.

(iv) Contaminated air exhausted from a working space shall be discharged into the open air or otherwise clear of the source of intake air.

(v) All air replacing that withdrawn shall be clean and respirable.

(vi) Oxygen shall not be used for ventilation purposes, comfort cooling, blowing dust or dirt from clothing, or for cleaning the work area.

(2) Welding, cutting and heating in confined spaces.

(a) Except as provided in WAC 296-304-04001 (2)(c) and (3)(b), either general mechanical or local exhaust ventilation meeting the requirements of (1) of this section shall be provided whenever welding, cutting or heating is performed in a confined space.

(b) The means of access shall be provided to a confined space and ventilation ducts to this space shall be arranged in accordance with WAC 296-304-05011 (2)(a) and (b).

(c) When sufficient ventilation cannot be obtained without blocking the means of access, employees in the confined space shall be protected by air line respirators in accordance with the requirements of chapter ((296-62)) 296-842 WAC, ((Part E,)) and an employee on the outside of such a confined space shall be assigned to maintain communication with those working within it and to aid them in an emergency.

(3) Welding, cutting or heating of metals of toxic significance.

(a) Welding, cutting or heating in any enclosed spaces aboard the vessel involving the metals specified in this subsection shall be performed with either general mechanical or local exhaust ventilation meeting the requirements of (1) of this section.

(i) Zinc-bearing base or filler metals or metals coated with zinc-bearing materials.

(ii) Lead base metals.

(iii) Cadmium-bearing filler materials.

(iv) Chromium-bearing metals or metals coated with chromium-bearing materials.

(b) Welding, cutting, or heating in any enclosed spaces aboard the vessel involving the metals specified in this subsection shall be performed with local exhaust ventilation in accordance with the requirements of (1) of this section or employees shall be protected by air line respirators in accordance with the requirements of chapter ((296-62)) 296-842 WAC((,Part E)).

(i) Metals containing lead, other than as an impurity, or metals coated with lead-bearing materials.

(ii) Cadmium-bearing or cadmium coated base metals.

(iii) Metals coated with mercury-bearing metals.

(iv) Beryllium-containing base or filler metals. Because of its high toxicity, work involving beryllium shall be done with both local exhaust ventilation and air line respirators.

(c) Employees performing such operations in the open air shall be protected by filter type respirators in accordance with the requirements of WAC 296-304-09003, except that employees performing such operations on beryllium-containing base or filler metals shall be protected by air line respirators in accordance with the requirements of chapter ((296-62)) 296-842 WAC((,Part E)).

(d) Other employees exposed to the same atmosphere as the welders or burners shall be protected in the same manner as the welder or burner.

(4) Inert-gas metal-arc welding.

(a) Since the inert-gas metal-arc welding process involves the production of ultraviolet radiation of intensities of 5 to 30 times that produced during shielded metal-arc welding, the decomposition of chlorinated solvents by ultraviolet rays, and the liberation of toxic fumes and gases, employees shall not be permitted to engage in, or be exposed to the process until the following special precautions have been taken:

(i) The use of chlorinated solvents shall be kept at least two hundred feet from the exposed arc, and surfaces prepared with chlorinated solvents shall be thoroughly dry before welding is permitted on such surfaces.

(ii) Helpers and other employees in the area not protected from the arc by screening as provided in WAC 206-304-04011(5) shall be protected by filter lenses meeting the requirements of Tables I-1A and B (see below). When two or more welders are exposed to each other's arc, filter lens goggles of a suitable type meeting the requirements of WAC 296-304-09001 (1) and (3) shall be worn under welding helmets or hand shields to protect the welder against flashes and radiant energy when either the helmet is lifted or the shield is removed.

(iii) Welders and other employees who are exposed to radiation shall be suitably protected so that the skin is covered completely to prevent burns and other damage by ultraviolet rays. Welding helmets and hand shields shall be free of leaks and openings, and free of highly reflective surfaces.

(iv) When inert-gas metal-arc welding is being performed on stainless steel, the requirements of (3)(b) of this section shall be met to protect against dangerous concentrations of nitrogen dioxide.

(5) General welding, cutting and heating.

(a) Welding, cutting and heating not involving conditions or materials described in (2), (3) or (4) of this section may normally be done without mechanical ventilation or respiratory protective equipment, but where, because of unusual physical or atmospheric conditions, an unsafe accumulation of contaminants exists, suitable mechanical ventilation or respiratory protective equipment shall be provided.

(b) Employees performing any type of welding, cutting or heating shall be protected by suitable eye protective equipment in accordance with the requirements of Tables I-1A and B (see below).

(6) Residues and cargos of metallic ores.

Residues and cargos of metallic ores of toxic significance shall be removed from the area or protected from the heat before welding, cutting or heating is begun.

TABLE I-1A

FILTER LENSES FOR PROTECTION AGAINST RADIANT ENERGY

OPERATIONS	ELECTRODE SIZE 1/32 IN	ARC CURRENT	MINIMUM PROTECTIVE SHADE
Shielded metal arc welding	Less than 3	Less than 60	7
	3-5	60-160	8
	5-8	160-250	10
	More than 8	250-550	11
Gas metal arc welding and flux cored arc welding		Less than 60	7
		60-160	10
		160-250 250-550	10 10
Gas Tungsten arc welding		Less than 50	8
		50-150	8
		150-500	10
Air carbon arc cutting	(Light)	Less than 500	10
	(Heavy)	500-1000	11
Plasma arc welding		Less than 20	6
		20-100	8
		100-400	10
		400-800	11

PERMANENT

OPERATIONS	ELECTRODE SIZE 1/32 IN	ARC CURRENT	MINIMUM PROTECTIVE SHADE
Plasma arc cutting	(Light)**	Less than 300	8
	(Medium)**	300-400	9
	(Heavy)**	400-800	10
Torch brazing	—	—	3
Torch soldering	—	—	2
Carbon Arc welding	—	—	14

**These values apply where the actual arc is clearly seen. Lighter filters may be used when the arc is hidden by the workplace.

TABLE I-1B

FILTER LENSES FOR PROTECTION AGAINST RADIANT ENERGY

OPERATIONS	PLATE THICKNESS... INCHES	PLATE THICKNESS... MM	MINIMUM* PROTECTIVE SHADE	
Gas welding	Light	Under 1/8	Under 3.2	4
	Medium	1/8 - 1/2	3.2 - 12.7	5
	Heavy	Over 1/2	Over 12.7	6
Oxygen cutting	Light	Under 1	Under 25	3
	Medium	1 - 6	25 - 100	4
	Heavy	Over 6	Over 150	5

*As rule of thumb, start with a shade that is too dark to see the weld zone. Then go to a lighter shade which gives sufficient view of the weld zone without going below the minimum. In oxyfuel gas welding or cutting where the torch produces a high yellow light, it is desirable to use a filter lens that absorbs the yellow or sodium line in the viable light of the (spectrum) operation.

AMENDATORY SECTION (Amending WSR 98-02-006, filed 12/26/97, effective 3/1/98)

WAC 296-304-09007 Respiratory protection. The employer must provide respiratory protection that meets the requirements of the general occupational health standards, chapter ((296-62)) 296-842 WAC((, Part E)).

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

WAC 296-305-02501 Emergency medical protection. (1) Fire fighters who perform emergency medical care or otherwise may be exposed to blood or other body fluids shall be provided with emergency medical face protection devices, and emergency medical garments that meet the applicable requirements of NAPA, Standard on Protective Clothing for Emergency Medical Operations 1999, 1992 edition.

Note: Prior to purchase, fire departments should request the technical data package required in NAPA 1999, 1992 edition, in order to compare glove and garment performance data. Departments reviewing these packages should ensure a relative ranking of the performance data before they purchase in order to provide the best performance of the EMS personal protective clothing.

(2) Fire fighters shall don emergency medical gloves prior to initiating any emergency patient care.

(3) Fire fighters shall don emergency medical garments and emergency medical face protection devices prior to any patient care during which splashes of body fluids can occur such as situations involving spurting blood or childbirth.

Note: Fire fighter turnout gear and gloves with vapor barriers may be used in lieu of emergency medical gloves and garments.

(4) Contaminated emergency medical garments, emergency medical face protection, gloves, devices, and emergency medical gloves shall be cleaned and disinfected, or disposed of, in accordance with chapter 296-823 WAC, Occupational exposure to bloodborne pathogens.

(5) Fire departments shall establish a designated infection (exposure) control officer who shall ensure that an adequate infection control plan is developed and all personnel are trained and supervised on the plan.

(6) The infection control officer shall be responsible for establishing personnel exposure protocols so that a process for dealing with exposures is in writing and available to all personnel.

(7) The infection control officer or his/her designee will function as a liaison between area hospitals and fire department members to provide notification that a communicable disease exposure is suspected or has been determined by hospital medical personnel. The department infection control officer will institute the established exposure protocols immediately after report of an exposure. The infection control officer shall follow the confidentiality requirements of chapter 246-100 WAC and the medical protocol requirements of chapter 296-802 WAC.

(8) Fire departments shall have a written infection (exposure) control plan which clearly explains the intent, benefits, and purpose of the plan. The written document must cover the standards of exposure control such as establishing the infection control officer and all members affected; education and training; HB. vaccination requirements; documentation and record keeping; cleaning/disinfection of personnel and equipment; and exposure protocols.

(9) Policy statements and standard operating procedure guidelines shall provide general guidance and specific regulation of daily activities. Procedures shall include delegation of specific roles and responsibilities, such as regulation of infection control, as well as procedural guidelines for all required tasks and functions.

(10) Fire departments shall establish a records system for members health and training.

(11) Fire fighters shall be trained in the proper use of P.E., exposure protection, post exposure protocols, disease modes of transmission as it related to infectious diseases.

(12) Infectious disease programs shall have a process for monitoring fire fighters compliance with established guidelines and a means for correcting noncompliance.

(13) Fire department members shall be required to annually review the infectious disease plan, updates, protocols, and equipment used in the program.

(14) Fire departments shall comply with chapter 296-823 WAC, Occupational exposure to bloodborne pathogens, in its entirety.

PERMANENT

(15) Tuberculosis (TB) exposure and respiratory protection requirements.

(a) Fire fighters shall wear a particulate respirator (PR) when entering areas occupied by individuals with suspected or confirmed TB, when performing high risk procedures on such individuals or when transporting individuals with suspected or confirmed TB in a closed vehicle.

(b) A NOSH-approved, 95% efficient particulate air respirator is the minimum acceptable level of respiratory protection.

(i) Fit tests are required.

(ii) Fit tests shall be done in accordance with chapter ((296-62)) 296-842 WAC((,Part E)).

Note 1: Emergency-response personnel should be routinely screened for tuberculosis at regular intervals. The tuberculin skin test is the only method currently available that demonstrates infection with *Mycobacterium tuberculosis* (*M. tuberculosis*) in the absence of active tuberculosis.

Note 2: If possible, the rear windows of a vehicle transporting patients with confirmed, suspected, or active tuberculosis should be kept open, and the heater or air conditioner set on a noncirculating cycle.

Additional References:

Chapter 296-823 WAC, Occupational exposure to bloodborne pathogens.

WAC 296-62-08001(3), Exposure Control.

AMENDATORY SECTION (Amending WSR 02-12-098, filed 6/5/02, effective 8/1/02)

WAC 296-305-04001 Respiratory equipment protection. (1) Fire fighter's self-contained breathing apparatus (SCBA) shall:

(a) Be pressure demand type (positive pressure);
 (b) Operate in the positive pressure mode only;
 (c) Have a minimum of thirty minutes service duration;
 (d) Be NIOSH certified; and
 (e) Meet the requirements of the 1992 or 1997 edition of NFPA, Standard on Open Circuit Self Contained Breathing Apparatus for Fire Fighters 1981.

(2) Closed circuit SCBA shall:

(a) Be positive pressure;
 (b) Be NIOSH certified; and
 (c) Have a minimum thirty-minute service duration.

(3) Members using SCBA's shall operate in teams of two or more.

(4) Except as otherwise provided in this chapter, fire departments shall adopt, maintain and implement a written respiratory protection program that addresses the requirements of chapter ((296-62)) 296-842 WAC, ((Part E,)) Respiratory protection and Part I-1, Asbestos, Tremolite, Anthophyllite, and Actinolite. This includes program administration, medical limitations, equipment limitations, equipment selection, inspection, use, maintenance, training, fit testing procedures, air quality, and program evaluation.

Note: Additional information on respirators and respirator usage can be found in ANSI Z88.2 - American National Standard for Respiratory Protection; ANSI Z88.5 - Practices for Respiratory Protection for Fire Service; various NFPA publications (1981, 1404, 1500, etc.), and the Washington State Fire Service Training Program for respiratory training and usage.

(5) When fire departments purchase compressed breathing air from a vendor, the fire department shall require the vendor to provide certification and documentation of breathing air quality as specified in subsection (21) of this section and in chapter ((296-62)) 296-842 WAC((,Part E)).

(6) When the fire department makes its own breathing air or uses vendor purchased breathing air, the air quality from compressors, cascade systems cylinders, shall be tested at least quarterly as specified in subsection (21) of this section.

(7) Fit testing shall be conducted in accordance with this section and chapter ((296-62)) 296-842 WAC, ((Part E,)) Respiratory protection.

(a) Each new member shall be tested before being permitted to use SCBA's in a hazardous atmosphere.

(b) Only fire fighters with a properly fitting facepiece shall be permitted by the fire department to function in a hazardous atmosphere with SCBA. (Reference WAC ((296-62-07170 Respiratory Sealing Problems)) 296-842-18005.)

(c) Fit testing shall be repeated:

(i) At least once every twelve months.

(ii) Whenever there are changes in the type of SCBA or facepiece used.

(iii) Whenever there are significant physical changes in the user. Example: Weight change of ten percent or more, scarring of face seal area, dental changes, cosmetic surgery, or any other condition that may affect the fit of the facepiece seal.

(d) The fit testing is done only in a negative-pressure mode. If the facepiece is modified for fit testing, the modification shall not affect the normal fit of the device. Such modified devices shall only be used for fit testing.

(e) The fit test procedures and test exercises described in WAC 296-62-07162, Asbestos, Appendix C, shall be followed unless stated otherwise in this chapter.

(f) Respirator fit test records shall include:

(i) Written guidelines for the respirator fit testing program including pass/fail criteria;

(ii) Type of respirator tested including manufacturer, model, and size;

(iii) Type of fit test and instrumentation or equipment used;

(iv) Name or identification of test operator;

(v) Name of person tested;

(vi) Date of test; and

(vii) Results of test.

Note: Fire fighters should be issued individual facepieces.

(8) Facial hair, contact lenses, and eye and face protective devices.

(a) A negative pressure respirator, any self-contained breathing apparatus, or any respirator which is used in an atmosphere immediately dangerous to life or health (IDLH) equipped with a facepiece shall not be worn if facial hair comes between the sealing periphery of the facepiece and the face or if facial hair interferes with the valve function.

(b) The wearer of a respirator shall not be allowed to wear contact lenses if the risk of eye damage is increased by their use.

(c) If a spectacle, goggle, or face shield must be worn with a facepiece, it shall be worn so as to not adversely affect

the seal of the facepiece to the face. See WAC 296-62-07170(2).

(d) Straps or temple bars shall not pass between the seal or surface of the respirator and the user's face.

(9) At the end of suppression activities (to include fire overhaul) and before returning to quarters:

(a) Fire fighters shall be decontaminated prior to removal of respirators whenever fire fighting activities resulted in exposure to a hazardous substance.

(b) When exchanging air supply bottles during suppression or overhaul activities, reasonable precautions shall be taken to maintain uncontaminated atmosphere to the breathing zone and facepiece supply hose.

(10) Self-contained respiratory equipment shall be available and used by all fire fighters who enter into hazardous atmospheres during structural fire fighting activities.

(11) Positive pressure air line respirators may be used only for atmospheres other than IDLH and must be equipped with a five minute minimum capacity positive pressure escape bottle.

(a) If the service life of the auxiliary air supply is fifteen minutes or less it shall not be used for entry into an IDLH atmosphere but it may be used for escape purposes. The auxiliary air supply may be used for entry into an IDLH atmosphere only when the service life of the unit exceeds fifteen minutes and when not more than twenty percent of the noted air supply will be used during entry.

(b) The maximum length of hose for supplied air respirators is 300 feet (91 meters). Such hose shall be heavy duty nonkinking and NIOSH approved.

(12) Respirators shall be provided for, and shall be used by, all personnel working in areas where:

- (a) The atmosphere is hazardous;
- (b) The atmosphere is suspected of being hazardous; or
- (c) The atmosphere may rapidly become hazardous;

(13) Anytime fire fighters are working inside a confined space, such persons shall be provided with SCBA or air line respirator with escape bottle, and shall use the equipment unless the safety of the atmosphere can be established by testing and continuous monitoring.

(14) Fire fighters using a properly functioning SCBA shall not compromise the protective integrity of the SCBA by removing the facepiece for any reason in hazardous atmospheres or in atmospheres where the quality of air is unknown.

(15) Fire fighters shall receive training for each type and manufacturer of respiratory equipment available for their use, the step-by-step procedure for donning the respirator and checking it for proper function. Required training shall include:

- (a) Recognizing hazards that may be encountered;
- (b) Understanding the components of the respirator;
- (c) Understanding the safety features and limitations of the respirator; and
- (d) Donning and doffing the respirator.

(16) After completing such training, each fire fighter shall practice at least quarterly, for each type and manufacturer of respirator available for use, the step-by-step procedure for donning the respirator and checking it for proper function.

(17) Members shall be tested at least annually on the knowledge of respiratory protection equipment operation, safety, organizational policies and procedures, and facepiece seals, to the fire department's standard. Such records shall remain part of the member training file.

(18) Members shall be allowed to use only the make, model, and size respirator for which they have passed a fit test within the last twelve months.

(19) In cases where there is a reported failure of a respirator, it shall be removed from service, tagged and recorded as such, and tested before being returned to service.

(20) Fire fighters shall be thoroughly trained in accordance with the manufacturer's instructions on emergency procedures such as use of regulator bypass valve, corrective action for facepiece and breathing tube damage, and breathing directly from the regulator (where applicable).

(21) Compressed gaseous breathing air in the SCBA cylinder shall meet the requirements of ANSI/CGA G7.1 - Commodity Specification for Air, with a minimum air quality of grade D, as well as meeting a water vapor level of 24 ppm or less.

(22) SCBA cylinders shall be hydrostatically tested within the periods specified by the manufacturer and the applicable governmental agencies.

Additional reference: Chapter ((296-62)) 296-842 WAC((Part E)).

AMENDATORY SECTION (Amending WSR 03-11-060, filed 5/19/03, effective 8/1/03)

WAC 296-305-05503 Summary of training requirements. (1) Training on noise must conform to chapter 296-817 WAC, Hearing loss prevention (noise), and WAC 296-305-02005.

(2) Training on medical procedures shall conform to WAC 296-305-02501.

(3) Training on respiratory equipment shall conform to chapter ((296-62)) 296-842 WAC, ((Part E,)) Respiratory protection, and WAC 296-305-04001.

(4) Training on employee right-to-know procedures shall conform to WAC 296-800-170, chemical hazard communication program.

(5) Training on overhaul procedures and operations shall conform to WAC 296-305-05001.

(6) Training on wildland fires shall conform to WAC 296-305-07001 through 296-305-07019.

(7) Training on confined space entry and/or rescue shall conform to chapter 296-62 WAC, Part M, Permit-required confined spaces and WAC 296-305-05003.

(8) Live fire training in structures shall conform to NFPA 1403 and this section.

(9) The employer shall provide training and education for all members commensurate with those duties and functions that members are expected to perform. Such training and education shall be provided to members before they perform emergency activities. Fire service leaders and training instructors shall be provided with training and education which is more comprehensive than that provided to the general membership of the fire department.

(10) The employer shall assure that training and education is conducted frequently enough to assure that each member is able to perform the member's assigned duties and functions satisfactorily and in a safe manner so as not to endanger members or other employees. All members shall be provided with training at least annually. In addition, members who are expected to perform interior structural fire fighting shall be provided with an education session or training at least quarterly.

AMENDATORY SECTION (Amending WSR 01-23-060, filed 11/20/01, effective 12/1/01)

WAC 296-800-160 Summary. Your responsibility: To make sure that your employees have, use, and care for the appropriate personal protective equipment (PPE).

PPE is an item or items used to protect the eyes, face, head, body, arms, hands, legs, and feet such as goggles, helmets, head covers, gloves, rubber slickers, disposable coveralls, safety shoes, protective shields, and barriers.

You must:

Do a hazard assessment for PPE.

WAC 296-800-16005.

Document your hazard assessment for PPE.

WAC 296-800-16010.

Select appropriate PPE for your employees.

WAC 296-800-16015.

Provide PPE to your employees.

WAC 296-800-16020.

Train your employees to use PPE.

WAC 296-800-16025.

Retrain employees to use PPE, if necessary.

WAC 296-800-16030.

Document PPE training.

WAC 296-800-16035.

Require your employees to use necessary PPE on the job.

WAC 296-800-16040.

Keep your PPE safe and in good condition.

WAC 296-800-16045.

Make sure your employees use appropriate face and eye protection.

WAC 296-800-16050.

Make sure your employees use appropriate head protection.

WAC 296-800-16055.

Make sure your employees use appropriate foot protection.

WAC 296-800-16060.

Make sure your employees use appropriate hand protection.

WAC 296-800-16065.

Make sure your employees are protected from drowning.

WAC 296-800-16070.

Exemption: • WAC 296-800-16015, 296-800-16025, 296-800-16030, and 296-800-16035 do not apply to electrical protective equipment or respiratory protection. See chapters 296-24 WAC, Part L and chapter ((296-62)) 296-842 WAC, ((Part E,)) for rules about these types of protective equipment.

AMENDATORY SECTION (Amending WSR 02-20-034, filed 9/24/02, effective 10/1/02)

WAC 296-824-20005 Develop an emergency response plan.

- Note:**
- You may already have an emergency response plan, such as required by chapter 296-62 WAC, Part P, Hazardous waste operations and treatment, storage and disposal facilities or by state and locally coordinated response efforts (Section 303 of Superfund Amendments and Reauthorization Act (SARA), Title III). You may use those plans to comply with this section, if they include the items listed below.
 - Before a written emergency response plan can be developed, you will need to anticipate the types of uncontrolled releases that employees could encounter in your workplace(s).

You must:

(1) Make sure your plan is written and adequately addresses, as a minimum, all of the following:

- Preemergency planning and coordination with additional responders (including personnel from other employers such as: Fire departments, law enforcement agencies, emergency medical services, and state or federal agencies).
- Personnel roles, (See Table 1) and lines of authority and communications for all affected parties including responders
- Employee training (see WAC 296-824-30005 for more detail):

- Note:**
- Responders' level of training depends on the duties or roles the employer assigns.
 - Training for the employees' role should address the competencies specified in Tables 3 through 6.
 - Training on specific substances may be appropriate depending on the number and characteristics of hazardous substances expected to be encountered. For example, if employees may only respond to one substance, you could provide training (covering the knowledge and skills specified in Tables 3 through 6) on that single substance. If employees might respond to a range of hazardous substances, training may be required to cover categories of hazardous substances.
 - Videos and automated training methods (for example: Interactive computer-based programs) may be used in training; however, instructors must be readily available to:
 - Encourage and provide responses to questions for the benefit of the group.
 - Evaluate employee understanding of the material.
 - Provide other instructional interaction to the group.

- Emergency recognition
- Immediate emergency procedures including:
 - Methods of alerting employees (see WAC 296-800-310, exit routes and employee alarm systems) and outside responders
 - Procedures for limited action (emergency prevention)

Note: *Limited action* includes shutting down processes, closing emergency valves and other critical actions to secure the operation, or prevent the incident from increasing in severity.

Limited Action and Employee Roles	
If . . .	Then employees involved would be:
Limited action could be conducted in the danger area	Considered emergency responders

Limited Action and Employee Roles	
If . . .	Then employees involved would be:
Limited action will not be conducted in the danger area	Considered evacuees, not emergency responders

- Details of who will evacuate immediately and who will remain behind for limited action
- Evacuation routes and procedures
- How to establish safe distances and places of refuge (for example, during emergency response the incident commander (IC) decides to make changes based on new developments, i.e., changes in the wind direction).
 - Methods of securing and controlling access to the site
 - Emergency medical treatment and first aid
 - A complete personal protective equipment (PPE) program that addresses:
 - Selection of PPE including selection criteria to be used and the identification, specified use and limitations of the PPE selected.
 - Training on proper use of PPE (including maintenance).
 - Hazards created by wearing PPE including heat stress during temperature extremes, and/or other appropriate medical considerations.
 - Criteria used for determining the proper fit of PPE.
 - Procedures covering proper use of PPE including procedures for inspection, putting it on (donning) and removing it (doffing).

- Maintenance of PPE including procedures for decontamination, disposal and storage.
- Methods used to evaluate the effectiveness of your PPE program.

Note:

- If a manufacturer's printed information or WISHA rule adequately addresses procedural requirements (such as donning or doffing for PPE), it is not necessary to rewrite this into your program; simply attach the printed information.
- You may use written procedures provided by the equipment manufacturer when they meet the requirements of other chapters, including chapter ((296-62)) 296-842 WAC, (~~Part E, Respiratory protection~~) Respirators.

- Emergency equipment
- Emergency response procedures
- Decontamination procedures determined by a hazardous materials specialist or other qualified individual
- Methods to critically assess the response and conduct appropriate follow-up

You must:

(2) Make your written emergency response plan available to employees, their representatives, and WISHA personnel for inspecting or copying.

Note: In situations where multiple employers could respond to an incident, all plans should consistently address:

- Who will be designated as the incident commander (IC)

AND

- If, when, and how transfer of the incident commander (IC) position will take place.

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If the employee's role is:	Then all of the following apply. They:
First responder at the awareness level	<ul style="list-style-type: none"> • Are likely to witness or discover a hazardous substance release • Are trained to initiate an emergency response by notifying the proper authorities of the release • Take no further action beyond notifying the authorities
First responder at the operations level	<ul style="list-style-type: none"> • Respond to actual or potential releases in order to protect nearby persons, property, and/or the environment from the effects of the release • Are trained to respond defensively, without trying to stop the release • May try to: <ul style="list-style-type: none"> - Confine the release from a safe distance - Keep it from spreading - Protect others from hazardous exposures
Hazardous materials technician	<ul style="list-style-type: none"> • Respond to releases or potential releases, with the intent of stopping the release • Are trained to approach the point of release offensively in order to, either: <ul style="list-style-type: none"> - Plug - Patch - Stop the release using other methods
Hazardous materials specialist	<ul style="list-style-type: none"> • Respond along with, and provide support to, hazardous materials technicians • Are required to have more specific knowledge of hazardous substances than a hazardous materials technician

**Table 1
Roles and Duties of Emergency Responders**

If the employee's role is:	Then all of the following apply. They:
	<ul style="list-style-type: none"> • Act as the site activity liaison when federal, state, local, and other government authorities participate
Incident commander	<ul style="list-style-type: none"> • Have ultimate responsibility for: <ul style="list-style-type: none"> - Direction - Control - Coordination of the response effort - Will assume control of the incident beyond the first responder awareness level
Specialist employee	<ul style="list-style-type: none"> • Are a technical, medical, environmental, or other type of expert • May represent a hazardous substance manufacturer, shipper, or a government agency • May be present at the scene or may assist from an off-site location • Regularly work with specific hazardous substances • Are trained in the hazards of specific substances • Are expected to give technical advice or assistance to the incident commander or incident safety officer, when requested
Skilled support personnel	<ul style="list-style-type: none"> • Are needed to perform an immediate, specific emergency support task at the site • Are skilled in the operation of equipment including: <ul style="list-style-type: none"> - Earth moving equipment - Cranes - Hoisting equipment
Incident safety officer	<ul style="list-style-type: none"> • Are designated by the incident commander • Are knowledgeable in operations being implemented at the site • Have specific responsibility to: <ul style="list-style-type: none"> - Identify and evaluate hazards - Provide direction on employee safety matters

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AMENDATORY SECTION (Amending WSR 02-20-034, filed 9/24/02, effective 10/1/02)

WAC 296-824-40005 Provide medical surveillance to employees.

You must:

(1) Provide medical surveillance for employees to comply with Tables 7 and 8, and the following:

- Make medical surveillance available at:
 - Reasonable times and places.
 - No cost to employees, including travel associated costs such as mileage, gas or bus fare if the employee is required to travel off site

AND

- Wages for additional time spent outside of employees normal work hours.
- Make sure a licensed physician performs or supervises exams and procedures.
- Give complete information to the examining physician including:
 - A copy of this chapter.
 - A description of the employee's duties that relate to hazardous substance exposure.
 - The hazardous substance exposure levels anticipated for the employee.

- A description of the personal protective equipment (PPE) the employee could use.

- Information available from previous medical examinations.

- The medical evaluation information required by chapter ((296-62)) 296-842 WAC, ((Part E, Respiratory protection)) Respirators.

- Medical exams must include, at a minimum:

- A medical history
- A work history (or updated history if on file)
- A special emphasis on:

- Assessment of symptoms related to handling hazardous substances

- Health hazards

- Evaluation of fitness for duty (including the ability to wear any personal protective equipment (PPE) or other conditions that may be expected at the workplace)

- Other content as determined by the examining physician.

Note: The physician should consult the *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities* and the *Medical Management Guidelines for Acute Chemical Exposure* (search OSHA website: <http://www.osha.gov>).

(2) Obtain the physician's written opinion and give a copy to the employee that includes:

- A statement of whether or not medical conditions were found which would increase the employee's risk for impairment during emergency response work or respirator use.

– Do not include specific findings or diagnoses unrelated to occupational exposures.

- Limitations recommended to the employee's assigned work, if any.

- Exam and test results if the employee requests this information.

- A statement that affirms the employee has been confidentially informed of medical exam results (including medical conditions requiring follow-up).

Table 7 Medical Surveillance for Employee Categories	
If the employee is covered by this chapter and is:	Then you must:
<ul style="list-style-type: none"> • Exposed for at least 30 days a year to health hazards or hazardous substances at or above the permissible exposure limit or published exposure levels (even when respirators are used), OR • Required to wear a respirator for at least 30 days a year.* 	<ul style="list-style-type: none"> • Offer standard medical surveillance as specified in Table 8.*
<ul style="list-style-type: none"> • A hazardous materials (HAZMAT) team member • A hazardous materials specialist 	<ul style="list-style-type: none"> • Provide standard medical surveillance as specified in Table 8.
<ul style="list-style-type: none"> • An emergency responder who shows immediate or delayed signs or symptoms possibly resulting from exposure to hazardous substances during an incident. 	<ul style="list-style-type: none"> • Provide incident-specific medical surveillance as specified in Table 8.
<ul style="list-style-type: none"> • Not an emergency responder and: <ul style="list-style-type: none"> – May be injured – Shows immediate or delayed signs or symptoms possibly resulting from exposure to hazardous substances – May have been exposed to hazardous substances at concentrations above the permissible exposure limits (PELs) or the published exposure levels without appropriate PPE. 	<ul style="list-style-type: none"> • Offer incident-specific medical surveillance as specified in Table 8.

***Note:** A medical evaluation for respirator use is required by chapter ((296-62)) 296-842 WAC, ((Part E, Respiratory protection)) Respirators, for those employees who have not been cleared for respirator use during medical surveillance activities.

Table 8 Frequency of Exams and Consultations	
If the employee is covered by:	Then medical surveillance must include:
<ul style="list-style-type: none"> • Standard medical surveillance 	<ul style="list-style-type: none"> • Exams and consultations: <ul style="list-style-type: none"> – Before assignment. <p style="margin-left: 20px;">Note: If the employee is a hazardous materials (HAZMAT) team member or a hazardous materials specialist, the employee must receive a baseline physical examination.</p> – At least once every 12 months after their initial assignment unless the physician believes a shorter, or longer interval (but no more than 24 months) is appropriate. – Whenever employees are reassigned to an area where they will no longer be covered by medical surveillance and they have not been examined within the past 6 months. – As soon as possible after an employee reports: <ul style="list-style-type: none"> ◆ Signs or symptoms of possible overexposure to hazardous substances or health hazards ◆ Injury ◆ Exposure above the permissible exposure limits or published exposure levels – At the termination of their employment unless they were examined within the past 6 months.
<ul style="list-style-type: none"> • Incident-specific medical surveillance 	<ul style="list-style-type: none"> • Medical consultations and exams: <ul style="list-style-type: none"> – As soon as possible following the incident or development of signs or symptoms. – At additional times, if the physician determines follow-up is medically necessary.

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AMENDATORY SECTION (Amending WSR 02-20-034, filed 9/24/02, effective 10/1/02)

WAC 296-824-60005 Personal protective equipment.

Use appropriate personal protective equipment (PPE).

- Note:**
- Only properly trained employees should select PPE. Hazardous materials technicians and hazardous materials specialists can select PPE within the competencies specified in Table 4.
 - Selection requirements in other PPE rules also apply, including:
 - WAC 296-800-160, Personal protective equipment.
 - Chapter ((296-62)) 296-842 WAC, ((Part E, Respiratory protection)) Respirators.
 - WAC 296-24-58505, Fire brigades.
 - Chapter 296-305 WAC, Safety standards for fire fighting.

You must:

- Provide employees with appropriate PPE and make sure it is used if hazards could be present.

– Select PPE (such as respirators, gloves, protective suits and other PPE) based on:

- ◆ An evaluation of the performance characteristics (such as breakthrough time and hazardous substance-specificity of the material or item) relevant to the requirements and limitations of the site.
- ◆ Task-specific conditions and durations.
- ◆ The hazards and potential hazards of the site (see Table 9, Selecting PPE for Specific Hazards).
 - Select totally encapsulating chemical protective (TECP) suits, as specified in Table 9, that:
 - ◆ Maintain positive air pressure.
 - ◆ Prevent inward test gas leakage of more than 0.5 percent.

Note: Follow the manufacturer's recommended procedure for testing a TECP suit's ability to maintain positive air pressure and prevent inward gas leakage. Other established test protocols for these suits, for example NFPA 1991 and ASTM F1052-97, may also be used.

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**Table 9
Selecting PPE for Specific Hazards**

If:	Then:
<ul style="list-style-type: none"> • Inhalation hazards could be present. 	<ul style="list-style-type: none"> • Positive-pressure (pressure-demand) self-contained breathing apparatus (SCBA) OR • A decreased level of respiratory protection only when the incident commander determines, from air monitoring results, that employees will be adequately protected.
Chemical exposure levels will create a substantial possibility of: <ul style="list-style-type: none"> • Immediate death. • Immediate serious illness or injury. • Reduced ability to escape. 	Either positive-pressure (pressure-demand): <ul style="list-style-type: none"> • SCBA • Air-line respirators equipped with an escape air supply.
Skin absorption of a hazardous substance may result in a substantial possibility of: <ul style="list-style-type: none"> • Immediate death. • Immediate serious illness or injury. • Reduced ability to escape. 	Protection equivalent to Level A including a totally encapsulating chemical protective (TECP) suit.

AMENDATORY SECTION (Amending WSR 02-20-034, filed 9/24/02, effective 10/1/02)

WAC 296-824-70005 Follow the appropriate post-emergency response requirements.

Important:

- Postemergency response is the stage of the emergency response where the immediate threat from the release has been stabilized or eliminated, and cleanup of the site has started.

- When cleanup is done by the employees who were part of the initial emergency response, the employees are not covered by this section (however, training, PPE and other requirements in WAC 296-824-20005 through 296-824-60015 apply to these employees).

You must:

- (1) Follow Table 10 to determine which requirements apply to your postemergency response activities.
- (2) Maintain clean-up equipment as specified in Table 10.

**Table 10
Rules that Apply to Postemergency Response Activities**

When postemergency response cleanup is performed by employees who were not part of the initial emergency response and:	The following rules or requirements apply:
It is necessary to remove hazardous substances, health hazards and contaminated materials (example: Soil) from the site	Chapter 296-62 WAC, Part P, Hazardous waste operations and treatment, storage and disposal facilities.

Table 10
Rules that Apply to Postemergency Response Activities

<p>When postemergency response cleanup is performed by employees who were not part of the initial emergency response and:</p>	<p>The following rules or requirements apply:</p>
<p>Cleanup is done on plant property using plant or workplace employees AND It is not necessary to remove hazardous substances, health hazards and contaminated materials from the site.</p>	<p>For training:</p> <ul style="list-style-type: none"> • WAC 296-24-567(1), Employee emergency action plans • Chapter ((296-62)) 296-842 WAC, ((Part E, Respiratory protection)) <u>Respirators</u> • WAC 296-800-170, Employer chemical hazard communication • Other appropriate training requirements relevant to personal protective equipment (PPE) and decontamination <p>For equipment:</p> <ul style="list-style-type: none"> • Make sure that all equipment used for clean-up work is serviced and inspected before use.

AMENDATORY SECTION (Amending WSR 02-20-034, filed 9/24/02, effective 10/1/02)

WAC 296-824-800 Definitions. The following definitions are specific to this chapter:

Annually

Any twelve-month cycle.

Buddy system

A system of organizing employees (who enter or stand by danger areas) into work groups, so each employee can be observed by at least one other member of the group. The purpose of this system is to provide rapid assistance to employees in an emergency.

Clean-up operation(s)

An operation where hazardous substances are removed, contained, incinerated, neutralized, stabilized, cleared up or, in any other manner, processed or handled with the goal of making the site safer for people or the environment.

Danger area

Areas where conditions pose a serious danger to employees, such as areas where:

- Immediately dangerous to life or health (IDLH) conditions could exist

OR

- High levels of exposure to toxic substances could exist

OR

- There is a potential for exceeding the lower explosive limit (LEL), also known as the lower flammability limit (LFL), of a substance.

Decontamination

Removing hazardous substances from employees and their equipment so potential adverse health effects will not occur.

Emergency response

An organized response to an anticipated release of a hazardous substance that is, or could become an uncontrolled release.

Emergency response plan

A written plan that requires coordination between emergency response participants, and contains procedures, criteria, and other information that will be applied to emergency

response operations. Each employer's plan should be compatible with local and state plans.

Engineering controls

Methods of controlling employee exposures by modifying the source or reducing the quantity of contaminants.

Hazardous materials team (HAZMAT team)

A group of employees who are expected to perform responses to releases, or possible releases, of hazardous substances for the purpose of control and stabilization. As a result of their duties, HAZMAT team members may have close contact with hazardous substances.

Note: A HAZMAT team may be a separate component of a fire brigade or fire department.

Hazardous substance

Any of the following substances that could adversely affect an exposed employee's health or safety:

- Substances defined under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) or "Superfund" Act (visit: <http://www.epa.gov>)

- Biological or other disease-causing agents released that could reasonably be expected to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations in a person or their offspring when the person:
 - Is directly exposed to the agent in the environment
 - Directly ingests, inhales, or assimilates the agent from the environment
 - Indirectly ingests the agent through a food chain

- Substances listed by the United States Department of Transportation as hazardous materials under Title 49 (Transportation) in the Code of Federal Regulations (CFR), Part 172, section 101 and appendices (visit: <http://www.nara.gov> and search for "List of CFR subjects")

- Hazardous wastes as defined in this chapter.

Hazardous waste
A substance designated by chapter 173-303 WAC, Dangerous waste regulations, department of ecology, as a danger-

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ous waste or an extremely hazardous waste and any waste fitting the definition of "health hazard" in this chapter.

Note: For department of ecology regulations, visit: <http://www.ecy.wa.gov>

Health hazard

A chemical, a mixture of chemicals, or a pathogen for which there is statistically significant evidence, based on at least one study conducted according to established scientific principles, that acute or chronic health effects may occur in exposed employees.

The term "health hazard" includes stress due to temperature extremes and chemicals that are:

- Carcinogens
- Toxic or highly toxic agents
- Reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, or neurotoxins
- Agents acting on the hematopoietic system agents that damage lungs, skin, eyes, or mucous membranes. (Detailed definitions of these chemical terms can be found in the Safety and health core rules, WAC 296-800-170, chemical hazard communication.)

Incident command system (ICS)

An organized approach to control and manage operations at an emergency response incident.

Incidental release

A release that can be safely controlled at the time of the release and does not have the potential to become an uncontrolled release.

Note:

Example of a situation that results in an incidental release:

A tanker truck is receiving a load of hazardous liquid when a leak occurs. The driver knows the only hazard from the liquid is minor skin irritation. The employer has trained the driver on procedures and provided equipment to use for a release of this quantity. The driver puts on skin protection and stops the leak. A spill kit is used to contain, absorb, and pick up the spilled material for disposal.

Immediately dangerous to life or health (IDLH)

Any atmospheric condition that would:

- Cause an immediate threat to life
- OR
- Cause permanent or delayed adverse health effects

OR

- Interfere with an employee's ability to escape

Limited action

Action necessary to:

- Secure an operation during emergency responses,
- OR

- Prevent an incident from increasing in severity.

Examples include shutting down processes and closing emergency valves.

Lines of authority

A preestablished ranking of individuals, qualified to assume a commanding role during an emergency response, noted in an emergency response plan and implemented during a response. This is most important when responders from

multiple employers could participate in an emergency response.

Lower explosive limit (LEL)

See lower flammable limit (LFL).

Lower Flammable limit (LFL)

The lowest concentration of a material that will propagate a flame. The LFL is usually expressed as a percent (by volume) of the material in air (or other oxidant).

Must

Must means mandatory.

Permissible exposure limit (PEL)

Means the established time-weighted-average (TWA) concentration or ceiling concentration of a contaminant that must not be exceeded. The exposure, inhalation, or dermal permissible limit specified in chapter ((296-62 WAC, Part H, Air contaminants)) 296-841 WAC, identifying and controlling respiratory hazards.

Personal protective equipment (PPE)

Protective items designed to be worn by the user to protect them against airborne, skin contact and other hazards. This includes items such as respiratory protection, protective suits, gloves, eye protection, etc.

Postemergency response

The stage of the emergency response where the immediate threat from the release has been stabilized or eliminated, and cleanup of the site has started.

Published exposure level

Exposure limits published in "National Institute for Occupational Safety and Health (NIOSH) Recommendations for Occupational Safety and Health" (DHHS publication #92-100, 1992).

If an exposure limit is not published by NIOSH, then "published exposure level" means the exposure limits published by the American Conference of Governmental Industrial Hygienists (ACGIH) in "TLVs and BEIs-Threshold Limit Values for Chemical Substances and Physical Agents" (1999 edition).

Note: Additional exposure levels published by recognized organizations such as the American Industrial Hygiene Association are not required to be observed by this rule; however, they may be a useful resource when a hazardous substance is not covered by NIOSH and ACGIH publications.

Release

A spill, leak, or other type of hazardous substance discharge.

Uncontrolled release

A release where significant safety and health risks could be created. Releases of hazardous substances that are either incidental or could not create a safety or health hazard (i.e., fire, explosion or chemical exposure) are not considered to be uncontrolled releases.

Examples of conditions that could create a significant safety and health risk:

- Large-quantity releases
- Small releases that could be highly toxic
- Potentially contaminated individuals arriving at hospitals
- Airborne exposures that could exceed a WISHA permissible exposure limit or a published exposure

limit and employees are not adequately trained or equipped to control the release.

Example of an uncontrolled release:

A forklift driver knocks over a container of a solvent-based liquid, releasing the contents onto the warehouse floor. The driver has been trained to recognize the vapor is flammable and moderately toxic when inhaled. The driver has not been trained or provided appropriate equipment to address this type of spill. In this situation, it is not safe for the driver to attempt a response. The driver needs to notify someone of the release so an emergency response can be initiated.

Workplace

- A fixed facility
- OR
- A temporary location (such as a traffic corridor)
- OR
- Locations where employees respond to emergencies.

You

The employer. For a complete definition of "employer" see Safety and health core rules, chapter 296-800 WAC.

AMENDATORY SECTION (Amending WSR 02-15-102, filed 7/17/02, effective 10/1/02)

WAC 296-835-11045 Protect employees during welding, burning, or other work using open flames.

You must:

• Make sure the dip tank and the area around it are thoroughly cleaned of solvents and vapors before performing work involving:

- Welding
- Burning

OR

- Open flames

Reference: There are additional requirements for this type of work. See Welding, cutting and brazing, chapter 296-24 WAC, Part I, and Respiratory protection, chapter ((296-62)) 296-842 WAC((Part E)).

AMENDATORY SECTION (Amending WSR 03-01-096, filed 12/17/02, effective 6/1/03)

WAC 296-839-30005 Develop or obtain material safety data sheets (MSDSs).

You must:

• Develop or obtain a complete and accurate material safety data sheet (MSDS) for each hazardous chemical or mixture according to ALL of the following:

- ALL information in Table 8 must be completed. If there is no relevant information for a required item, this must be noted. Blank spaces are not permitted.

- Note:**
- No specific format is required for MSDSs; however, an example format (OSHA form 174) can be found online at: <http://www.osha.gov>
 - One MSDS can be developed for a group of complex mixtures (for example, jet fuels or crude oil) IF the health and physical hazards of the mixtures are similar (the amounts of chemicals in the mixture may vary).

- Content of MSDSs must accurately represent the available scientific evidence.

Note: You may report results of scientifically valid studies that tend to refute findings of hazards.

- MSDSs must be in English.

Note: You may develop copies of MSDSs in other languages.

You must:

• Revise an MSDS when you become aware of new and significant information regarding the hazards of a chemical, or how to protect against the hazards

- Within three months after you first become aware of the information

OR

- Before the chemical is reintroduced into the workplace if the chemical is no longer being used, produced or imported.

Table 8 Information Required on MSDSs
• The chemical's identity as it appears on the label
• The date the MSDS was prepared or updated
• A contact for additional information about the hazardous chemical and appropriate emergency procedures Include all of the following: <ul style="list-style-type: none"> - Name - Address - Telephone number of the responsible party preparing or distributing the MSDS
• The chemical's hazardous ingredients ¹ as determined by your hazard evaluation <ul style="list-style-type: none"> - For a single substance chemical, include the chemical and common name(s) of the substance - For mixtures tested as a whole <ul style="list-style-type: none"> ■ Include the common name(s) of the mixture <li style="text-align: center;">AND ■ List the chemical and common name(s) of ingredients that contribute to the known hazards - For mixtures NOT tested as a whole, list the chemical and common name(s) of hazardous ingredients <ul style="list-style-type: none"> ■ That make up 1% or more of the mixture, by weight or volume, including carcinogens (if 0.1% concentration or more, by weight or volume) - If ingredients are less than the above concentrations but may present a health risk to employees (for example, allergic reaction or exposure could exceed the permissible exposure limits, or PEL) they must be listed here
• Exposure limits for airborne concentrations. Include ALL of the following, when they exist: <ul style="list-style-type: none"> - WISHA or OSHA PELs² <ul style="list-style-type: none"> ■ The 8-hour time weighted average (TWA) ■ The short-term exposure limit (STEL), if available ■ Ceiling values, if available - Threshold limit values (TLVs) including 8-hour TWAs, STELs, and ceiling values - Other exposure limits used or recommended by the employer preparing the MSDS
• Physical and chemical characteristics <ul style="list-style-type: none"> - For example, boiling point, vapor pressure, and odor
• Fire, explosion data, and related information <ul style="list-style-type: none"> - For example, flashpoint, flammable and explosion limits, extinguishing media, and unusual fire or explosion hazards
• Physical hazards of the chemical including reactivity information <ul style="list-style-type: none"> - For example, incompatibilities, decomposition products, by-products, and conditions to avoid

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**Table 8
Information Required on MSDSs**

<ul style="list-style-type: none"> • Health hazard information including ALL of the following: <ul style="list-style-type: none"> – Primary routes of exposure <ul style="list-style-type: none"> ■ For example, inhalation, ingestion, and skin absorption or other contact³ – Health effects (or hazards) associated with: <ul style="list-style-type: none"> ■ Short-term exposure⁴ AND <ul style="list-style-type: none"> ■ Long-term exposure⁴ – Whether the chemical is listed or described as a carcinogen or potential carcinogen in the latest editions of each of the following: <ul style="list-style-type: none"> ■ The National Toxicology Program (NTP) Annual Report on Carcinogens OR ■ The International Agency for Research on Cancer (IARC) Monographs as a potential carcinogen OR ■ WISHA or OSHA rules – Signs and symptoms of exposure⁵ – Medical conditions generally recognized as being aggravated by exposure
<ul style="list-style-type: none"> • Emergency and first-aid procedures
<ul style="list-style-type: none"> • Generally applicable precautions for safe handling and use known to the employer preparing the MSDS <ul style="list-style-type: none"> – For example, appropriate procedures for clean-up of spills and leaks, waste disposal method, precautions during handling and storing
<ul style="list-style-type: none"> • Generally applicable and appropriate control measures known to the employer preparing the MSDS, including ALL of the following: <ul style="list-style-type: none"> – Engineering controls (for example, general or local exhaust ventilation) – Work practices – Personal protective equipment (PPE) – Personal hygiene practices – Protective measures during repair and maintenance of contaminated equipment

¹The identities of some chemicals may be protected as trade secret information (see chapter 296-62 WAC, Part B-1, Trade secrets).

² WISHA PEL categories are defined, and values are provided, in chapter ((296-62 WAC, Part H)) 296-841 WAC, identifying and controlling respiratory hazards.

³ A "skin notation" listed with either an ACGIH TLV or WISHA/OSHA PEL indicates that skin absorption is a primary route of exposure.

⁴Examples of:

- Short-term health effects (or hazards) include eye irritation, skin damage caused by contact with corrosives, narcosis, sensitization, and lethal dose.
- Long-term health effects (or hazards) include cancer, liver degeneration, and silicosis.

⁵Signs and symptoms of exposure to hazardous substances include those that:

- Can be measured such as decreased pulmonary function

AND

- Are subjective such as feeling short of breath.

AMENDATORY SECTION (Amending WSR 03-01-096, filed 12/17/02, effective 6/1/03)

WAC 296-839-500 Definitions. The following definitions apply to this chapter:

Article (manufactured item)

A manufactured item that

- Is not a fluid or particle

AND

- Is formed to a specific shape or design during manufacture for a particular end use function

AND

- Releases only trace amounts of a hazardous chemical during normal use and does not pose a physical or health risk to employees.

Chemical

- An element or mixture of elements

OR

- A compound or mixture of compounds

OR

- A mixture of elements and compounds

Included are manufactured items (such as bricks, welding rods and sheet metal) that are not exempt as an article.

Chemical name

- The scientific designation of a chemical developed by the

- International union of pure and applied chemistry (IUPAC)

OR

- Chemical abstracts service (CAS) rules of nomenclature

OR

- A name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

Combustible liquid

Liquids with a flashpoint of at least 100°F (37.8°C) and below 200°F (93.3°C). A mixture with at least 99% of its components having flashpoints of 200°F (93.3°C), or higher, is not considered a combustible liquid.

Commercial account

An arrangement where a retailer is selling hazardous chemicals to an employer

- Generally in large quantities over time

OR

- At costs below regular retail price.

Common name

Any designation or identification used to identify a chemical other than the chemical name, such as a

- Code name or number

OR

- Trade or brand name

OR

- Generic name.

Compressed gas

- A contained gas or mixture of gases with an absolute pressure greater than:

- 40 psi at 70°F (21.1°C)

OR

- 104 psi at 130°F (54.4°C) regardless of the pressure at 70°F (21.1°C)

OR

- A liquid with a vapor pressure greater than 40 psi at 100°F (37.8°C), as determined by ASTM D323-72.

Container

A vessel, other than a pipe or piping system, that holds a hazardous chemical. Examples include:

- Bags
- Barrels

PERMANENT

- Bottles
- Boxes
- Cans
- Cylinders
- Drums
- Reaction vessels
- Storage tanks
- Rail cars.

Designated representative

- An individual or organization with written authorization from an employee

OR

- A recognized or certified collective bargaining agent (not necessarily authorized by an employee)

OR

- A legal representative of a deceased or legally incapacitated employee.

Distributor

A business that supplies hazardous chemicals to other employers. Included are employers who conduct retail and wholesale transactions.

Explosive

A chemical that causes a sudden, almost instant release of pressure, gas, and heat when exposed to a sudden shock, pressure, or high temperature.

Flammable

A chemical in one of the following categories:

- Aerosols that, when tested using a method described in 16 CFR 1500.45, yield either a:

– Flame projection of more than eighteen inches at full valve opening

OR

– A flashback (a flame extending back to the valve) at any degree of valve opening

- Gases that, at the temperature and pressure of the surrounding area, form a:

– Flammable mixture with air at a concentration of thirteen percent, by volume, or less

OR

– Range of flammable mixtures with air wider than twelve percent, by volume, regardless of the lower limit

- Liquids with a flashpoint below 100°F (37.8°C). A mixture with at least ninety-nine percent of its components having flashpoints of 100°F (37.8°C), or higher, is not considered a flammable liquid

- Solids, other than blasting agents or explosives, as defined in WAC 296-52-417 or 29 CFR 1910.109(a), that:

– Is likely to cause fire through friction, moisture, absorption, spontaneous chemical change or retained heat from manufacturing or processing

OR

– That can be readily ignited (and when ignited burns so vigorously and persistently that it creates a serious hazard)

OR

– When tested by the method described in 16 CFR 1500.44, ignite and burn with a self-sustained flame at a rate greater than 1/10th of an inch per second along its major axis.

Flashpoint

The minimum temperature at which a liquid gives off an ignitable concentration of vapor, when tested by any of the following measurement methods:

- Tagliabue closed tester. Use this for liquids with a viscosity less than, 45 Saybolt Universal Seconds (SUS) at 100°F (37.8°C), that do not contain suspended solids and do not tend to form a surface film under test. See American National Standard Method of Test for Flashpoint by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79)

- Pensky-Martens closed tester. Use this for liquids with a viscosity equal to, or greater than, 45 SUS at 100°F (37.8°C) or for liquids that contain suspended solids or have a tendency to form a surface film under test. See American National Standard Method of Test for Flashpoint by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79)

- Setaflash closed tester. See American National Standard Method of Test for Flashpoint by Setaflash Closed Tester (ASTM D 3278-78)

Organic peroxides, which undergo auto accelerating thermal decomposition, are excluded from any of the flashpoint measurement methods specified above.

Hazardous chemical

A chemical, which is a physical or health hazard.

Hazard warning

Words, pictures or symbols (alone or in combination) that appear on labels (or other forms of warning such as placards or tags) that communicate specific physical and health hazards (including target organ effects) associated with chemicals in a container.

Health hazard

A chemical that may cause health effects in short or long-term exposed employees based on statistically significant evidence from a single study conducted by using established scientific principles.

Health hazards include, but are not limited to, any of the following:

- Carcinogens
- Toxic or highly toxic substances
- Reproductive toxins
- Irritants
- Corrosives
- Sensitizers
- Hepatotoxins (liver toxins)
- Nephrotoxins (kidney toxins)
- Neurotoxins (nervous system toxins)
- Substances that act on the hematopoietic system (blood or blood forming system)
- Substances that can damage the lungs, skin, eyes, or mucous membranes.

Identity

A chemical or common name listed on the material safety data sheet (MSDS) and label.

Importer

The first business, within the Customs Territory of the United States, that receives hazardous chemicals produced in other countries and supplies them to manufacturers, distributors or employers within the United States.

Label

Written, printed, or graphic material displayed on, or attached to, a container of hazardous chemicals.

Manufacturer

An employer with a workplace where one or more chemicals (including items not exempt as "articles," see Table 1 in this chapter) are produced for use or distribution.

Material safety data sheet (MSDS)

Written, printed or electronic information (on paper, microfiche, or on-screen) that informs manufacturers, distributors or employers about the chemical, its hazards and protective measures as required by this rule.

Mixture

A combination of two or more chemicals that retain their chemical identity after being combined.

Organic peroxide

An organic compound containing the bivalent-O-O-structure. It may be considered a structural derivative of hydrogen peroxide if one or both of the hydrogen atoms has been replaced by an organic radical.

Oxidizer

A chemical, other than a blasting agent or explosive as defined in WAC 296-52-417 or 29 CFR 1910.109(a), that starts or promotes combustion in other materials, causing fire either of itself or through the release of oxygen or other gases.

Permissible exposure limits

See chapter ((296-62)) 296-841 WAC ((part H)), for definition of this term.

Physical hazards

A chemical that has scientifically valid evidence to show it is one of the following:

- A combustible liquid
- A compressed gas
- Explosive
- Flammable
- An organic peroxide
- An oxidizer
- Pyrophoric
- Unstable (reactive)
- Water-reactive.

Produce

To do one or more of the following:

- Manufacture
- Process
- Formulate
- Blend
- Extract
- Generate
- Emit
- Repackage.

Pyrophoric

Chemicals that ignite spontaneously in the air at a temperature of 130°F (54.4°C) or below.

Responsible party

Someone who can provide more information about the hazardous chemical and appropriate emergency procedures.

Retailer

See "distributor."

Threshold limit values (TLVs)

Airborne concentrations of substances established by the American Conference of Governmental Industrial Hygienists (ACGIH), and represent conditions under which it is believed

that nearly all workers may be repeatedly exposed day after day without adverse health effects.

TLVs are specified in the most recent edition of the *Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices* and include the following categories:

- Threshold limit value-time-weighted average (TLV-TWA)
- Threshold limit value-short-term exposure limit (TLV-STEL)
- Threshold limit value-ceiling (TLV-C).

Unstable (reactive)

A chemical in its pure state, or as produced or transported, that will vigorously polymerize, decompose, condense, or become self-reactive under conditions of shocks, pressure or temperature.

Use

To do one or more of the following:

- Package
- Handle
- React
- Emit
- Extract
- Generate as a by-product
- Transfer.

Water-reactive

A chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

Wholesaler

See "distributor."

WSR 05-03-011

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed January 6, 2005, 11:16 a.m., effective January 6, 2005]

Effective Date of Rule: Immediately.

Purpose: To implement changes to the unemployment insurance program adopted by 2ESB 6097, passed by the 2003 legislature. The rules clarify issues related to part-time workers, predecessor/successor employers, and employer penalties. The rules also describe how the department will calculate the industry average array factor rate and graduated social cost factor rate that will be paid by employers.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.12.042.

Other Authority: RCW 50.20.010.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Several sections of 2ESB 6097 are effective January 2, 2005. The department has begun the rule-making process, holding several meetings with stakeholders and interested parties. It is anticipated rules will be proposed within the next sixty days. In the interim, emergency rules are necessary to provide guidance to employers, unemployment insurance claimants, and the general public of the department's interpretation of the changes to the statute.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 3, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 3, Repealed 0.

Date Adopted: January 2, 2005.

January 6, 2005

Dr. Sylvia P. Mundy

Commissioner

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-110-015 Applications by (~~partially unemployed or~~) standby workers—RCW (~~50.04.310~~), 50.20-010(~~g~~) and 50.20.130. (1) (~~Definitions:~~

(a) ~~"Employer" means any person or business for which you work in exchange for wages.~~

(b) ~~"Partially unemployed" means that during a week:~~

(i) ~~You worked for your regular employer less than full time because of lack of work; and~~

(ii) ~~You earned less than one and one third times your weekly benefit amount plus five dollars.~~

(e)) ~~"Standby" means you are temporarily unemployed due to lack of work but expect to return to work with your regular employer.~~

(2) (~~Your rights when you are partially unemployed:~~

(a) ~~You may file your application or claim for benefits as many as five weeks after your hours are reduced without it being considered late.~~

(b) ~~You do not have to register for work, however, you must accept all hours offered by your regular employer.~~

(3)) **Your rights when you are on standby:**

(a) You can ask to be on standby for up to four weeks.

(b) You do not have to register for work.

(c) We will ask your employer to verify that you are on standby and your expected return to work date:

(i) If your employer does not respond, you can be on standby for up to four weeks;

(ii) If your employer confirms you are on standby, you can be on standby for up to four weeks or until the return to work date given by your employer, whichever is earlier;

(iii) If your employer responds that you are not on standby, you will be required to immediately register for work and to look for work.

(d) Your regular employer (~~must~~) may request to extend your standby status for more than four, but no more than eight, weeks in any benefit year. This request is subject to approval by the department. We will consider the following before deciding whether to extend standby status for more than four weeks:

(i) How long you have been out of work;

(ii) Whether other suitable work is available;

(iii) The impact on you and your employer if you accept other work; and

(iv) Other factors that apply to your situation.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 192-110-017 Applications by partially unemployed workers—RCW 50.04.310. If you are partially unemployed as defined in WAC 192-180-013, you may file your application for benefits as many as five weeks after your hours are reduced without it being considered late.

NEW SECTION

WAC 192-170-060 Availability requirements for part-time eligible workers—RCW 50.20.119. (1) If you are a part-time eligible worker as defined in RCW 50.20.119, you may limit your availability for work to 17 or fewer hours per week. You may refuse any job that is for 18 or more hours per week.

(2) You must be available for work during the hours that are customary to your occupation. For example, if your occupation normally requires both day and evening hours of work, you must be available for work both day and evening hours.

(3) You must be available for work all days of the week that are customary for your occupation, even if you have not worked those days in the past. If you are unavailable for work on any day that is a customary day of work for your occupation, your benefits will be reduced as provided in RCW 50.20.130. For example, your occupation customarily works Monday through Friday, although you normally have worked weekends only. If you are unavailable for work Monday through Friday, your benefits will be reduced as provided in RCW 50.20.130.

NEW SECTION

WAC 192-180-013 Job search requirements for individuals working less than full-time. (1) "Partially unemployed" workers are those individuals:

- (a) Who were hired to work full time,
- (b) Whose weekly hours of work have been temporarily reduced to less than full time by their employer,
- (c) Who earn less than one and one-third times their weekly benefit amount plus five dollars during a week, and
- (d) Who are expected to return to full time work for their employer within six months.

These workers are considered to be employer attached and are not required to register for or seek work. They must be available for all work offered by their regular employer.

(2) "Part time" workers are individuals who normally work less than full time, or who accept work that is less than full time. To be eligible for benefits, these workers must be available for and actively seeking full time work, and their job search is subject to review. If they obtain part time work, they must continue to seek full time work or benefits will be denied as provided in RCW 50.20.010 (1)(c). This definition of "part time" workers addresses individuals who work part time, but do not meet the requirements of RCW 50.20.119.

(3) "Part time eligible" workers are individuals who have worked no more than 17 hours in any week of their base year and are eligible for benefits under RCW 50.20.119. These individuals may seek work for 17 or fewer hours per week and their job search is subject to review. If they obtain work of 17 or fewer hours per week, they are considered to be employer attached and are no longer required to look for work, nor are they subject to the job search monitoring program.

AMENDATORY SECTION (Amending WSR 04-23-058, filed 11/15/04, effective 12/16/04)

WAC 192-300-050 Predecessor-successor relationship defined. This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(1) **Predecessor.** You are a "predecessor" if, during any calendar year, you transfer any of the following to another individual or organization:

- (a) All, or a portion, of your operating assets as defined in subsection (3) below; or
- (b) A separate unit or branch of your trade or business.

(2) **Successor.** You are a "successor" if, during any calendar year, you acquire substantially all of a predecessor

employer's operating assets. You are a "partial successor" if, during any calendar year, you acquire:

- (a) A portion of a predecessor employer's operating assets, or
- (b) A separate unit or branch of a predecessor employer's trade or business.

(3) **Operating assets.** "Operating assets" include the properties you use in the normal course of business operations to generate your operating income. They may include properties that are real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, employees, or goodwill. (~~Employees are not operating assets.~~)

(4) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (6) below.

(5) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that occurred as a result of the business acquisition or reorganization, beginning when the acquisition started and ending when the primary entity is transferred.

(6) **Exceptions.** A predecessor-successor relationship will not exist:

(a) For the purposes of chapter 50.24 RCW (payment of taxes), when the property is acquired through court proceedings, including bankruptcies, to enforce a lien, security interest, judgment, or repossession under a security agreement unless the court specifies otherwise;

(b) For the purposes of chapter 50.29 RCW (experience rating), when any four consecutive quarters, one of which includes the acquisition date, pass without reportable employment by either the predecessor, successor, or a combination of both.

AMENDATORY SECTION (Amending WSR 04-23-058, filed 11/15/04, effective 12/16/04)

WAC 192-310-030 Reports and tax payments subject to penalty. (1) **Late tax reports.** An employer who files a tax report as described in WAC 192-310-010 (2)(a) but does not file it within the time frame prescribed in WAC 192-310-010 (2)(c) is subject to a penalty of twenty-five dollars per violation, unless the penalty is waived by the department.

(2) **Incomplete Tax Reports.** An employer is required to file the report required by WAC 192-310-010 in a complete manner and in the format required by the commissioner.

(a) An "incomplete report" is defined as any report submitted by either a contributory or reimbursable employer or their agent where:

- (i) The entire wage report is not submitted timely; or
- (ii) A required element is not reported (social security number, name, hours worked, or wages paid); or
- (iii) A significant number of employees are not reported; or
- (iv) A significant number of any given element is not reported such as, but not limited to, missing social security numbers, names, hours, wages; or

(v) Either the employer reference number or Unified Business Identifier (UBI) number is not included with the tax or wage report; or

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(vi) The report includes duplicate social security numbers, or impossible social security numbers as indicated by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.).

(b) An "incorrect format" means any report that is not submitted in the format required by the commissioner under WAC 192-310-010(c).

(c) For purposes of this section, the term "significant" means an employer who has:

(i) Two to 19 employees and reports incomplete wage records for two or more employees; or

(ii) Twenty to 49 employees and reports incomplete wage records for three or more employees; or

(iii) Fifty or more employees and reports incomplete wage records for four or more employees.

(3) Penalty for filing an incomplete or incorrect format tax report. An employer who fails to file a report required by RCW 50.12.070 is subject to penalty as follows:

~~(a) ((Incomplete tax report. The penalty for filing an incomplete tax report will be t))~~ (a) Two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less((-)), with a minimum penalty of \$75.00.

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply:

(i)	1st Occurrence	\$75.00
(ii)	2nd Occurrence	\$150.00
(iii)	3rd and subsequent occurrences	\$250.00

~~((b) Filing tax report in an incorrect format. The penalty for filing a tax report in an incorrect format will be two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less. When no quarterly tax is due and an employer has submitted a tax report in an incorrect format, the following schedule will apply:~~

(i)	1st Occurrence	\$150.00
(ii)	2nd and subsequent occurrences)	\$250.00

(4) Knowingly misrepresenting amount of payroll. If an employer knowingly misrepresents to the department the amount of his or her payroll, upon which contributions under this title are based, the employer is liable for a penalty of ten times the difference between the contributions paid, if any, and the amount of contributions the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer is also liable to the department for the reasonable expenses of auditing his or her books and collecting such sums as provided in WAC 192-340-100.

(5) Report of employee's wages. Any decision to assess a penalty for filing a late or incomplete report of employee's wages as described in WAC 192-310-010 (2)(b) will be made on an individual basis by the chief administrative officer of the tax branch as provided in RCW 50.12.220.

(6) Delinquent tax payments. For purposes of RCW 50.12.220, tax payments are delinquent as provided in WAC 192-310-020 and RCW 1.12.070.

(7) Penalty waivers. The department may, for good cause, waive penalties in the following situations:

(a) The return was filed on time but inadvertently mailed to another agency;

(b) The delinquency was due to an action of an employee of the department, such as providing incorrect information to the employer when the source can be identified, or not furnishing proper forms to permit the filing of tax reports or the payment of taxes on time;

(c) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family;

(d) The delinquency was caused by the accidental destruction of the employer's place of business or business records; ((e))

(e) The department finds the employer to be out of compliance during an employer-requested audit, but the department determines the employer made a good faith effort to comply with all applicable laws and rules((-);

(f) The report was in an incorrect format and the employer can demonstrate making a good faith attempt to correct the problem in a timely manner after the department provided notification of the problem; or

(g) The employer can demonstrate that an impossible social security number was provided to the employer by the employee.

(8) Waiver requests. A request for a waiver of penalties must be written, contain all pertinent facts, be accompanied by available proof, and be filed through a tax office. In all cases the burden of proving the facts is on the employer.

(9) Extensions. The department, for good cause, may extend the due date for filing a report. The employer must make a deposit with the department in an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit will be credited to the employer's account and applied to the employer's debt. The amount of the deposit is subject to approval by the department.

(10) Billing statements. The department will not mail billing statements to employers who owe amounts of less than \$5.00. Amounts due will be accrued until they total \$5.00 at which time a billing statement will be mailed to the employer.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 192-320-005 Experience defined—RCW 50.29.021. As used in this chapter, the term "experience" includes factors that bear a direct relation to the risk of unemployment. Any benefits paid which are based on wages paid by the employer and chargeable under RCW 50.29.020 are considered experience.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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NEW SECTION

WAC 192-320-010 Experience transferred to successor employer—Definition. (1) Any benefits paid which are based on wages paid by the predecessor employer prior to the transfer of ownership must be charged to the successor employer. Just as the successor employer acquires the organization, trade, business, assets, and experience of a predecessor employer as of the date of transfer, it must also acquire the benefit charges for past, current, or future claims related to the predecessor employer (or segregable part of the predecessor employer) prior to the transfer.

(2) Once experience has been transferred, it becomes the successor employer's experience. It must be used in determining the successor's rates for any rate year that follows the year in which the transfer occurs. (There is an exception when, following the transfer, the successor still does not have sufficient experience to meet the definition of a qualified employer in RCW 50.29.010(6).) Since the transferred experience belongs to the successor employer, it may no longer be used to compute rates for the predecessor employer for subsequent rate years.

NEW SECTION

WAC 192-320-020 Calculation of industry average—RCW 50.29.025. (1) As used in this title, the term "NAICS" is an abbreviation for North American Industrial Classification System.

(2) When calculating the industry average array factor rate and the industry average graduated social cost factor rate, the department will use the first four digits of the NAICS code to determine the industry that is being calculated.

(3) **Industry average array factor rate.** (a) The department will calculate the industry average array factor rate as follows:

(i) A matrix will be prepared that contains each of the 40 rate classes;

(ii) For each rate class, all qualified employers assigned to that rate class and assigned the NAICS code being calculated will have their taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date, and reported to the department by the deadline, totaled and displayed;

(iii) The total of the 40 products will be divided by the total of all payrolls used in the calculation; and

(iv) The result will be increased by fifteen percent and expressed as a percentage rounded to two decimal places.

(b) The calculated industry average array factor rate shall be no less than 1.00 percent or greater than 5.4 percent.

(4) **Industry average graduated social cost factor rate.** (a) The department will calculate the industry average graduated social cost factor rate as follows:

(i) The industry average matrix will be expanded to display the graduated social cost factor rate for each of the 40 rate classes;

(ii) The payroll sum in each rate class will be multiplied by the corresponding graduated social cost factor rate for that rate class and the product displayed;

(iii) The total of the 40 products shall be divided by the total of all payrolls used in the calculation; and

(iv) The result shall then be increased by fifteen percent and expressed as a percentage rounded to two decimal places.

(b) The calculated industry average graduated social cost factor rate shall be no greater than the graduated social cost factor rate assigned rate class 40.

(4) If no qualified employers are in the four digit level of the NAICS code, the rates shall be calculated at the corresponding three digit level and the result assigned to the four digit level. If no qualified employers are in the three digit level, the rates shall be calculated at the corresponding two digit level and the result assigned to both the three and four digit levels.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 05-03-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-02—Filed January 6, 2005, 1:37 p.m., effective January 6, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-20-05100A and 220-20-05100B; and amending WAC 220-20-051.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The winter 2005 Washington Coastal Dungeness crab fishery will not open until substantially later than the Dungeness crab fishery off the Oregon and California coast. This rule is needed to promote orderly fisheries in accordance with RCW 77.04.012. It is intended to be consistent with the fair start provisions as agreed to between the states of California, Oregon and Washington under the tri-state agreement. There is insufficient time to promulgate permanent regulations.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

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

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

Date Adopted: January 5, 2004 [2005].

J. P. Koenings
Director
by Larry Peck

NEW SECTION

WAC 220-20-05100B Vessel designation change—Coastal crab licenses. Notwithstanding the provisions of WAC 220-20-051, effective immediately until February 15, 2005, holders of Dungeness crab—coastal fishery licenses are prohibited from changing the vessel designation except in an emergency and then only as authorized by the director.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-20-05100A Vessel designation requirements.

The following section of the Washington Administrative Code is repealed effective February 15, 2005:

WAC 220-20-05100B Vessel designation change—Coastal crab licenses.

**WSR 05-03-016
EMERGENCY RULES
DEPARTMENT OF REVENUE**

[Filed January 7, 2005, 9:35 a.m., effective January 7, 2005]

Effective Date of Rule: Immediately.

Purpose: In order to take certain tax exemptions, credits, and rates ("tax adjustments"), taxpayers must file an annual report with the Department of Revenue detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The purpose of WAC 458-20-267 Annual reports for certain tax adjustments, is to explain the reporting requirements for tax adjustments provided to the aerospace manufacturing, aluminum manufacturing, and electrolytic processing industries. This rule explains who is required to file annual reports, how to file reports and what information must be included in the reports.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The first annual report is due on March 31, 2005. The rule is necessary to provide guidance to taxpayers on who is required to file the annual reports, how the file them, and what information to be included in them. The department is unable to adopt a perma-

nent rule within a reasonable time before March 31, 2005, making an emergency rule necessary.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-04 issue of the Register.

**WSR 05-03-017
EMERGENCY RULES
DEPARTMENT OF REVENUE**

[Filed January 7, 2005, 9:37 a.m., effective January 7, 2005]

Effective Date of Rule: Immediately.

Purpose: In order to take certain tax credits and deferrals ("tax adjustments"), taxpayers must file an annual survey with the Department of Revenue containing certain information about their business activities and employment. The purpose of WAC 458-20-268 Annual surveys for certain tax adjustments, is to explain the survey requirements for tax adjustments provided to the high technology industry and the manufacturing industry located in rural areas. This rule explains who is required to file an annual survey, how to file a survey, and what information must be included in the surveys.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The first annual survey is due on March 31, 2005. The rule is necessary to provide guidance to taxpayers on who is required to file the annual surveys, how to file them, and what information to be included in them. The department is unable to adopt a permanent rule within a reasonable time before March 31, 2005, making an emergency rule necessary.

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

EMERGENCY

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Janis P. Bianchi, Manager
Interpretations and
Technical Advice Unit

NEW SECTION

WAC 458-20-268 Annual surveys for certain tax adjustments. (1) **Introduction.** In order to take certain tax credits and deferrals ("tax adjustments"), taxpayers must file an annual survey with the department of revenue (the "department") containing certain information about their business activities and employment. This rule explains the survey requirements for tax adjustments provided to the high technology industry and the manufacturing industry located in rural areas. This rule explains who is required to file an annual survey, how to file a survey, and what information must be included in the surveys.

This rule provides examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(2) Who is required to file the annual survey?

(a) A person claiming the B&O tax credit provided by RCW 82.04.4452 for persons engaged in qualified research and development is required to file an annual survey. If the person has assigned its entire B&O tax credit provided by RCW 82.04.4452 to another person, the person/assignor is not required to file an annual survey. In such an instance, the assignee of a B&O tax credit provided by RCW 82.04.4452 is required to file an annual survey. If the person has assigned a portion of its B&O tax credit provided by RCW 82.04.4452 to another person, both the assignor and the assignee is required to file an annual survey. A separate annual survey must be filed for each tax reporting account that claims the B&O tax credit provided by RCW 82.04.-4452.

(b) An applicant for deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project is required to file an annual survey. A separate annual survey must be filed for each deferral certificate issued.

(c) An applicant for deferral of taxes under chapter 82.63 RCW for sales and use taxes on an eligible investment project is required to file an annual survey. A separate annual survey must be filed for each deferral certificate issued.

(d) A lessee of an eligible investment project under chapters 82.60 and 82.63 RCW (as defined in RCW 82.60.020 (4)(b)(ii) or 82.63.010 (7)(b)) who receives the economic benefit of the deferral and agrees in writing with the department to complete the annual survey is required to file an annual survey. A lessor, by written contract, must agree to pass the economic benefit of the deferral to its lessee. The economic benefit of the deferral to the lessee must be no less than the amount of tax deferred by lessors and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between lessors or owners of the qualified building and lessees. An applicant who is a lessor of an eligible investment project that received a deferral of taxes under chapters 82.60 and 82.63 RCW and who meets these requirements is not required to complete and file an annual survey.

(3) How to file annual surveys.

(a) **Forms.** The department has developed a survey form that taxpayers must use to complete the annual survey unless a person obtains prior written approval from the department to file the annual survey in an alternative format. Contact the special programs division at the address below to request the use of an alternative format. The form may be obtained by downloading from the department's website (www.dor.wa.gov). The form may also be obtained at department district offices, by telephoning the telephone information center (800-647-7706), or by contacting the department's special programs division at:

Department of Revenue
Special Programs Division
Post Office Box 47477
Olympia, WA 98504-7477
Fax: 360-586-2163

(b) **Due date.** For persons taking the B&O tax credit provided by RCW 82.04.4452, the survey must be filed or postmarked by March 31st following any calendar year in which the credit is taken against taxes due. For applicants of sales tax deferrals issued under chapters 82.60 and 82.63 RCW, the survey must be filed or postmarked by March 31st of the year following the calendar year in which an eligible investment project is certified by the department as being operationally complete and the seven succeeding calendar years.

(c) Examples.

(i) Advanced Computing, Inc. qualifies for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year 2004. Advanced Computing, Inc. must file an annual survey with the department by March 31, 2005.

(ii) In 1999, Biotechnology, Inc. applied for and received a sales and use tax deferral under chapter 82.63 RCW for an eligible investment project in qualified research and development. The eligible investment project was certified by the department as being operationally complete in 2001. Biotechnology, Inc. must file its annual survey with the department for the 2004 calendar year by March 31, 2005. A survey is due from Biotechnology, Inc. by March 31st each following year, with its last survey due March 31, 2009.

(iii) Advanced Materials, Inc. is a manufacturer located in Walla Walla, WA. Since 2002, manufacturing activities

have been conducted in a building leased from Property Management Services. Property Management Services is a recipient of a deferral under chapter 82.60 RCW, and the building has been operationally complete since 2002. In order to pass on the entire economic benefit of the deferral, Property Management Services charges Advanced Materials, Inc. \$5,000 less in rent each year. Assuming all the requirements of RCW 82.60.020 (4)(b)(ii) are met, Advanced Materials, Inc. must file its annual survey with the department for the 2004 calendar by March 31, 2005. A survey is due from Advanced Materials, Inc. by March 31st each following year, with its last survey due by March 31, 2010.

(4) What information is required to be completed in the annual survey? The annual survey requests information about the following:

(a) Amount of tax deferred under chapter 82.60 or 82.63 RCW, or the amount of B&O tax credit taken under RCW 82.04.4452;

(b) The number of new products or research projects by general classification;

(c) The number of trademarks, patents, and copyrights associated with activities at the investment project.

(d) The following information for employment positions in Washington:

(i) The total number of employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment. Refer to subsection (7) of this rule for information about full-time, part-time, and temporary employment positions;

(iii) The number of employment positions according to the wage bands of less than \$30,000; \$30,000 or greater, but less than \$60,000; and \$60,000 or greater. A wage band containing fewer than three individuals may be combined with the next lowest wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands; and

(e) Additional information the department requests that is necessary to measure the results of the tax adjustments as provided in RCW 82.04.4452 (7)(c), 82.60.070 (1)(c), and 82.63.020 (2)(c).

(5) What is total employment in the annual survey?

(a) The annual survey covers all full-time, part-time, and temporary employment positions located in Washington state on December 31st of the calendar year covered by the report. Total employment includes persons who are on leaves of absence such as sick leave, vacation, disability leave, jury duty, military leave, and workers compensation leave, regardless of whether those persons are receiving wages. Leaves of absence do not include separations of employment such as layoffs or reductions in force. Vacant positions are also not included in total employment.

(b) **Examples.** Assume these facts for the following examples. National Construction Equipment (NCE) manufactures bulldozers, cranes, and other earth-moving equipment in Ridgefield, WA and Kennewick, WA. In 2003, NCE received a deferral of taxes under chapter 82.60 RCW for sales and use taxes on its new manufacturing site in Kennewick, WA.

(i) NCE's Ridgefield, WA location employs two hundred workers manufacturing construction cranes. NCE's Kennewick, WA location employs two hundred fifty workers manufacturing bulldozers and other earth-moving equipment. Although NCE's Ridgefield, WA location does not qualify for any tax adjustments, NCE's annual survey must report a total of four hundred fifty employment positions. The annual survey includes all Washington state employment positions, which includes employment positions engaged in activities that do not qualify for tax adjustments.

(ii) On November 20th, seventy-five NCE workers are laid off due to slow sales. NCE has informed the workers that they will be rehired in the spring once the construction season begins. NCE notifies ten of the laid off workers on December 20th that they will be rehired and begin work on January 2nd. The seventy-five employment positions are excluded in NCE's annual survey, because a separation of employment has occurred. Although NCE intends to rehire ten employees, those employment positions are vacant on December 31st.

(iii) On December 31st, NCE has one hundred workers on vacation leave, five employees on sick leave, one employee on military leave, one employee who is scheduled to retire as of January 1st, and three vacant employment positions. The employment positions of workers on leave are included in NCE's annual survey. The worker scheduled to retire is included in the annual survey because the employment position is filled on December 31st. The vacant positions are not included in the annual survey.

(iv) In June, NCE hires two individuals from a local college to intern in its engineering department. When the academic year begins in September, one individual ends the internship. NCE allows the other individual to continue the internship until the following June. NCE should report one employment position on the annual survey, representing the one intern employed on December 31st.

(6) When is an employment position located in Washington state? An employment position is located in Washington state if:

(a) The service of the employee is performed entirely within the state;

(b) The service of the employee is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state;

(c) The service of the employee is performed both within and without the state, and the employee's base of operations is within the state;

(d) The service of the employee is performed both within and without the state, but the service is directed or controlled in this state; or

(e) The service of the employee is performed both within and without the state and the service is not directed or controlled in this state, but the employee's individual residence is in this state.

(f) **Examples.** Assume these facts for the following examples. Acme Computer, Inc. develops computer software. Acme Computer claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Acme Computer employs one thousand people in a variety of activities at four locations in Washington state. Acme

Computer's headquarters are located in California. Acme Computer also has offices in Oregon and Texas.

(i) Ed is a software engineer in Acme Computer's Vancouver office. Ed occasionally works at Acme Computer's Portland, Oregon office when other software engineers are on leave. Ed is included in the amount of total employment in Washington state that Acme Computer reports on the annual survey. Ed performs services both within and without the state, but the services performed without the state are incidental to the employee service within Washington state.

(ii) John is an Acme Computer salesperson. John travels throughout the states of Washington, Oregon, and Idaho introducing new Acme Computer products to retailers. John's activities are controlled by Acme Computer's Spokane office. John is included in the amount of total employment in Washington state that Acme Computer reports on the annual survey. John performs services both within and without the state, but the services are directed or controlled in Washington state.

(iii) Jane works in Acme Computer's Portland, Oregon office. Jane is Acme Computer's vice-president for product development. Jane regularly often travels to Seattle, WA to review the progress of research and development projects conducted in Washington state. Jane is not included in the amount of total employment in Washington state that Acme Computers reports on the annual survey. Although Jane regularly performs services within Washington state, her services are directed or controlled in Oregon.

(iv) Roberta is an Acme Computer service technician and travels throughout the United States servicing Acme Computer products. Roberta's activities are directed from Acme Computer's corporate offices in California. Roberta works out of a home office in Tacoma, WA. Roberta is included in the amount of total employment in Washington state that Acme Computer reports on the annual survey. Roberta performs services both within and without the state and the service is not directed or controlled in this state, but the employee's individual residence is in Washington state.

(7) What are full-time, part-time and temporary employment positions? The survey must state the number of full-time, part-time, and temporary employment positions as a percent of total employment.

(a) Full-time and part-time employment positions. In order for a position to be treated as full-time or part-time, the employer must intend for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months, excluding any leaves of absence. A full-time position is a position that requires the employee to work, excluding overtime hours, thirty-five hours per week for fifty-two consecutive weeks, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours during a period of twelve consecutive months. A part-time position is a position in which the employee may work less than the hours required for a full-time position. In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements. If, in the absence of these factors, the employee would be required to work the number of hours for

a full-time position to receive their current wage, the position should be reported as a full-time employment position.

(b) Temporary positions. A temporary position is a position that is intended to be filled for a period of less than fifty-two consecutive weeks or twelve consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include persons obtained through temporary agencies.

(c) Examples. Assume these facts for the following examples. Worldwide Materials, Inc. develops materials used in the aerospace manufacturing industry at a facility located in Everett, WA. Worldwide Materials claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Worldwide Materials employs one hundred individuals.

(i) On December 31st, Worldwide Materials has five employees on workers compensation leave. At the time of work-related injury, the employees worked forty hours a week and were expected to work for fifty-two consecutive weeks. Worldwide Materials should report these employees as being employed in a full-time position. Although the employees are not currently working, Worldwide Materials intended for the full-time positions to be filled for at least fifty-two consecutive weeks.

(ii) In September, Worldwide Materials hires two individuals on a full-time basis for a two-year project to design composite materials to be used in a new airplane model. Because the position is intended to be filled for a period exceeding twelve consecutive months, Worldwide Materials should report these positions as two full-time positions.

(iii) Worldwide Materials has two employees who clean laboratories during the evenings. The employees regularly work 5:00 p.m. to 11:00 p.m., Monday through Friday, fifty-two weeks a year. Because the employees work less than thirty-five hours a week, the employment positions are reported as part-time positions.

(iv) On November 1st, a Worldwide Materials engineer begins twelve weeks of family and medical leave. The engineer was expected to work forty hours a week for fifty-two consecutive weeks. While the engineer is on leave, Worldwide Materials hires an individual through a temporary staffing business to complete the engineer's projects. Worldwide Materials should report the engineer as a full-time position on the annual report. Worldwide Materials should also report the engineer hired through the temporary staffing business as a temporary employment position on the annual survey.

(v) Worldwide Materials allows three of its research employees to work on specific projects with a flexible schedule. These employees are not required to work a set amount of hours each week, but are expected to work twelve consecutive months. The three research employees are paid the same wage as other research employees who are required to work a set schedule of forty hours a week. Although the three research employees may work fewer hours, they are receiving identical wages as other research employees working forty hours a week. Worldwide Materials should report these positions as full-time employment positions, because the position is equivalent to a full-time employment position.

(vi) Worldwide Materials has a large order to fulfill and hires ten employees for the months of June and July. Five of

the employees leave at the end of July. Worldwide Materials decides to have the remaining five employees work on an on-call basis for the remainder of the year. As of December 31st, three of the employees are working for Worldwide Materials on an on-call basis. Worldwide Materials should report three temporary employment positions on the annual survey.

(8) **What are wages?** For the purposes of the annual survey, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, or otherwise as reported on the W-2 forms of employees. Stock options granted as compensation to employees are wages to the extent they are reported on the W-2 forms of the employees and are taken as a deduction for federal income tax purposes by the employer. The compensation of a proprietor or a partner is determined in one of two ways:

(a) If there is net income for federal income tax purposes, the amount reported subject to self-employment tax is the compensation.

(b) If there is no net income for federal income tax purposes, reasonable cash withdrawals or cash advances is the compensation.

(9) **What are employer-provided benefits?** The annual survey requires persons to report the number of employees that have employer-provided medical, dental, and retirement benefits, by each of the wage bands. An employee has employer-provided medical, dental, and retirement benefits if the employee is currently enrolled in or currently receiving the benefit. A benefit is "employer-provided" if the medical, dental, and retirement benefit is dependent on the employer's establishment or administration of the benefit. A benefit that is equally available to employees and the general public is not an "employer-provided" benefit.

(a) **What are medical benefits?** "Medical benefits" mean compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A "health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, health care services. Health plans include any "employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA), any "health plan" or "health benefit plan" as defined in RCW 48.43.005, any self-funded multiple employer welfare arrangement as defined in RCW 48.125.-010, any "qualified health insurance" as defined in Section 35 of the Internal Revenue Code, an "Archer MSA" as defined in Section 220 of the Internal Revenue Code, a "health savings plan" as defined in Section 223 of the Internal Revenue Code, any "health plan" qualifying under Section 213 of the Internal Revenue Code, governmental plans, and church plans. "Health care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(b) **What are dental benefits?** "Dental benefits" means a dental health plan offered by an employer as a benefit to its employees. "Dental health plan" has the same meaning as "health plan" in subsection (9)(a) of this rule, but is for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, dental care

services. "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(c) **What are retirement benefits?** "Retirement benefits" mean compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods extending to the termination of employment or beyond. The term includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code.

(d) **Examples.** Assume these facts for the following examples. Medical Resource, Inc. is a pharmaceutical manufacturer located in Spokane, WA. Medical Resource, Inc. claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Medical Resource, Inc. employs two hundred full-time employees, fifty part-time employees, and fifty temporary employees in research and manufacturing of pharmaceutical products.

(i) Medical Resource, Inc. offers its employees two different health plans. Health Plan A is available at no cost to full-time employees. Employees are not eligible to participate in Health Plan A until they have worked thirty days with the company. Health Plan B costs employees \$200 each month. Full-time and part-time employees are eligible for Health Plan B after they have worked thirty days with the company. All Medical Resource's full-time and part-time employees are eligible for Health Plans A or B. Two hundred thirty employees are enrolled in Health Plans A or B. Medical Resource, Inc. must report two hundred thirty employees as having employer-provided health benefits, because this is the number of employees enrolled in the health plans it offers.

(ii) Medical Resource, Inc. does not offer a health plan to its temporary employees. However, twenty-five of the temporary employees have enrolled in a health plan through the temporary agency that Medical Resource, Inc. used to acquire the employees. Medical Resource, Inc. must report these twenty five-employment positions as having employer-provided medical benefits.

(iii) Medical Resource, Inc. does not offer its employees dental insurance, but has arranged with a group of dental providers to provide all Medical Resource, Inc. employees with a 30% discount on any dental care service. No action, other than Medical Resource, Inc. employment, is required by employees to receive this benefit. Medical Resource, Inc. must report three hundred employment positions as having dental benefits, because this is the number of employees enrolled in this dental plan.

(iv) Medical Resource, Inc. offers a 401(k) Plan to its full-time and part-time employees after the employee has

worked for the company for six months. Medical Resource, Inc. makes matching contributions to an employee's 401(k) Plan when an employee has worked for the company two years. On December 31st, two hundred and twenty-five workers are eligible to participate in the 401(k) Plan. Two hundred workers are enrolled in the 401(k) Plan, with one hundred workers receiving matching contributions. Medical Resource, Inc. must report two hundred employment positions as having employer-provided retirement benefits, because this is the number of employees enrolled in the 401(k) Plan. An employer contribution to the retirement plan is not required for a retirement plan to be employer provided.

(v) Medical Resource, Inc. coordinates with a bank to insert information in employee paycheck envelopes on the bank's Individual Retirement Account (IRA) options offered to bank customers. Employees who open an IRA with the bank can arrange to have their contributions directly deposited from their paychecks into their accounts. Fifty employees open IRAs with the bank. Medical Resource, Inc. cannot report that these fifty employees have employer-provided retirement benefits. The establishment of the IRAs offered by the bank was not dependent on Medical Resource, Inc.'s participation or sponsorship of the benefit.

(10) **What additional information is the department requesting?** The department is required to provide two reports to the legislature measuring the effect of the tax adjustments on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects. See RCW 82.04.4452(9), 82.60.020 (1)(f), and 82.63.020(4). The department has included additional questions related to measuring these effects. In addition, the department has included questions related to a person's use of the sales and use tax exemption for machinery and equipment used in manufacturing provided in RCW 82.08.02565 and 82.12.02565. Lastly, the department is requiring persons to report the Unified Business Identifier used with the Washington state employment security department and all employment security department reference numbers used on quarterly tax reports that cover the employment positions reported in the annual survey.

(11) **Is the annual survey confidential?** Yes, the annual survey is subject to the confidentiality provisions of RCW 82.32.330. However, information on the amount of tax adjustment taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request. In the case of a person taking less than \$10,000 of the B&O tax credit under RCW 82.04.4452 during the period covered by the survey, the person may request the department to treat the tax credit amount as confidential under RCW 82.32.330. The request must be made for each survey in writing, dated and signed by the owner, corporate officer, partner, guardian, executor, receiver, administrator, or trustee of the business, and filed with the department's special programs division at the address provided above in subsection (3) of this rule.

(12) **What are the consequences for failing to file a complete annual survey?**

(a) **High technology business and occupation (B&O) tax credit.** If a person claiming the B&O tax credit provided by RCW 82.04.4452 for persons engaged in qualified research and development fails to file a complete annual survey by the date due, the person entitled to the credit is not eligible to take or assign the credit in the year the person failed to complete the annual survey. See RCW 82.04.4452. If a person claims the B&O tax credit during this period of ineligibility, the department shall declare the amount of taxes for which the credit was claimed during the period of ineligibility to be immediately due and payable with interest and penalties, as provided in chapter 82.32 RCW.

(b) **Tax deferrals for investment projects in rural counties.** If a recipient of the deferral fails to file a complete annual survey required under RCW 82.60.070 by the date due, 12.5% of the total deferred tax shall be immediately due and payable with interest and penalties, as provided in chapter 82.32 RCW. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit. See RCW 82.60.070.

(c) **Tax deferrals for investment projects for high technology businesses.** If a recipient of the deferral fails to file a complete annual survey required under RCW 82.63.020 by the date due, 12.5% of the total deferred tax shall be immediately due with interest and penalties, as provided in chapter 82.32 RCW. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit. See RCW 82.63.045.

WSR 05-03-032

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE

[Filed January 10, 2005, 11:53 a.m., effective January 10, 2005]

Effective Date of Rule: Immediately.

Purpose: Rules are needed in order to implement budget direction from the legislature to assist in maintaining a viable asparagus industry in this state.

Statutory Authority for Adoption: RCW 15.04.402 and ESHB 2459.

Other Authority: Chapter 34.05 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: To allow for program to proceed and develop permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 10, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 10, 2005.

William E. Brookreson
Deputy Director

Chapter 16-730 WAC

ASPARAGUS EQUIPMENT LEASE PROGRAM

NEW SECTION

WAC 16-730-005 Purpose of the program. (1) This chapter is promulgated pursuant to ESHB 2459 wherein the department is directed to purchase agricultural products packing equipment for use by the agricultural industry and to negotiate an appropriate agreement for that use and RCW 15.04.402 wherein the department is authorized to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber and maintain the economic well-being of the agricultural industry.

(2) The purpose of this chapter is to provide for the purchase of automated labor saving equipment that will strengthen the asparagus post harvest industry, which includes fresh, frozen or pickled asparagus.

NEW SECTION

WAC 16-730-010 Definitions. (1) "**Applicant**" means any person who is commercially handling 250,000 pounds or more of asparagus that applies for approval to participate in the equipment-leasing program.

(2) "**Approved**" means any packer or handler who has submitted an application to the department and met the criteria for participating in the equipment-leasing program.

(3) "**Automation**" means the technique and equipment used to bring about automatic operation and control of a process.

(4) "**Department**" means the department of agriculture of the state of Washington.

(5) "**Director**" means the department of agriculture of the state of Washington.

(6) "**Handler**" means to sell, arrange for the sale of, represent, process, distribute or package fresh, frozen or pickled asparagus.

(7) "**Facility**" includes, but is not limited to, any premises, plan, establishment, facilities and the appurtenances thereto, in whole or in part, where fresh asparagus is prepared, handled and packaged fresh, frozen, or pickled for sale.

(8) "**Labor saving**" means actions or activities designed to decrease the amount of human labor needed.

(9) "**Leasing**" means to grant or obtain use of equipment through the asparagus equipment-leasing program.

(10) "**Packing equipment**" means equipment associated with the post harvest fresh, frozen and pickled asparagus handler.

(11) "**Program administrator**" means the department of agriculture.

(12) "**Review Committee**" means a group of five to seven persons representing the department, asparagus commission staff and members, and an agricultural representative not directly affiliated with the industry nor any of the applicants.

NEW SECTION

WAC 16-730-015 Program administration. The department shall administer the asparagus equipment-leasing program using the current guidelines and rules and may develop and implement, as needed any additional processes or guidelines necessary to carry out this program.

NEW SECTION

WAC 16-730-020 Eligibility, application and award process for the equipment-leasing program. (1) All post harvest handlers who packed a minimum of 250,000 pounds of fresh, frozen or pickled asparagus in Washington during the award year are eligible to participate in the equipment-leasing program.

(2) Handlers and their facilities must meet all applicable federal, state, and local laws and rules related to doing business in Washington and handling food products.

(3) Handlers must obtain and file an application with the department that includes, but is not necessarily limited to:

(a) Documentation of their business information including the ability to insure proposed equipment;

(b) Intent and ability to participate in the program;

(c) Ability to provide for the necessary upkeep and maintenance of the leased equipment;

(d) Description of the equipment to be leased;

(e) Description of how it will automate the handler's operation and what are the reductions in labor costs that will result; and

(f) Pounds of asparagus processed for the period of years identified on the application with supporting documentation.

(4) Handlers must identify what automated labor saving equipment associated with post harvest packing that they want to lease and the cost of the equipment in order to participate in the program. This equipment must automate their current packing process and reduce labor costs.

(5) The schedule for application, review and selection of participants shall be determined by the department in consultation with the asparagus commission, council and industry. Additional application cycles may be implemented on an as needed basis in the future in order to insure full participation by handlers in the program.

(6) Review of the application and awards will be completed by the review committee. Recommendations for approval from the committee will be reviewed and approved

by the director of the department and applicants will be notified within five working days of the results.

(7) Applicants may request a review of the decision. Reviews will follow an informal process conducted by the director's designee to resolve a request for review. The request for review shall:

- (a) Specify the date of the decision or action being appealed;
- (b) Specify as precisely as possible the issue to be resolved by the administrative review;
- (c) Include the address of the participant; and
- (d) Include a signature of the applicant.

An administrative review will be conducted within thirty days after submission of the request for review and a conclusion provided to the participant within ten days. The rights of the department, provided in this section shall be exclusive and be in addition to any other rights and remedies provided by law.

(8) Applicants who were not approved for their initial equipment request may reapply to the department within ten days from the date the announcement of decisions was made for review by the review committee. When reapplying the handler must request equipment not included on the first application and/or a different mix of equipment from the original application.

NEW SECTION

WAC 16-730-025 Distribution of program benefits for equipment leasing. (1) Program benefits will be distributed to eligible applicants who have completed the application and review process and been approved for an allocation of dollars being provided to a leasing company for purchase and subsequent lease to approved applicants of the equipment.

(2) Benefits will be determined by the department in consultation with the asparagus commission, council and asparagus industry.

(3) The initial benefits for 2004 will be distributed based on documented pounds handled over a four-year period. Appropriate documentation can include asparagus commission assessments and other accepted industry documentation. The initial benefits will be distributed based on an average of pounds documented per year reported from 2001 through 2004. The department to address any additional application cycles that may be held to administer current and future allocations may adjust the four-year period.

(4) All eligible and approved applicants will receive a base amount of not less than \$75,000 for the initial program offering in 2004 or an amount adjusted to reflect an appropriate base for future program offerings unless it is determined by the department in consultation with the asparagus commission, council and asparagus industry that the benefit distribution be changed. If the distribution formula is changed after consultation, the department will notify asparagus handlers and industry.

(5) Categories are established for the initial offering that groups handlers into small, medium, large and extra large. These categories could change in future offerings and handlers and the industry will be notified by the department of

any changes. The categories for this initial offering are as follows:

Small	less than 1 million pounds
Medium	1 to 2 million pounds
Large	2 to 5 million pounds
Extra Large	5 million and above

(6) The base distribution for this first offering for a small handler(s) will be \$75,000 per handler and no handler will receive greater than \$195,000 for this current allocation. Allocation distribution other than the "small handler(s)" will be determined based on the amount of funds available after administrative and contract leasing costs are subtracted by the department from the total amount allocated. The department will work with the review committee to assure that the allocations are done based on the pounds processed formula in a fair and equitable manner. Each categories above the small handler will be adjusted by the following sequence:

- (a) Small to medium a minimum \$20,000 increment adjustment;
- (b) Medium to large up to a \$40,000 increment adjustment; and
- (c) Large to extra large up to a \$60,000 increment adjustment.

If the reduced allocation available is not adequate to accommodate the above sequence for this offering then an adjustment will be made to reflect a reduction to all increments of the formula except the small handler.

NEW SECTION

WAC 16-730-030 Leasing program. (1) Handlers approved to participate in the leasing program will complete an agreement with the leasing firm selected by the department. The leasing company will purchase and manage the equipment leasing for all approved handlers.

(2) All lease agreements shall be exclusive to the approved handler for the term of the contract with the leasing company and are nontransferable without the written approval of the department.

(3) Lease agreements cannot be paid off in advance of the leasing company's contract termination date.

(4) Other lease requirements for handlers will be identified in the department's contract with the leasing company and handlers will be required to follow any of the requirements in that contract.

NEW SECTION

WAC 16-730-035 Length of program. The length of the initial equipment purchase leasing program shall be determined by the department based on the OFM approved depreciation schedule for each type of equipment and the period of time needed to surplus and transfer equipment and complete program closeout activities. The department will finalize the schedule. The department for any subsequent offerings may modify the program length, depreciation schedule and any other necessary contracts or agreements.

EMERGENCY

NEW SECTION

WAC 16-730-040 Depreciation and surplus equipment process. Depreciation schedules for this program shall be determined by the department upon approval from OFM on appropriate useful life determination for asparagus processing and handling equipment. Equipment will be surplused at the end of the depreciation period only and will be offered for sale to the handler who has leased the equipment or his/her designee. A handler must complete a designee form and have it approved by the department.

NEW SECTION

WAC 16-730-045 Program compliance. To ensure that all participants are in compliance with the terms of this program and to ensure that the equipment is being utilized for packing and processing of fresh, frozen or pickled asparagus only, the participating handlers will annually provide the department with a letter certifying that the equipment is being used for the intended program purpose and summarize the costs and labor savings for that period.

NEW SECTION

WAC 16-730-050 Equipment default. In the event that a handler defaults on a lease agreement, the department retains ownership of the equipment and will make the equipment available to other asparagus handlers through a selection process determined by the department in cooperation with the Washington asparagus commission, council and the asparagus industry representatives. The selection process shall comply with any applicable state and federal laws and regulations.

**WSR 05-03-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-04—Filed January 10, 2005, 5:05 p.m., effective January 11, 2005, 8:00 a.m.]

Effective Date of Rule: January 11, 2005, 8:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000F; and amending WAC 220-52-040.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Pot limit changes for the commercial crab fishery in the Puget Sound licensing district are to maintain commercial harvest allocation objectives. Pot limitations are the primary tool for in-season adjustments of the fishery and may reflect a change in conditions such as

harvest rates, or state/treaty balances. There is insufficient time to promulgate permanent rule.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 10, 2005.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-04000H Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Effective 8:00 a.m. January 11, 2005 until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 50 pots per license, per buoy tag number in Marine Fish Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B. The remaining 50 buoy tags per license must be onboard the designated vessel and available for inspection in the pot limited areas.

(2) Effective immediately until further notice, it is unlawful for any person to fish for crabs for commercial purposes with more than 75 pots per license, per buoy tag number in Marine Fish Shellfish Catch Reporting Areas 23C, 29, 23D, 25A, and 25E. The remaining 25 buoy tags per license must be onboard the designated vessel and available for inspection in the pot limited areas.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. January 11, 2005:

WAC 220-52-04000F Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (04-304)

EMERGENCY

WSR 05-03-061
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-05—Filed January 12, 2005, 4:31 p.m., effective February 1, 2005, 12:00 p.m.]

Effective Date of Rule: February 1, 2005, 12:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:

Repealing WAC 220-32-05100G; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets tribal winter season. Sturgeon management goals will be determined at a sturgeon management task force meeting in mid-January. Fisheries are consistent with the interim management agreement and the biological opinion. Rule is consistent with action of the Columbia River compact on December 16, 2004. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent rules.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 12, 2005.

J. P. Koenings
 Director
 by Larry Peck

NEW SECTION

WAC 220-32-05100H Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, shad, or sturgeon taken for commercial purposes in Columbia River Salmon Management Catch Reporting Areas 1F, 1G, and 1H, except those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, walleye, shad, carp, or sturgeon under the following provisions:

1) Open Periods: 12:00 p.m. February 1, 2005 through 12:00 p.m. March 21, 2005.

2) Open Areas: SMCRA 1F, 1G, 1H

3) Gear: No mesh restriction on gillnets. Hoop nets, dip bag nets, and rod and reel with hook and line.

4) Allowable sale: salmon, steelhead, walleye, shad, carp, and sturgeon. Sturgeon between 4 feet and 5 feet in length in The Dalles and John Day pools and between 45-60 inches in the Bonneville pool may be sold.

5) Miscellaneous: Sale of platform or hook and line caught fish is allowed during open commercial season.

6) Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

7) Notwithstanding the provisions of WAC 220-32-058, the closed area at the mouth of:

a) Hood River are those waters along the Oregon side of the Columbia River and extends to mid-stream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles down river from the west bank at the end of the break wall at the west end of the port of Hood River and 1/2 mile upriver from the east bank.

b) Herman Creek are those waters upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

c) Deschutes River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

d) Umatilla River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between points 1/2 mile upstream from the eastern shoreline to one mile downstream from the western shoreline.

e) Big White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

f) Wind River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

g) Klickitat River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1/8 miles downstream from the west bank.

h) Little White Salmon River are those waters of the Columbia River extending to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upstream from the eastern shoreline.

8) Notwithstanding the provisions of WAC 220-22-010, during the open periods described above:

a) Area 1F (Bonneville Pool) includes those waters of the Columbia River upstream from the Bridge of the Gods,

and downstream from the west end of the 3 Mile Rapids located approximately 1.8 miles below the Dalles Dam.

b) Area 1G includes those waters of the Columbia River upstream from a line drawn between a deadline marker on the Oregon shore located approximately 3/4 miles above The Dalles Dam fishway exit, thence at a right angle to the thread of the river to a point in mid-river, then downstream to Light "1" on the Washington shore, and downstream from Preacher's Eddy Light below John Day Dam.

c) Area 1H includes those waters of the Columbia River upstream from a fishing boundary marker approximately 1/2 mile above the John Day River, Oregon, extending at a right angle across the thread of the river to a point in mid-river, then downstream to a fishing boundary marker on the Washington shore approximately opposite the mouth of the John Day River, and downstream from a line at a right angle across the thread of the river one mile downstream from McNary Dam.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. March 21, 2005:

WAC 220-32-05100H Columbia River salmon seasons above Bonneville Dam.

**WSR 05-03-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-06—Filed January 12, 2005, 4:31 p.m., effective January 15, 2005, 12:01 a.m.]

Effective Date of Rule: January 15, 2005, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:

Repealing WAC 232-28-61900Y; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The recreational fishery upstream of Rocky Reach Dam to Wells Dam is fishing on 95% unmarked steelhead. The majority of adipose clipped hatchery-origin steelhead have moved above Wells Dam. The closure will concentrate the recreational fishery in waters where the majority of the steelhead are adipose fin-clipped. Consistent with WDFW's ESA permit allowing a fishery on upper Columbia River hatchery steelhead. Disk tags were applied to steelhead during run-size determination and fish sampling operations at Priest Rapids Dam, these disk tagged hatchery-origin fish are no longer needed for monitoring purposes. There is insufficient time to promulgate permanent rules.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 12, 2005.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900B Exceptions to statewide rules—Columbia, Methow, Okanogan and Similkameen rivers. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. January 15, 2005, until further notice, it is unlawful to violate the following provisions in the following waters:

(1) For purposes of this section, "adipose fin clipped steelhead" means steelhead with an adipose fin clip and a healed scar at the site of the fin clip, whether or not any other fins are clipped or a healed scar is present at any other fin position.

(2) Columbia River from Highway 395 Bridge at Pasco to the Old Hanford townsite wooden powerline towers upstream of Ringold Hatchery and from Wells Dam to Highway 17 Bridge at Bridgeport - Open until March 31, 2005. Daily limit may contain up to two adipose fin clipped steelhead.

(3) Columbia River from Rocky Reach Dam to Wells Dam - Closed to the fishing for trout/steelhead.

(4) Methow River - Mouth (Highway 97 Bridge) upstream to the second powerline crossing, and from the first Highway 153 Bridge north of Pateros to the confluence with the Chewuch River. Whitefish gear rules do not apply. Selective gear rules except lawful to fish from motorized vessels. Night closure. Open to steelhead and whitefish until further notice. Daily limit may contain up to two adipose fin clipped steelhead.

(5) Okanogan River - Open until further notice, except closed from Lake Osoyoos Control Dam (Zosel Dam) downstream to one-quarter mile below railroad trestle. Selective gear rules except lawful to fish from motorized vessels. Night closure. Gamefish: Open to all gamefish downstream from Highway 97 Bridge at Malott. Daily limit may contain up to two adipose fin clipped steelhead. Above Highway 97 Bridge at Malott, open only for adipose fin clipped steelhead. Daily limit may contain up to two adipose fin clipped steelhead.

- Except: Effective February 16, 2005 until further notice, the area from the Highway 97 Bridge at Omak to a line across the river 500 feet above the mouth of Omak Creek, closed to fishing.

(6) Similkameen River - Mouth to 400 feet below Enloe Dam - Open until further notice. Whitefish gear rules do not apply. Selective gear rules. Night closure. Open only to adipose fin clipped steelhead and whitefish. Up to two adipose fin clipped steelhead per day may be retained.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. January 15, 2005:

WAC 232-28-61900Y Exceptions to statewide rules—Columbia, Methow, Okanogan and Similkameen rivers. (04-310)

**WSR 05-03-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 05-07—Filed January 12, 2005, 4:32 p.m., effective January 15, 2005, 6:00 p.m.]

Effective Date of Rule: January 15, 2005, 6:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-52-04600R; and amending WAC 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The state may not authorize commercial shellfish harvests absent agreed planning or compliance with a process. The provisions of this rule are in conformity with agreed plans with applicable tribes which have been entered as required by court order. The closure area around Everett is to protect high numbers of soft crab. There is insufficient time to promulgate permanent rules.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 12, 2005.

J. P. Koenings

Director

by Larry Peck

NEW SECTION

WAC 220-52-04600X Crab fishery—Seasons and areas. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice:

1) It will be lawful to fish for Dungeness Crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A within a line that extends due north from the green number 1 buoy at Scatchet Head to Scatchet Head, thence from the green number 1 buoy at Scatchet Head to the green number 1 buoy at Possession Point, thence due north from the green number 1 buoy at Possession Point to Possession Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A east and north of a line that extends from Possession Point to the green number 1 buoy at Possession Point thence following the 200 foot contour northward to a point due east from the Glendale Dock, thence extending due west to the Whidbey Island shore.

(c) That portion of Marine Fish-Shellfish Catch Area 21B in Samish Bay south of a line from Fish Point and Point Williams in water deeper than 60 feet.

(d) Those waters of Marine Fish-Shellfish Catch Area 26A in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47° 58.782'N, 122° 30.84'W) projected 110° true to the boulder on shore (47° 57.690'N, 122° 26.742'W).

2) Marine Fish-Shellfish Management and Catch Reporting Area 26A shall be further defined by the following boundaries:

(a) Area 26A-W shall include those waters of Catch Area 26A south of 25B and northerly of a line from Apple Cove Point to Point Edwards and south and west of a line that extends from Possession Point to the Shipwreck located .8 nautical miles north of Picnic Point.

(b) Area 26A-E shall include those waters of Catch Area 26A south of Areas 24B and 24C and north and east of a line that extends from Possession Point to the Shipwreck located .8 nautical miles north of Picnic Point.

3) Those waters of Marine Fish Shellfish Management and Catch Reporting Area 26A east of a line from Howarth Park due north to the south end of Gedney Island and that portion of 24B east of a line from the north end of Gedney Island to Camano Head and south of a line drawn from Camano Head to Hermosa Point are closed to taking or possession of Dungeness crab.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 p.m. January 15, 2005:

WAC 220-52-04600R Crab fishery—Seasons and areas. (04-286)

WSR 05-03-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 05-08—Filed January 13, 2005, 4:16 p.m., effective January 16, 2005]

Effective Date of Rule: January 16, 2005.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300Q; and amending WAC 220-52-073.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Harvestable amounts of red and green sea urchins exist in the areas described. Prohibition of all diving from licensed sea urchin and sea cucumber harvest vessels within two days of scheduled sea urchin openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. Prohibiting all diving from licensed sea urchin harvest vessels within Sea Urchin District 3 discourages the taking of red urchins from the district (currently closed to red urchin harvest) and reporting the catch to the adjacent harvest district. There is insufficient time to promulgate permanent rules.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 13, 2005.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-07300R Sea urchins. Notwithstanding the provisions of WAC 220-52-073, effective January 16, 2005 until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) Green sea urchins: Sea Urchin Districts 3 and 4 are open only on Sundays through Thursdays of each week. Sea Urchin Districts 6 and 7 are open only on Sundays and Mondays of each week. The minimum size for green sea urchins is 2.25 inches (size in largest test diameter exclusive of spines).

(2) Red sea urchins: Sea Urchin District 4 is open only on January 17, 2005. The maximum daily landing of red sea urchins allowed in Sea Urchin District 4 is 1,800 pounds per valid designated sea urchin harvest vessel. In Sea Urchin District 4 it is unlawful to harvest red sea urchins smaller than 3.25 inches or larger than 5.0 inches (size in largest test diameter exclusive of spines).

(3) It is unlawful to dive for any purpose from a commercially licensed sea urchin fishing vessel in Sea Urchin District 3 when the vessel has red sea urchins on-board.

(4) It is unlawful to dive for any purpose from a commercially licensed sea urchin or sea cucumber fishing vessel on Fridays and Saturdays of each week, except by written permission from the Director.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 16, 2005:

WAC 220-52-07300Q Sea urchins. (04-329)

WSR 05-03-079
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed January 17, 2005, 12:57 p.m., effective January 17, 2005]

Effective Date of Rule: Immediately.

Purpose: Amending WAC 388-450-0200 Will the medical expenses of an elderly or disabled person in my assistance unit be used as an income deduction for Basic Food?, to be consistent with FNS (federal Food and Nutrition Service) revised policy memos (administrative notices) regarding how persons with Medicare-approved prescription drug discount cards will have their excess medical cost deduction calculated for the Basic Food program. Also, updated program language to be consistent with the requirements of HB 2663 regarding respectful language.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0200.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Other Authority: FNS AN (Administrative Notice) 04-39 and AN 04-45 (implementing Public Law 108-173; HB 2663 (chapter 175, Laws of 2004)).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Without the emergency rules DSHS clients would not receive the correct food benefits they are eligible to receive per FNS (federal Food and Nutrition Service) revised policy as directed in Administrative Notices 04-39 and 04-45; implementation of this policy change was required to be in effect by October 1, 2004. The department is in the process of formal rule adoption, and a proposed rule making - CR-102 notice has been filed and a hearing is scheduled for January 25, 2005. Due to a short federal implementation requirement, the department cannot complete the formal rule adoption prior to expiration of the existing emergency filing to ensure correct benefits.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 11, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-02-025, filed 12/30/03, effective 2/1/04)

WAC 388-450-0200 Will the medical expenses of ((an elderly or disabled person)) elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for basic food? (1) If your basic food assistance unit (AU) includes an elderly ~~((or disabled))~~ person or individual with a disability as defined in WAC 388-400-0040, your AU may be eligible for an income deduction for ~~((the elderly or disabled))~~ that person's out-of-pocket medical expenses, and certain expenses allowable for Medicare prescription drug card holders. We allow the deduction for medical expenses over thirty-five dollars each month.

(2) You can use ((a)) an out-of-pocket medical expense toward this deduction if the expense covers services, supplies, medication, or other medically needed items prescribed by a state-licensed practitioner or other state-certified, qualified, health professional. Examples of expenses you can use for this deduction include those for:

(a) Medical, psychiatric, naturopathic physician, dental, or chiropractic care;

(b) Prescribed alternative therapy such as massage or acupuncture;

(c) Prescription drugs;

(d) Over the counter drugs;

(e) Eye glasses;

(f) Medical supplies other than special diets;

(g) Medical equipment or medically needed changes to your home;

(h) Shipping and handling charges for an allowable medical item. This includes shipping and handling charges for items purchased through mail order or the internet;

(i) Long distance calls to a medical provider;

(j) Hospital and outpatient treatment including:

(i) Nursing care; or

(ii) Nursing home care including payments made for a person who was an assistance unit member at the time of placement.

(k) Health insurance premiums paid by the ~~((client))~~ person including:

(i) Medicare premiums; and

(ii) Insurance deductibles and co-payments.

(l) Out-of-pocket expenses used to meet a spenddown as defined in WAC 388-519-0010. We do not allow your entire spenddown obligation as a deduction. We allow the expense as a deduction as it is estimated to occur or as the expense becomes due;

(m) Dentures, hearing aids, and prosthetics;

(n) Cost to obtain and care for a seeing eye, hearing, or other specially trained service animal. This includes the cost of food and veterinarian bills. We do not allow the expense of food for a service animal as a deduction if you receive ongoing additional requirements under WAC 388-473-0040 to pay for this need;

(o) Reasonable costs of transportation and lodging to obtain medical treatment or services; and

(p) Attendant care necessary due to age, infirmity, or illness. If your AU provides most of the attendant's meals, we allow an additional deduction equal to a one-person allotment.

(3) There are two types of deductions for out-of-pocket expenses:

(a) One-time expenses are expenses that cannot be estimated to occur on a regular basis. You can choose to have us:

(i) Allow the one-time expense as a deduction when it is billed or due;

(ii) Average the expense through the remainder of your certification period; or

(iii) If your AU has a twenty-four-month certification period, you can choose to use the expense as a one-time deduction, average the expense for the first twelve months of your certification period, or average it for the remainder of our certification period.

(b) Recurring expenses are expenses that happen on a regular basis. We estimate your monthly expenses for the certification period.

(4) If the elderly person or individual with a disability in your AU has a Medicare prescription drug card:

(a) Allow any out-of-pocket expenses that meet the criteria in subsections (2) and (3) above;

(b) Add a standard twenty-three dollars to these expenses; and

(c) Allow an additional fifty dollar monthly deduction to account for the 2004 and 2005 prescription subsidies;

(i) For twenty-four consecutive months if the client applied before January 2005; or

(ii) For the average number of months resulting from dividing the total subsidy amount by fifty dollars if the client applies in January 2005 or later.

(d) Allow the deductions in (b) and (c) of this subsection even if the AU has no out-of-pocket expenses.

(5) AU members with a Medicare prescription drug card have the option of using their verified pre-card out-of-pocket expenses when this amount is greater than using the standards in subsection (4).

(6) We do not allow a medical expense as an income deduction if:

(a) The expense was paid before you applied for benefits or in a previous certification period;

(b) The expense was paid or will be paid by someone else;

(c) The expense was paid or will be paid by the department or another agency;

(d) The expense is covered by medical insurance;

(e) We previously allowed the expense, and you did not pay it. We do not allow the expense again even if it is part of a repayment agreement;

(f) You included the expense in a repayment agreement after failing to meet a previous agreement for the same expense; or

(g) You claim the expense after you have been denied for presumptive SSI; and you are not considered disabled by any other criteria(~~;~~ or

~~(h) The provider considers the expense overdue).~~

expects to file the CR-102 Proposed rule-making notice by the end of January 2005.

Statutory Authority for Adoption: RCW 74.20A.310.

Other Authority: 45 C.F.R. 303.32 (a), (c)(2); 45 C.F.R. 303.31 (a)(6) and (a)(8).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: 45 C.F.R. 303.32(a) lists the required state laws for a valid state plan under Title IV-D of the Social Security Act; the state must have rules requiring the IV-D agency to send a national medical support notice to an employer within two days of entry of the noncustodial parent into the state directory of new hires, and the state must periodically communicate with the state's Title XIX agency regarding medical support enforcement. The federal Office of Child Support Enforcement will only recommend approval of Washington's state plan upon the adoption of such requirements.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 12, 2005.

Andy Fernando, Manager
Rules and Policies Assistance Unit

WSR 05-03-094

EMERGENCY RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 18, 2005, 12:42 p.m., effective January 18, 2005]

Effective Date of Rule: Immediately.

Purpose: 45 C.F.R. 303.32(a) lists program requirements for serving and enforcing medical support obligations under Title IV-D of the Social Security Act: The state must have a law requiring the IV-D agency to send a national medical support notice to an employer within two days of entry of the noncustodial parent into the state directory of new hires, and there are communication requirements with the Title XIX agency (medical assistance). The federal Office of Child Support Enforcement will only recommend continued approval of Washington's state plan upon the adoption of such requirements. At the same time we are filing this emergency rule, the DSHS Division of Child Support (DCS) is pursuing the regular rule-making process on this subject and

NEW SECTION

WAC 388-14A-4119 How soon after a noncustodial parent is listed in the state directory of new hires must the division of child support send a national medical support notice to the employer? The division of child support (DCS) must send a national medical support notice (NMSN) to the employer of a noncustodial parent (NCP) within two business days of the date the NCP's information is entered into the state directory of new hires (SDNH).

NEW SECTION

WAC 388-14A-4180 When must the division of child support communicate with the DSHS medical assistance administration? (1) The division of child support (DCS) must inform the DSHS medical assistance administration (MAA) of the existence of a new or modified court or administrative order for child support when the order includes a requirement for medical support. MAA is the part of DSHS

which provides services for the state of Washington under Title XIX of the federal Social Security Act.

(2) DCS must provide MAA with the following information:

(a) Title IV-A case number, Title IV-E foster care case number, Medicaid number or the individual's Social Security Number;

(b) Name of the noncustodial parent (NCP);

(c) Social Security Number of the NCP;

(d) Name and Social Security Number of the child(ren) named in the order;

(e) Home address of the NCP;

(f) Name and address of the NCP's employer;

(g) Information regarding the NCP's health insurance policy; and

(h) Whether the child(ren) named in the order are covered by the policy.

(3) DCS must periodically communicate with MAA if there have been lapses (stops and starts) in health insurance coverage for Medicaid applicants.

WSR 05-03-004

**NOTICE OF PUBLIC MEETINGS
GRAYS HARBOR COLLEGE**
[Memorandum—December 29, 2004]

The Grays Harbor College board of trustees will meet in the boardroom on the main campus in the Joseph A. Malik Administration Building on the following dates at 5:30 p.m.

- January 18, 2005
- February 15, 2005
- March 15, 2005
- April 19, 2005
- May 17, 2005
- June 21, 2005
- July 19, 2005
- September 20, 2005
- October 18, 2005
- November 15, 2005

WSR 05-03-012

**RULES COORDINATOR
SUPERINTENDENT OF
PUBLIC INSTRUCTION**
[Filed January 6, 2005, 11:28 a.m.]

This is to apprise you of the fact that Jolynn (Joie) Erickson, Administrative Resource Services, has been appointed hearings officer for the Office of Superintendent of Public Instruction. She replaces Ben Gravely in this capacity.

Charlie Schreck
for Marcia L. Riggers
Assistant Superintendent
Student Support and Operations

WSR 05-03-014

**INTERPRETIVE STATEMENT
DEPARTMENT OF AGRICULTURE**
(Fryer Commission)
[Filed January 6, 2005, 1:52 p.m.]

**INTERPRETIVE STATEMENT
Number 2004-01**

RE: Clarification of term "market value" under chapter 15.66 RCW, Washington State Agricultural Commodity Commissions and chapter 16-512 WAC, Marketing order of the Washington Fryer Commission.

Contact: JoAnne Naganawa, Office Manager, Washington Fryer Commission, phone (425) 226-6125.

Date Approved: December 2, 2004.

WSR 05-03-015

**NOTICE OF PUBLIC MEETINGS
HEALTH CARE AUTHORITY**
(Pharmacy and Therapeutics Committee)
[Memorandum—January 5, 2005]

PHARMACY AND THERAPEUTICS COMMITTEE
2005 Revised Meeting Schedule

All meetings are held on Wednesdays and begin at 9:00 a.m.

1.	SPECIAL MEETING: February 16, 2005 9:00 a.m. - 4:00 p.m. Location: Radisson Hotel Phoenix Room 17001 Pacific Highway South Seattle, WA 98188
2.	March 16, 2005 9:00 a.m. - 4:00 p.m. Location: Radisson Hotel Phoenix Room 17001 Pacific Highway South Seattle, WA 98188
3.	June 15, 2005 9:00 a.m. - 4:00 p.m. Location: Radisson Hotel Phoenix Room 17001 Pacific Highway South Seattle, WA 98188

If you are a person with a disability and need a special accommodation, please contact Erika Clayton, (206) 521-2027.

WSR 05-03-019

**AGENDA
UNIVERSITY OF WASHINGTON**
[Filed January 7, 2005, 12:18 p.m.]

**The University of Washington's
Semiannual Agenda for Rules under Development
(per RCW 34.05.314)
January 2005**

1. Rule making for chapter 478-118 WAC, Parking and traffic rules of the University of Washington, Tacoma, continues during the first half of 2005.

2. Expedited rule making concerning proposed house-keeping amendments to Title 478 WAC rules continues during the first half of 2005.

For more information concerning the above rules contact Rebecca Goodwin Deardorff, Director of Rules Coordination, University of Washington, 4014 University Way N.E., Seattle, WA 98105-6302, campus mail Box 355509, phone

MISC.

(206) 543-9219, fax (206) 616-6294, or e-mail rules@u.washington.edu.

Rebecca Goodwin Dearthoff
Director of Rules Coordination

WSR 05-03-020
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
[Memorandum—January 5, 2005]

Pediatrics Faculty Meeting

Meeting Date	Location (Building and Room #)	Time
February 28, 2005	Children's Hospital Sound Cafe, Seattle	5:30 - 8:00 p.m.

Physiology Department Faculty Meetings in 2005

- January 12 and 26
- February 9 and 23
- March 9 and 23
- April 6 and 20
- May 4 and 18
- June 8 and 22
- July 6 and 20
- August 3 and 17
- September 7 and 21
- October 5 and 19
- November 2 and 16
- December 7 and 21

All meetings will be at 12:00 noon in G-417 HSB.
History Faculty

Meeting Date	Location (Building and Room #)	Time
January 12, 2005	Smith #306 Seattle	3:30 - 5:00
February 9, 2005	Smith #306 Seattle	3:30 - 5:00
February 16, 2005	Smith #306 Seattle	3:30 - 5:00
February 23, 2005	Smith #306 Seattle	3:30 - 5:00
March 2, 2005	Smith #306 Seattle	3:30 - 5:00
April 6, 2005	Smith #306 Seattle	3:30 - 5:00
April 27, 2005	Smith #306 Seattle	3:30 - 5:00
May 18, 2005	Smith #306 Seattle	3:30 - 5:00

Meeting Date	Location (Building and Room #)	Time
May 25, 2005	Smith #306 Seattle	3:30 - 5:00
October 5, 2005	Smith #306 Seattle	3:30 - 5:00
November 9, 2005	Smith #306 Seattle	3:30 - 5:00
December 7, 2005	Smith #306 Seattle	3:30 - 5:00

WSR 05-03-021
NOTICE OF PUBLIC MEETINGS
THE EVERGREEN STATE COLLEGE
[Memorandum—December 30, 2004]

The board of trustees of The Evergreen State College will hold regular meetings on the following dates in 2003 [2005]. Unless otherwise noted, all meetings will be held in Olympia in Room 3112 of the Daniel J. Evans Library Building at The Evergreen State College, 2700 Evergreen Parkway N.W.

Date	Time	Meeting
January 12	9:00 - 3:00	Regular Meeting
March 15	10:00 - 5:00	Meeting: Education Planning Session Note Location: TESC - Tacoma 1210 6th Avenue
March 16	9:00 - 3:00	Regular Meeting/Action items
May 10	10:00 - 5:00	Meeting: Education/Planning Session
May 11	9:00 - 3:00	Regular Meeting/Action items
June 9	9:00 - 5:00	Regular Meeting/Action items
June 10	9:00 - 5:00	Work Session/Commencement
July 13	9:00 - 5:00	Regular Meeting
September 15	10:30 - 5:00	Convocation/Work Session
September 16	9:00 - 3:00	Regular Meeting/Action items
November 9	9:00 - 3:00	Regular Meeting

Notices of special meetings, if any, will be published on campus and provided to local news media.

WSR 05-03-022
NOTICE OF PUBLIC MEETINGS
BATES TECHNICAL COLLEGE
[Memorandum—January 5, 2005]

Change of Public Meeting Time

The board of trustees of Bates Technical College has rescheduled its regularly scheduled meeting of January 19, 2005, to begin at 2:00 p.m. in the Clyde Hupp Board Room at Bates Technical College, 1101 South Yakima Avenue, Tacoma, WA 98405.

MISC.

WSR 05-03-023
NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE LOTTERY
 (Lottery Commission)
 [Memorandum—January 5, 2005]
MEETING SCHEDULE FOR 2005

Following is the meeting schedule for the regular meetings of Washington's Lottery Commission for 2005:

January 20, 2005	SeaTac	Amsterdam Conference Room Seattle Tacoma International Airport Seattle, Washington
March 17, 2005	Olympia	Lottery Headquarters Drawing Studio Olympia, Washington
May 19, 2005	Spokane	TBD
July 21, 2005	Burien	Criminal Justice Training Commission
September 22, 2005	Vancouver	TBD
November 17, 2005	Olympia	Lottery Headquarters Drawing Studio Olympia, Washington

WSR 05-03-026
NOTICE OF PUBLIC MEETINGS
OFFICE OF THE
INTERAGENCY COMMITTEE
 (Governor's Forum on Monitoring)
 [Memorandum—January 5, 2005]

The next public meeting of the Governor's Forum on Monitoring (Executive Order 04-03) will be Wednesday, February 2, 2005, from 1:30 to 5:00 p.m. in Room 175 A&B of the Natural Resources Building, 1111 Washington Street S.E., Olympia.

For further information, please contact Patty Dickason, Interagency Committee for Outdoor Recreation (IAC), (360) 902-3012 or check the web page at <http://www.iac.wa.gov/srfb/monitoring.htm>.

The IAC schedules all public meetings at barrier free sites. Persons who need special assistance, such as large type materials, may contact Patty Dickason at the number listed above or by e-mail at pattyd@iac.wa.gov.

WSR 05-03-027
NOTICE OF PUBLIC MEETINGS
OFFICE OF THE
INTERAGENCY COMMITTEE
 (Biodiversity Council)
 [Memorandum—January 5, 2005]

At a regular meeting on December 16, 2004, the Washington State Biodiversity Council adopted the following meeting schedule:

February 16, 2005	Regular Meeting	Olympia
April 27, 2005	Regular Meeting	Olympia
June 14, 2005	Regular Meeting	TBD
September 22, 2005	Regular Meeting	Olympia
December 8, 2005	Regular Meeting	Olympia

WSR 05-03-029
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
 [Memorandum—January 7, 2005]

ASUW Board

Please not [note] the meeting time changes for the ASUW board of directors meetings: Winter 2005, Thursdays, 3:30 p.m. (moved from 4:00 p.m.).

Faculty of Spanish and Portuguese

Meeting Date	Location (Building and Room #)	Time
October 8, 2004	CMU 226, Seattle	3:30
November 5, 2004	CMU 202, Seattle	3:30
December 10, 2004	CMU 226, Seattle	3:30
January 7, 2005	CMU 202, Seattle	3:30
February 4, 2005	CMU 202, Seattle	3:30
March 4, 2005	CMU 202, Seattle	3:30
April 1, 2005	CMU 202, Seattle	3:30
May 6, 2005	CMU 202, Seattle	3:30
June 3, 2005	CMU 226, Seattle	3:30

Faculty Meetings - Oral Biology

Meeting Date	Location (Building and Room #)	Time
January 12, 2005	HSB, Room B228	10:00 a.m.
February 9, 2005	HSB, Room B228	10:00 a.m.
March 9, 2005	HSB, Room B228	10:00 a.m.
April 13, 2005	HSB, Room B228	10:00 a.m.
May 11, 2005	HSB, Room B228	10:00 a.m.
June 8, 2005	HSB, Room B228	10:00 a.m.
July 13, 2005	HSB, Room B228	10:00 a.m.
August 10, 2005	HSB, Room B228	10:00 a.m.
September 14, 2005	HSB, Room B228	10:00 a.m.
October 12, 2005	HSB, Room B228	10:00 a.m.
November 9, 2005	HSB, Room B228	10:00 a.m.
December 14, 2005	HSB, Room B228	10:00 a.m.

MISC.

WSR 05-03-030

NOTICE OF PUBLIC MEETINGS

BELLINGHAM TECHNICAL COLLEGE

[Memorandum—January 10, 2005]

The regularly scheduled meeting of the board of trustees of Bellingham Technical College will be held on Thursday, January 20, 2005, 9:00 - 11:00 a.m., in the College Services Board Room on the Bellingham Technical College campus. Call 752-8334 for information.

WSR 05-03-040

ATTORNEY GENERAL'S OFFICE

[Filed January 11, 2005, 10:59 a.m.]

NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION
WASHINGTON ATTORNEY GENERAL

The Washington Attorney General issues formal published opinions in response to requests by the heads of state agencies, state legislators, and county prosecuting attorneys. When it appears that individuals outside the Attorney General's Office have information or expertise that will assist in the preparation of a particular opinion, a summary of that opinion request will be published in the state register. If you are interested in commenting on a request listed in this volume of the register, you should notify the Attorney General's Office of your interest by February 9, 2005. This is not a due date by which comments must be received. However, if you do not notify the Attorney General's Office of your interest in commenting on an opinion request by this date, the opinion may be issued before your comments have been received. You may notify the Attorney General's Office of your intention to comment by calling (360) 586-4218, or by writing to the Solicitor General, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100. When you notify the office of your intention to comment, you will be provided with a copy of the opinion request in which you are interested; information about the Attorney General's Opinion process; information on how to submit your comments; and a due date by which your comments must be received to ensure that they are fully considered.

The Attorney General's Office seeks public input on the following opinion request(s).

**05-01-01 Request by Gregory M. Banks
Island County Prosecuting Attorney**

Who is responsible for paying for the cost of necessary medical treatment before an arrestee is booked and confined in the county jail? The arrestee alone, the arresting law enforcement agency, or the county jail?

WSR 05-03-043

AGENDA

DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed January 11, 2005, 2:40 p.m.]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-05 issue of the Register.

WSR 05-03-044

INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed January 11, 2005, 2:42 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 04-90 MAA.

Subject: Physician-related services: 2005 Changes and additions to CPT® and HCPCS codes, policies, and fee schedule.

Effective Date: January 1, 2005.

Document Description: **Effective for dates of service on and after January 1, 2005**, the Medical Assistance Administration (MAA) will:

- Begin using 2005 current procedural terminology (CPT)® code and healthcare common procedural coding system (HCPCS) Level II code additions as discussed in this memorandum. Maximum allowable fees for the year 2005 additions and 2005 base anesthesia units (BAU) are also included.
- Update and clarify various policies and payment rates.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2004"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 3, 2005

Ann Myers, Manager

Rules and Publications Section

WSR 05-03-045

INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed January 11, 2005, 2:43 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 04-95 MAA.

Subject: Outpatient hospitals updates: Year 2005 CPT and HCPCS.

Effective Date: January 1, 2005.

Document Description: **Effective for dates of service on and after January 1, 2005**, the Medical Assistance Administration (MAA) will begin using the year 2005 current procedural terminology (CPT)® and HCPCS Level II code updates as discussed in this memorandum. Maximum allowable fees for the year 2005 new codes are added to the fee schedule.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2004"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 3, 2005

Ann Myers, Manager
Rules and Publications Section

WSR 05-03-046

INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed January 11, 2005, 2:44 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 04-96 MAA.
Subject: Medical nutrition: HCPCS code deletions.
Effective Date: January 1, 2005.

Document Description: **Effective for dates of service on and after January 1, 2005**, the Medical Assistance Administration (MAA) will no longer pay claims for HCPCS* codes B4151 and B4156 due to the Centers for Medicare and Medicaid Services' (CMS) deletion of these codes. MAA is revising the product list and product classification in MAA's *Medical Nutrition Billing Instructions* to reflect these deletions.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2004"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 3, 2005

Ann Myers, Manager
Rules and Publications Section

WSR 05-03-047

INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed January 11, 2005, 2:45 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 04-97 MAA.
Subject: Wheelchairs durable medical equipment (DME), and supplies: Fee schedule changes.
Effective Date: January 1, 2005.

Document Description: **Effective for dates of service on and after January 1, 2005**, the Medical Assistance Administration (MAA) will:

- Begin using 2005 healthcare common procedure coding system (HCPCS) Level II code additions as discussed in this memorandum;
- Add updates to maximum allowable fees for the year 2005; and
- Update policy related to wheelchairs and durable medical equipment.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2004"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 3, 2005

Ann Myers, Manager
Rules and Publications Section

WSR 05-03-048

INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed January 11, 2005, 2:46 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 04-99 MAA.
Subject: Nondurable medical supplies and equipment: Fee schedule changes.
Effective Date: January 1, 2005.

Document Description: **Effective for dates of service on and after January 1, 2005**, the Medical Assistance Administration (MAA) will:

- Begin using 2005 healthcare common procedure coding system (HCPCS) Level II code additions as discussed in this memorandum;
- Add updates to maximum allowable fees for the year 2005; and
- Update policy related to wheelchairs and durable medical equipment.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section,

Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2004"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 3, 2005
Ann Myers, Manager
Rules and Publications Section

WSR 05-03-049
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed January 11, 2005, 2:47 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 04-102 MAA.

Subject: Prosthetic and orthotic devices: Fee schedule changes.

Effective Date: January 1, 2005.

Document Description: **Effective for dates of service on and after January 1, 2005**, the Medical Assistance Administration (MAA) will:

- Begin using 2005 current procedural terminology (CPT)® healthcare common procedure coding system (HCPCS) Level II code additions as discussed in this memorandum;
- Add updates to maximum allowable fees for the year 2005; and
- Update policy related to prosthetic and orthotic devices.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2004"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 3, 2005
Ann Myers, Manager
Rules and Publications Section

WSR 05-03-050
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed January 11, 2005, 2:49 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 05-01 MAA.

Subject: Prescription drug program: Expedited prior authorization updates.

Effective Date: Week of February 7, 2005.

Document Description: **Effective the week of February 7, 2005, and after**, the Medical Assistance Administration (MAA) will implement the changes to expedited prior authorization codes and criteria for MAA's prescription drug program outlined in this memorandum.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2004"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 5, 2005
Ann Myers, Manager
Rules and Publications Section

WSR 05-03-058
NOTICE OF PUBLIC MEETINGS
HIGHER EDUCATION CONSORTIUM

[Memorandum—January 7, 2005]

The NSIS Higher Education Consortium board of directors has adopted a schedule of regular meetings for 2005:

Wednesday January 26
Friday October 21

Meetings will begin at 9:00 a.m. and will be held in Conference Room 213, University Center, Everett Station, 3201 Smith Avenue, Everett, WA. This meeting space is accessible to persons of disability. For information, call the University Center Office at (425) 252-9505.

WSR 05-03-065
NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE PATROL
(Fire Protection Policy Board)
[Memorandum—January 13, 2005]

2005
MEETING/WORK SESSION SCHEDULE

Date	Session Type	Location
January 26, 2005 9:00 a.m.	Work Session	General Administration Building 210 11th Street S.W. Olympia, WA
February 23, 2005 9:00 a.m.	Regular Meeting	General Administration Building 210 11th Street S.W. Olympia, WA
April 27, 2005 9:00 a.m.	Work Session	General Administration Building 210 11th Street S.W. Olympia, WA

MISC.

May 25, 2005 9:00 a.m.	Regular Meeting	General Administration Building 210 11th Street S.W. Olympia, WA
July 27, 2005 9:00 a.m.	Work Session	General Administration Building 210 11th Street S.W. Olympia, WA
August 24, 2005 9:00 a.m.	Regular Meeting	General Administration Building 210 11th Street S.W. Olympia, WA
October 26, 2005 9:00 a.m.	Work Session	General Administration Building 210 11th Street S.W. Olympia, WA
*November 30, 2005 9:00 a.m.	Regular Meeting	General Administration Building 210 11th Street S.W. Olympia, WA

2005, beginning at 1:30 p.m. in Tukwila, Washington, at the DoubleTree Guest Suites, 16500 Southcenter Parkway, in the Monterey Room.

Note: If you need special accommodations to participate in this meeting, please notify us by January 18, 2005, at (360) 902-2637 or TDD (360) 902-1996.

WSR 05-03-070
NOTICE OF PUBLIC MEETINGS
OFFICE OF THE
INTERAGENCY COMMITTEE
 (Governor's Forum on Monitoring)
 [Memorandum—January 12, 2005]

The next public meeting of the Governor's Forum on Monitoring (Executive Order 04-03) will be **Tuesday, February 1, 2005, from 9:00 a.m. to 12:30 p.m.** in Room 175 A&B of the Natural Resources Building, 1111 Washington Street S.E., Olympia.

For further information, please contact Patty Dickason, Interagency Committee for Outdoor Recreation (IAC), (360) 902-3012 or check the web page at <http://www.iac.wa.gov/monitoring/schedule.htm>.

The IAC schedules all public meetings at barrier free sites. Persons who need special assistance, such as large type materials, may contact Patty Dickason at the number listed above or by e-mail at pattyd@iac.wa.gov.

WSR 05-03-066
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF
GENERAL ADMINISTRATION
 (State Capitol Committee)
 [Memorandum—January 11, 2005]

REGISTRATION - STATE CAPITOL COMMITTEE MEETING DATES

Following is the 2005 quarterly State Capitol Committee (SCC) meeting dates, time and location:

Thursday	March 17	2:00 p.m. to 3:30 p.m.
Thursday	June 16	10:00 a.m. to 12:00 p.m.
Thursday	October 13	10:00 a.m. to 12:00 p.m.
Thursday	December 15	10:00 a.m. to 12:00 p.m.

The SCC meetings will be held in Room 207 on the second floor of the General Administration Building, 210 11th Avenue S.W., Olympia, WA; with the exception of the March 17, 2005, meeting which will be held in Room G3 of the General Administration Building.

If you have any questions, please contact Pam Robel at 902-0982.

WSR 05-03-069
NOTICE OF PUBLIC MEETINGS
INTERAGENCY COMMITTEE
FOR OUTDOOR RECREATION
 [Memorandum—January 11, 2005]

The next meeting of the Interagency Committee for Outdoor Recreation is scheduled for Wednesday, January 26,

WSR 05-03-072
POLICY STATEMENT
UNIVERSITY OF WASHINGTON
 [Filed January 14, 2005, 9:12 a.m.]

The University of Washington has recently revised or repealed the following policy statements:

Revised effective August 12 and September 9, 2004, Administrative Policy Statement 1.1, "University Organization Chart."

Revised effective September 17, 2004, Board of Regents By-Laws, Article II, "Meetings of the Board" (*University Handbook*, Volume I, Part II, Article II).

Revised effective September 17, 2004, Board of Regents Standing Orders, Chapter I, "Delegation of Authority" (*University Handbook*, Volume I, Part III, Chapter I).

Revised effective October 7, 2004, Administrative Policy Statement 53.4, "The U-PASS Program."

Repealed effective October 13, 2004, an unnumbered executive order, "Military Training Leave During Summer Quarter" (*University Handbook*, Volume 4, Part III, Chapter 17).

Repealed effective October 13, 2004, Executive Order No. 44, "Smoking in University Buildings" (*University Handbook*, Volume 4, Part VII, Chapter 6).

Repealed effective October 13, 2004, Executive Order No. 50, "Student Employment Policy" (*University Handbook*, Volume 4, Part IV, Chapter 9, Section 2).

MISC.

Repealed effective October 13, 2004, Executive Order No. 51, "International Student Policy" (*University Handbook*, Volume 3, Part III, Chapter 10).

Repealed effective October 13, 2004, Executive Order No. 54, "Records Management Policy" (*University Handbook*, Volume 4, Part VI, Chapter 7).

Repealed effective October 13, 2004, Executive Order No. 56, "Professional Staff Personnel Policy" (*University Handbook*, Volume 4, Part IV, Chapter 11, Section 3).

Repealed effective October 13, 2004, Executive Order No. 65, "Fulbright Program" (*University Handbook*, Volume 4, Part V, Chapter 15).

Revised effective October 14, 2004, Board of Regents By-Laws, Article III, "Committees of the Board" (*University Handbook*, Volume 1, Part II, Article III).

Revised effective December 16, 2004, Administrative Policy Statement 42.1, "Professional Staff Program."

To view any current policy statement from the *University Handbook*, go to the *University Handbook* website: <http://www.washington.edu/faculty/facsenate/handbook/handbook.html>; to view a UW administrative policy statement, go to the *Administrative Policy Statements* website: <http://www.washington.edu/admin/rules/APS/APSIndex.html>, or to request a paper copy of any policy statement, contact Rebecca Goodwin Deardorff, Director of Rules Coordination, University of Washington, 4014 University Way N.E., Seattle, WA 98105-6203; by e-mail at rules@u.washington.edu; or by fax at (206) 616-6294.

WSR 05-03-073

NOTICE OF PUBLIC MEETINGS CONVENTION AND TRADE CENTER

[Memorandum—January 12, 2005]

A regular meeting of the Washington State Convention and Trade Center board of directors will be held on Tuesday, January 18, 2005, at 2:00 p.m. in Room 303 of the Convention Center, 800 Convention Place, Seattle.

If you have any questions regarding this meeting, please call (206) 694-5000.

WSR 05-03-084

INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed January 17, 2005, 1:05 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Billing Instruction.

Subject: Ambulance and Involuntary Treatment Act (ITA) transportation.

Effective Date: February 2005.

Document Description: These are billing instructions for ambulance and involuntary treatment transportation providers to use when billing for medical assistance eligible cli-

ents. Included in this document are client eligibility, provider responsibilities, coverage, authorization requirements, reimbursement, fee schedules, out-of-state services, Involuntary Treatment Act (ITA) transportation, and billing.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on Billing Instructions), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 12, 2005

Ann Myers, Manager
Rules and Publications Section

WSR 05-03-085

INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed January 17, 2005, 1:06 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 05-02 MAA.

Subject: Ground and air ambulance medical transportation program and Involuntary Treatment Act (ITA) transportation program: Policy and rate changes.

Effective Date: February 1, 2005.

Document Description: **Effective for dates of service on and after February 1, 2005**, the Medical Assistance Administration (MAA) is implementing policy and rate changes for ambulance services, consistent with the changes to chapter 388-546 WAC adopted in August 2004.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Rules and Publications Section, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2005"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail salmobl@dshs.wa.gov.

January 12, 2005

Ann Myers, Manager
Rules and Publications Section

WSR 05-03-086

INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed January 17, 2005, 1:07 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: SEO Handbook Chapter 4.

Subject: Foster care.

Effective Date: January 11, 2005.

Document Description: This is a revision to the existing SEO Handbook Chapter 4.

To receive a copy of the interpretive or policy statement, contact Susan Reams, Division of Child Support, Mailstop 45860, P.O. Box 9162, Olympia, WA 98507-9162, phone (360) 664-5278, TDD (360) 753-9122, fax (360) 586-3274, e-mail sreams@dshs.wa.gov.

January 11, 2005

Susan Reams

WSR 05-03-089

INTERPRETIVE AND POLICY STATEMENT DEPARTMENT OF LABOR AND INDUSTRIES

[Filed January 18, 2005, 10:07 a.m.]

In accordance with RCW 34.05.230(12), enclosed are the policy and interpretive statements issued by the department for December 2004.

If you have any questions or need additional information, please call Carmen Moore at (360) 902-4206.

POLICY AND INTERPRETIVE STATEMENTS

WISHA

1. WISHA Regional Directive (WRD) 27.20, Traffic Control and Flagging Operations

This directive provides guidance to WISHA enforcement and consultation staff when evaluating work zones where traffic control or flaggers are used. It will remain in place indefinitely, and replaces all other instructions on this issue, whether formal or informal.

This new policy was established December 30, 2004.

Contact Marcia Benn, Mailstop 44648, phone (360) 902-5503.

Insurance Services

1. Program: Office of the Medical Director, Crime Victims, State Fund Claims Administration and Self-Insurance

Provider Bulletin 04-11: Hearing Aid Services and Devices Reimbursement Policies and Rates

Effective September 1, 2004, this *Provider Bulletin* consolidates and replaces:

- *Provider Bulletin* 01-09 and 02-09, and
- The hearing aid related information in *Provider Updates*: 99-01 and 00-01

The following policies and requirements apply to all hearing aid services and devices, except those listed in the *Physicians' Current Procedural Terminology* (CPT).

Self-insured companies who have entered into contracts for purchasing hearing aid related services and devices may continue to use them. Self-insured companies who do not have hearing aid purchasing contracts must follow the department's maximum fee schedule and purchasing policies for all hearing aid services and devices listed in this bulletin.

Which policies have changed?

- Digital hearing aids may be covered, if that technology best addresses a worker's needs.
- New worker information and restocking forms have been developed, see appendix.
- Advertising limits are explained.
- Professional fees.

Policy or program information covered in the *Provider Bulletin* includes:

- Authorization and payment policies
- Advertising limits
- Types of hearing aids authorized
- Hearing aid quality
- Testing
- Trial period
- Warranties
- Repairs and batteries
- Replacement
- Documentation and record-keeping requirements
- Billing procedures
- Information about a specific claim
- Fee schedules
- Appendix: New timelines for filing occupational hearing loss.

This new policy was effective July 2004.

Contact Grace Wang, Mailstop 44321, phone (360) 902-5227.

2. Program: Office of the Medical Director, Crime Victims, State Fund Claims Administration and Self-Insurance

Provider Bulletin 04-12: Review Criteria for Thoracic Outlet Syndrome Surgery (TOS)

This *Provider Bulletin* replaces PB 95-04 and becomes effective September 1, 2004.

Provider Bulletin 04-06 describes policies currently in effect for state fund and self-insurance claims in all locations:

The purpose of this *Provider Bulletin* is to notify providers that all inpatient or outpatient surgery for vascular or neurogenic TOS or for entrapment of the brachial plexus will require prior approval and utilization review (UR) for state fund claims.

The *Provider Bulletin* includes an update in CPT codes that require prior approval and UR for state fund claims, the criteria for the electrodiagnostic diagnosis of unilateral neurogenic TOS, and the review criteria for TOS surgery.

This new policy is effective August 2004.

Contact Grace Wang, Mailstop 44321, phone (360) 902-5227.

3. Program: Office of the Medical Director, Crime Victims, State Fund Claims Administration and Self-Insurance

Provider Bulletin 04-13: Coverage Decision (May 2004 to September 2004)

This *provider bulletin* describes policies currently in effect for state fund in all locations:

- Noncoverage of low level laser therapy (LLLT).

MISC.

LLLT is not a covered therapy because it is considered investigational. Published literature has not substantially shown effectiveness of LLLT.

- ❑ Noncoverage of autologous blood injections (replaces coverage decision memos dated June 25, 2004).

Autologous blood injection/patch therapy is not a covered therapy at this time for lateral epicondylitis or any other indication. This therapy is considered experimental to a lack of published literature indicating safety and effectiveness.

Epidural blood patches used for spinal leaks are a different procedure and remain covered for that purpose.

- ❑ Noncoverage of tinnitus retraining therapy (TRT) (replaces coverage decision memos dated June 25, 2004).

Tinnitus retraining therapy is not a covered therapy because it is considered investigational and controversial due to the lack of evidence addressing effectiveness for tinnitus.

This bulletin also describes policies currently in effect for state fund and self-insurers in all locations:

- ❑ Coverage of powered traction devices (updates PB 00-09 and replaces coverage decision memos dated June 25, 2004).

Powered traction is a covered therapy. This decision applies to all FDA approved powered traction devices.

When powered traction is a proper and necessary treatment, the department or self-insured employer may pay for powered traction therapy administered by a licensed practitioner.

Only one unit of this code will be paid per visit, regardless of the length of time traction is applied.

The department will not pay any additional cost when powered traction devices are used because published literature has not substantially shown whether powered traction devices are more effective than other forms of traction, other conservative treatments, or surgery.

- ❑ Coverage of hyaluronic acid (HA) (updates PB 98-10).

HA injections are indicated only for osteoarthritis of the knee. When osteoarthritis is the accepted condition or is retarding recovery from an accepted condition, one course of HA may be considered medically necessary. Prior authorization is required for HA injections.

This bulletin describes a policy effective November 1, 2004 for state fund and self-insurers in all locations:

- ❑ Coverage of Epidural Adhesiolysis.

Epidural Adhesiolysis conducted with the 1-day protocol may be authorized for patients who meet all of the following criteria:

- > The injured worker has experienced acute low back pain or acute exacerbation of chronic low back pain of no more than six months duration.
- > The physician intends to conduct the adhesiolysis in order to administer drugs in immediate proximity to a nerve.
- > The physician documents strong suspicion of adhesions blocking access to the nerve.
- > Adhesions blocking access to the nerve have been identified by:
 - Gallium MRI, or

- Fluoroscopy during epidural steroid injections.

Epidural Adhesiolysis conducted with the 1-day protocol requires prior authorization.

Adhesiolysis conducted with the 3-day protocol and endoscopic adhesiolysis are not covered procedures at this time.

This new policy was issued August 2004.

Contact Grace Wang, Mailstop 44321, phone (360) 902-5227.

4. Program: Office of the Medical Director, Crime Victims, State Fund Claims Administration and Self-Insurance

Provider Bulletin 04-15: Chronic Pain Management Program

Provider Bulletin 04-15 explains revisions the department recently made to its policies concerning the authorization and payment of chronic pain management programs.

This bulletin replaces Provider Bulletin 93-02.

Specifically, the revisions to the chronic pain management program include:

- Eliminating the current chronic pain management program contracts,
- Establishing an all inclusive, phase-based, per diem fee schedule,
- Establishing a per diem fee schedule for inpatient room and board services, and
- Authorizing the extension of the treatment phase using specific criteria.

In addition to these revisions of the chronic pain management program, disability prevention evaluations by chronic pain management programs will be eliminated.

What is changing?

Since 1987, the department has authorized and paid for chronic pain management programs by contract. Effective February 1, 2005, these contracts will be eliminated and replaced by a fee schedule payable to any chronic pain management program meeting the provider requirements. This fee schedule will be all-inclusive, paid by chronic pain management phase, and is based on a daily rate.

This bulletin provides new maximum allowable fees and billing codes for chronic pain management programs. These fees will be effective for dates of service on or after February 1, 2005.

Policy or program information covered in the Provider Bulletin includes:

- When should an injured worker be referred for a chronic pain management program evaluation?
- What are the chronic pain management program phases and the fee schedule?
- What is a Return to Work Action Plan?
- Who is involved when a return to work action plan is developed and implemented?
- What is the fee schedule for inpatient room and board costs?
- What if the injured worker needs more treatment than is permitted by the limit established in the fee schedule?
- What are the criteria for extending the treatment phase?

MISC.

- Who is eligible to provide chronic pain management program services to injured workers?
- What if a Commission on Accreditation of Rehabilitation Facilities (CARF) accredited provider is not reasonably available for injured workers who have moved out of Washington State?
- If an injured worker does not complete a full day of treatment or follow-up, how do I bill for those services?
- Why are Disability Prevention Evaluations being discontinued?
- Where can I find out any additional information about the chronic pain management program or disability prevention evaluations?

This policy was issued October 2004.

Contact Grace Wang, Mailstop 44321, phone (360) 902-5227.

5. Program: Office of the Medical Director, Crime Victims, State Fund Claims Administration and Self-Insurance

Provider Bulletin 04-16: Nursing Home, Transitional Care Unit, Adult Family Home and Boarding Home Payment System

The bulletin explains the new L&I facilities payment system, including policies and fees, for residential care facilities.

This bulletin applies to state fund claims when authorization is requested for services to be provided in residential care facilities on or after January 1, 2005.

For information regarding self-insurer requirements contact the self-insurer directly.

Policy or program information covered in the Provider Bulletin includes:

- What types of services are being affected?
- Who may provide the services?
- What types of services does the department cover?
- What services are included in the new system?
- How was the Nursing Home and Transitional Care Unit fee schedule developed?
- How do you bill for pharmaceuticals and Durable Medical Equipment?
- How do residential care facilities receive authorization?
- What if the care needs of the injured worker in a Nursing Home or Transitional Care Unit change?
- Will the department review residential care services?
- How will the payment system changes affect injured workers and providers?
- What are the requirements for billing, payment and record keeping?
- Nursing Home and Transitional Care Unit Fee Schedule
- Adult Family Home and Boarding Home Fee Schedule
- Where is more information available?

This policy was issued October 2004.

Contact Grace Wang, Mailstop 44321, phone (360) 902-5227.

6. Program: Office of the Medical Director, Crime Victims, State Fund Claims Administration and Self-Insurance

Provider Bulletin 04-17: Spinal Cord Stimulation

This Provider Bulletin announces a pilot study entitled "Spinal Cord Stimulators (SCS) for Injured Workers with Chronic Low Back and Leg Pain after Lumbar Surgery" that pertains to state fund claims in all locations. This bulletin is currently in effect.

SCS is a noncovered procedure for State Fund claimants. However, the department will cover SCS for state fund claimants if performed as part of the SCS pilot study conducted by the University of Washington.

The study is entitled, "Spinal Cord Stimulators (SCS) for Injured Workers with Chronic Low Back and Leg Pain after Lumbar Surgery." Payment authorization will be contingent upon the patient consenting to participate in the study, meeting the study inclusion criteria, and completing the baseline assessment.

The study aims to observe SCS outcomes in routine practice. Therefore, individual physicians in the community will conduct the implantation procedure and provide follow-up care. Individual physicians will also choose the length of the trial SCS period, the type of SCS device, and the type of pulse generator.

The study aims to recruit fifty injured workers to undergo a trial of SCS. The study also aims to recruit fifty patients each to two comparison groups. The comparison groups will comprise injured workers with chronic LBP who meet inclusion and exclusion criteria for SCS, but who have not been offered SCS by their physician. The first comparison group will receive usual care for their symptoms.

The second comparison group will receive treatments at multidisciplinary pain clinics.

This policy was restated November 2004.

Contact Gary Franklin, Mailstop 44321, phone (360) 902-5020.

7. Program: State Fund Claims Administration

Guideline - Job offers, 'odd lot' employment, temporary and light-duty jobs

This memorandum provides:

- Guidelines regarding the payment of time-loss compensation benefits when the employer of record offers a light-duty or permanent job.
- Characteristics of a bona fide job offer.

This new policy was issued November 19, 2004.

Contact Valerie Grimm, Mailstop 4208, phone (360) 902-5005.

Carmen Moore
Rules Coordinator

MISC.

WSR 05-03-097**NOTICE OF PUBLIC MEETINGS
WHATCOM COMMUNITY COLLEGE**

[Memorandum—January 13, 2005]

At the January meeting of the Whatcom Community College board of trustees the February 1, 2005, meeting of the board of trustees was rescheduled for Tuesday, February 8, 2005.

WSR 05-03-098**NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF AGRICULTURE**

(Fryer Commission)

[Memorandum—January 18, 2005]

Please note a change in venue for the first quarter meeting of the Washington Fryer Commission

Place: Moved to: Renton Community Center
1715 Maple Valley Highway
Classroom B
Renton, WA
Previously scheduled for the Silver Cloud Inn
in Renton

Dates: Tuesday, February 8, 2005

Any questions you may have can be addressed with JoAnne Naganawa, Washington Fryer Commission at (425) 226-6125 or e-mail joanne@cluckcluck.org.

WSR 05-03-099**AGENDA****OFFICE OF THE
INTERAGENCY COMMITTEE**

(Interagency Committee for Outdoor Recreation)

(Salmon Recovery Funding Board)

[Filed January 18, 2005, 4:36 p.m.]

Semiannual Rule Development Agenda

We would like to report that at this time neither the board of the Interagency Committee for Outdoor Recreation nor the Salmon Recovery Funding Board have rules under development. Please feel free to call Greg Lovelady at 902-3008 (GregL@iac.wa.gov) if you have questions regarding this information.

Greg Lovelady
Rules Coordinator

WSR 05-03-100**DEPARTMENT OF ECOLOGY**

[Filed January 18, 2005, 4:37 p.m.]

PUBLIC NOTICE**Public Workshop and Hearing to Accept Comments on the Draft Upland Fin-fish Hatching and Rearing NPDES General Permit****Notice of Reissuance of the Upland Fin-fish Hatching and Rearing NPDES General Permit**

In 1990, the Washington State Department of Ecology developed a national pollutant discharge elimination system general permit to regulate the discharges from upland fin-fish hatching and rearing facilities. The current permit was reissued in April 17, 2000, and expires June 1, 2005. Ecology is proposing to reissue the revised permit April 20, 2005, with an effective date of June 1, 2005. The proposed draft upland fin-fish hatching and rearing general permit and fact sheet are available for review and public comment from February 2, 2005, to April 1, 2005. Ecology will host a workshop and public hearing on its proposal to reissue the upland fin-fish hatching and rearing NPDES general permit. Ecology will accept written comments on the draft permit and fact sheet or oral comments can be given at the public hearing.

The proposed permit implements the Federal Clean Water Act; the State Water Pollution Control Act; and chapter 173-221A WAC, Wastewater discharge standards and effluent limitations. Dischargers who require coverage under this permit include all state and private hatcheries that produce more than 20,000 pounds of fish per year or feed more than 5,000 pounds per month. The purpose of the permit is to control the discharge of pollutants from hatcheries into waters of the state. The permit contains best management practices and effluent limitations and monitoring requirements necessary to protect state water quality. Individual facilities that receive coverage under the general permit are required to comply with the terms and conditions of the permit. Currently, about eighty-six facilities are covered under the upland fin-fish hatching and rearing general permit.

Interested persons are encouraged to submit comments on the proposed permit and attend the public workshop and hearing described below. Written comments must be post-marked by April 1, 2005, to be considered.

Public Workshop/Hearing: A public workshop and hearing on the proposed reissuance of the upland fin-fish hatching and rearing permit will be held on Tuesday, **March 22, 2005, at 7:00 p.m.** The purpose of the workshop is to explain permit conditions, clarify permit changes, answer questions, and facilitate meaningful testimony during the hearing. Interested parties will be given an opportunity to give formal oral testimony and comment on the proposed general permit. The workshop and hearing will be held at the Washington State Department of Ecology, Room ROA-32/34/36, 300 Desmond Drive, Lacey, WA.

Driving directions: http://www.ecy.wa.gov/images/offices/map_hq_swro.df

The public workshop and hearing will begin at 7:00 p.m. and conclude as soon as public testimony is completed.

Requesting Copies of the Permit: Requests for copies of the proposed permit and fact sheet may be made by contacting Tricia Miller at (425) 649-7201 or Lori LeVander, (425) 649-7039, e-mail llev461@ecy.wa.gov, both at the Department of Ecology, NWRO, 3190 160th Avenue S.E., Bellevue, WA 98008-5452, fax (425) 649-7098. You can download copies from www.ecy.wa.gov/programs/wq/permits/.

Submitting Written and Oral Comments: Ecology will accept written and oral comments on the draft upland fin-fish hatching and rearing general permit and fact sheet. Comments should reference specific text when possible. Submit written comments to Lori LeVander, Department of Ecology, NWRO, 3190 160th Avenue S.E., Bellevue, WA 98008-5452.

Written comments must be postmarked no later than midnight, Friday, April 1, 2005. Oral comments can be made by attending and testifying at the public hearing.

Issuing the Final Upland Fin-fish Hatching and Rearing General Permit: A final determination to reissue the permit will be made after ecology receives and considers all public testimony and comments received pursuant to this notice. Ecology expects to issue the final general permit on April 20, 2005, with an effective date of June 1, 2005. When issued, a copy of the notice of issuance and ecology's responses to the comments will be sent to all persons who submitted written comment or gave public testimony.

Ecology is an equal opportunity agency. If you have special accommodation needs or require a copy of the permit and fact sheet in an alternative format, please contact Lori LeVander at (425) 649-7039. If you are a person with a speech or hearing impairment, call 711 or 1-800-833-6388 for TTY.

WSR 05-03-101
NOTICE OF PUBLIC MEETINGS
UNIVERSITY OF WASHINGTON
[Memorandum—January 13, 2005]

Following is one additional regular meeting notice for 2005 as well as one that we sent in October but neglected to put on list sent to you at the beginning of the year.

Below is the quarter schedule for the GPSS Finance and Budget committee.

- January 21
- February 4
- February 18
- March 4
- March 18

HUB 300

GPSS and ASUW Meetings for 2004-2005
ASUW BOD for the Academic Year 2004-2005

Meetings are at 4 p.m. in Room 204M in the HUB.

- September 30
- October 7, 14, 21, 28
- November 4, 18
- December 2, 9, 16
- January 6, 13, 20, 27
- February 3, 10, 17, 24
- March 3, 10, 17, 31
- April 7, 14, 21, 28
- May 5, 12, 19, 26

ASUW Senate for the Fall Quarter

Meeting times are at 4:30 p.m. - 7:30 p.m. in Room 310 in the HUB:

- October 5, 12, 19, 26
- November 2, 9, 16, 23, 30
- December 7, 14, 21, 28

These are the dates for ASUW Senate for the Winter Quarter

Meeting times are at 4:30 p.m. - 7:30 p.m. in Room 108 in the HUB:

- January 4, 11, 18, 25
- February 1, 8, 15, 22
- March 1, 8, 15

ASUW Senate Steering for the Fall Quarter

Meeting times are at 2 p.m. - 3 p.m. in Room 204N in the HUB:

- October 22, 29
- November 5, 12, 19
- December 3, 10

ASUW Finance and Budget for the Fall Quarter

Meeting times are at 6:30 p.m. - 8 p.m. in Room 204M in the HUB:

- October 20
- November 3, 17
- December 1, 15

WSR 05-03-107
AGENDA
OFFICE OF
FINANCIAL MANAGEMENT
[Filed January 19, 2005, 9:28 a.m.]

In accordance with RCW 34.05.314, following is a copy of the Office of Financial Management's semiannual agenda for rules under development.

MISC.

**Semiannual Agenda for Rules Under Development
January 2005 - June 2005**

In August 2004, the Office of Financial Management (OFM) began rule-making activities regarding chapter 236-22 WAC, Local government insurance transactions. Recently enacted statutes dealing with local government self-insurance risk pools have given rise to a need to update this chapter. In addition, this chapter was originally enacted by the state risk manager when the risk management function was a part of the Department of General Administration. The risk management function is now under the authority of OFM. So, in addition to updating the chapter rules to reflect changes in the local government self-insurance risk pool statutes, the rules will be moved to Title 82 WAC, the title that contains all OFM rules.

For more information concerning the above rules, contact Roselyn Marcus, Director of Legal Affairs and Rules Coordinator, Office of Financial Management, 300 Insurance Building, P.O. Box 43113, Olympia, WA 98504-3113, phone (360) 902-0568, or e-mail roselyn.marcus@ofm.wa.gov.

Roselyn Marcus
Director of Legal Affairs
Rules Coordinator

WSR 05-03-108

DEPARTMENT OF ECOLOGY

[Filed January 19, 2005, 9:42 a.m.]

**Washington's Water Quality Management Plan
Public comments invited on the plan to control nonpoint
pollution**

The Department of Ecology (ecology) is updating *Washington's Water Quality Management Plan to Control Nonpoint Source Pollution*. Ecology is required to revise its plan every five years and is proposing to submit a final plan to the Environmental Protection Agency on April 1, 2005.

You are invited to review and comment on the draft plan. Ecology will host three public meetings on the statewide water pollution control plan. Ecology is looking for comment on the actions and strategies to improve water quality that are proposed in the plan.

Public Meetings: The purpose of the meetings is to explain and discuss the update of *Washington's Water Quality Management Plan to Control Nonpoint Source Pollution*. There will be time to answer your questions, and an opportunity for you to comment on the proposed plan. *All meetings begin at 6:30 p.m.*

Lacey: Tuesday, March 8, Auditorium, Washington Department of Ecology, 300 Desmond Drive.

Spokane: Wednesday, March 9, Commissioners Hearing Room, Spokane County Courthouse, 1116 West Broadway Avenue.

Ellensburg: Thursday, March 10, Hal Holmes Community Center, 201 North Ruby.

Public Comments: You are encouraged to comment during the public comment period. Written or verbal comments will be taken at the public meetings. You can also reg-

ister comments by mail to Bill Hashim, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6551, fax (360) 407-6426, e-mail bhas@ecy.wa.gov.

Review the WA Water Quality Management Plan to Control Nonpoint Source Pollution at http://www.ecy.wa.gov/programs/wq/nonpoint/nps_plan.html.

Fact sheet overview at <http://www.ecy.wa.gov/biblio/0510019.html>.

Written comments must be postmarked no later than Friday, **March 18, 2005**. Faxed and e-mailed comments must be received by midnight, March 18, 2005.

Ecology will submit the final plan to the United States Environmental Protection Agency after it considers all public comments. If you comment on the draft plan, you will receive the response to comments document.

What is Nonpoint Pollution and Why is It a Problem? Most pollution in Washington's waters comes from many different, hard-to-trace sources with no obvious point of discharge - we call this nonpoint pollution. Nonpoint water pollution is generated by a wide variety of land uses and activities such as construction, car washing, pet waste, and lawn fertilizers.

Purpose of Washington's Water Quality Management Plan to Control Nonpoint Source Pollution: The proposed plan describes how Washington state is addressing nonpoint source pollution. Although ecology is responsible for writing the plan, all state and local agencies have a role in implementing nonpoint source control methods to help solve this statewide problem. The plan identifies existing and future programs and actions that are needed to improve water quality.

WSR 05-03-112

**OFFICE OF
INSURANCE COMMISSIONER**

[Filed January 19, 2005, 10:23 a.m.]

**TECHNICAL ASSISTANCE ADVISORY (TAA)
T 05-01**

To: Domestic Insurers
Subject: Requests for Permitted Accounting Practices
Date: January 18, 2005

This TAA provides guidance for preparing and submitting requests for permitted accounting practices.

BACKGROUND

Title 48 RCW defines certain financial accounting and reporting practices for domestic insurers (state prescribed practices). Title 48 RCW also requires domestic insurers to comply with the NAIC *Accounting Practices and Procedures Manual* (Manual) or Statutory Accounting Principles to the extent it does not directly conflict with Title 48 RCW.

Over the years, the commissioner has recognized special circumstances affecting individual insurers, and, where authorized, has approved deviations from state prescribed practices

or the Manual. Those deviations are generally referred to as permitted accounting practices.

At its quarterly meeting in December 2004, the NAIC adopted a new section in the preamble to the Manual which became effective January 1, 2005. That new section is:

**Accounting Practices and Procedures Manual
Preamble**

IX. Permitted Accounting Practices

55. In instances where the domiciliary state regulator is considering approval of a request for an accounting practice that departs from the NAIC Manual and state prescribed accounting practices, the domiciliary regulator must provide Notice as defined in paragraphs 56 and 57.
56. No domiciliary state regulatory authority shall grant an approval to use an accounting practice, as described in paragraph 55, unless it provides Notice at least 30 days in advance of such approval (but in no event less than 30 days from the financial statement filing date) or such shorter period with an explanation for the shorter notice period, but never less than 5 days.
57. This Notice must disclose the following information regarding the requested accounting practice request to all other states in which the insurer is licensed prior to the financial statement filing date:
- a. The nature and a clear description of the permitted accounting practice request;
 - b. The quantitative effect of the permitted accounting practice request with all other approved permitted accounting practices currently in effect as disclosed in *Appendix A-205: Illustrative Disclosure of Differences Between NAIC Statutory Accounting Practices and Procedures and Accounting Practices Prescribed or Permitted by the State of Domicile*, for that insurer in the domiciliary state;
 - c. The effect of the requested permitted accounting practice on a legal entity basis and on all parent and affiliated United States insurance companies, if applicable; and
 - d. Identify any potential effects on and quantify the potential impact to each financial statement line item affected by the request. The potential impact may be determined by comparing the financial statements prepared in accordance with NAIC SAP and the financial statements incorporating the requested permitted accounting practice.
58. The granting of approval for an accounting practice request by the domiciliary state regulator does not preempt or in any way limit any individual state's legislative and regulatory authority.

Compliance with the new preamble section and NAIC interpretation of that section will be a subject of future accreditation reviews of the Office of the Insurance Commissioner (OIC).

On December 29, 2004, the OIC received the final language of the new preamble section and guidance for OIC's reporting obligations. The OIC must give at least 30 days notice of proposed new permitted accounting practices to every state

where the insurer does business. At a minimum those notices to other states must include:

- Detailed description of the permitted accounting practice request, including the specific NAIC Statutory Accounting Principles or state prescribed practices from which the practice departs;
- Whether the permitted accounting practice was granted the previous year;
- The financial statement filing date in which the permitted accounting practice will be reflected and the timeframe for which the permitted accounting practice is granted (e.g., indefinitely, until withdrawn, specific date - month, day, year);
- Explanation for providing less than 30 days advance notice if the email is distributed less than 30 days from the financial statement filing date;
- The financial statement line items the permitted accounting practice will affect and the respective financial impact for each line item identified;
- The total financial impact to capital and surplus for all approved/requested permitted accounting practices;
- The effect of the permitted accounting practice on a legal entity basis and on all parent and affiliated U.S. insurance companies, if applicable;
- Whether the permitted accounting practice is approved or pending approval.

INTERPRETATION

Effective January 1, 2005, every request for a permitted accounting practice must be in writing and received by the OIC more than 30 days prior to the proposed effective date. A request for extension of a current permitted accounting practice will be considered as a request for a new permitted practice. Currently existing permitted accounting practices that do not have a specific termination date will expire upon any change of control of the insurer.

Each request for a permitted accounting practice must be received by the OIC more than 30 days prior to the proposed effective date and contain, at a minimum, all of the following information:

- Proposed effective date and first filed financial statement in which practice will be reported;
- Detailed description of the permitted accounting practice requested, including specific citation to the NAIC Statutory Accounting Principles and/or state prescribed practices from which the permitted accounting practice departs;
- Periods, if any, in which permitted practice was previously in effect;
- As of date of financial statement which will reflect the proposed permitted accounting practice;
- Proposed period in which permitted accounting practice will be effective (e.g. indefinite, until withdrawn, specific date);
- Explanation for filing less than 30 days before proposed effective date;
- Specific identification of financial statement impact of proposed permitted accounting practice;

- Specific identification of impact on capital and surplus of proposed and any other permitted practices;
- Capital and surplus effect of permitted accounting practice, on a legal entity basis, on domestic insurer, its ultimate and intermediate parents and all affiliated U.S. insurers.

Requests for permitted accounting practices may be made by completing and submitting the attached document in Exhibit A to:

Company Supervision Division
Office of the Insurance Commissioner
Post Office Box 40259
Olympia, Washington 98504-0259

If this form is used to request a permitted accounting practice a copy will be returned noting commissioner action on the request. The commissioner may request additional or supplementary information concerning the proposed permitted accounting practice.

Exhibit A

Request for Approval
of
Permitted Accounting Practice

(name of insurer or health carrier) CIC _____
NAIC No. _____ respectfully requests approval of the permitted accounting practice identified as follows:

- 1) Proposed effective date:
- 2) Detailed description of requested permitted accounting practice - including specific cites to Statutory Accounting Principles or Title 48 RCW.
- 3) If requested permitted accounting practice was previously in effect -
 - a) period in effect:
 - b) reflected in financial statements as of:
- 4) As-of date of first filed financial statement to reflect permitted accounting practice, if approved:
- 5) Proposed period of effectiveness of permitted accounting practice, if approved:
- 6) If applicable, explanation for filing less than 30 days before proposed effective date:
- 7) Identification of financial statement impact of proposed permitted accounting practice.
(Identify each statement and each line impacted.)

Reported amount

<u>financial</u>	<u>line</u>	without permitted	with permitted
<u>statement</u>		<u>accounting prac-</u>	<u>accounting</u>
		<u>tice</u>	<u>practice</u>

- 8) Identification of impact of permitted accounting practices on capital and surplus as of first filed financial statement for proposed permitted accounting practice:

	<u>capital/surplus</u>	<u>capital/surplus</u>
	<u>without</u>	<u>with</u>
proposed permitted	\$	\$
accounting practice		

list all existing permitted accounting practices and impact on capital and surplus:

\$	\$
\$	\$
\$	\$

- 9) Capital and surplus impact of proposed permitted accounting practice on ultimate and intermediate parents of insurer and all affiliated U.S. insurers:

	capital/sur-	capital/surplus
	plus without	with permitted
Name of	<u>permitted acct.</u>	<u>acct. practice</u>
<u>Parent of affiliate</u>	<u>practice</u>	<u>practice</u>
	\$	\$

(insurer name) will supplement above information as requested by the commissioner.

Respectfully submitted:

Signature:

Typed/printed name:

Title:

Date:

ACTION BY COMMISSIONER:

- Approved as submitted.
- Approved with following modification:
- Disapproved. Comments:

Date of Action:

by: _____
Deputy Insurance Commissioner
Company Supervision Division

WSR 05-03-113

AGENDA

OFFICE OF
INSURANCE COMMISSIONER

[Filed January 19, 2005, 10:25 a.m.]

Rules Agenda
January 31, 2005

Pending Rule Makings: The following rule makings have been proposed and are currently between the CR-101, CR-102, and CR-103 stage. They are currently under review and there may be further rule-making activity before July, 2005.

MISC.

- R 2001-06 Maternity
- R 2001-13 Grievance Review and Dispute Resolution
- R 2001-14 Compliance with federal Health Insurance Portability and Accountability Act of 1996
- R 2002-01 Establishing a market assistance plan for medical malpractice insurance
- R 2002-10 WAC 284-30-510 Date certain payment of automobile premium
- R 2003-03 Chapter 284-20 WAC, Standard fire policies
- R 2003-05 WAC 284-24-065 - Simplify the process to show compliance with RCW 48.19.020
- R 2003-06 Chapter 284-24 WAC - improve the clarity and efficiency
- R 2003-09 Chapter 284-02 WAC, OIC Operations
- R 2004-02 Market assistance plans
- R 2004-03 Corporate-owned life insurance
- R 2004-04 Agent/Broker Continuing Education
- R 2004-05 Health Rate Plans
- R 2004-08 Medicare

Possible Rule Makings: The commissioner notes that there may be rule makings necessary to implement legislation adopted this session. In addition to those activities, the commissioner continues the effort to update and clarify the code. In the period before July 2005, subjects that may be considered for rule making in this effort include:

- Chapter 284-15 WAC Surplus line insurance
- Chapter 284-24B WAC Credit P&C
- Chapter 284-43 WAC Health carriers
- Chapter 284-48 WAC Bulletins
- Chapter 284-53 WAC Conversion regulations
- Chapter 284-74 WAC Approved insurance tables

Please direct questions or comments regarding this agenda or any ongoing or possible rule making to Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0255, phone (360) 725-7041, fax (360) 586-3109, e-mail KacyS@oic.wa.gov.



Table of WAC Sections Affected

KEY TO TABLE

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

Symbols:

- AMD = Amendment of existing section
- A/R = Amending and recodifying a section
- DECOD = Decodification of an existing section
- NEW = New section not previously codified
- OBJECT = Notice of objection by Joint Administrative Rules Review Committee
- PREP = Preproposal comments
- RE-AD = Readoption of existing section
- RECOD = Recodification of previously codified section
- REP = Repeal of existing section
- RESCIND = Rescind of existing section
- REVIEW = Review of previously adopted rule
- SUSP = Suspending an existing section

Suffixes:

- C = Continuance of previous proposal
- E = Emergency action
- P = Proposed action
- S = Supplemental notice
- W = Withdrawal of proposed action
- X = Expedited rule making
- XA = Expedited adoption
- XR = Expedited repeal
- No suffix means permanent action

WAC # Shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

WSR # Shows the issue of the Washington State Register where the document may be found; the last three digits identify the document within the issue.

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
4-25-530	PREP	05-02-051	67-25-280	AMD-P	05-03-116	139-02-030	AMD-P	05-03-025
10-20-010	NEW	05-03-003	67-25-284	AMD-P	05-03-116	139-02-050	AMD-P	05-03-025
10-20-020	NEW	05-03-003	67-25-288	REP-P	05-03-116	139-02-060	REP-P	05-03-025
10-20-030	NEW	05-03-003	67-25-300	REP-P	05-03-116	139-02-070	AMD-P	05-03-025
16-350-035	AMD	05-03-042	67-25-325	AMD-P	05-03-116	139-02-080	AMD-P	05-03-025
16-730-005	NEW-E	05-03-032	67-25-326	REP-P	05-03-116	139-02-090	AMD-P	05-03-025
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16-730-020	NEW-E	05-03-032	67-25-380	AMD-P	05-03-116	139-02-120	NEW-P	05-03-025
16-730-025	NEW-E	05-03-032	67-25-384	AMD-P	05-03-116	139-02-130	NEW-P	05-03-025
16-730-030	NEW-E	05-03-032	67-25-388	AMD-P	05-03-116	139-03-010	AMD-P	05-03-024
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16-730-045	NEW-E	05-03-032	67-25-395	REP-P	05-03-116	139-03-045	NEW-P	05-03-024
16-730-050	NEW-E	05-03-032	67-25-396	AMD-P	05-03-116	139-03-050	REP-P	05-03-024
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67-25-030	AMD-P	05-03-116	67-25-412	AMD-P	05-03-116	173-400-040	AMD	05-03-033
67-25-050	AMD-P	05-03-116	67-25-416	AMD-P	05-03-116	173-400-050	AMD	05-03-033
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67-25-075	REP-P	05-03-116	67-25-446	AMD-P	05-03-116	173-400-102	AMD	05-03-033
67-25-077	AMD-P	05-03-116	67-25-448	AMD-P	05-03-116	173-400-104	AMD	05-03-033
67-25-080	REP-P	05-03-116	67-25-452	AMD-P	05-03-116	173-400-105	AMD	05-03-033
67-25-085	REP-P	05-03-116	67-25-460	AMD-P	05-03-116	173-400-110	AMD	05-03-033
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67-25-270	AMD-P	05-03-116	67-25-590	AMD-P	05-03-116	173-400-131	AMD	05-03-033
67-25-275	AMD-P	05-03-116	139-02-020	AMD-P	05-03-025	173-400-136	AMD	05-03-033

Table of WAC Sections Affected

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173-400-151	AMD	05-03-033	232- 28-284	NEW	05-02-046	246-272A-0175	NEW-P	05-02-082
173-400-171	AMD	05-03-033	232- 28-291	AMD	05-02-046	246-272A-0200	NEW-P	05-02-082
173-400-175	NEW	05-03-033	232- 28-333	AMD	05-02-046	246-272A-0210	NEW-P	05-02-082
173-400-200	AMD	05-03-033	232- 28-619	AMD	05-03-005	246-272A-0220	NEW-P	05-02-082
173-400-560	NEW	05-03-033	232- 28-61900B	NEW-E	05-03-062	246-272A-0230	NEW-P	05-02-082
173-400-700	NEW	05-03-033	232- 28-61900Y	REP-E	05-03-062	246-272A-0232	NEW-P	05-02-082
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173-400-730	NEW	05-03-033	246-101-101	AMD	05-03-055	246-272A-0240	NEW-P	05-02-082
173-400-740	NEW	05-03-033	246-101-201	AMD	05-03-055	246-272A-0250	NEW-P	05-02-082
173-400-750	NEW	05-03-033	246-101-301	AMD	05-03-055	246-272A-0260	NEW-P	05-02-082
182- 08-120	AMD-W	05-02-060	246-260-031	AMD-X	05-03-057	246-272A-0265	NEW-P	05-02-082
182- 16-040	AMD-W	05-02-060	246-260-041	AMD-X	05-03-057	246-272A-0270	NEW-P	05-02-082
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192- 35-050	NEW	05-02-094	246-272-00501	REP-P	05-02-082	246-272A-0320	NEW-P	05-02-082
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192- 35-070	NEW	05-02-094	246-272-02001	REP-P	05-02-082	246-272A-0400	NEW-P	05-02-082
192- 35-080	NEW	05-02-094	246-272-03001	REP-P	05-02-082	246-272A-0410	NEW-P	05-02-082
192- 35-090	NEW	05-02-094	246-272-04001	REP-P	05-02-082	246-272A-0420	NEW-P	05-02-082
192- 35-100	NEW	05-02-094	246-272-05001	REP-P	05-02-082	246-272A-0425	NEW-P	05-02-082
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220- 20-05100B	NEW-E	05-03-013	246-272-23501	REP-P	05-02-082	284- 17-200	AMD-P	05-03-110
220- 20-05100B	REP-E	05-03-013	246-272-24001	REP-P	05-02-082	284- 17-210	AMD-P	05-03-110
220- 32-05100H	NEW-E	05-03-061	246-272-25001	REP-P	05-02-082	284- 17-220	AMD-P	05-03-110
220- 32-05100H	REP-E	05-03-061	246-272-26001	REP-P	05-02-082	284- 17-222	NEW-P	05-03-110
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220- 52-04000H	NEW-E	05-03-039	246-272-28001	REP-P	05-02-082	284- 17-226	NEW-P	05-03-110
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284-34-130	NEW	05-02-076	296-62-07521	AMD	05-03-093	315-37-060	REP-X	05-03-060
284-34-140	NEW	05-02-076	296-62-07540	AMD	05-03-093	315-37-070	REP-X	05-03-060
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284-34-170	NEW	05-02-076	296-62-14533	AMD	05-03-093	315-37-100	REP-X	05-03-060
284-34-180	NEW	05-02-076	296-62-20011	AMD	05-03-093	315-37-110	REP-X	05-03-060
284-34-190	NEW	05-02-076	296-62-20019	AMD	05-03-093	315-37-120	REP-X	05-03-060
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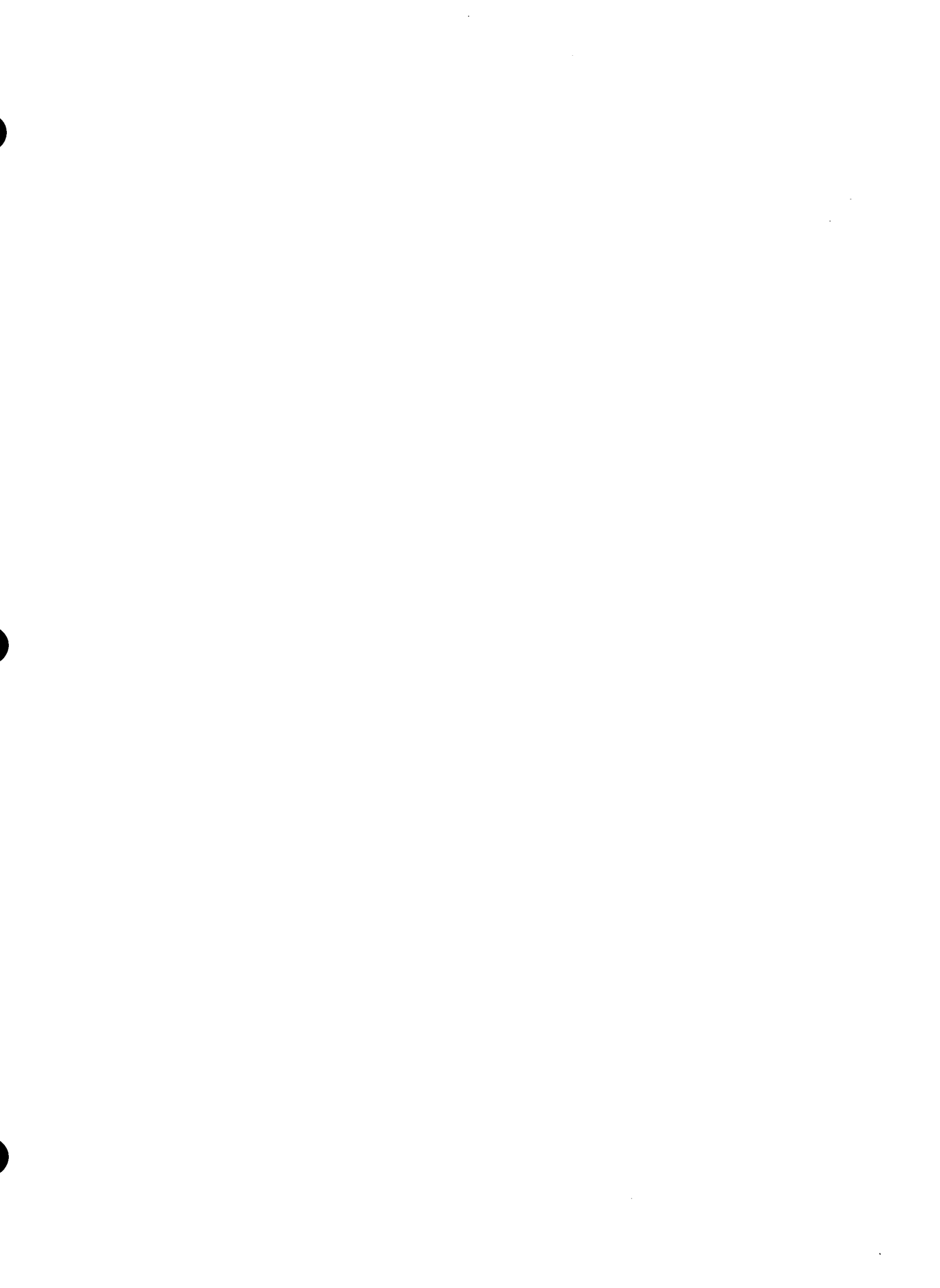
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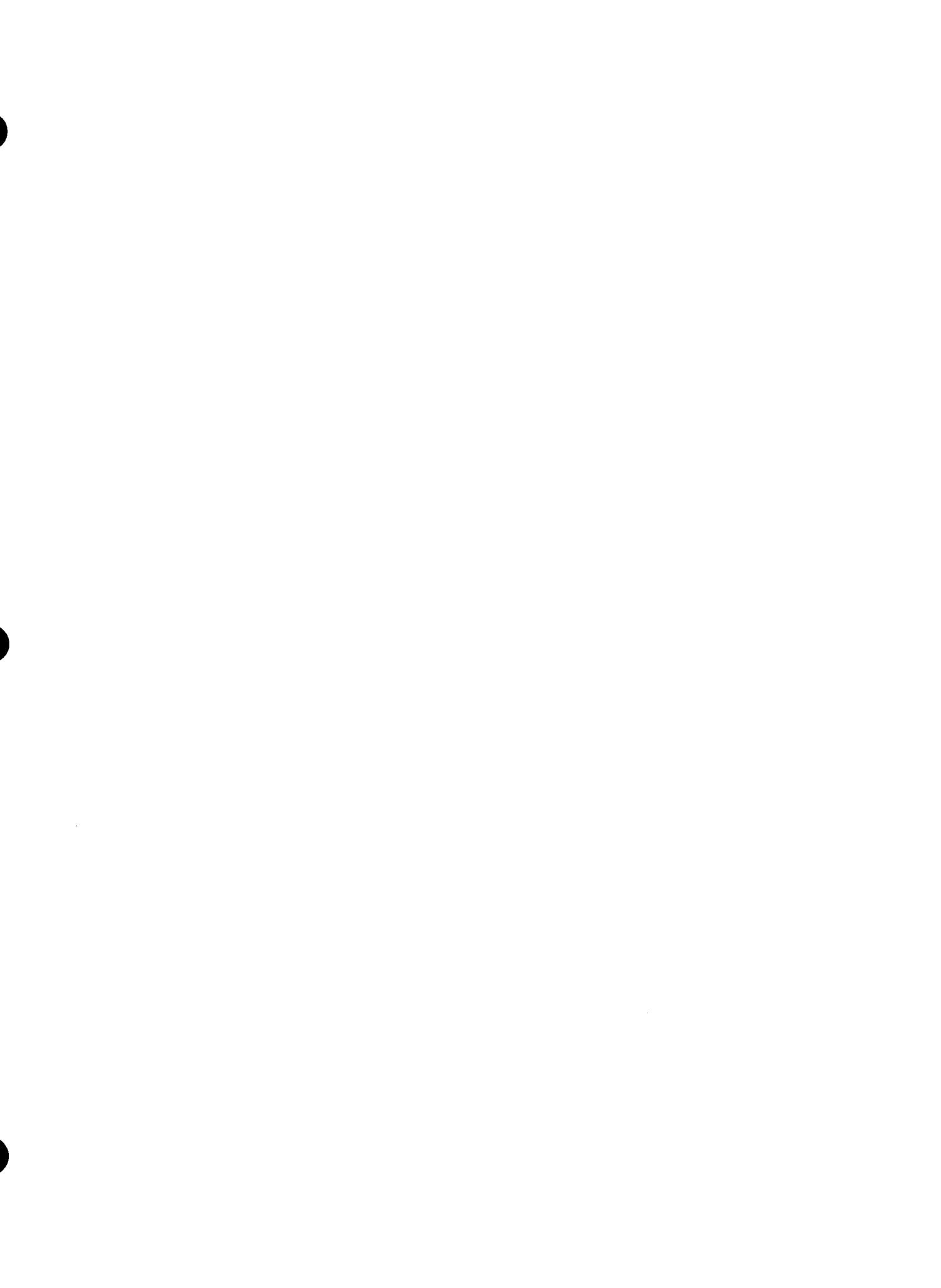
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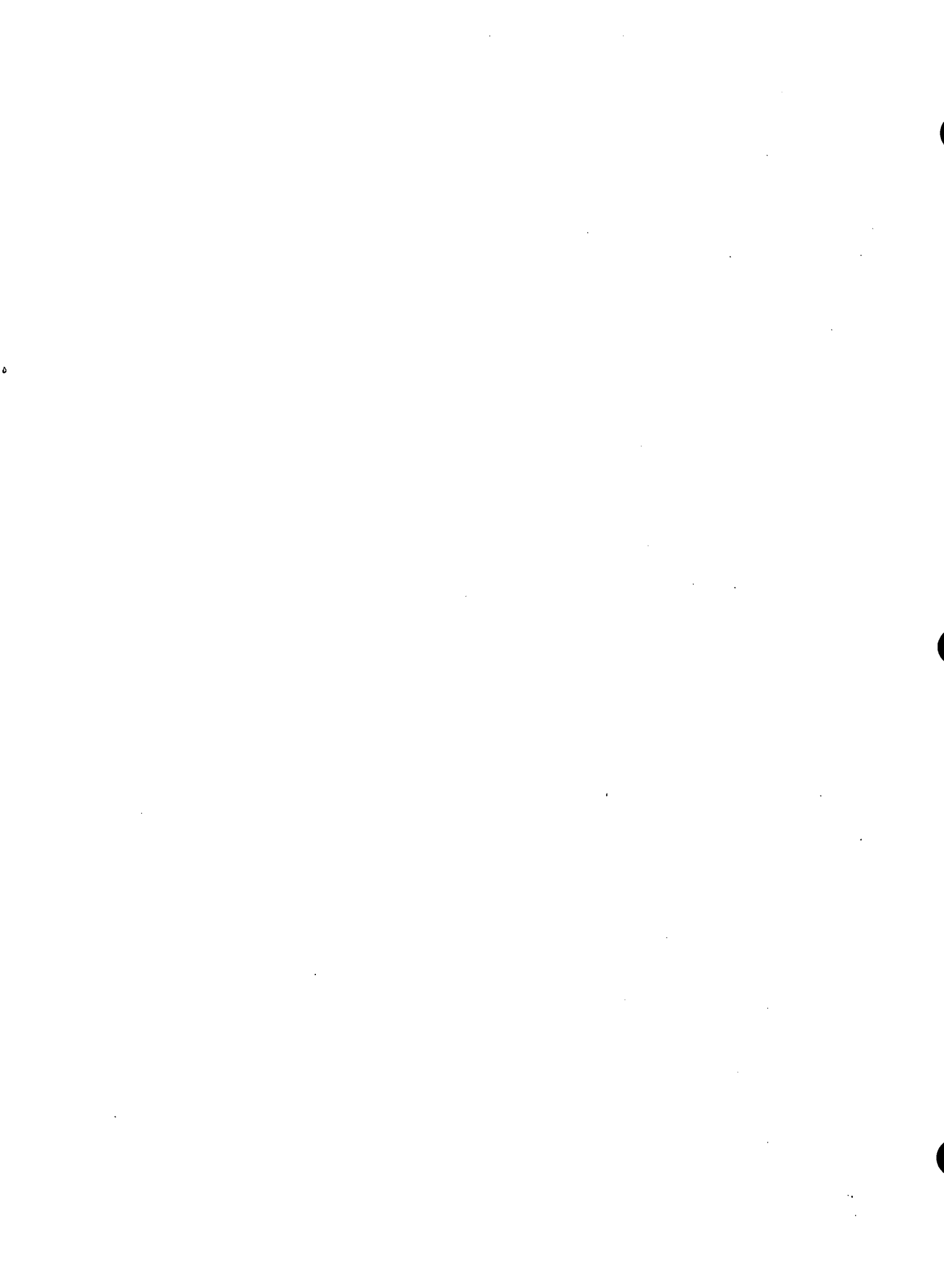
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