

WSR 07-03-001
PERMANENT RULES
MILITARY DEPARTMENT

[Filed January 3, 2007, 1:01 p.m., effective February 3, 2007]

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

Purpose: This rule-making order repeals the public records provisions for the military department emergency management division established in chapter 118-02 WAC. These provisions duplicate existing public records provisions for the military department established in chapter 323-10 WAC.

Citation of Existing Rules Affected by this Order: Repealing chapter 118-02 WAC.

Statutory Authority for Adoption: RCW 38.52.930, 38.08.090, and chapters 42.56 and 34.05 RCW.

Adopted under notice filed as WSR 06-22-057A on October 27, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 16.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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 3, 2007.

Jill Bushnell
 Rules Coordinator

WSR 07-03-015
PERMANENT RULES
DEPARTMENT OF COMMUNITY,
TRADE AND ECONOMIC DEVELOPMENT

[Filed January 4, 2007, 4:04 p.m., effective February 4, 2007]

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

Purpose: The department of community, trade and economic development is charged with developing criteria to be used by a motion picture competitiveness program in determining funding assistance to productions that use Washington state as a location for Washington state film and video production.

Statutory Authority for Adoption: RCW 43.365.020.

Adopted under notice filed as WSR 06-12-107 [06-20-051] on September 27, 2006.

Changes Other than Editing from Proposed to Adopted Version: Defined employment terms, clarified sections to make sure language was consistent, and added requirement for production to negotiate the acknowledgement with the motion picture competitiveness program board.

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

Juli Wilkerson
 Director

Chapter 130-20 WAC

**WASHINGTON MOTION PICTURE
 COMPETITIVENESS PROGRAM**

NEW SECTION

WAC 130-20-001 Purpose and authority. The department of community, trade, and economic development is charged with developing criteria to be used by a motion picture competitiveness program in determining funding assistance to productions that use Washington state as a location for film and video production.

NEW SECTION

WAC 130-20-010 Definitions. The following definitions apply to this chapter, unless the context clearly requires otherwise:

(1) "Applicant" means a television, film or commercial production company intending to produce a qualified production in Washington state.

(2) "Motion picture competitiveness program" means an approved program that is a 501 (c)(6) nonprofit organization with the sole purpose of revitalizing the state's standing in the film production marketplace through recommending and awarding financial assistance to qualified productions.

(3) "Costs" mean actual expenses of preproduction, production and postproduction expended in Washington state for the production of motion pictures, including but not limited to payments made for salaries, wages, and health insurance and retirement benefits, the rental/lease costs of machinery, equipment and facilities, and the purchase of food, property, lodging, and permits for work conducted in Washington state.

(4) "Department" means the department of community, trade, and economic development.

(5) "State film office" means a program within the department with the responsibility of promoting Washington state as a premier location for film and video production and assisting production needs within the state.

(6) "Motion picture" means a recorded audio-visual production intended for distribution to theaters, DVD, video, or the internet, or television, or one or more episodes of a single television series, television pilot or television commercials. Motion picture does not mean production of a television commercial that spends less than two hundred fifty thousand dollars in the state of Washington or one or more segments of a newscast or sporting event.

(7) "Funding assistance" means financial assistance from a motion picture competitiveness program.

(8) "Person" means the same as defined in RCW 82.04.030.

(9) "Qualified production" is a production that has been certified by the motion picture competitiveness program as fully meeting the requirements for funding assistance.

(10) "Qualified expenditures" include production costs for wages and benefits provided to residents of Washington state for services performed in Washington state, goods and services purchased, leased or employed from a legal resident of this state, or a vendor or supplier who is located and doing business in this state for one year. Qualified expenditures do not include wages, salaries or other compensation for services of nonresident production personnel.

(11) "Motion picture competitiveness board" means a board appointed by the governor that administers the motion picture competitiveness program. The board evaluates and awards funding assistance to motion picture projects pursuant to the guidelines of this chapter.

NEW SECTION

WAC 130-20-020 Eligibility criteria and guidelines.

(1) To qualify for funding assistance, the applicant must:

(a) Certify that it is not engaged, to any extent, in the production of erotic material, as defined in RCW 9.68.050.

(b) The end credits of a film production must acknowledge that the production was filmed in Washington state. The type and style of acknowledgment shall be negotiated between the motion picture competitiveness board and the production company.

(c) Agree to pay all obligations the film production company incurs in Washington state.

(d) Complete a survey as required in WAC 130-20-060 and file it with the state film office following the completion of the part of the project covered by the contract with the competitiveness board and before distribution of the funding assistance.

(e) Make every effort to maximize the hiring of local cast, crew and support services.

(f) Make industry standard payments for health insurance and a retirement plan for those positions typically covered by a collective bargaining agreement; and

(g) Enter into a contract with the motion picture competitiveness program accepting the terms above.

(2) The following activities are considered, but not limited to, qualified expenditures, provided the expenditure occurs in Washington state:

(a) Production costs include costs for preproduction, production and postproduction.

(b) Salaries of Washington state residents who are cast and crew, not to exceed two hundred fifty thousand dollars for any one employee, including wages and payments for health insurance and retirement plans, or fees of Washington state residents to include talent, management and labor.

(c) Cost of set construction and operations, wardrobe, make-up, accessories, location fees and related services.

(d) Costs associated with photography, sound synchronization, lighting and related services and materials.

(e) Renting or leasing vehicles, equipment or facilities.

(f) In-state food and lodging or a per diem for in-state employees, not to exceed the IRS rate or rate negotiated with the production company.

(g) Agency fees for insurance coverage and bonding if purchased from Washington state-based insurance agent.

(h) Postproduction expenditures directly attributable to the production of a motion picture or commercial for services including, but not limited to: Editing and related services, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects, animation services, and music.

(i) Legal and accounting fees and expenses related to the production's activities in Washington state, provided such services are performed by Washington state licensed attorneys or accountants.

(j) "Preproduction" means costs for standard activities directly related to the production, which are incurred prior to the first day of principal photography for a motion picture.

(k) Other direct or indirect costs of producing a film in accordance with the generally accepted entertainment industry practices if expenditures occurred in the state of Washington.

(l) Other costs the competitiveness program believes add economic benefit to the state of Washington.

(3) The board is encouraged to consider the following when considering certifying a production for funding assistance:

(a) The additional income and tax revenue to be retained in the state for general purposes.

(b) Creation and retention of family wage jobs that provide health insurance and payments into a retirement plan.

(c) The impact of projects to maximize in-state labor and use of in-state film production and film postproduction companies.

(d) The impact on the local economy and the state economy as a whole.

NEW SECTION

WAC 130-20-030 Funding assistance limits. (1) Maximum funding assistance from a motion picture competitiveness program is capped at one million dollars per production and subject to the following limitations:

(a) No more than twenty percent of a total actual expenditure in the state of at least five hundred thousand dollars for a single feature film produced in Washington state.

(b) No more than twenty percent of a total actual expenditure in the state of at least three hundred thousand dollars per television episode produced in Washington state (e.g., television series, pilot, movie of the week).

(c) No more than twenty percent of a total actual expenditure in the state of at least two hundred fifty thousand dollars for an infomercial or television commercial produced in Washington state.

(2) Funding assistance is subject to the amount available in the account managed by the motion picture competitiveness program.

NEW SECTION

WAC 130-20-040 Disqualification from the program. A production will be disqualified for funding assistance if the motion picture competitiveness program determines the qualified production does not meet requirements in WAC 130-20-020.

NEW SECTION

WAC 130-20-050 Sales and use tax exemptions. Unless otherwise prohibited, production companies may use both existing sales and use tax exemptions and the funding assistance provided by the motion picture competitiveness program while filming qualified productions in Washington state.

NEW SECTION

WAC 130-20-060 Survey requirement. In order to recognize the accountability and effectiveness of tax policy, the legislature requires that each production receiving funding assistance from the motion picture competitiveness program shall report information to the state film office through a survey.

(1) The motion picture competitiveness program shall ensure that no funds are disbursed until an applicant submits answers to a survey developed by the state film office.

(2) The state film office will make available on its web site a survey template.

(3) The motion picture competitiveness program may extend the due date for timely filing of the survey if failure to file was the result of circumstances beyond the control of the motion picture production receiving the funding assistance.

(4) Surveys shall include the following information:

(a) The amount of funding assistance requested.

(b) The amount of preproduction, production and post-production spending made in the state.

(c) The number of total employment positions.

(d) The number of full-time and part-time/temporary employment positions as a percent of total employment.

(i) Full-time employment is sixty hours or more per week, or positions held for the full shooting schedule;

(ii) Part-time/temporary employment is for positions held for less than the full shooting schedule.

(e) The number of jobs at the wage bands of less than thirty thousand dollars, thirty thousand to sixty thousand dollars, and sixty thousand dollars and greater per production.

(f) The number of jobs that have employer-provided health insurance and payments into a retirement plan by each wage band.

(g) Additional information as requested by the department or state film office.

(5) The state film office will continue to track total production spending of projects, monitor the state's competitiveness in the national marketplace, and continue to build partnerships that streamline the delivery of production services statewide.

(6) The department shall submit a summary of descriptive statistics based on information from the survey each year by September 1.

(7) The department shall provide the complete surveys to the joint legislative audit and review committee each year by September 1.

WSR 07-03-027

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed January 5, 2007, 4:03 p.m., effective February 5, 2007]

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

Purpose: Amended rule language brings existing rules into uniformity with SSB 5752, updates existing rules for clarity, and repeals two outdated rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-48-110 and 308-49-120; and amending WAC 308-47-010, 308-47-020, 308-47-030, 308-47-070, 308-48-010, 308-48-030, 308-48-031, 308-48-040, 308-48-080, 308-48-150, 308-48-160, 308-48-180, 308-48-200, 308-48-210, 308-48-350, 308-48-510, 308-48-520, 308-48-530, 308-48-550, 308-48-590, 308-48-780, 308-48-800, and 308-49-168.

Statutory Authority for Adoption: RCW 18.39.175 and chapter 34.05 RCW.

Adopted under notice filed as WSR 06-21-110 on October 17, 2006.

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 23, Repealed 2.

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 23, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 13, Repealed 2.

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 23, Repealed 2.

Date Adopted: January 5, 2007.

Joe Vincent Jr.
Administrator

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-47-010 Definitions. (1) "**Authorizing agent**" means the person(s) legally entitled to control the disposition of the human remains.

~~((2))~~ ~~((3))~~ **"Crematory"** the building or area of a building that houses a cremation chamber, to be used for the cremation of human remains.

~~((3))~~ **"Crematory authority or endorsement"** the legal entity and their authorized representatives, licensed to perform cremations.

~~((4))~~ ~~((3))~~ **"Cremation chamber"** means the enclosed space in a crematory in which the cremation process takes place.

~~((5))~~ **"Cremation"** means the reduction of human remains to bone fragments, in a crematory, by means of incineration.

~~((6))~~ **"Cremated human remains"** means the end products of cremation.

~~((7))~~ ~~((4))~~ **"Pulverization"** is the reduction of identifiable bone fragments to unidentifiable dimensions by manual or mechanical means following cremation.

~~((8))~~ ~~((5))~~ **"Processing"** is the removal of foreign objects from cremated human remains and may include pulverization.

~~((9))~~ ~~((6))~~ **"Cremation container"** means the container in which the human remains must be enclosed before being placed in the cremation chamber for cremation. A cremation container must:

- Be composed of a combustible material. If the remains are delivered to a crematory in a noncombustible container, the authorizing agent must be informed of the disposition of the container, if the container is not actually used in the cremation process. Any transfer of human remains to combustible containers at the crematory must be in accordance with chapter 18.39 RCW, Title 308 WAC, and applicable public health laws.

- Be rigid enough for placement into the cremation chamber.

- Assure protection to the health and safety of the crematory operators and others.

- Provide a proper covering for the human remains.

- Be resistant to leakage or spillage of body fluids.

~~((10))~~ ~~((7))~~ **"Sealable container"** means any container in which cremated human remains can be placed and closed to prevent leakage or spillage of cremated human remains.

~~((11))~~ ~~((8))~~ **"Holding facility"** means an area designated for the care, storage and holding of human remains prior to disposition. A holding facility must:

- Comply with any applicable public health laws.

- Preserve the dignity of the human remains.

- Recognize the personal integrity, health and safety of employees and others.

- Be secure from access by anyone other than authorized personnel.

~~((12))~~ **"Human remains"** means the body of a deceased person.

~~((13))~~ ~~((9))~~ **"Cadaver"** means ~~((the body of a deceased person,))~~ human remains or any part thereof, which ~~((has))~~ have been donated to science for medical research purposes.

~~((14))~~ ~~((10))~~ **"Body parts"** means limbs and other portions of human anatomy that have been removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy or medical research.

~~((15))~~ ~~((11))~~ **"Commingling"** means the mixing of cremated human remains of more than one deceased person.

~~((16))~~ ~~((12))~~ **"Residue"** means the cremation products that may unavoidably remain in the cremation chamber after manual sweeping techniques are performed.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-47-020 Identification of human remains. A crematory must not take custody of unidentified human remains. Before accepting human remains, the crematory must verify that identification is attached to the cremation container. Upon accepting human remains for cremation, the crematory must make a permanent record of the following:

- Name of deceased.

- Date of death.

- Place of death.

- Name and relationship of authorizing agent.

- Name of firm engaging crematory services.

- Description of the cremation container to be consumed with the human remains.

- An identification number assigned each human remains and inscribed on a metal disc or metal tag. The metal identification disc or tag must identify the crematory and accompany the human remains through each phase of the cremation, processing and packaging. The disc or tag identification number must be recorded on all paperwork regarding a human remains ~~((and in the crematory log)).~~

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-47-030 Holding human remains for cremation. (1) A crematory must not accept and hold human remains for cremation unless the human remains are contained in a cremation container.

(2) A crematory must not accept human remains in a cremation container having evidence of body fluid leakage.

(3) Human remains that are not embalmed must be held only within a mechanically or commercially acceptable refrigerated facility of adequate capacity, with a maximum temperature of 48 degrees Fahrenheit, or ~~((in compliance with applicable public health regulations))~~ as determined by chapter 246-500 WAC.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-47-070 Disposition of cremated human remains. (1) A crematory must keep a permanent record of all cremations performed and the disposition or release of the cremated human remains. The record must include the following information:

- Date of death.

- Date burial transit permit was issued.

- Date of delivery of human remains to the crematory.

- Date of cremation.

- Name of crematory operator performing the cremation.

- Name of person performing packaging, and date of packaging.

• Date of release (~~(or date of disposition)~~) of the cremated human remains and the name of the individual(s) to whom the cremated human remains were released; or

• Date of disposition of the cremated human remains.

(2) When cremated human remains have been in the possession of a crematory, funeral establishment or cemetery for a period of (~~(two years)~~) ninety days or more, the entity holding the cremated human remains may arrange for disposition in any legal manner, provided the entity:

• Attempts to contact the authorizing agent for disposition instructions by registered mail.

• Informs the authorizing agent(s) of the procedures that will be followed if disposition instructions are not received.

• Informs the authorizing agent(s) that disposition will take place if disposition instructions are not received within sixty days of initiation of the contact process.

• Informs the authorizing agent(s) that recovery of the cremated human remains, after the disposition, may or may not be possible.

• Maintains a permanent record of the location of the disposition.

(3) No entity making disposition of cremated human remains under subsection (2) of this section will be liable for the disposition or nonrecoverability of cremated human remains.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-48-010 Definitions. For the purpose of these rules, the following term(s) will be construed as follows:

~~((1)) "Licensee" will mean any person or entity holding a license, registration, endorsement, or permit issued by the director.~~

~~((2)) "In its employ" as used in RCW 18.39.148 will include personnel who are employed on a part-time basis as well as personnel who are employed on a full-time basis.~~

AMENDATORY SECTION (Amending WSR 97-21-061, filed 10/14/97, effective 11/14/97)

WAC 308-48-030 Care of human remains. (1) Funeral establishments, funeral directors, embalmers, (~~(apprentices)~~) interns, employees or agents while providing for the care and handling of human remains shall:

(a) Comply with all applicable Washington state laws, rules and regulations related to health or the handling, transportation or disposition of human remains.

(b) Not perform any act which will tend to affect adversely the dignity, individual integrity or the respectful and reverential handling and burial or other customary disposition of human remains.

(c) Upon receipt of the human remains, obtain the identity of the human remains as established by the institution, agency, or individual releasing the remains(~~(-)~~

~~((#))~~) and place an identification bracelet or tag on the ankle or wrist of the remains. In the case of a remains that must be placed in a protective pouch due to the condition of the remains, an identification bracelet or tag should be placed inside the pouch and a second bracelet or tag attached to the exterior of the pouch.

~~((#))~~) (d) Follow the directions of the individual or individuals that has/have the right to control the disposition of the human remains.

~~((#))~~) (e) Record and maintain the following information:

(i) Name of deceased;

(ii) Date of death;

(iii) Place of death;

(iv) Name and relationship of person(s) having the right to control the disposition;

(v) Date and time of receipt of remains;

(vi) Date and time of refrigeration and/or embalming;

(vii) Method, date and location of disposition.

~~((#))~~) (f) Not separate any organs, viscera or appendages of a human remains from any other portion of the remains for a separate or different disposition. The entire noncremated human remains that the funeral establishment has received and has possession of must be maintained and disposed of as one entity.

~~((#))~~) (g) Provide refrigerated holding of a human remains for which embalming has not been authorized. In addition to these regulations, the handling and refrigeration of human remains shall be governed by chapter 246-500 WAC.

(2) The care and preparation for burial or other disposition of all human remains shall be private. No one shall be allowed in the embalming or preparation rooms while a human remains is being embalmed or during the course of an autopsy except the licensee, his authorized employees, and public officials in the discharge of their duties. This rule shall not apply to duly authorized medical personnel employed in a case(~~(, nor to members of the immediate family of the deceased)~~) or those authorized to be present by the decedent's next of kin.

(3) Every licensee shall provide a written itemization of any property, money, jewelry, possessions or other items of significant value found on a human remains in the licensee's care, custody or control to the decedent's next of kin or the proper authorities.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-48-031 Funeral establishment facility, equipment, and embalming and preparation room standards. A funeral establishment or branch establishment shall:

(1) Have an exclusive area/office at an identified location for conducting the business which is accessible to the public.

(2) Provide private and secure area(s) for holding human remains which will include:

(a) A mechanically or commercially acceptable refrigerated holding area of adequate capacity for unembalmed remains with a maximum temperature of 48 degrees Fahrenheit or as determined by chapter 246-500 WAC;

(b) A sink with hot and cold running water;

(c) Covered receptacles for soiled linens, bandages, refuse and other waste materials which meet OSHA,

WISHA, department of health and any other applicable regulations;

(d) Adequate chemicals for the disinfection of human remains and the equipment used in handling and caring for human remains;

(e) Chemical storage that meets OSHA, WISHA, department of health and any other applicable regulations.

(3) Provide rest rooms that are available for staff and the public.

(4) In the case where the holding of human remains is not provided at this facility, provide the identification of the facility upon request to the board and the individual or individuals that has/have the right to control the disposition of the human remains where this establishment or branch provides for the holding and/or preparation of the human remains entrusted to its care (this off-site facility must meet the requirements of subsection (2) of this section).

(5) Provide for the privacy of uncasketed human remains in vehicles used for transportation of the remains by screening, curtains, or adequately tinted windows.

(6) Provide that if embalming is performed at the establishment or branch, no embalming of a human remains shall be performed in a funeral establishment or branch establishment except in a room set aside exclusively for embalming of a human remains. Such room shall be maintained and kept in a clean sanitary condition, and every embalming and preparation room shall be constructed, equipped, and maintained as follows:

(a) The surfaces of the floor, walls, and ceiling shall be covered with tile or other hard, smooth, impervious washable material.

(b) The room shall be adequately lighted and adequately ventilated. The ventilation shall be provided by an exhaust fan ~~((or by an appropriate air conditioning unit))~~ and shall comply with OSHA/WISHA standards.

(c) The room shall be equipped and provided with hot and cold running water, a utility sink, and cabinets, closets or shelves for instruments and supplies.

(d) The room shall be equipped with adequate sewage and waste disposal and drainage facilities and systems and comply with OSHA/WISHA standards.

(e) The doors shall be tight closing and rigid and any windows of the room shall be so maintained as to obstruct any view into such room. The room's entry door(s) must be labeled "Private" or "Authorized Entry Only," and must be locked at all times.

(f) The embalming or preparation table shall be nonporous.

(g) The room shall be equipped with proper and convenient covered receptacles for refuse.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-48-040 Control of human remains. ~~((+))~~ No licensee will, directly or indirectly, assume control of any human remains without having first obtained authority from the person(s) ~~(, their responsible representatives, or persons lawfully entitled to such control.~~

~~(2) A licensee in charge of human remains will be governed by the directions of those lawfully entitled to such control))~~ having the right to control the disposition of the human remains under RCW 68.50.160, as to matters relating to the preparation, handling and final disposition of the human remains (including steps in preparation, autopsy, embalming, dressing, viewing, videotaping, photographing; funeral, burial and cremation merchandise, and disposition arrangements.

AMENDATORY SECTION (Amending Rule 8, filed 9/17/64)

WAC 308-48-080 Improper use of license. No ~~((license))~~ licensee shall lend, place, permit ~~((to be placed))~~ or authorize the placement of his/her license in any establishment ~~((of))~~ or place of business unless ~~((he be))~~ the licensee is an owner, part owner or bona fide employee of such place of business, nor shall ~~((he lend his license (or any copy thereof) for use by any establishment or place of business in which he has no such interest, nor shall he suffer any))~~ a funeral establishment or place of business to pretend or represent that it is legally qualified to perform funeral directing or embalming by any such improper use of his/her license.

AMENDATORY SECTION (Amending WSR 97-21-062, filed 10/14/97, effective 11/14/97)

WAC 308-48-150 Course of training—~~((Apprentice))~~ Funeral director intern. (1) For the purposes of RCW 18.39.035, the term "one year course of training" shall include assisting a licensed funeral director in coordinating all aspects of at least twenty-five arrangements for funeral, memorial and/or final disposition services for human remains.

(2) The term "one year" shall consist of at least eighteen hundred hours of employment and cannot be completed in a period of time less than one calendar year.

(3) Registered ~~((apprentice))~~ funeral director~~(s)~~ interns shall provide a quarterly report to the board on a form supplied by the board containing information relating to the arrangements, services, final dispositions, and other duties of a funeral director the ~~((apprentice))~~ intern has assisted with or performed during the required term of ~~((apprenticeship))~~ internship.

(4) Licensed sponsors shall provide a quarterly report to the board on a form supplied by the board showing the progress of the ~~((apprentice))~~ intern toward the skill level required to work independently.

(5) Registered apprentice funeral director~~(s)~~ interns may receive training from their sponsor and other licensed funeral directors as approved by the sponsor.

AMENDATORY SECTION (Amending WSR 97-21-062, filed 10/14/97, effective 11/14/97)

WAC 308-48-160 Course of training—~~((Apprentice))~~ Embalmer~~(s)~~ interns. (1) For the purposes of RCW 18.39.035, the term "two year course of training" shall include the embalming of at least fifty human remains under the supervision of a licensed embalmer.

(2) The term "two year" shall consist of at least thirty-six hundred hours of employment and cannot be completed in a period of time less than two calendar years.

(3) Registered ((~~apprentice~~)) embalmer(s) interns shall provide a quarterly report to the board on a form supplied by the board containing information relating to the embalmings the ((~~apprentice~~)) intern has assisted with or performed during the required term of ((~~apprenticeship~~)) internship.

(4) Licensed sponsors shall provide a quarterly report to the board on a form supplied by the board showing the progress of the ((~~apprentice~~)) intern toward the skill level required to work independently.

(5) Registered apprentice embalmer(s) interns may receive training from their sponsor and other licensed embalmers as approved by the sponsor.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-48-180 Renewal of licenses, registrations, endorsements and permits. (1) The annual license or registration renewal date for embalmers, funeral directors and ((~~apprentices~~)) interns is the licensee's birth date. Individuals making application and fulfilling requirements for initial license and examination will be issued a license or registration, which will expire on their next birth date.

(2) ((~~Funeral establishments, branch establishments, pre-arrangement sales licenses, and crematories must renew their licenses~~)) All licensees, with the exception of academic intern, must renew annually.

(3) Before the expiration date of the license, the director will mail a notice of renewal. The licensee must return such notice along with current renewal fees prior to the expiration of the license. Failure to renew the license prior to the expiration date will require payment of the penalty fee.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-48-200 Report of ((~~apprenticeship~~)) internship registration, termination, transfer and credit.

(1) The responsibility for notifying the director, department of licensing of ((~~apprenticeship~~)) internship registration and termination rests with the employing funeral establishment. In order to protect the status of the ((~~apprentice~~)) intern in cases where the employing licensee fails to initiate the required report of registration or termination, the affected ((~~apprentice~~)) intern should initiate and ensure submission of same. The notification shall be certified by signature of the sponsor.

(2) No credit for ((~~apprenticeship~~)) internship will be allowed for any period during which the ((~~apprentice~~)) intern is not registered pursuant to RCW 18.39.120. In the event an ((~~apprentice's~~)) intern's sponsor dies or is otherwise incapable of certifying ((~~apprenticeship~~)) internship credit, such credit may be given by certification by another licensed funeral director or embalmer who has knowledge of the work performed and the credit due or by documentation or reasonable proof of such credit as determined by the board.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-48-210 Establishment licensure. (1) It is the intent of the board that the establishment licensure process serve to protect consumers by identifying to the department all locations subject to regulation. Any provider of any aspect of the care, shelter, transportation, embalming, other preparation and arrangements for the disposition of human remains must be licensed as a funeral establishment. Establishments must obtain a funeral establishment or branch license for each location.

(2) Branches of an establishment may operate under the general license of the establishment, pursuant to RCW 18.39.145 and 18.39.148 and the following terms and conditions:

(a) Branch(es) must operate under the same name as the establishment.

(b) Branch(es) must display a current branch license.

(c) Branch(es) must have a licensed funeral director ((~~and embalmer~~)) in its employ and available to provide any services requiring the professional skills of a licensee.

(d) The failure of a branch to meet the standards of an establishment may result in cancellation of the establishment license, pursuant to RCW 18.39.148.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-48-350 AIDS prevention and information education requirements. (1) Definitions.

(a) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(b) "Office on AIDS" means that section within the department of social and health services or any successor department with jurisdiction over public health matters as defined in 70.24 RCW.

(2) Renewal of funeral director and/or embalmer licenses or ((~~apprenticeship~~)) internship registrations, and all persons making initial application for funeral director and/or embalmer licensure, or initial renewal of funeral director and/or embalmer ((~~apprenticeship~~)) internship registration must submit evidence to show compliance with the education requirements of subsection (3) of this section.

(3) AIDS education and training.

(a) Acceptable education and training. The board will accept education and training that is consistent with the model curriculum available from the office on AIDS. Such education and training must be a minimum of four ((~~and one half~~)) clock hours and must include, but is not limited to, the following: Prevention, transmission and treatment of AIDS.

(b) Implementation. The requirement for initial funeral director and/or embalmer licensure, the first renewal of a funeral director and/or embalmer ((~~apprenticeship~~)) internship registration, or reinstatement of any license or ((~~apprenticeship~~)) internship registration on lapsed, inactive, or disciplinary status will include evidence of completion of an education and training program, which meets the requirements of subsection (a).

(c) Documentation. The applicant must:

- (i) Certify, on forms provided, that the minimum education and training has been completed;
- (ii) Keep records for five years documenting attendance and description of the learning;
- (iii) Be prepared to validate, through submission of these records, that attendance has taken place.
- (4) Continuing education. The AIDS education requirement may be counted towards the fulfillment of the continuing education requirement.

AMENDATORY SECTION (Amending Order PL 504, filed 12/19/84)

WAC 308-48-510 Continuing education requirements—Purpose. Continuing education activities, approved by the board of funeral directors and embalmers, shall be required as a condition of renewal of funeral director and embalmer licenses and of ~~((apprentice))~~ funeral director intern and ~~((apprentice))~~ embalmer intern registration, in order to maintain and improve the quality of their services to the public.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-48-520 Effective date of continuing education requirement. The effective date of the continuing education requirement will be two years after initial licensure as a funeral director and/or embalmer, or initial registration as ~~((an apprentice))~~ a funeral director intern and/or embalmer intern.

AMENDATORY SECTION (Amending Order PL 504, filed 12/19/84)

WAC 308-48-530 Continuing education basic requirement—Amount. (1) Every individual licensed as a funeral director and/or embalmer or registered as a funeral director intern and/or embalmer intern, shall be required to complete ten hours of approved continuing education every two years as a condition of renewal of such licenses or registrations.

~~((Every individual registered as an apprentice funeral director and/or apprentice embalmer shall be required to complete ten hours of approved continuing education every two years as a condition of renewal of such registration.~~

~~((3))~~ Continuing education credits in excess of the required hours earned in any renewal period may not be carried forward to a subsequent renewal period.

~~((4))~~ (3) The department shall not renew a license or registration or issue a new license or registration to any person who has failed to submit evidence of completion of ten hours of approved continuing education for the prior two-year period.

AMENDATORY SECTION (Amending Order PM 697, filed 12/9/87)

WAC 308-48-550 Continuing education reporting requirement. (1) The licensee or registrant shall submit an affidavit certifying compliance with the continuing education

requirement on the form provided by the board. The affidavit shall be submitted with license or registration renewal fee every two years.

(2) A material misstatement of information on the continuing education report shall be grounds for disciplinary action ~~((, including nonrenewal, suspension or revocation of license or registration))~~.

AMENDATORY SECTION (Amending Order PM 697, filed 12/9/87)

WAC 308-48-590 Qualification for board approval of continuing education activities. (1) In order for a continuing education activity to qualify for board approval, the following qualifications must be met:

(a) The activity must contribute directly to the professional competency of the licensee or registrant;

(b) The activity must relate to the practice of mortuary science or, for a registrant, be a course required for initial licensure;

(c) The activity must be conducted by individuals who are considered by the board to be knowledgeable in the subject matter of the program by virtue of education, training, or experience.

(2) The board may approve as continuing education activities courses, lectures, seminars, correspondence or homestudy programs, or other instructional programs which meet the above qualifications and which the board determines would be beneficial in improving the knowledge or service capability of licensees and registered ~~((apprentices))~~ interns.

AMENDATORY SECTION (Amending Order PL 561, filed 10/17/85)

WAC 308-48-780 Crematories—Inspections. Crematories regulated under the authority of chapter 18.39 RCW are subject to inspection at least once each year by the inspector of funeral directors and embalmers to ensure compliance with Washington state laws and regulations related to health or the handling or ~~((disposal))~~ disposition of human remains.

AMENDATORY SECTION (Amending WSR 05-20-076, filed 10/4/05, effective 11/4/05)

WAC 308-48-800 Funeral director/embalmer fees. The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Embalmer:	
State examination or reexamination	\$100.00
Renewal	70.00
Late renewal penalty	35.00
Duplicate	15.00
((Certification	25.00))
Embalmer intern:	
Intern application	75.00
Intern renewal	45.00

Title of Fee	Fee
Duplicate	15.00
((Certification	25.00))
Funeral director:	
State examination or reexamination	100.00
Renewal	70.00
Late renewal penalty	35.00
Duplicate	15.00
((Certification	25.00))
Funeral director intern:	
Intern application	75.00
Intern renewal	45.00
Duplicate	15.00
((Certification	25.00))
Funeral establishment:	
Original application	300.00
Renewal	150.00
Branch registration	250.00
Branch renewal	150.00
Preneed application	140.00
Preneed renewal:	
0-25 sales	25.00
26-99 sales	75.00
100 or more sales	125.00
Crematory endorsement registration	140.00
Crematory endorsement renewal	
(((\$))3.20 per cremation performed	
during previous calendar year.	
Academic intern	No fee
Certificate of removal registration:	
Application	30.00
Renewal	15.00

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-48-110 Revocation of license.

AMENDATORY SECTION (Amending WSR 90-17-148, filed 8/22/90, effective 9/22/90)

WAC 308-49-168 Trust fund depository agreement requirements. (1) Each prearrangement funeral trust shall enter into an agreement with one or more depositories in which the responsibilities of the depository are set forth. The agreement shall contain language which:

- (a) Sets forth the terms and conditions under which deposits and withdrawals are made;
- (b) States that instruments of deposit shall be an insured account in a ~~((qualified))~~ public depository or shall be invested in instruments issued or insured by an agency of the

federal government, ~~((and states that the trust shall be held in a public depository,))~~ and sets forth the conditions for termination and transfer of the prearrangement trust fund depository agreement.

(2) Prearrangement trust fund depository agreements are an integral part of the prearrangement funeral service contract agreement and shall be approved by the board prior to use. Amendments to or changes in the agreement shall be filed with the board prior to incorporation. The board shall be advised prior to termination of any depository agreement.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-49-170 Annual statement requirements.

(1) Each funeral establishment must file with the board annually, ninety days after the end of its fiscal year, a statement of its financial condition, transactions and affairs for the preceding fiscal year.

(2) The statement shall include a balance sheet and a profit and loss statement for the preceding fiscal year and/or other such fiscal documents as the board may require.

(3) The funeral establishment shall list any changes in its officers, directors, managers or partners or any change in ownership greater than ten percent which have occurred in the preceding fiscal year.

(4) With respect to each prearrangement funeral service contract trust fund, the following information must be provided:

- (a) The name of the depository and the account number;
- (b) The number of outstanding contracts at the beginning of the fiscal year;
- (c) The total amount paid in by the holders of such contracts pertinent to the trust fund;
- (d) The total amount deposited in the trust account;
- (e) The number of new contracts issued during the fiscal year;
- (f) The amount paid in on such new contracts and the amount deposited in the trust fund for such contracts;

(g) The number of ~~((individuals withdrawing from the))~~ withdrawals from the trust due to contract((s;)) cancellations and/or instances where the ((principal amount paid to them and the amount of interest, dividends, or accretions, separately stated, paid to them.

~~((h))~~ The number of cases where prearrangement)) funeral merchandise and services covered by ((the)) prearrangement contracts have been furnished and delivered ((and the amount transferred out of the trust fund to the funeral establishment for such services and/or merchandise)). Withdrawals will include principal and earnings;

~~((i))~~ (h) The number of outstanding contracts as of the end of the fiscal year and the amount being held in trust for such contracts.

(5) The annual report form must include ~~((verification))~~ a year-end statement from the depository as to the amount of money held in funeral prearrangement trust as of the reporting date.

~~((6))~~ The annual statement must be accompanied by a fee as determined by the director, payable to the state treasurer.)

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-49-120 Effective date and scope.

Date Adopted: January 8, 2007.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

WSR 07-03-031**PERMANENT RULES****DEPARTMENT OF REVENUE**

[Filed January 8, 2007, 4:14 p.m., effective February 8, 2007]

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

Purpose: WAC 458-20-101 explains tax registration and tax reporting requirements, and discusses who is required to be registered and file excise tax returns. It also discusses requirements when there is a change in business ownership, when an account may be administratively closed, and the process of revocation and reinstatement of a tax reporting account.

Subsection (7) of this rule explains that a temporary revenue registration certificate may be issued to temporary businesses. Subsection (7)(a) explains what businesses qualify as temporary businesses for the purposes of registration. The department added language to subsection (7)(b) to explain that persons making sales into Washington other than those identified in subsection (7)(a) may incur additional tax liability and need to obtain a "regular" tax registration endorsement. Readers are also referred to rule 193 for additional information because this circumstance comes up most often with businesses located outside Washington making sales into the state.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-101 Tax registration and tax reporting.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 06-22-039 on October 25, 2006.

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.

AMENDATORY SECTION (Amending WSR 00-01-069, filed 12/13/99, effective 1/13/00)

WAC 458-20-101 Tax registration and tax reporting.

(1) **Introduction.** This ~~((rule))~~ section explains tax registration and tax reporting requirements for the Washington state department of revenue as established in RCW 82.32.030 and 82.32.045. This ~~((rule))~~ section discusses who is required to be registered, and who must file excise tax returns. This ~~((rule))~~ section also discusses changes in ownership requiring a new registration, the administrative closure of taxpayer accounts, and the revocation and reinstatement of a tax reporting account with the department of revenue. Persons required to file tax returns should also refer to WAC 458-20-104 (Small business tax relief based on volume of business).

(2) **Persons required to obtain tax registration endorsements.** Except as provided in (a) of this subsection, every person who is engaged in any business activity for which the department of revenue is responsible for administering and/or collecting a tax or fee, shall apply for and obtain a tax registration endorsement with the department of revenue. (See RCW 82.32.030.) This endorsement shall be reflected on the face of the business person's registrations and licenses document. The tax registration endorsement is non-transferable, and valid for as long as that person continues in business.

(a) Registration under this ~~((rule))~~ section is not required if all of the following conditions are met:

(i) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is less than twelve thousand dollars per year;

(ii) A person's gross income from all business activities taxable under chapter 82.16 RCW (public utility tax), is less than twelve thousand dollars per year;

(iii) The person is not required to collect or pay to the department of revenue retail sales tax or any other tax or fee which the department is authorized to administer and/or collect; and

(iv) The person is not otherwise required to obtain a license or registration subject to the master application procedure provided in chapter 19.02 RCW. For the purposes of this ~~((rule))~~ section, the term "license or registration" means any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(b) The term "tax registration endorsement," as used in this ~~((rule))~~ section, has the same meaning as the term "tax registration" or "certificate of registration" used in Title 82 RCW and other ~~((rules))~~ sections in chapter 458-20 WAC.

(c) The term "person" has the meaning given in RCW 82.04.030.

(d) The term "tax reporting account number" as used in this ~~(rule)~~ section, is the number used to identify persons registered with the department of revenue.

(3) **Requirement to file tax returns.** Persons registered with the department must file tax returns and remit the appropriate taxes to the department, unless they are placed on an "active nonreporting" status by the department.

(a) The department may relieve any person of the requirement to file returns by placing the person in an active nonreporting status if all of the following conditions are met:

(i) The person's value of products (RCW 82.04.450), gross proceeds of sales (RCW 82.04.070), or gross income of the business (RCW 82.04.080), from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is:

(A) Beginning July 1, 1999, less than twenty-eight thousand dollars per year (chapter 357, Laws of 1999); or

(B) Prior to July 1, 1999, less than twenty-four thousand dollars per year;

(ii) The person's gross income (RCW 82.16.010) from all business activities taxable under chapter 82.16 RCW (public utility tax) is less than twenty-four thousand dollars per year; and

(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee the department is authorized to collect.

(b) The department will notify those persons it places on an active nonreporting status. (A person may request to be placed on an active nonreporting status if the conditions of (a) of this subsection are met.)

(c) Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities do not meet any of the conditions explained in (a) of this subsection. These persons will be removed from an active nonreporting status, and must file tax returns and remit appropriate taxes to the department, beginning with the first period in which they do not qualify for an active nonreporting status.

(d) Persons that have not been placed on an active nonreporting status by the department must continue to file tax returns and remit the appropriate taxes.

(4) **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 status of each situation must be determined after a review of all facts and circumstances.

(a) Bob Brown is starting a bookkeeping service. The gross income of the business is expected to be less than twelve thousand dollars per year. Due to the nature of the business activities, Bob is not required to pay or collect any other tax which the department is authorized to collect.

Bob Brown is not required to apply for and obtain a tax registration endorsement with the department of revenue. The conditions under which a business person may engage in business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income exceeding twelve thousand dollars per year, he will be required to obtain a tax registration endorsement. If Bob's gross income exceeds twenty-

eight thousand dollars per year, he will be required to file tax returns and remit the appropriate taxes.

(b) Cindy Smith is opening a business to sell books written for children to local customers at retail. The gross proceeds of sales are expected to be less than twelve thousand dollars per year.

Cindy Smith must apply for and obtain a tax registration endorsement with the department of revenue. While gross income is expected to be less than twelve thousand dollars per year, Cindy Smith is required to collect and remit retail sales tax.

(c) Alice Smith operates a taxicab service with an average gross income of eighteen thousand dollars per year. She also owns a management consulting service with an average gross income of fifteen thousand dollars per year. Assume that Alice is not required to collect or pay to the department any other tax or fee the department is authorized to collect. Alice qualifies for an active nonreporting status because her taxicab income is less than the twenty-four thousand dollar threshold for the public utility tax, and her consulting income is less than the twenty-four thousand dollar threshold for the business and occupation (B&O) tax. If the department of revenue does not first place her on an active nonreporting status, she may request the department to do so.

(5) **Out-of-state businesses.** The B&O and public utility taxes are imposed on the act or privilege of engaging in business activity within Washington. RCW 82.04.220 and 82.16.020. Out-of-state persons who have established sufficient nexus in Washington to be subject to Washington's B&O or public utility taxes must obtain a tax registration endorsement with this department if they do not satisfy the conditions expressed in subsection (2)(a) of this ~~(rule)~~ section. Out-of-state persons required to collect Washington's retail sales or use tax, or who have elected to collect Washington's use tax, even though not statutorily required to do so, must obtain a tax registration endorsement.

(a) Persons with out-of-state business locations should not include income that is disassociated from their in-state activities in their computations for determining whether the gross income thresholds provided in subsection (2)(a)(i) and (ii) are satisfied.

(b) Out-of-state persons making sales into or doing business within Washington should also refer to the following rules in chapter 458-20 WAC for a discussion of their tax reporting responsibilities:

(i) WAC 458-20-103 (Time and place of sale);

(ii) WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property);

(iii) WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate or foreign commerce);

(iv) WAC 458-20-194 (Doing business inside and outside the state); and

(v) WAC 458-20-221 (Collection of use tax by retailers and selling agents).

(6) **Registration procedure.** The state of Washington initiated the unified business identifier (UBI) program to simplify the registration and licensing requirements imposed on the state's business community. Completion of the master application enables a person to register or license with sev-

eral state agencies, including the department of revenue, using a single form. The person will be assigned one unified business identifier number, which will be used for all state agencies participating in the UBI program. The department may assign the unified business identifier number as the taxpayer's revenue tax reporting account number, or it may assign a different or additional number as the revenue tax reporting account number.

(a) Persons completing the master application will be issued a registrations and licenses document. The face of this document will list the registrations and licenses (endorsements) which have been obtained.

(b) The department of revenue does not charge a registration fee for issuing a tax registration endorsement. Persons required to complete a master application may, however, be subject to other fees.

(c) While the UBI program is administered by the department of licensing, master applications are available at any participating UBI service provider location. The following agencies of the state of Washington participate in the UBI program (see RCW 19.02.050 for a more complete listing of participating agencies):

- (i) The office of the secretary of state;
- (ii) The department of licensing;
- (iii) The department of employment security;
- (iv) The department of labor and industries;
- (v) The department of revenue.

(7) **Temporary revenue registration certificate.** A temporary revenue registration certificate may be issued to any person who operates a business of a temporary nature.

(a) Temporary businesses, for the purposes of registration, are those with:

- (i) Definite, predetermined dates of operation for no more than two events each year with each event lasting no longer than one month; or
- (ii) Seasonal dates of operation lasting no longer than three months. However, persons engaging in business activities on a seasonal basis every year should refer to subsection (8) of this ~~(rule)~~ section.

(b) Each temporary registration certificate is valid for a single event. Persons that subsequently make sales into Washington may incur additional tax liability. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for additional information on tax reporting requirements. It may be required that a tax registration endorsement be obtained, in lieu of a temporary registration certificate. See subsection (2) of this section.

(c) Temporary revenue registration certificates may be obtained by making application at any participating UBI agency office, or by completing a seasonal registration form.

(8) **Seasonal revenue tax reporting accounts.** Persons engaging in seasonal business activities which do not exceed two quarterly reporting periods each calendar year may be eligible for a tax reporting account with a seasonal reporting status. This is a permanent account until closed by the taxpayer. The taxpayer must specify in which quarterly reporting periods he or she will be engaging in taxable business activities. The quarterly reporting periods in which the taxpayer is engaging in taxable business activities may or may not be consecutive, but the same quarterly period or periods

must apply each year. The taxpayer is not required to be engaging in taxable business activities during the entire period.

The department will provide and the taxpayer will be required to file tax returns only for the quarterly reporting periods specified by the taxpayer. Examples of persons which may be eligible for the seasonal reporting status include persons operating Christmas tree and/or fireworks stands. Persons engaging in taxable business activities in more than two quarterly reporting periods in a calendar year will not qualify for the seasonal reporting status.

(9) **Display of registrations and licenses document.** The taxpayer is required to display the registrations and licenses document in a conspicuous place at the business location for which it is issued.

(10) **Multiple locations.** A registrations and licenses document is required for each place of business at which a taxpayer engages in business activities for which the department of revenue is responsible for administering and/or collecting a tax or fee, and any main office or principal place of business from which excise tax returns are to be filed. This requirement applies to locations both within and without the state of Washington.

(a) For the purposes of this subsection, the term "place of business" means:

- (i) Any separate establishment, office, stand, cigarette vending machine, or other fixed location; or
- (ii) Any vessel, train, or the like, at any of which the taxpayer solicits or makes sales of tangible personal property, or contracts for or renders services in this state or otherwise transacts business with customers.

(b) A taxpayer wishing to report all tax liability on a single excise tax return may request a separate registrations and licenses document for each location. The original registrations and licenses document shall be retained for the main office or principal place of business from which the returns are to be filed, with additional documents obtained for all branch locations. All registrations and licenses documents will reflect the same tax reporting account number.

(c) A taxpayer desiring to file a separate excise tax return covering a branch location, or a specific construction contract, may apply for and receive a separate revenue tax reporting account number. A registrations and licenses document will be issued for each tax reporting account number and will represent a separate account.

(d) A master application must be completed to obtain a separate registrations and licenses document, or revenue tax reporting account number, for a new location.

(11) **Change in ownership.** When a change in ownership of a business occurs, the new owner must apply for and obtain a new registrations and licenses document. The original document must be destroyed, and any further use of the tax reporting account number for tax purposes is prohibited.

(a) A "change in ownership," for purposes of registration, occurs upon but is not limited to:

- (i) The sale of a business by one individual, firm or corporation to another individual, firm or corporation;
- (ii) The dissolution of a partnership;
- (iii) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a

business organization and the change in the composition of the partners is equal to or greater than fifty percent;

(iv) Incorporation of a business previously operated as a partnership or sole proprietorship;

(v) Changing from a corporation to a partnership or sole proprietorship; or

(vi) Changing from a corporation, partnership or sole proprietorship to a limited liability company or a limited liability partnership.

(b) For the purposes of registration, a "change in ownership" does not occur upon:

(i) The sale of all or part of the common stock of a corporation;

(ii) The transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy;

(iii) The death of a sole proprietor where there will be a continuous operation of the business by the executor, administrator, or trustee of the estate or, where the business was owned by a marital community, by the surviving spouse of the deceased owner;

(iv) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is less than fifty percent; or

(v) A change in the trade name under which the business is conducted.

(c) While changes in a business entity may not result in a "change in ownership," the completion of a new master application may be required to reflect the changes in the registered account.

(12) Change in location. Whenever the place of business is moved to a new location, the taxpayer must notify the department of the change. A new registrations and licenses document will be issued to reflect the change in location.

(13) Lost registrations and licenses documents. If any registrations and licenses document is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new document will be issued upon request.

(14) Administrative closure of taxpayer accounts. The department may, upon written notification to the taxpayer, close the taxpayer's tax reporting account and rescind its tax registration endorsement whenever the taxpayer has reported no gross income and there is no indication of taxable activity for two consecutive years.

The taxpayer may request, within thirty days of notification of closure, that the account remain open. A taxpayer may also request that the account remain open on an "active non-reporting" status if the requirements of subsection (3)(a) of this ~~(rule)~~ section are met. The request shall be reviewed by the department and if found to be warranted, the department will immediately reopen the account. The following are acceptable reasons for continuing as an active account:

(a) The taxpayer is engaging in business activities in Washington which may result in tax liability.

(b) The taxpayer is required to collect or pay to the department of revenue a tax or fee which the department is authorized to administer and/or collect.

(c) The taxpayer has in fact been liable for excise taxes during the previous two years.

(15) Reopening of taxpayer accounts. A business person choosing to resume business activities for which the department of revenue is responsible for administering and/or collecting a tax or fee, may request a previously closed account be reopened. The business person must complete a new master application. When an account is reopened a new registrations and licenses document, reflecting a current tax registration endorsement, shall be issued. Persons requesting the reopening of an account which had previously been closed due to a revocation action should refer to subsection (16) of this ~~(rule)~~ section.

(16) Revocation and reinstatement of tax registration endorsements. Actions to revoke tax registration endorsements must be conducted by the department pursuant to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, and the taxpayers bill of rights of chapter 82.32A RCW. Persons should refer to WAC 458-20-10001, Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation/suspension—Certificate of registration (tax registration endorsement) revocation, for an explanation of the procedures and processes pertaining to the revocation of tax registration endorsements.

(a) The department of revenue may, by order, revoke a tax registration endorsement if any tax warrant issued under the provisions of RCW 82.32.210 is not paid within thirty days after it has been filed with the clerk of the superior court, or for any other reason expressly provided by law.

(b) The revocation order will be posted in a conspicuous place at the main entrance to the taxpayer's place of business and must remain posted until the tax registration endorsement has been reinstated. A revoked endorsement will not be reinstated until:

(i) The amount due on the warrant has been paid, or satisfactory arrangements for payment have been approved by the department; and

(ii) The taxpayer has posted with the department a bond or other security in an amount not exceeding one-half the estimated average annual liability of the taxpayer.

(c) It is unlawful for any taxpayer to engage in business after its tax registration endorsement has been revoked.

(17) Penalties for noncompliance. The law provides that any person engaging in any business activity, for which registration with the department of revenue is required, shall obtain a tax registration endorsement.

(a) The failure to obtain a tax registration endorsement prior to engaging in any taxable business activity constitutes a gross misdemeanor.

(b) Engaging in business after a tax registration endorsement has been revoked by the department constitutes a Class C felony.

(c) Any tax found to have been due, but delinquent, and any tax unreported as a result of fraud or misrepresentation, may be subject to penalty as provided in chapter 82.32 RCW, WAC 458-20-228 and 458-20-230.

WSR 07-03-035
PERMANENT RULES
OLYMPIC REGION
CLEAN AIR AGENCY

[Filed January 10, 2007, 3:50 p.m., effective February 10, 2007]

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

Purpose: This action will increase the maximum daily penalty that may be imposed by the Olympic Region Clean Air Agency to \$14,915.00 per day per violation. The previous maximum was \$10,000.00 per day per violation. The second revision changes the means of collecting a fee for land clearing burn permits. Previously, the permits were \$100.00. This action will change the fee to \$75.00 per acre cleared.

Citation of Existing Rules Affected by this Order: Amending Olympic Region Clean Air Agency Regulations, Rules 2.5 and 3.4.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 06-24-002 on November 22, 2006.

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 0, Repealed 0.

Date Adopted: January 10, 2007.

Richard A. Stedman
Executive Director

AMENDED SECTION

RULE 3.4 OUTDOOR BURNING PERMIT FEES

Agricultural Burn permit: For 10 acres (or equivalent) or less the fee is twenty-five dollars (\$25.00). For greater than 10 acres (or equivalent) the fee will be two dollars and fifty cents (\$2.50) per acre.

Land Clearing Burn Permit: Land clearing burning permits issued by ORCAA will be charged ~~((a fee in the amount of one hundred dollars (\$100.00)))~~ \$75.00 for one acre or less. For greater than one acre the fee will be \$75.00 per acre cleared, rounded to the nearest full acre.

AMENDED SECTION

RULE 2.5 REGULATORY ACTIONS AND PENALTIES

The Control Officer may take any of the following regulatory actions to enforce the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, which are incorporated by reference.

(a) Civil Penalties

(1) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed ~~(((\$10,000.00))~~ \$14,915.00 per day for each violation.

(2) Any person who fails to take action as specified by an Order issued pursuant to chapter 70.94 RCW or Regulations of the Olympic Region Clean Air Agency (ORCAA) shall be liable for a civil penalty of not more than ~~(((\$10,000.00))~~ \$14,915.00 for each day of continued noncompliance.

(3) Within 30 days after receipt of Notice of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Any such request must contain the following:

(i) The name, mailing address, and telephone number of the appealing party;

(ii) A copy of the Notice of Civil Penalty appealed from;

(iii) A short and plain statement showing the grounds upon which the appealing party considers such Order to be unjust or unlawful;

(iv) A clear and concise statement of facts upon which the appealing party relies to sustain his or her grounds for appeal;

(v) The relief sought, including the specific nature and extent; and

(vi) A statement that the appealing party has read the notice of appeal and believes the contents to be true followed by the party's signature.

Upon receipt of the application, the Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(4) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC if the appeal is filed with the Hearings Board and served on the Agency within 30 days after receipt by the person penalized of the notice imposing the penalty or 30 days after receipt of the notice of disposition of the application for relief from penalty.

(5) A civil penalty shall become due and payable on the later of:

(i) 30 days after receipt of the notice imposing the penalty;

(ii) 30 days after receipt of the notice of disposition on application for the relief from penalty, if such application is made; or

(iii) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(6) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may use any available methods, including Superior Court, to recover the penalty. In all actions brought in the Superior Court for recovery of penalties hereunder, the procedures and rules of evidence shall be the same as in ordinary civil action.

(7) To secure the penalty incurred under this rule, this Agency shall have a lien on any vessel used or operated in violation of these Regulations, which shall be enforced as provided in RCW 60.36.050.

(b) Criminal Penalties

(1) Any person who knowingly violates any of the provisions of chapter 70.94 RCW or any rules or regulations in force pursuant thereto, shall be guilty of a crime and upon conviction thereof, shall be punished by fine of not more than \$10,000.00, or by imprisonment in the county jail for not more than 1 year, or by both for each separate violation.

(2) Any persons who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm shall be guilty of a crime and shall, upon conviction, be punished by a fine of not more than \$10,000.00, or by imprisonment for not more than 1 year, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that they have thereby placed another person in imminent danger of death or substantial bodily harm shall be guilty of a crime and shall, upon conviction, be punished by a fine of not less than \$50,000.00, or by imprisonment for not more than 5 year, or both.

(c) Additional Enforcement

(1) Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of chapter 70.94 RCW, or any order, rule or regulation issued by the Board of Control Officer or duly authorized agent, the Board, after notice to such person and an opportunity to comply, may petition the Superior Court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(2) As an additional means of enforcement, the Board or Control Officer may accept an assurance of discontinuance of any act or practice deemed in violation of chapter 70.94 RCW or of any order, rule, or regulation adopted pursuant thereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter or the orders, rules or regulations issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from Superior Court in the county wherein the violation is alleged to be occurring or to have occurred.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Olympic Region Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 07-03-043
PERMANENT RULES
BUILDING CODE COUNCIL

[Filed January 11, 2007, 10:59 a.m., effective July 1, 2007]

Effective Date of Rule: July 1, 2007.

Purpose: To adopt and amend the 2006 Edition of the Uniform Plumbing Code Appendices, chapter 51-57 WAC.

Citation of Existing Rules Affected by this Order: Amending 6.

Statutory Authority for Adoption: RCW 19.27.190 and 19.27.020.

Other Authority: Chapters 19.27 and 34.05 RCW.

Adopted under notice filed as WSR 06-16-111 on August 1, 2006.

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 6, 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 6, Repealed 0.

Date Adopted: November 17, 2006.

Tim Nogler
for John Neff
Council Chair

AMENDATORY SECTION (Amending WSR 04-01-110, filed 12/17/03, effective 7/1/04)

WAC 51-57-003 Uniform Plumbing Code Standards. The ((2003)) 2006 edition of the Uniform Plumbing Code Standards (Appendixes A, B and I), published by the International Association of Plumbing and Mechanical Officials are hereby adopted by reference.

NEW SECTION

WAC 51-57-004 Conflicts between Appendix I and the manufacturer's installation instructions. Where a conflict exists between the provisions of Appendix I and the manufacturer's installation instructions, the conditions of the listing and the manufacturer's installation instructions shall apply.

AMENDATORY SECTION (Amending WSR 02-01-114, filed 12/18/01, effective 7/1/02)

WAC 51-57-007 Exceptions. The exceptions and amendments to the ((Uniform)) Model Codes contained in the provisions of chapter 19.27 RCW shall apply in cases of conflict with any of the provisions of these rules.

AMENDATORY SECTION (Amending WSR 04-01-110, filed 12/17/03, effective 7/1/04)

WAC 51-57-008 Implementation. The Uniform Plumbing Code Standards adopted by chapter 19.27 RCW shall become effective in all counties and cities of this state on July 1, (~~2004~~) 2007, unless local government residential amendments have been approved by the state building code council.

AMENDATORY SECTION (Amending WSR 04-01-110, filed 12/17/03, effective 7/1/04)

WAC 51-57-202000 Installation standard 20-200—CPVC solvent cemented hot and cold water distribution systems.

~~((301.1.1 Materials. Materials shall comply with the following:~~

Materials	ASTM Std
Raw Material — CPVC 23447 B	D1784-95
IPS pipe	
Sch 40 (1/2 in., 3/4 in., and 1 in.)	F 441-89 ⁺
Sch 80 (1/2 in. — 2 in.)	F 441-94
Tubing	
SDR 11 (1/2 in. — 2 in.)	D2846-93
Fittings	
Sch 40 (1/2 in., 3/4 in., and 1 in.)	F 438-93
Sch 80 (1/2 in. — 2 in.)	F 439-93 ^a
Tube Fittings (1/2 in. — 2 in.)	D2846-93))

2.1.2 Primer. Listed primers shall be used that are compatible with the type of listed CPVC cement and pipe used. The primer shall be a true solvent for CPVC, containing no slow-drying ingredient. Cleaners shall not be allowed to be used as a substitute or equivalent for a listed primer.

EXCEPTION: Listed solvent cements that do not require the use of primer shall be permitted for use with CPVC pipe and fittings, manufactured in accordance with ASTM D2845 (~~((1/2 in. — 2 in.))~~), 1/2 inch through 2 inches in diameter.

AMENDATORY SECTION (Amending WSR 02-01-114, filed 12/18/01, effective 7/1/02)

WAC 51-57-790000 Installation Standard (~~(7-90)~~) 7-03—Polyethylene cold water building supply and yard piping.

~~((604.1))~~ **2.6.1 Location.** Polyethylene piping may terminate within a building or structure. The connection to the potable water distribution system shall be accessible, except that it may be buried underground outside of the building or structure in an accessible location. Barbed insert fittings with hose clamps are prohibited within a building.

AMENDATORY SECTION (Amending WSR 02-01-114, filed 12/18/01, effective 7/1/02)

WAC 51-57-895000 Installation Standard (~~(8-95)~~) 8-03—PVC cold water building supply and yard piping.

~~((604.1))~~ **2.7.1 Location.** PVC piping may terminate within a building or structure. The connection to the potable water distribution system shall be accessible, except that it may be buried underground outside of the building or structure in an accessible location.

**WSR 07-03-049
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed January 12, 2007, 12:14 p.m., effective February 12, 2007]

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

Purpose: WAC 246-235-075 Financial assurance and recordkeeping for decommissioning, brings radiation protection regulations into conformance with the United States Nuclear Regulatory Commission's rules on updating financial surety for decommissioning.

Citation of Existing Rules Affected by this Order: Amending WAC 246-235-075.

Statutory Authority for Adoption: RCW 70.98.095.

Other Authority: RCW 70.98.050.

Adopted under notice filed as WSR 06-20-077 on October 2, 2006.

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

Date Adopted: January 12, 2007.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 00-07-085, filed 3/15/00, effective 4/15/00)

WAC 246-235-075 Financial assurance and record-keeping for decommissioning. (1) Each applicant for one of the following licenses shall submit a decommissioning funding plan as described in this section:

(a) A specific license authorizing receipt of radioactive waste for the purpose of volume reduction, repackaging or interim storage.

(b) Receipt of contaminated articles, scrap material, equipment, or clothing to be decontaminated at the licensee's facility.

(c) A specific license authorizing the possession and use of radioactive material of half-life greater than one hundred twenty days and in quantities for unsealed material exceeding

10^3 times and for sealed forms exceeding 10^{10} times the applicable quantities set forth in WAC 246-221-300 Appendix B (for a combination of isotopes the unity rule applies. A decommissioning funding plan will be required if R is greater than 1, where R is defined as the sum of the ratios of the quantity for sealed and unsealed forms of each isotope compared to the applicable value derived from WAC 246-221-300).

(d) A specific license authorizing possession and use of source material in readily dispersible form and in quantities greater than 10 millicuries.

(2) Each decommissioning funding plan shall contain:

(a) A cost estimate for decommissioning facilities impacted by the activities authorized in the specific license.

(b) A description of the method of assuring funds for decommissioning.

(c) A ~~((schedule))~~ means for adjusting cost estimates and associated funding levels periodically over the life of the facility or facilities.

(d) A description of methods and general procedures for performing facility decontamination, maintaining security, and performing a final radiation survey.

(e) A commitment to clean up accidental spills promptly and to begin decommissioning of the facility or facilities within twelve months of ceasing operation involving radioactive material.

(3) Each cost estimate for decommissioning shall include:

(a) A description of the facility and areas within the facility likely to require decommissioning as a result of routine operation.

(b) Anticipated labor, equipment and material costs.

(c) Anticipated waste volume.

(d) Anticipated packaging, transportation and waste disposal costs.

(e) An assessment of costs associated with an accident involving licensed material.

(4) Each applicant shall submit a certification that financial assurance for decommissioning shall be provided by one or more of the following methods:

(a) Prepayment. Prepayment is the deposit of sufficient funds to pay decommissioning costs. Funds shall be deposited prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities.

(b) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless ninety days or more prior to the renewal date, the issuer notifies the department, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also require that the full face

amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the department within thirty days after receipt of notification of cancellation.

(ii) The surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the department. Acceptable trustees include an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(iii) The surety method or insurance must remain in effect until the department has terminated the license.

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control. The total amount of funds in the external sinking fund shall be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in subsection (4)(b) of this section.

(d) Statement of intent. In the case of state or local government licensees, a statement of intent containing a cost estimate for decommissioning and indicating that funds for decommissioning will be obtained when necessary.

(e) Other methods of financial assurance as approved by the department. The department may approve other financial mechanisms submitted by the applicant or licensee if the alternate method meets, at a minimum, the requirements of 10 C.F.R. 30.35 and associated U.S. Nuclear Regulatory Commission guidance.

~~(5)(a) ((The department shall review each decommissioning funding plan prior to license issuance and prior to license renewal.))~~ The applicant or licensee shall submit to the department an initial decommissioning funding plan prior to license issuance and shall submit an updated plan at intervals not to exceed three years.

(b) The applicant or licensee shall incorporate department comments into the decommissioning funding plan including its cost estimate and shall revise its financial surety accordingly.

(c) Applicants shall obtain the appropriate financial assurance as approved by the department prior to receipt of licensed material. The department may issue a new license if the applicant agrees to comply with the decommissioning funding plan as approved. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of this section shall be submitted to the department before receipt of licensed material.

~~(d) ((Holders of licenses issued on or before the effective date of this rule shall submit a decommissioning funding plan to the department by April 1, 1993.))~~ Licensees shall implement the financial assurance requirements within thirty days

of receiving department approval of the initial or updated decommissioning funding plan. Licensees shall submit copies of the financial surety within thirty days of securing the surety and annually thereafter.

(6) Each person licensed under this chapter shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with WAC 246-232-050(2), licensees shall transfer all records described in this subsection to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated by the department. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the department considers important to decommissioning consists of:

(a) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(b) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used and/or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(c) Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or depleted uranium used only for shielding or as penetrators in unused munitions, or radioactive materials having only half-lives of less than sixty-five days, a list contained in a single document and updated every two years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under WAC 246-220-010;

(ii) All areas outside of restricted areas that require documentation under (a) of this subsection;

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under WAC 246-221-230 (8)(a); and

(iv) All areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in chapter 246-246 WAC or apply for approval for disposal under WAC 246-221-180. Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

WSR 07-03-050

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 12, 2007, 1:11 p.m., effective February 15, 2007]

Effective Date of Rule: February 15, 2007.

Purpose: The purpose of these new sections is to ensure system-wide consistency in the use of special pay in higher education. This does not change the intent or purpose of special pay.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-24-093 on December 5, 2006.

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 4, 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 4, Amended 0, Repealed 0.

Date Adopted: January 12, 2007.

Eva N. Santos
Director

NEW SECTION

WAC 357-28-026 For what reasons may the director adopt special pay ranges and/or compensation practices for institutions of higher education and related boards?

The director may adopt special pay ranges and/or compensation practices which are locally competitive to alleviate recruitment and/or retention problems, to maintain effective operations of an institution, or to address other unique working conditions.

NEW SECTION

WAC 357-28-027 How long will higher education special pay ranges remain in effect? Except when the director specifies otherwise, special pay ranges will remain in effect until the system-wide pay range for the class equals or exceeds the special pay range.

NEW SECTION

WAC 357-28-028 By whom and for what reasons may a higher education special pay request be submitted to the director? A special pay request may be submitted by institutions of higher education and related boards:

(1) When a unique configuration of work requires skills, duties, or working conditions beyond those typically required of comparable positions;

(2) To alleviate employment problems such as recruitment and/or retention;

(3) When failure to grant special pay could result in recruitment and/or retention problems which would seriously jeopardize the effective operation of the institution; or

(4) To prevent salary inversion or compression problems with other classes in the same or related series which have been granted special pay.

NEW SECTION

WAC 357-28-029 When making a special pay request for higher education, what information must the requesting party provide department of personnel staff?

It is the responsibility of the requesting party to provide department of personnel staff with information necessary to make a recommendation to the director. Information to be provided must include:

(1) Data supporting the pay practice in the locality of the institution for which the request is being made; and

(2) Rationale supporting the request; and

(3) When applicable, data showing recruitment/retention difficulty.

WSR 07-03-051

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 12, 2007, 1:16 p.m., effective February 15, 2007]

Effective Date of Rule: February 15, 2007.

Purpose: This is a housekeeping issue. This corrects a reference to the wrong WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-150.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-24-091 on December 5, 2006.

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

Number of Sections Adopted at 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 12, 2007.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-150 Can an employee be paid for accrued sick leave? In accordance with the attendance incentive program established by RCW 41.04.340, employees are eligible to be paid for accrued sick leave as follows:

(1) In January of each year, an employee whose sick leave balance at the end of the previous year exceeds four hundred eighty hours may elect to convert the sick leave hours earned in the previous calendar year, minus those hours used during the year, to monetary compensation.

(a) No sick leave hours may be converted which would reduce the calendar year-end balance below four hundred eighty hours.

(b) Monetary compensation for converted hours is paid at the rate of twenty-five percent and is based on the employee's current salary.

(c) All converted hours are deducted from the employee's sick leave balance.

(d) Hours which are accrued, donated, and returned from the shared leave program in the same calendar year may be included in the converted hours for monetary compensation.

(2) Employees who separate from state service because of retirement or death must be compensated for their total unused sick leave accumulation at the rate of twenty-five percent or the employer may deposit equivalent funds in a medical expense plan as provided in WAC 357-31-~~(330)~~375. Compensation must be based on the employee's salary at the time of separation. For the purpose of this subsection, retirement does not include "vested out-of-service" employees who leave funds on deposit with the department of retirement systems (DRS).

(3) No contributions are to be made to the department of retirement systems (DRS) for payments under subsection (1) or (2) of this section, nor are such payments reported to DRS as compensation.

WSR 07-03-052

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 12, 2007, 1:19 p.m., effective February 15, 2007]

Effective Date of Rule: February 15, 2007.

Purpose: This is a housekeeping issue to correct a numbering error.

Citation of Existing Rules Affected by this Order: Amending WAC 357-19-115.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-24-095 on December 5, 2006.

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

Number of Sections Adopted at 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, 2007.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 06-15-065, filed 7/13/06, effective 8/14/06)

WAC 357-19-115 To which employer and position would an employee revert? A permanent employee who does not satisfactorily complete the trial service period or a Washington management service (WMS) review period or has failed to progress to the next step of an in-training plan in accordance with WAC 357-19-285, has reversion rights with the current employer at the time of reversion. An employee has the right to revert to a position, if available, in accordance with the following:

(1) For employees reverting from trial service following a promotion, transfer or elevation, the employer must revert the employee to a vacant position, or a position filled by a nonpermanent appointee as defined in WAC 357-01-210, for which the employee satisfies competencies and other position requirements and which is:

~~((a))~~ ~~((e))~~ (a) Allocated to the class the employee last held permanent status in; or

~~((b))~~ ~~((d))~~ (b) If no positions are available, allocated to a class which has the same or lower salary range maximum.

(2) For employees reverting from trial service following a voluntary demotion, the employer must revert the employee to a vacant position, or a position filled by a nonpermanent appointee as defined in WAC 357-01-210, for which the employee satisfies the competencies and other position requirements and which is allocated to a class which has the same or lower salary range maximum as the class from which the employee is reverting.

WSR 07-03-053

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 12, 2007, 1:21 p.m., effective February 15, 2007]

Effective Date of Rule: February 15, 2007.

Purpose: This change clarifies the language in WAC 357-46-100(1). This does not change the intent of this rule.

Citation of Existing Rules Affected by this Order: Amending WAC 357-46-100.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-24-094 on December 5, 2006.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at 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, 2007.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 06-03-073, filed 1/12/06, effective 2/13/06)

WAC 357-46-100 Who administers and establishes operating procedures for the general government transition pool program? The department administers the general government transition pool program. The director develops and implements appropriate operating procedures to facilitate the program. The operating procedures include the following requirements:

(1) ~~((General government employers must certify transition pool candidates when a certified pool contains eligible candidates other than layoff or internal promotional candidates))~~ General government employers must provide for consideration of transition pool candidates when a certified pool contains eligible candidates other than candidates from the employer's internal or statewide layoff list or the employer's internal promotional eligibles.

(2) Transition pool candidates must satisfy the competency and other position requirements to be considered for a position.

WSR 07-03-054

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed January 12, 2007, 1:25 p.m., effective February 15, 2007]

Effective Date of Rule: February 15, 2007.

Purpose: The purpose of changing the definition of "child" is because the current definition is identical to the definition of "minor/dependent child." We have also added "minor/dependent" to several places to clarify that is the definition that should be looked at.

Citation of Existing Rules Affected by this Order: Amending WAC 357-01-072, 357-31-070, 357-31-285, and 357-31-460.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 06-24-092 on December 5, 2006.

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 4, 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 4, Repealed 0.

Date Adopted: January 12, 2007.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 06-19-063, filed 9/19/06, effective 10/20/06)

WAC 357-01-072 Child. A biological, adopted, or foster child, or a stepchild, a legal ward, or a child of a person standing in loco parentis(~~(-who is)~~).

~~((1) under eighteen years of age; or~~

~~(2) eighteen years of age or older and incapable of self-care because of a mental or physical disability.))~~

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-070 When is an employer required to approve an employee's request to use a personal holiday?

(1) An employer must approve the use of a personal holiday as long as:

(a) The employee is entitled to a personal holiday in accordance with RCW 1.16.050 and WAC 357-31-055;

(b) The employee has requested the personal holiday in accordance with the employer's leave procedures; and

(c) The employee's absence does not interfere with the operational needs of the employer.

(2) At any time, an employer must allow an employee to use part or all of the personal holiday for either of the following reasons:

(a) To care for a minor/dependent child with a health condition that requires treatment or supervision.

(b) To care for a spouse, parent, parent-in-law or grandparent of the employee who has a serious health condition or an emergency health condition.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-285 Is an employer required to authorize the absence of an employee for family care emergencies? Absence because of an employee's inability to report

for or continue scheduled work due to a family care emergency:

(1) **Must** be authorized for care of the employee's spouse, household member or the employee's/spouse's minor/dependent child, parent or grandparent up to the limits specified in WAC 357-31-300.

(2) **May** be authorized for care of others, including a child over the age of eighteen who is capable of self care, in accordance with the employer's leave policy.

AMENDATORY SECTION (Amending WSR 05-08-140, filed 4/6/05, effective 7/1/05)

WAC 357-31-460 For what purposes must parental leave be granted? (1) Employers must grant parental leave to employees for purposes of:

(a) The birth and care of a newborn child of the employee; or

(b) Placement of a minor/dependent child with the employee for adoption or foster care.

(2) Parental leave must be taken during the first year following the child's birth or placement of the minor/dependent child with the employee for adoption or foster care.

WSR 07-03-064

PERMANENT RULES

HORSE RACING COMMISSION

[Filed January 16, 2007, 4:43 p.m., effective February 16, 2007]

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

Purpose: To authorize the commission to randomly test licensees who are on horseback.

Citation of Existing Rules Affected by this Order: Amending WAC 260-34-030.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 06-24-090 on December 5, 2006.

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 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 11, 2007.

R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 06-07-064, filed 3/10/06, effective 4/10/06)

WAC 260-34-030 Testing. (1) A steward of the horse racing commission, a commission security investigator or the commission, acting through the executive secretary, may require any licensee or applicant to provide breath blood and/or urine samples for the purpose of drug or alcohol analysis under any of the following circumstances:

(a) When a steward or commission security investigator finds that there is reasonable suspicion to believe that the applicant or licensee has used or is under the influence of alcohol and/or any drug.

(b) When an applicant or licensee has a documented history of an unexplained positive test which indicates illegal drug usage or has a documented history of violating chapter 69.41, 69.45 or 69.50 RCW, WAC 260-34-020 or similar drug-related violation within five years of conviction or release from a correctional institution for that violation. The term "correctional institution" shall include any prison, jail or similar institution in this state or elsewhere.

(c) When a steward or commission security investigator decides to test any licensee or applicant as a condition of any conditional or probationary license.

(d) When any person is riding a horse on the grounds of a licensed racing association.

(2) For licensees or applicants who are subject to a field screening urine test under the provisions in this chapter, and whose test shows the presence of a controlled substance or alcohol, the field screening test results shall be confirmed by a laboratory acceptable to the commission.

(3) The result of a test conducted with a preliminary breath test (PBT) instrument approved by the state toxicologist in chapter 448-15 WAC or other breath test equipment approved under chapter 448-16 WAC shall constitute evidence of a violation of these rules. The results of such a test may be considered for purposes of determining whether the licensee or applicant has consumed alcohol, the level of alcohol concentration, and whether the licensee or applicant has violated a prohibition on the use or consumption of alcohol established in a conditional license.

WSR 07-03-065

PERMANENT RULES

HORSE RACING COMMISSION

[Filed January 16, 2007, 4:45 p.m., effective February 16, 2007]

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

Purpose: To move all trainer responsibilities into one chapter.

Citation of Existing Rules Affected by this Order: Repealing WAC 260-28-180 and 260-70-520.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 06-24-109 on December 6, 2006.

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 1, Amended 0, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 0, Repealed 2; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 11, 2007.

R. M. Leichner
Executive Secretary

NEW SECTION

WAC 260-28-295 Trainer responsibility. The purpose of this section is to identify the minimum responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

(1) The trainer is responsible for and is the absolute insurer of the condition of the horses entered regardless of the acts of third parties.

(2) The trainer is responsible for the condition of horses in his/her care.

(3) The trainer is responsible for the presence of any prohibited drug, medication, or other prohibited substance, including permitted medication in excess of the maximum allowable concentration, in horses in his/her care. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable concentration, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer will be held responsible.

(4) A trainer will prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(5) A trainer whose horse has been claimed remains responsible for violation of any rules regarding that horse's participation in the race in which the horse is claimed.

(6) The trainer is responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition and safety of horses in his/her care;

(d) Immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and an official veterinarian when a posterior digital neurectomy (heel nerving) is performed on a horse in his/her care and ensuring that such fact is designated on its certificate of registration;

(f) Promptly report to the racing secretary, when mares who have been entered to race, have been bred;

(g) Promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this chapter governing postmortem examinations;

(h) Maintaining knowledge of the medication record and medication status of horses in his/her care;

(i) Immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

(j) Ensuring the fitness to perform creditably at the distance entered;

(k) Ensuring that every horse he/she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed in chapter 260-70 WAC;

(l) Ensuring proper bandages, equipment and shoes; and

(m) Attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-28-180 Trainer—Insurer of condition of horse.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-70-520 Trainer responsibility.

WSR 07-03-066

PERMANENT RULES

HORSE RACING COMMISSION

[Filed January 16, 2007, 4:46 p.m., effective February 16, 2007]

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

Purpose: Update penalties for labor and industries violations, add penalty for failing to wear proper safety equipment, and clarify the penalties for possession of a controlled substance for personal use and possession of a controlled substance with intent to sell or deliver.

Citation of Existing Rules Affected by this Order: Amending WAC 260-84-060 and 260-84-065.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 06-24-088 on December 5, 2006.

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 2, 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 11, 2007.

R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 06-07-058, filed 3/10/06, effective 4/10/06)

WAC 260-84-060 Penalty matrixes. (1) The imposition of reprimands, fines and suspensions shall be based on the following penalty matrixes:

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$25	\$50	\$100
Disturbing the peace WAC 260-80-140	Warning to \$200 and/or suspension	Warning to \$500 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel or failure to report correct stall or registration paper count for L&I purposes (trainer's responsibility) WAC 260-28-230 and 260-36-220	((\$500)) Required to pay full labor and industries premium and assessed a fine equal to 50% of the premium due		

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Licensing - failure to divulge a felony WAC 260-36-120	\$100 or possible denial of license		
Licensing - failure to divulge a gross misdemeanor or misdemeanor WAC 260-36-120	Warning to \$50		
Licensing - providing false information on application WAC 260-36-120	\$50 to \$250 or possible denial of license		
Licensing - nonparticipation WAC 260-36-080	License canceled		
Violation of any claiming rule in chapter 260-60 WAC	\$200 to \$500 plus possible suspension		
Use of improper, profane or indecent language to a racing official WAC 260-80-130	\$50	\$100	\$250
Unsafe vehicle operation WAC 260-20-020	Warning to \$50	\$100 and recommend racing association revoke vehicle pass	
Financial responsibility WAC 260-28-030	Resolve within 30 days or before the end of the meet (whichever is sooner) or suspension		
Failure to appear - for ruling conference WAC 260-24-510	Suspension		
Failure to honor riding engagements (call) - agents WAC 260-32-400	\$75	\$100	\$200
Reporting incorrect weight - jockeys WAC 260-32-150	\$50	\$100	\$200
Failure to appear for films - jockeys WAC 260-24-510	\$50	\$100	\$200
Failure to fulfill riding engagement WAC 260-32-080	\$100	\$150	\$200
Easing mount without cause WAC 260-52-040	\$250	\$250 and/or suspension	\$500 and/or suspension
Jockey failing to maintain straight course or careless riding WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey's misuse of whip WAC 260-52-040	Warning to \$2500		
Use of stimulating device (may include batteries) WAC 260-52-040	1 year suspension plus mandatory referral to commission for revocation		
Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	1 year suspension plus mandatory referral to commission for revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020	1 year suspension plus mandatory referral to commission for revocation		
Entering ineligible horse WAC 260-40-140 and 260-80-030	\$50	\$100	\$100

Class A and B Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Arriving late to the paddock WAC 260-28-200	Warning to \$50	Warning to \$50	\$50 to \$100
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	\$50 to \$100	\$100	\$100
Failure to obtain permission for equipment changes WAC 260-44-010	Warning to \$50	\$100	\$100
Failure to report performance records WAC 260-40-100	Warning to \$50	\$100	\$150
Insufficient workouts - resulting in scratch WAC 260-40-100	\$50 to \$100	\$100	\$100

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Smoking in restricted areas WAC 260-20-030	\$25	\$50	\$100
Disturbing the peace WAC 260-80-140	Warning to \$100 and/or suspension	\$250 and/or suspension	Suspension
Person performing duties for which they are not licensed WAC 260-36-010	\$50	\$100	\$150
Unlicensed or improperly licensed personnel or failure to report correct stall or registration paper count for L&I purposes (trainer's responsibility) WAC 260-28-230 and 260-36-220	((\$500)) <u>Required to pay full labor and industries premium and assessed a fine equal to 50% of the premium due</u>		
Licensing - failure to divulge a felony WAC 260-36-120	\$100 or possible denial of license		
Licensing failure to divulge a misdemeanor or gross misdemeanor WAC 260-36-120	Warning to \$25		
Licensing - providing false information on application WAC 260-36-120	\$50 to \$250 or possible denial of license		
Licensing - nonparticipation WAC 260-36-080	License canceled		
Violation of any claiming rule in chapter 260-60 WAC	\$100 to \$250 plus possible suspension		
Use of improper, profane or indecent language to a racing official WAC 260-80-130	\$50	\$100	\$250
Unsafe vehicle operation WAC 260-20-020	Warning to \$50		
Financial responsibility WAC 260-28-030	Resolve 30 days or before the end of the fall meet (whichever is sooner) to resolve or suspension		

Class C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to appear for ruling conference WAC 260-24-510	Suspension		
Failure to honor riding engagements (call) - agents WAC 260-32-400	\$25	\$50	\$100
Reporting incorrect weight - jockeys WAC 260-32-150	\$25	\$50	\$100
Failure to appear for films - jockeys WAC 260-24-510	\$25	\$50	\$100
Failure to fulfill riding engagement WAC 260-32-080	\$50	\$100	\$200
Easing mount without cause WAC 260-52-040	\$100	\$200 and/or suspension	\$400 and/or suspension
Jockey failing to maintain straight course or careless riding WAC 260-52-040	Warning to \$750 and/or suspension (riding days)		
Jockey's misuse of whip WAC 260-52-040	Warning to \$2500		
Use of stimulating device (may include batteries) WAC 260-52-040	1 year suspension plus mandatory referral to commission for revocation		
Possession of stimulating device (may include batteries) WAC 260-52-040 and 260-80-100	1 year suspension plus mandatory referral to commission for revocation		
Offering or accepting a bribe in an attempt to influence the outcome of a race WAC 260-80-010 and 260-80-020	1 year suspension plus mandatory referral to commission for revocation		
Entering ineligible horse WAC 260-40-140 and 260-80-030	\$25	\$50	\$50
Arriving late to the paddock WAC 260-28-200	Warning to \$25	\$50	\$50
Failure to have registration papers on file - resulting in a scratch WAC 260-40-090	\$50	\$100	\$100
Failure to obtain permission for equipment changes WAC 260-44-010	Warning to \$50	\$50	\$50

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Tampering with a fire protection, prevention or suppression system or device WAC 260-20-030	\$50	\$100	\$250 plus possible suspension
Failure to post problem gambling signs WAC 260-12-250	Warning to \$50	\$100	\$200
Issuing a check to the commission with not sufficient funds WAC 260-28-030	\$25	\$50	\$100

Class A, B and C Licensed Facilities			
	1st Offense	2nd Offense	3rd Offense or subsequent offense
Failure to follow instructions of the outrider WAC 260-24-690	\$50	\$100	\$200
Failure to complete provisional license application within fourteen days WAC 260-36-200	Warning to \$100 and denial of license	\$250 and denial of license	\$500 and denial of license
Failure to pay or default on L&I payment <u>agreement</u> WAC 260-28-235	<u>Per L&I premium payment agreement, immediate suspension until paid plus \$25 for each quarter payment is late</u>		
Failure to register employees with the commission (trainer's responsibility) WAC 260-28-230	Warning to \$50		
Unlicensed person on the backside WAC 260-20-040 and 260-20-090	Report violation to the racing association		
<u>Failure to wear proper safety equipment</u> WAC 260-12-180	<u>\$50</u>	<u>\$100</u>	<u>\$200</u>
<u>Failure to display or possess license badge when in restricted area</u> WAC 260-36-110	<u>\$25</u>	<u>\$50</u>	<u>\$100</u>

(2) In determining whether an offense is a first, second, third or subsequent offense, the commission, or designee shall include violations, which occurred in Washington as well as any other recognized racing jurisdiction. If a penalty is not listed under second or third/subsequent offense columns, the penalty listed in the "first offense" column shall apply to each violation.

(3) Except as otherwise provided in this chapter, for any other violation not specifically listed above, the stewards (~~shall~~) have discretion to impose the penalties as provided in WAC 260-24-510 (3)(~~(b)~~)(a). For violations considered minor, the fine can be up to \$500 and/or suspension for up to sixty days. Fines for violations considered major can be up to \$2,500 and/or suspension up to one year.

(4) Circumstances which may be considered for the purpose of mitigation or aggravation of any penalty shall include, but are not limited to, the following:

- The past record of the licensee or applicant;
- The impact of the offense on the integrity of the parimutuel industry;
- The danger to human and/or equine safety;
- The number of prior violations of these rules of racing or violations of racing rules in other jurisdictions; and/or
- The deterrent effect of the penalty imposed.

(5) For violations covered by chapter 260-70 WAC, Medication, the stewards shall follow the penalty guidelines as set forth in WAC 260-84-090.

(6) The stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a stewards' referral shall not preclude commission action in any matter. A stewards' ruling shall not prevent the commission from imposing a more severe penalty.

AMENDATORY SECTION (Amending WSR 06-07-058, filed 3/10/06, effective 4/10/06)

WAC 260-84-065 Licensees—Drug and alcohol penalties. (1) Engaging in the illegal sale or distribution of alcohol in violation of WAC 260-34-020(2).

- First offense - thirty-day suspension; and
- Second or subsequent offense - one-year suspension and referral to the commission for revocation.

(2) (~~Use or possession of an illegal controlled substance, other than marijuana.~~) Possessing any equipment, products or materials of any kind, which are used or intended for use in injecting, ingesting, inhaling or otherwise introducing into the human body an illegal controlled substance, other than marijuana in violation of WAC 260-34-020(5); or possessing or having within their body while on the grounds of a licensed race meet any illegal controlled substance, in violation of WAC 260-34-020 (1) or (4).

- First offense - thirty-day suspension; and
- Second offense - one-year suspension and referral to the commission for revocation.

(3) (~~Possession or use of marijuana.~~) Possessing any equipment, products or materials of any kind, which are used or intended for use in ingesting, inhaling or otherwise introducing into the human body marijuana, in violation of WAC 260-34-020(5); or possessing or having within their body marijuana, an illegal controlled substance, while on the grounds of any licensed race meet, in violation of WAC 260-34-020(1).

- First offense - three-day suspension;
- Second offense - thirty-day suspension; and
- Third or subsequent offenses - one-year suspension and referral to commission for revocation.

(4) Being under the influence of or affected by intoxicating liquor and/or drugs in violation of WAC 260-34-020(1).

- First offense - warning to one-day suspension;
- Second offense - three-day suspension;

(c) Third offense - thirty-day suspension; and

(d) Subsequent offenses - one-year suspension and referral to commission for revocation.

(5) ~~((Refusal))~~ Refusing to submit to a drug or alcohol test, in violation of WAC 260-34-020(6) will result in a penalty of a one-year suspension plus referral to the commission for revocation.

(6) ~~((Possession of))~~ Possessing any equipment or material used to manufacture or distribute any controlled substance, or engaging in the sale, manufacturing or distribution of any illegal controlled substance or possessing an illegal controlled substance with intent to deliver on the grounds of any licensed race meet in violation of WAC 260-34-020 (3)~~((, (4), and))~~ or (5), immediate ejection from the grounds ~~((and)), a one-year suspension plus~~ referral to the commission for revocation.

(7)(a) For violations of WAC 260-34-020 (1) and (4), the board of stewards may stay a suspension if the licensee or applicant shows proof of participation in a drug rehabilitation or alcohol treatment program approved or certified by the department of social and health services. Individuals will only be allowed a stay of a suspension under this subsection once in a five-year period. If during ~~((this time))~~ the period of the stay a licensee or applicant violates the provisions of chapter 260-34 WAC, the violation for which the stay of suspension was entered will be considered as a prior violation for penalty purposes. Before being granted a stay of the suspension, the licensee or applicant must also agree to comply with the following conditions during the duration of the treatment program:

(i) Remain in compliance with the rehabilitation and/or treatment program.

(ii) Submit to random drug or alcohol testing at the discretion of the board of stewards or commission security investigators ~~((for a period of five years))~~.

(iii) Have no ~~((further incidents of violating))~~ violations of chapter 260-34 WAC ~~((within the next twelve calendar months))~~.

Upon completion of the rehabilitation or treatment program, the licensee or applicant must provide documentation of completion to the board of stewards. Upon making a determination that the licensee or applicant successfully completed the rehabilitation or treatment program, the board of stewards may direct that the final disposition of the violation will be that the licensee or applicant completed a treatment program in lieu of suspension.

(b) If the board of stewards, after a conference, finds that the licensee or applicant failed to comply with the conditions ~~((of the stay, the original suspension may be imposed. Failure to remain in compliance with the rehabilitation and/or treatment program shall be considered a failure to comply with the conditions of the stay.~~

~~((e) Upon successful completion of a drug or alcohol rehabilitation or treatment program, a licensee or applicant can request the board of stewards lift the suspension))~~ required in (a)(iii) of this subsection, the board of stewards has discretion to impose the original suspension authorized by this rule. If the failure to comply with the conditions of the stay is a violation of chapter 260-34 WAC, the board of stew-

ards may also hold a ruling conference for that rule violation and impose such penalty as is provided for that violation.

(8) Any licensee or applicant who tests positive (presumptive or confirmatory) for the presence of an illegal controlled substance is prohibited from performing any duties for which a license is required until the licensee does not test positive (presumptive or confirmatory) for the presence of any illegal controlled substance.

(9) Any licensee or applicant who is affected by intoxicating liquor or who has an alcohol concentration of 0.08 percent or higher is prohibited from performing any duties for which a license is required until the licensee is not affected by intoxicating liquor and his/her alcohol concentration is below 0.08 percent.

WSR 07-03-067

PERMANENT RULES

HORSE RACING COMMISSION

[Filed January 16, 2007, 4:49 p.m., effective February 16, 2007]

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

Purpose: To authorize the stewards the ability to issue as part of a ruling a restriction for the individual's to receive an automatic stay of the penalty if appealed. This would only be done if the stewards deem that the individual poses a danger to the health, safety, or welfare of human or equine participants.

Citation of Existing Rules Affected by this Order: Amending WAC 260-24-510.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 06-24-110 on December 6, 2006.

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 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 11, 2007.

R. M. Leichner
Executive Secretary

AMENDATORY SECTION (Amending WSR 05-07-065, filed 3/11/05, effective 4/11/05)

WAC 260-24-510 Stewards. (1) General authority:

(a) The stewards for each race meet ~~((shall be))~~ are responsible to the executive secretary for the conduct of the

race meet and the initial agency determination of alleged rule violations in accordance with these rules;

(b) The stewards ~~((shall))~~ will enforce the rules of racing in chapters 260-12 through 260-84 WAC, excluding chapters 260-49 and 260-75 WAC. The stewards will take notice of alleged misconduct or rule violations and initiate investigations into such matters;

(c) The stewards' authority includes regulation of all racing officials, track management, licensed personnel, other persons responsible for the conduct of racing, and patrons, as necessary to insure compliance with these rules;

(d) All nominations, entries, declarations and scratches ~~((shall))~~ will be monitored by a steward;

(e) The stewards ~~((shall))~~ have authority to resolve conflicts or disputes related to violations of the rules of racing and to discipline violators in accordance with the provisions of these rules;

~~((The stewards shall take notice of any questionable conduct with or without complaint thereof;~~

~~((g))~~ The stewards have the authority to interpret the rules and to decide all questions of racing. The stewards of the race meet are hereby given authority to exercise their full power, recommending to the commission the imposition of more severe penalties if necessary.

(2) The stewards' period of authority ~~((shall))~~ will commence ~~((ten days prior to the beginning of each race meet, or at such other time as is necessary in the opinion of the executive secretary,))~~ and ~~((shall))~~ terminate at the direction of the executive secretary. One steward ~~((shall))~~ will be designated as the presiding steward by the ~~((commission))~~ executive secretary.

(3) Stewards ruling conference regarding violations of rules of racing:

~~((The stewards shall take notice of alleged misconduct or rule violations and initiate investigations into such matters.~~

~~((b))~~ The stewards ((shall)) have authority to charge any licensee or other person with a violation of these rules, to make rulings and to impose penalties including the following:

- (i) Issue a reprimand;
- (ii) Assess a fine not to exceed \$2,500.00, except as provided in WAC ~~((260-70-690))~~ 260-84-060 and 260-84-110;
- (iii) Require forfeiture or redistribution of purse or award, when specified by applicable rules;
- (iv) Place a licensee on probation;
- (v) Suspend a license or racing privileges for not more than one year per violation;
- (vi) Revoke a license; or
- (vii) Exclude from grounds under the jurisdiction of the commission.

~~((e))~~ (b) The stewards' imposition of reprimands, fines and suspensions ((shall)) will be based on the ((penalty matrix)) penalties in ((WAC 260-84-060)) chapter 260-84 WAC.

For any ~~((other))~~ violation not specifically listed in ~~((WAC 260-84-060))~~ chapter 260-84 WAC, the stewards ~~((shall))~~ have discretion to impose the penalties as provided in ~~((b))~~ (a) of this subsection.

~~((d))~~ (c) The stewards may direct a jockey to meet with the film analyst whenever a jockey is involved in questionable, unsafe or potentially dangerous riding. Jockeys referred to the film analyst ((shall)) must appear when directed. Failure to appear when directed ((shall)) will be considered a violation of the rules of racing for which penalties may be imposed.

~~((e))~~ (d) The stewards ((shall)) have the authority to conduct a ruling conference, and the authority to:

- (i) Direct the attendance of witnesses and commission employees;
- (ii) Direct the submission of documents, reports or other potential evidence;
- (iii) Inspect license documents, registration papers and other documents related to racing or the rule violation;
- (iv) Question witnesses; and
- (v) Consider all relevant evidence.

~~((f))~~ (e) The stewards ((shall)) must serve notice of a conference to person(s) alleged to have committed a violation, which ((shall)) must contain the following information:

- (i) A statement of the time and place the conference will be held;
- (ii) A reference to the particular sections of the WAC involved;
- (iii) A short and plain statement of the alleged violation; and
- (iv) A statement that if the person does not appear, the ruling will be made in his/her absence, and that failure to appear will be considered a separate violation of the rules of racing.

~~((g))~~ (f) Failure to appear for a ruling conference ((shall)) will be considered a violation of the rules of racing for which penalties may be imposed.

~~((h))~~ (g) It is the duty and obligation of every licensee to make full disclosure to the board of stewards and commission investigators conducting an investigation into any alleged violation of these rules, of any knowledge he/she possesses of a violation of any rule of racing. No person may refuse to respond to questions before the stewards or commission investigators on any relevant matter within the authority of the stewards or commission, except in the proper exercise of a legal privilege, nor ((shall)) may any person respond falsely before the stewards or to commission investigators.

~~((i))~~ (h) At the ruling conference, the stewards ((shall)) will allow the person alleged to have committed a violation to make a statement regarding the alleged violation.

~~((j))~~ (i) All ruling conferences ((shall)) will be recorded.

~~((k))~~ (j) Every ruling by the stewards from a ruling conference must be served in writing on the person(s) or parties found in violation within five days and ((shall)) must include:

- (i) Time and place the ruling was made;
- (ii) Statement of rules violated;
- (iii) Details of the violation;
- (iv) Penalties to be imposed;
- (v) Procedure for requesting a hearing before the commission to challenge the ruling; and
- (vi) Plain statement of the options of the person found in violation, which ((shall)) must include:

(A) Accepting the penalty imposed by the stewards; or

(B) Requesting a hearing before the commission challenging the stewards' ruling within seven days of service of the ruling.

(k) Any penalty imposed by the stewards will be stayed if a request for hearing before the commission is filed within the seven days of service of the ruling.

(l) If the stewards determine that a person's actions constitute an immediate, substantial danger to human and/or equine health, safety, or welfare, and a request for hearing before the commission is filed within seven days of service of the ruling, no stay will be granted except by a hearing before the commission. The hearing before the commission will occur within thirty days of filing the request for hearing before the commission.

(m) The stewards' ruling ((shall)) will be posted and a copy provided to the racing association.

((m)) (n) If a person does not file a request for hearing before the commission within seven days or in the format required by chapter 260-08 WAC, then the person is deemed to have waived his or her right to a hearing before the commission. After seven days, if a request for hearing before the commission has not been filed, the stewards' penalty ((shall)) will be imposed.

((n)) (o) "Service" of the notice of ruling conference or a stewards' ruling ((shall)) may be by either personal service to the person or by depositing the notice of ruling conference or stewards' ruling into the mail to the person's last known address in which case service is complete upon deposit in the U.S. mail.

((o)) (p) If the stewards determine that a person's actions constitute an immediate, substantial danger to human and/or equine health, safety, or welfare, the stewards may enter a ruling summarily suspending the license and/or ((eject)) ejecting the person from the grounds pending a ruling conference before the board of stewards. A summary suspension takes effect immediately on issuance of the ruling. If the stewards suspend a license under this subsection, the licensee is entitled to a ruling conference before the board of stewards, not later than five days after the license was summarily suspended. The licensee may waive his/her right to a ruling conference before the board of stewards on the summary suspension.

(4) Protests, objections and complaints. The stewards ((shall cause)) will ensure that an investigation ((to be)) is conducted and ((shall render)) a decision is rendered in every protest, objection and complaint made to them. The stewards are vested with the power to determine the extent of disqualification in case of fouls. They may place the offending horse behind such horses as in their judgment it interfered with, or they may place it last.

(5) Stewards' presence:

(a) On each racing day at least one steward ((shall)) will be on duty at the track beginning three hours prior to first race post time. ((The full board of stewards shall sit in regular session to exercise their authority and perform the duties imposed on them by the rules of racing:))

(b) Three stewards ((shall)) must be present in the stewards' stand during the running of each race. In case of emer-

gency, the executive secretary may appoint a substitute steward.

(6) Order of finish for parimutuel wagering:

(a) The stewards ((shall)) will determine the official order of finish for each race in accordance with these rules of racing;

(b) The decision of the stewards as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the running of the race, ((shall be)) is final for purposes of distribution of the parimutuel wagering pool.

(7) The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a parimutuel pool for a race or races, if such action is necessary to protect the integrity of parimutuel wagering.

(8) Records and reports:

(a) The stewards ((shall)) will prepare a weekly report of their regulatory activities. The report ((shall)) will contain the name of the racetrack, the date, the weather and track conditions, claims, inquiries, protests, objections, complaints and conferences. The report ((shall)) will be filed with and approved by the executive secretary;

(b) Not later than seven days after the last day of a race meeting, the presiding steward ((shall)) will submit ((to the executive secretary)) a written report regarding the race meeting to the executive secretary. The report ((shall)) will contain:

(i) The stewards' observations and comments regarding the conduct of the race meeting, the overall conditions of the association grounds during the race meeting; and

(ii) Any recommendations for improvement by the association or action by the commission.

(9) Stewards' list:

(a) The stewards ((shall)) will maintain a stewards' list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the racetrack that may endanger the health or safety of other participants in racing;

(b) The stewards may place a horse on the stewards' list when there exists a question as to the exact identification or ownership of said horse;

(c) A horse which has been placed on the stewards' list because of inconsistent performance or behavior, may be removed from the stewards' list when, in the opinion of the stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing;

(d) A horse which has been placed on the stewards' list because of questions as to the exact identification or ownership of said horse, may be removed from the stewards' list when, in the opinion of the stewards, proof of exact identification and/or ownership has been established.

(e) An owner or trainer who disagrees with the stewards' decision of placing or maintaining a horse on the stewards' list may request and be granted a stewards' ruling conference to challenge the decision of the stewards.

WSR 07-03-069**PERMANENT RULES****UNIVERSITY OF WASHINGTON**

[Filed January 17, 2007, 11:26 a.m., effective February 17, 2007]

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

Purpose: The proposed house-keeping amendments to Title 478 WAC rules update the names of internal UW units or individuals responsible for various administrative duties in WAC 478-120-020, 478-124-020, and 478-250-050; update obsolete reference citations in WAC 478-124-030; and correct a Washington state register filing error in WAC 478-276-060.

Citation of Existing Rules Affected by this Order: Amending WAC 478-120-020, 478-124-020, 478-124-030, 478-250-050, and 478-276-060.

Statutory Authority for Adoption: RCW 28B.20.130.

Other Authority: RCW 28B.20.130.

Adopted under notice filed as WSR 06-21-078 on October 17, 2006.

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 5, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: January 4, 2007.

Rebecca Goodwin Deardorff
UW Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

WAC 478-120-020 Standards of conduct. (1) The university is a public institution having special responsibility for providing instruction in higher education, for advancing knowledge through scholarship and research, and for providing related services to the community. As a center of learning, the university also has the obligation to maintain conditions conducive to freedom of inquiry and expression to the maximum degree compatible with the orderly conduct of its functions. For these purposes, the university is governed by the rules, regulations, procedures, policies, and standards of conduct that safeguard its functions and protect the rights and freedoms of all members of the academic community.

(2) Admission to the university carries with it the presumption that students will conduct themselves as responsible members of the academic community. As a condition of enrollment, all students assume responsibility to observe standards of conduct that will contribute to the pursuit of aca-

demical goals and to the welfare of the academic community. That responsibility includes, but is not limited to:

(a) Practicing high standards of academic and professional honesty and integrity;

(b) Respecting the rights, privileges, and property of other members of the academic community and visitors to the campus, and refraining from any conduct that would interfere with university functions or endanger the health, welfare, or safety of other persons;

(c) Complying with the rules, regulations, procedures, policies, standards of conduct, and orders of the university and its schools, colleges, and departments.

(3) Specific instances of misconduct include, but are not limited to:

(a) Conduct that intentionally and substantially obstructs or disrupts teaching or freedom of movement or other lawful activities on the university campus and is not constitutionally and/or legally protected;

(b) Physical abuse of any person, or conduct intended to threaten imminent bodily harm or to endanger the health or safety of any person on the university campus;

(c) Conduct on the university campus constituting a sexual offense, whether forcible or nonforcible, such as rape, sexual assault, or sexual harassment;

(d) Malicious damage to or malicious misuse of university property, or the property of any person where such property is located on the university campus;

(e) Refusal to comply with any lawful order to leave the university campus or any portion thereof;

(f) Possession or use of firearms, explosives, dangerous chemicals or other dangerous weapons or instrumentalities on the university campus, except for authorized university purposes, unless prior written approval has been obtained from the (~~vice president for student affairs~~) university chief of police, or any other person designated by the president of the university (see WAC 478-124-020 (2)(e)) (legal defense sprays are not covered by this section);

(g) Unlawful possession, use, distribution, or manufacturer of alcohol or controlled substances (as defined in chapter 69.50 RCW) on the university campus or during university-sponsored activities;

(h) Intentionally inciting others to engage immediately in any unlawful activity, which incitement leads directly to such conduct on the university campus;

(i) Hazing, or conspiracy to engage in hazing, which includes:

(i) 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 or physical harm, or serious mental or emotional harm, to any student or other person attending the university; and

(ii) Conduct associated with initiation into a student organization or living group, or any pastime or amusement engaged in with respect to an organization or living group not amounting to a violation of (i)(i) of this subsection, but including such conduct as humiliation by ritual act and sleep deprivation. Consent is no defense to hazing. Hazing does not include customary athletic events or other similar contests or competitions;

(j) Falsely reporting a violation of the student conduct code.

(4) Disciplinary action may be taken in accord with this chapter regardless of whether that conduct also involves an alleged or proven violation of law.

(5) An instructor has the authority to exclude a student from any class session in which the student is disorderly or disruptive. If the student persists in the disorderly or disruptive conduct, the instructor should report the matter to the dean of the school or college in which the student is enrolled. (See WAC 478-120-030(3).)

(6) Nothing herein shall be construed to deny students their legally and/or constitutionally protected rights.

AMENDATORY SECTION (Amending WSR 91-10-030, filed 4/24/91, effective 5/25/91)

WAC 478-124-020 Conduct on campus code—Prohibited conduct. (1) In order to safeguard the right of every citizen to criticize and to seek meaningful change, each individual has an obligation to respect the rights of all members of the university community.

(2) In order to assure those rights to all members of the university community and to maintain a peaceful atmosphere in which the university may continue to make its special contribution to society, the following types of conduct are hereby prohibited on or in property either owned, controlled or operated by the university which is used or set aside for university purposes, hereinafter referred to as the university campus:

(a) Conduct which intentionally and substantially obstructs or disrupts teaching or freedom of movement or other lawful activities on the university campus;

(b) Physical abuse of any person or conduct which is intended unlawfully to threaten imminent bodily harm or to endanger the health or safety of any person on the university campus;

(c) Malicious damage to or malicious misuse of university property, or the property of any person where such property is located on the university campus;

(d) Refusal to comply with any lawful order to leave the university campus or any portion thereof;

(e) Possession or use of firearms, explosives, dangerous chemicals or other dangerous weapons or instrumentalities on the university campus, except for authorized university purposes, unless prior written approval has been obtained from the ~~((vice president for student affairs))~~ university chief of police, or any other person designated by the president of the university;

(f) Unlawful possession, use, distribution, or manufacture of alcohol or controlled substances (as defined in chapter 69.50 RCW) on the university campus or during university-sponsored activities;

(g) Intentionally inciting others to engage immediately in any of the conduct prohibited herein, which incitement leads directly to such conduct. (Inciting is that advocacy which prepares the group addressed for imminent action and steels it to the conduct prohibited herein.)

AMENDATORY SECTION (Amending WSR 91-10-030, filed 4/24/91, effective 5/25/91)

WAC 478-124-030 Conduct on campus code—Sanctions. (1) Any person while on the university campus who willfully refuses the request of a uniformed campus police officer to desist from conduct prohibited by these rules may be required by such officer to leave such premises.

(2) Disciplinary action which may result in dismissal from the university will be initiated against faculty, staff, or students who violate these rules, in accordance with the applicable disciplinary codes or other appropriate due process procedures.

(3) Sanctions which may be imposed against faculty are set forth in the *University of Washington Handbook*, Volume II, Chapter 25, Sections 25-51 and 25-71.

(4) Sanctions which may be imposed against students are set forth in WAC 478-120-040.

(5) Sanctions which may be imposed against the classified staff are set forth in ~~((WAC 251-11-010 through 251-11-130))~~ the relevant University of Washington labor contract for contract-classified staff, and in Title 357 WAC and applicable university policy for classified nonunion staff.

(6) Sanctions which may be imposed against the professional staff are set forth in the University of Washington Professional Staff ~~((Personnel))~~ Program ~~((University of Washington Operations Manual, D-42.1, Section 7(e)))~~.

(7) Violation of any of the above regulations may also constitute violation of the criminal laws or ordinances of the city of Seattle, the state of Washington, or the United States and may subject a violator to criminal sanctions in addition to any sanctions imposed by the university.

AMENDATORY SECTION (Amending WSR 05-08-064, filed 3/31/05, effective 5/1/05)

WAC 478-250-050 University rules coordination. (1) Coordination of university rules shall be conducted by the rules coordination office, which reports to the office of the ~~((vice provost))~~ president.

(2) The director of the rules coordination office shall have knowledge of the subjects of rules being proposed or prepared within the university, maintain the records of any such action, and respond to public inquiries about possible, proposed, or existing rules and the identity of university personnel developing, reviewing, or commenting on them.

AMENDATORY SECTION (Amending WSR 06-17-131, filed 8/22/06, effective 9/22/06)

WAC 478-276-060 Public records officer. For purposes of compliance with chapter 42.56 RCW, the person designated as public records officer for the University of Washington is the director of public records and open public meetings. Duties for this individual shall include but not be limited to: The implementation of the university's rules and regulations regarding release of public records, coordinating the staff of the public records and open public meetings office in this regard, and generally coordinating compliance by the university with the public records disclosure requirements of

chapter 42.56 RCW. The person so designated shall be at the following location:

University of Washington
Public Records and Open Public Meetings Office
(~~Visitors Information Center~~)
~~4311 11th Ave. N.E.~~
~~Suite 360~~
~~4014 University Way N.E.~~)
4311 11th Ave. N.E.
Suite 360
Seattle, WA 98105(~~6203~~)

(for internal campus mail use: Box (~~354997~~ ~~355502~~)
354997).

WSR 07-03-072
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed January 17, 2007, 1:13 p.m., effective February 17, 2007]

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

Purpose: To bring the office of superintendent of public instruction rules into alignment with RCW 28A.160.160 (eliminating a one hundred forty-four day program requirement for basic shuttle routes) and to allow the full-time period provided under statute for the school district annual ridership report. The revisions will allow school districts to report basic shuttle routes for funding allowed under statute during the 2006-07 school year. This action is in direct response to Recommendation 4 of the joint legislative audit and review committee report on pupil transportation funding.

Citation of Existing Rules Affected by this Order: Amending WAC 392-141-160, 392-141-180, and 392-141-185.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 06-21-017 on October 6, 2006.

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 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, 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 3, Repealed 0.

Date Adopted: December 11, 2006.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 98-08, filed 8/7/98, effective 9/7/98)

WAC 392-141-160 District reporting and record-keeping requirements. Annual or supplementary reports shall be submitted by each school district to the superintendent of public instruction prior to the (~~third Monday~~) last business day in October. This report shall reflect to the extent practical the planned pupil transportation program for the entire school year and which is in operation during ridership count week. Reports shall be submitted with a cover letter signed by the chief school district administrator attesting to the completeness of the requirements below and the accuracy of the data contained therein. The superintendent of public instruction shall have the authority to make modifications or adjustments in accordance with the intent of RCW 28A.160.-150, 28A.160.160, and 28A.160.170. Each district shall submit the data required on a timely basis as a condition to the continuing receipt of student transportation allocations. These reports shall be maintained for a period of three school years or until audited and include the following but are not limited to:

(1) School bus route logs completed in ink by bus drivers for five consecutive days. These logs shall include state school bus numbers, each bus stop, the number of students boarding the bus at each stop, and destination schools, transfer points, learning centers, or agencies; and

(2) The number of kindergarten through fifth grade students enrolled during ridership count week and living one radius mile or less from their destination school; and

(3) Other operational data and descriptions, as required by the superintendent of public instruction to determine operation allocation requirements for each district; and

(4) An annual school bus mileage report including the beginning and ending year odometer reading, the total miles for each bus for the school year, an estimate of to and from school mileage for the upcoming school year, and miles for extended day routes, field trips, extracurricular, and other contractual uses of school buses; and

(5) Copies of any and all correspondence, publications, news articles, or campaign materials which encourage ridership during count week of the report that is beyond the normal activity experienced during the school year. School districts shall not utilize incentive programs that provide tangible gifts to reward increases in ridership counts.

School districts shall maintain at least a weekly one-day route log containing the school bus driver's name, state bus number, route number, route type, day of the week, beginning and ending odometer readings, destinations, destination times and student counts. These route logs shall be maintained in the school district files for a period of three years or until audited.

AMENDATORY SECTION (Amending Order 92-03, filed 3/23/92, effective 4/23/92)

WAC 392-141-180 Limitations on the allocation for transportation between schools and learning centers. Funding for transportation between schools and learning centers shall be subject to the (~~following conditions~~):

~~(1) The~~) instruction at the learning center site (~~shall be scheduled for at least one hundred forty-four school days within an annual term and meet~~) meeting the requirements established in any of the following statutes:

- ~~((a))~~ (1) Chapter 28A.230 RCW;
- ~~((b))~~ (2) Chapter 28A.155 RCW;
- ~~((c))~~ (3) RCW 28A.165.010 through 28A.165.080;
- ~~((d))~~ (4) RCW 28A.150.200; and
- ~~((e))~~ (5) RCW 28A.180.010 through 28A.180.080(;

~~(2) The transportation between schools and learning centers shall be scheduled for at least one hundred forty-four school days within an annual term; and~~

~~(3) The limitations imposed by this section shall not apply to midday transportation or transportation of special education, gifted, or bilingual students between schools and agencies less frequently than four days a week).~~

AMENDATORY SECTION (Amending Order 96-09, filed 7/25/96, effective 8/25/96)

WAC 392-141-185 Operation allocation computation. The computation of the transportation operation allocation shall be as follows:

(1) All basic and transit tripper students defined in WAC 392-141-115 who are transported to school shall be measured by radius mile intervals between the bus route stop and the destination sites in accordance with WAC 392-141-170(3) and multiplied by two to yield the round trip totals in each distance interval;

(2) All midday students defined in WAC 392-141-115 and basic shuttle students transported shall be measured by radius mile intervals between the bus route stop and the destination school in accordance with WAC 392-141-170(3)(~~;~~). Basic shuttle transportation whose schedule is less than five days a week shall have the weighted units multiplied by the appropriate percent shown in the table below:

<u>No. of days</u> <u>per week</u>	<u>Percent</u> <u>factor</u>
<u>1</u>	<u>20%</u>
<u>2</u>	<u>40%</u>
<u>3</u>	<u>60%</u>
<u>4</u>	<u>100%</u>

(3) The total students in subsections (1) and (2) of this section in each distance interval, multiplied by the applicable distance weighting factor contained in WAC 392-141-170(3) shall equal the weighted student units in each distance interval. Midday transportation students whose schedule is one day per week shall have the weighted student units multiplied by twenty percent;

(4) The district's minimum load factor, if applicable, is calculated pursuant to WAC 392-141-170(5). This factor is multiplied by the total weighted student units generated by basic and tripper students. This total is the additional weighted units attributable to the district's small average bus load;

(5) The sum of the cumulative weighted student units calculated in subsections (3) and (4) of this section, if applicable, equals the total basic transportation weighted units;

(6) The basic allocation is the total basic transportation weighted units calculated in subsection (5) of this section multiplied by the standard student mile allocation rate;

(7) All special students defined in RCW 28A.155.020 transported on special transportation bus routes to school or agencies for related services shall be measured by radius mile intervals between their bus route stops and destinations sites in accordance with WAC 392-141-170(3) and multiplied by two to yield the round trip total in each distance interval;

(8) All special shuttle students transported between schools or agencies less frequently than five days a week shall be measured by radius mile intervals between the bus route stop and destination sites in accordance with WAC 392-141-170(3);

(9) The total students in subsections (7) and (8) of this section in each distance interval multiplied by the applicable distance weighting factor contained in WAC 392-141-170(3) shall equal the weighted student units in each distance interval. Special shuttle transportation whose schedule is less than five days a week shall have the weighted units multiplied by the appropriate percent shown in the table below:

<u>No. of days</u> <u>per week</u>	<u>Percent</u> <u>factor</u>
1	20%
2	40%
3	60%
4	100%

(10) The district's special transportation load factor, if applicable, is calculated pursuant to WAC 392-141-170. The factor is multiplied by the total weighted student units generated by special students (not special shuttle students);

(11) The weighted student units calculated in subsections (9) and (10) of this section, if applicable, equals the total special transportation weighted units;

(12) The special allocation is the total special transportation weighted units calculated in subsection (11) of this section, multiplied by the standard student mile allocation rate;

(13) The one radius mile allocation for basic trippers and midday kindergarten students shall be calculated by the number of kindergarten through fifth grade students enrolled during the five consecutive day count week and living one radius mile or less from their enrollment school less kindergarten through fifth grade special education students living and transported within one mile, multiplied by the allocation rate, and further multiplied by a factor established by the Biennial Appropriations Act;

(14) The district car allocation is computed for each vehicle and then totaled to equal the district car allocation. The computation is based on one hundred eighty days and fifty mile increments multiplied by the appropriate district car operation and depreciation rates published by the superintendent of public instruction. All vehicles traveling over two hundred fifty miles receive only the depreciation rate for miles in excess of two hundred fifty for the one hundred eighty day period;

(15) The district's annual allocation for transportation operation is the total of the calculations made in subsections (6), (12), (13) and (14) of this section;

(16) The allocation for kindergarten through fifth grade students living one radius mile or less from their school of enrollment may be used for transporting students, funding crossing guards or local and the state matching funds for capital projects. Projects managed by the federal government are ineligible;

(17) When a district submits a revised report pursuant to WAC 392-141-165, to the extent funds are available, the district's operation allocation shall be recalculated. Any increase in operations allocations shall be prorated for the remainder of the annual school term or until termination of activities before the end of the scheduled school term. The date that the district documents first meeting the ten percent increase in eligible students transported shall be used to prorate any increase in annual transportation operation allocations.

WSR 07-03-074
PERMANENT RULES
ENVIRONMENTAL HEARINGS OFFICE

(Pollution Control Hearings Board)

(Shorelines Hearings Board)

[Filed January 17, 2007, 1:48 p.m., effective February 17, 2007]

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

Purpose: The purpose in making the changes to chapter 371-08 WAC, Pollution control hearings board rules and chapter 461-08 WAC, Shorelines hearings board rules, is to make the procedural rules for the two boards more consistent, except where differences are driven by the underlying statutes. Increased consistency would make the hearings process easier for persons appearing before the boards, and for the staff and board members that serve both boards. Additional reasons for the changes are to update areas where common practice has diverged from the rules, and to improve the "plain talk" readability of the rules.

Citation of Existing Rules Affected by this Order: Amending WAC 371-08-305, 371-08-310, 371-08-325, 371-08-335, 371-08-405, 371-08-450, 371-08-460, 371-08-470, 371-08-475, 371-08-535, 371-08-550, 371-08-560, 461-08-305, 461-08-310, 461-08-325, 461-08-330, 461-08-340, 461-08-355, 461-08-425, 461-08-470, 461-08-475, 461-08-480, 461-08-490, 461-08-495, 461-08-555, 461-08-565, and 461-08-575.

Statutory Authority for Adoption: RCW 43.21B.170, 90.58.174, chapters 43.21B, 34.05, and 90.58 RCW.

Adopted under notice filed as WSR 06-23-139 on November 21, 2006, published December 6, 2006.

Changes Other than Editing from Proposed to Adopted Version: The only change made from the proposed rule to the final rule was made in WAC 461-08-495(7), and was made in response to a comment. The last sentence of WAC 461-08-495(7) has been changed to add "or representative" following the word "employee." This is a minor change and avoids the unintended consequence of the proposed rule amendment which would have made the rule inapplicable to employees of the attorney general's office.

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 27, 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 16, 2007.

William H. Lynch, Director
Chair of the Pollution
Control Hearings Board
and the Shorelines
Hearings Board

AMENDATORY SECTION (Amending WSR 05-15-017, filed 7/7/05, effective 8/7/05)

WAC 371-08-305 Definitions. ~~((As used in this chapter))~~ The following terms ((shall)) apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

(1) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in RCW 34.05.010. The term "adjudicative proceeding" is used interchangeably with the terms "case" and "appeal" in this chapter.

(2) "Agency" means any state governmental entity, air pollution control authority, local health department or other agency whose decisions are subject to the board's jurisdiction.

(3) "Board" means the pollution control hearings board, a quasi-judicial board created pursuant to chapter 43.21B RCW and described in WAC 371-08-315. Where appropriate, the term "board" also refers to the designated agents of the pollution control hearings board.

(4) "Business days" means Monday through Friday exclusive of any state or federal holidays.

(5) "Department" refers to and means the department of ecology.

(6) "Filing" of a document means actual receipt by the board during regular office hours. Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency and parties. Filing by facsimile is permitted of documents ten pages or less if the original document is concurrently mailed or submitted to a commercial delivery service. Electronic filing of documents, other than the appeal document itself, may be authorized by the presiding officer after consultation with the parties regarding format and authentication.

(7) "Party" means:

(a) A person to whom any agency decision is specifically directed; or

(b) A person named as a party to the adjudicative proceeding, allowed to intervene or joined as a party by the board.

(8) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency or entity of any character.

(9) "Presiding officer" means a member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson or vice-chairperson.

(10) "Service" of a document means delivery of the document to the other parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) Facsimile transmission with mailing or submission to commercial delivery service of copies on the same day. Service by facsimile is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to delivery service of the copies.

(d) Commercial parcel delivery service. Service by commercial parcel delivery service is regarded as complete upon delivery to the parcel delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents, other than the appeal document itself, is authorized if the parties agree to electronic service or if authorized by the presiding officer.

AMENDATORY SECTION (Amending WSR 97-19-064, filed 9/15/97, effective 10/16/97)

WAC 371-08-310 Computation of time. (1) The time within which any act shall be done, as provided by these rules, (~~shall be~~) is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays (~~shall be~~) are excluded in the computation.

(2) This section also pertains to the period for filing an appeal with the board, petition for rule making, petition for declaratory ruling or any other adjudication authorized by this chapter.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-325 Public information about practice before the board and public records. (1) Questions about practicing before the board may be directed to the environmental hearings office by mail or, during regular office hours, by telephone or by telefacsimile.

(2) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-12 WAC are available for public inspection and copying during regular office hours at the environmental hearings office. The form for requests

for public records is set forth in WAC 198-12-140. Any person seeking to make copies of such public records may copy the documents at the environmental hearings office for a reasonable charge per page.

(3) The environmental hearings office maintains a web site with information on the pollution control hearings board, including information about the board members, the board hearings calendar, past decisions of the board, a handbook with helpful information for practice before the board, sample forms, and links to the board's rules of practice and other pertinent statutes and rules. This web site may be accessed via the internet at <http://www.eho.wa.gov>.

AMENDATORY SECTION (Amending WSR 05-15-017, filed 7/7/05, effective 8/7/05)

WAC 371-08-335 Filing a timely appeal with the board. (1) An appeal before the board (~~shall be begun~~) is initiated by filing a notice of appeal with the board at the environmental hearings office and by serving a copy of the appeal notice on the agency whose decision is being appealed. For the board to acquire jurisdiction both such filing and such service must be timely accomplished.

(2) The notice of appeal shall be filed with the board within thirty days of the date of receipt of the order or decision. The board's rule governing the computation of time (WAC 371-08-310) shall determine how the thirty-day appeal period is calculated. The "date of receipt" of an order or decision means:

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

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the agency, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

(3) An appeal may be filed with the board by personal delivery, commercial delivery, facsimile, or first-class, registered or certified mail. An appeal is filed with the board on the date the board actually receives the notice of the appeal, not the date that the notice is mailed. Upon receiving the notice of appeal, the board will acknowledge receipt. The date stamped on the appeal notice shall be prima facie evidence of the filing date. The board may thereafter require that additional copies be filed.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-405 Jurisdictional requirements of the board—Dismissal on jurisdictional grounds. (1) Timely filing of the notice of appeal with the board and timely service of the notice of appeal on the appropriate agency (~~must both be accomplished~~) are required for the board to acquire jurisdiction.

(2) Any party may challenge the jurisdiction of the board to hear an appeal, and the board may independently raise the jurisdictional issue. The board shall, when satisfied that it does not have jurisdiction, dismiss an appeal.

AMENDATORY SECTION (Amending WSR 05-15-017, filed 7/7/05, effective 8/7/05)

WAC 371-08-450 Motions. (1) An application to the board for an order ~~((shall))~~ must be by motion which, unless made during a hearing, ~~((shall))~~ must be in writing, state with particularity the grounds therefor and set forth the relief sought. A moving party is not required to submit a proposed order ~~((shall be submitted))~~ with a motion ~~((only at the request of))~~ unless requested to do so by the presiding officer.

(2) For motions for continuance or for schedule changes, or other motions that are likely to be uncontested, the moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible.

(3) If the motion is contested, any party may request ~~((that the board hold a motion hearing)), or the board may independently set, an oral argument on the motion.~~ The presiding officer will decide whether or not ~~((a motion hearing))~~ oral argument will be held and notify the parties accordingly. At ~~((a motion hearing))~~ oral argument, the board will consider the arguments of the parties but will not take evidence. ~~((Unless a motion hearing is requested by one or more parties, or the board independently sets a motion hearing date, the board will normally decide the motion exclusively on the parties' written submissions.))~~

(4) Unless a scheduling letter or order provides otherwise, the following schedule governs all written motions (including any supporting affidavits, memoranda of law, or other documentation):

(a) All motions dispositive of all or part of an appeal must be filed and served not later than sixty days before the secondary hearing date, or, if no secondary date applies, the primary hearing date, unless the presiding officer by order allows otherwise.

~~((b))~~ (b) All responses to any dispositive motion ~~((dispositive of all or part of an appeal shall))~~ must be filed and served fourteen days from the receipt of the motion by the nonmoving party. The moving party ~~((shall))~~ then ~~((have))~~ has ten days from receipt of the response to file and serve a reply.

~~((c))~~ (c) All responses to any nondispositive motion ~~((shall))~~ must be filed and served five days from receipt of the motion by the nonmoving party. The moving party ~~((shall))~~ then ~~((have))~~ has three days from receipt of the response to file and serve a reply.

~~((e))~~ All dispositive motions shall be filed and served not later than sixty days before the secondary hearing date, or, if no secondary date applies, the primary hearing date, unless the presiding officer by order allows otherwise.))

(d) In exigent or exceptional circumstances, a party may at any time request the board to modify the above schedules by requesting a scheduling conference (which may be telephonic) with the presiding officer.

(5) ~~((The board will decide a motion on the written record unless the presiding officer orders a motion hearing.))~~ Unless oral argument is held, the board normally decides motions exclusively on the parties' written submissions.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-460 Postponements or continuances of hearings. (1) Postponement or continuance of a hearing is within the discretion of the ~~((board))~~ presiding officer, whether contested or uncontested by the parties. The board may postpone or continue a hearing on its own motion.

(2) A party may seek the postponement or continuance of a hearing ~~((shall be sought))~~ by written motion and according to the procedure set forth in WAC 371-08-450.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-470 Hearing briefs. Hearing briefs, if filed, ~~((shall))~~ must be submitted to the board at least seven days before the hearing or such other time as ~~((the board may prescribe))~~ directed by the presiding officer. ~~((An))~~ The original ~~((and three copies of the))~~ brief ~~((shall))~~ must be filed with the board and a copy served on the other parties or their attorneys. Additional copies must be submitted to the board as required by the presiding officer and consistent with the prehearing order. The board may permit or require the filing of additional briefs.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-475 Procedures at hearings. (1) **Presiding officer.** All hearings ~~((shall be))~~ are conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Testimony under oath.** ~~((Oaths shall be administered by the presiding officer or other officer with authority to administer oaths.))~~ All testimony to be considered by the board ~~((shall))~~ must be sworn or affirmed. The presiding officer, or other authorized officer, shall administer the oath to witnesses.

(3) **Recording.**

(a) An official record of all evidentiary hearings ~~((shall))~~ must be made by manual, electronic, or other type of recording device.

(b) Unofficial use of photographic and recording equipment is permitted at hearings; however, anyone seeking to use such equipment must consult first with the presiding officer ~~((shall be consulted first and))~~, who may impose conditions on their use as necessary to prevent disruption of the hearing.

(4) **Order of presentation of evidence.**

(a) The presiding officer shall determine the proper order of presentation of evidence. As a general rule, the appealing party shall initially introduce its evidence, except that in case of an appeal from a regulatory order or an order assessing a penalty, the issuing agency shall initially introduce all evidence necessary to its case.

(b) The opposing party shall present its evidence after the party initially presenting evidence has rested.

(c) Rebuttal and surrebuttal evidence will be received only at the discretion of the presiding officer.

(d) Witnesses may be called out of turn in contravention of this rule by agreement of all parties.

(5) **Opening statements.** Unless the presiding officer rules otherwise, parties may present an oral opening statement setting out briefly a statement of the basic facts, disputes and issues of the case.

(6) **Written statement of qualifications of expert witnesses.** Any party who plans to introduce the testimony of any expert witness at the hearing shall submit as an exhibit to the board and all parties at the hearing a written statement of the qualifications, experience, and expertise of each such expert witness.

(7) **Former employee as an expert witness.** Except when permitted by applicable state conflict of interest law, no former employee of the department ((shall at any time after leaving the employment of the department appear, except when permitted by applicable state conflict of interest law,)) may appear as an expert witness on behalf of other parties in a formal board proceeding in which he or she took an active part in the ((investigation)) matter giving rise to the appeal as ((a representative)) an employee of the department ((was taken)).

(8) **Objections and motions to strike.** Objections to the admission or exclusion of evidence ((shall)) must be in short form stating the legal grounds of objection relied upon.

(9) **Rulings.** The presiding officer, on objection or independently, shall exclude all irrelevant or unduly repetitious evidence and all rulings upon objections to the admissibility of evidence shall be made in accordance with WAC 371-08-480 through 371-08-515.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-535 Final decisions and orders. (1) When the hearing on the appeal has been concluded, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by a majority of the board may be adopted which shall contain findings and conclusions as to each contested issue of fact and law.

(2) The record before the board shall be considered by at least two of the members of the board: Provided, That if two members cannot agree on a decision, the third member must consider the record before the board: And provided further, That if two members cannot agree on a decision in any case, the substantive decision of the agency (or authority) will control ((in those cases where the appealing party has the burden of proof)).

(3) The board shall mail copies of the final decision and order ((shall be mailed by the board)) to each party to the appeal or to the attorney or representative of record, if any. Service upon the representative ((shall)) constitutes service upon the party.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-550 Petitions for reconsideration. (1)(a) After issuance of a final decision, any party may file a petition for reconsideration with the board. Such petition must be

filed and served on all parties within ten days of mailing of the final decision. The board may require an answer, or parties may elect to file an answer, to the petition for reconsideration. ((Copies of the petition for reconsideration, and an answer, if required, shall be served on the other parties of record.)) Any answer to a petition for reconsideration must be filed and served on all parties within five days of the receipt of the petition.

(b) The filing of a petition for reconsideration does not stay the effectiveness of the final decision of the board.

(c) In response to a petition for reconsideration, the board may deny it, or may reverse or modify its decision or may reopen the hearing. The board is deemed to have denied the petition if, within twenty days from the date the petition is filed, the board does not act on the petition or specify a date by which it will act on the petition.

(2) The time for filing a petition for judicial review does not commence until disposition of the petition for reconsideration. However, the filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

(3) The board shall mail copies of the final decision and order and of the board's disposition of any petition for reconsideration ((shall be mailed by the board)) to each party to the appeal or to the attorney or representative of record. Service on the representative ((shall be deemed to be)) constitutes service on the party.

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-560 Direct review to the court of appeals upon certification by the board. (1) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review with the superior court and must serve the board and all parties of record. The application for direct review shall request the board to file a certificate of appealability.

(2) If the board's jurisdiction is among the issues on review to the superior court, the board may, on its own motion, file an application for direct review with the superior court on the jurisdictional issue.

(3) From the date the board is served a copy of the application for direct review under subsection (1) of this section, the board shall have thirty days to grant or deny the request to file a certificate of appealability. The board shall file its decision granting or denying the certificate of appealability ((or its decision denying the certificate, together with the board's final order being appealed,)) with the superior court and serve the parties of record.

(4) The board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest, and either of the following:

(a) Fundamental and urgent statewide or regional issues are raised; or

(b) The proceeding is likely to have significant precedential value.

(5) The board shall state in the certificate of appealability, or in its decision denying the certificate, which criteria set

forth in subsection (4) of this section it applied and how those criteria were or were not met.

(6) Where the board issues a certificate of appealability, the parties (~~shall~~) have fifteen days from the date the certificate is served to file a notice of discretionary review in the superior court. The notice (~~shall~~) must include a copy of both the certificate of appealability and the final order or decision of the board being appealed.

(7) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(8) If the certificate of appealability is denied, review of the board's decision shall be by the superior court. The superior court's decision may be appealed to the court of appeals.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-305 Definitions. (~~As used in this chapter~~) The following terms (~~shall~~) apply throughout this chapter and, unless the context clearly requires otherwise, have the following meanings:

(1) "Agency" means any state governmental entity.

(2) "Adjudicative proceeding" means a proceeding involving an opportunity for hearing before the board as defined in chapter 34.05 RCW. The terms "appeal," "adjudicative proceeding" and "case" are used interchangeably in this chapter.

(3) "Board" means the shorelines hearings board, a quasi-judicial body created pursuant to chapter 90.58 RCW and described in WAC 461-08-315.

(4) "Date of filing" as used in this chapter and RCW 90.58.140(6) has different meanings depending upon the type of local government decision that is being appealed.

(a) "Date of filing" of a local government's approval or denial of a substantial development permit, or local government's denial of a variance or conditional use permit, is the date that the department actually receives a completed filing.

(b) "Date of filing" of a local government's approval of a conditional use permit or variance is the date that the department transmits its final decision or order to local government.

(c) For substantial development permits filed simultaneously with approvals of conditional use permits or variances, the "date of filing" is the date that the department transmits its final decision or order on the variance or conditional use permit to local government.

(5) "Department" refers to and means the department of ecology.

(6) "Filing" of a document means actual receipt by the board during regular office hours. Any document filed with the board shall contain an affirmation that copies were served on the appropriate agency, local government and parties. Filing by facsimile is permitted of documents ten pages or less if the original document is concurrently mailed or submitted to a commercial delivery service. Electronic filing of documents, other than the appeal document itself, may be authorized by the presiding officer after consultation with the parties regarding format and authentication.

(7) "Local government" means any county, incorporated city or town which contains within its boundaries any lands or water subject to chapter 90.58 RCW.

(8) "Party" means:

(a) A person to whom any local government or agency decision is specifically directed; or

(b) A person named as a party to the appeal, or allowed to intervene or joined as a party by the board.

(9) "Person" means any individual, partnership, corporation, association, organization, governmental subdivision, agency or entity of any character.

(10) "Petition for review" is a document that when properly filed with the board initiates an adjudicative proceeding before the board.

(11) "Presiding officer" means any member of the board or an administrative appeals judge who is assigned to conduct a conference or hearing by the chairperson or the vice-chairperson.

(12) "Service" of a document means delivery of the document to the other parties to the appeal. Service may be made in any of the following ways:

(a) Personally, in accordance with the laws of the state, with a return of service or affidavit of service completed.

(b) First-class, registered or certified mail. Service is complete upon deposit in the United States mail properly stamped and addressed.

(c) Facsimile transmission with mailing or submission to a commercial delivery service of copies on the same day. Service by facsimile is regarded as complete by production of the confirmation of transmission and evidence of mailing or submission to a delivery service of the copies.

(d) Commercial delivery service. Service by commercial delivery service is regarded as complete upon delivery to the delivery company with charges prepaid.

(e) Electronic service. Electronic service of documents, other than the appeal document itself, is authorized if the parties agree to electronic service or if authorized by the presiding officer.

AMENDATORY SECTION (Amending WSR 97-19-063, filed 9/15/97, effective 10/16/97)

WAC 461-08-310 Computation of time. (1) (~~In computing any period of time prescribed or allowed by these rules or applicable statute, the day of the act after which the designated period of time begins to run is not to be included.~~) The time within which any act shall be done, as provided by these rules, (~~shall be~~) is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays (~~shall be~~) are excluded in the computation.

(2) This section also pertains to the period for filing with the board any petition for review, petition for rule making, petition for declaratory ruling or any other adjudication (~~which this chapter authorizes~~) authorized by this chapter.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-325 Public information about practice before the board and public records. (1) Questions about board procedures may be directed to the environmental hearings office by mail or, during regular office hours, by telephone or by telefacsimile.

(2) Case files of appeals pending before the board, past written opinions of the board and other public records maintained by the board under chapter 198-12 WAC are available for public inspection and copying during regular office hours at the environmental hearings office. The form for requests for public records is set forth in WAC 198-12-140. Any person seeking to make copies of such public records may copy the documents at the environmental hearings office for a reasonable charge per page.

(3) The environmental hearings office maintains a web site with information on the shorelines hearings board, including information about the board members, the board hearings calendar, past decisions of the board, a handbook with helpful information for practice before the board, sample forms, and links to the board's rules of practice and other pertinent statutes and rules. This web site may be accessed via the internet at <http://www.eho.wa.gov>.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-330 Board decision making on appeals.

The number of board members required to make a decision on a case differs depending on the type of case.

(1) **Short-board appeals.** Pursuant to RCW ~~((90.58-170))~~ 90.58.185, petitions for review that involve a single-family residence or an appurtenance to a single-family residence, including a dock or pier for a single-family residence, and petitions for review involving a penalty of fifteen thousand dollars or less, may be heard by a panel of three board members~~(s)~~. A short-board appeal panel must have at least one ~~((and))~~ but not more than two ~~((of whom shall also be))~~ members of the pollution control hearings board. Two members of the panel must agree to issue a final decision. The decision of the panel ~~((shall be))~~ is the final decision of the full board.

(2) **Full-board appeals.** All other appeals are full-board appeals. Four members of the board ~~((shall))~~ constitute a quorum for making a decision and may act even if the other two members are unavailable or have not yet been appointed.

(3) **Administrative appeals judges.** For both full-board and short-board cases, the chairperson may appoint an administrative appeals judge from the environmental hearings office to be the presiding officer.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-340 Where to file a petition for review and number of copies. (1) An adjudicative proceeding before the board ~~((shall be begun))~~ is initiated by filing a petition for review ~~((and one copy))~~ with the board at the environmental hearings office. The board shall acknowledge fil-

ing of the petition for review by a stamp and the board's stamp on the petition ~~((shall be))~~ is prima facie evidence of the date of filing. The board may thereafter require that additional copies be filed.

(2) **Deadlines for filing a petition for review.** ~~((There are))~~ Different deadlines for filing a petition for review apply depending upon the type of decision or government action being appealed.

(a) A petition for review by any person aggrieved by the granting, denying or rescinding of a permit on shorelines of the state ~~((shall))~~ must be filed with the board within twenty-one days of the "date of filing" as defined in WAC 461-08-305.

(b) A petition for review by any person aggrieved by a penalty assessment ~~((shall))~~ must be filed with the board within thirty days of the date the penalty notice is received.

(c) A petition for review by any person aggrieved by the department's decision to approve, reject or modify a proposed or final shoreline master program, or program amendment, by a local government that is not planning under the Growth Management Act, RCW 36.70A.300, ~~((shall))~~ must be filed with the board within thirty days of the date of the department's written notice of its decision to the local government.

(d) A petition for review by any person aggrieved by any rules, regulations or guidelines adopted or approved by the department pursuant to chapter 90.58 RCW ~~((, shall))~~ must be filed with the board within thirty days of the date of adoption or approval.

AMENDATORY SECTION (Amending WSR 02-06-009, filed 2/22/02, effective 3/25/02)

WAC 461-08-355 Service of petitions for review with department and attorney general—Intervention by the department and attorney general. (1) For a petition pertaining to a local government's final decision on a permit, the petitioner shall serve a copy of the petition with the department, the attorney general and that local government within seven days of filing the petition with the board.

(2) Within fifteen days of the date of receipt of the petition for review described in subsection (1) of this section, the department or the attorney general may intervene in the case before the board to protect the public interest and to insure compliance with chapter 90.58 RCW. Nothing in WAC 461-08-345, setting a twenty-one day limit on when the department or the attorney general can directly file a petition for review, limits the right of the department or attorney general to intervene under this section in a board proceeding.

(3) Service on the local government shall be accomplished in one of the following ways:

(a) The petitioner shall serve local government as designated on the permit decision within seven days of filing the petition with the board; or

(b) The petitioner shall serve the department or office within the local government that issued the permit decision within seven days of filing the petition with the board; or

(c) The petitioner shall serve local government pursuant to RCW 4.28.080 within seven days of filing the petition with the board.

(4) When the petitioner is not the permit applicant, the petitioner shall serve the permit applicant with a copy of the petition for review.

(5) For purposes of this rule, the date of service (~~shall be~~) is the date of mailing.

~~((6) The board may dismiss a petition for review where there has not been substantial compliance with the filing and service requirements of RCW 90.58.180 and this rule. Substantial compliance will include actual notice of a petition for review.))~~

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-425 Dismissal of petitions for review on jurisdictional grounds. (1) Timely filing of the petition for review with the board, and other petitions within the board's jurisdiction under chapter 90.58 RCW, ~~((is))~~ and timely service on the appropriate agencies are required for the board to acquire jurisdiction.

(2) Any party may challenge the jurisdiction of the board to hear a petition for review or other petition under chapter 90.58 RCW on jurisdictional grounds, and the board may independently raise the jurisdictional issue. The board may, when satisfied that it does not have jurisdiction, dismiss the petition for review.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-470 Use of telephone conferences, motion hearings and hearings. Upon the motion of any party or independently, the presiding officer may decide to conduct any conference, ~~((motion hearing))~~ oral argument on a motion, or hearing by telephone conference call to promote the fair, speedy and economical processing of a matter. ~~((If the presiding officer grants the party's request for a telephone conference, the requesting party shall initiate and pay for the conference call.))~~

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-475 Motions. (1) An application to the board for an order ~~((shall))~~ must be by motion which, unless made during a hearing, ~~((shall))~~ must be in writing, state with particularity the grounds therefor and set forth the relief sought. ~~((Each written motion shall have appended to it the order which the motion seeks.))~~ A moving party is not required to submit a proposed order with a motion unless requested to do so by the presiding officer.

(2) For motions for continuance or for schedule changes, or other motions that are likely to be uncontested, the moving party shall affirmatively seek the stipulation of all parties and present a stipulated order wherever possible.

(3) If the motion is contested, any party may request ~~((that the board hold a motion hearing))~~, or the board may independently set, an oral argument on the motion. The presiding officer will decide whether or not an oral argument will be held and notify the parties accordingly. At ~~((a motion hearing))~~ oral argument, the board will consider the argu-

ments of the parties but will not take evidence. ~~((Unless a motion hearing is requested by one or more parties, or the board independently sets a motion hearing date, the board will normally decide the motion exclusively on the parties' written submissions. Where any party requests a motion hearing, that party shall procure from the hearing coordinator an available date for the motion hearing and prepare a note that sets the time, date and location of the motion hearing. The moving party shall note the motion for hearing on a date deemed by the hearing coordinator to be available for that purpose. The motion, order and note for motion hearing shall then be filed and served. Where the hearing coordinator specifies that the hearing shall be telephonic, the moving party shall originate the telephonic hearing conference call. The presiding officer will decide whether or not a motion hearing will be held, and notify the parties accordingly.))~~

(4) Unless a scheduling letter or order provides otherwise, the following schedule governs all written motions (including any supporting affidavits, memoranda of law, or other documentation):

(a) All motions dispositive of all or part of an appeal must be filed and served not later than sixty days before the hearing date, unless the presiding officer by order allows otherwise.

(b) All responses to any dispositive motion ~~((shall))~~ must be filed and served ~~((ten))~~ fourteen days from the ~~((date the motion is received))~~ receipt of the motion by the nonmoving party. The moving party ~~((shall))~~ then ~~((have seven))~~ has ten days from receipt of the response to file and serve a reply.

~~((b) In cases where the moving party requests a motion hearing, all dispositive motions shall be filed and served not later than twenty-eight days before the motion hearing.~~

~~((c) All responses to any nondispositive motion must be filed and served five days from receipt of the motion by the nonmoving party. The moving party then has three days from receipt of the response to file and serve a reply.~~

(d) In exigent or exceptional circumstances, a party may at any time request the board to modify the above schedules by requesting a scheduling conference (which may be telephonic) with the presiding officer.

(5) ~~((The board will decide a motion on the written record unless the presiding officer orders a motion hearing.))~~ Unless oral argument is held, the board normally decides motions exclusively on the parties' written submissions.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-480 Postponements and continuances of hearings. (1) Postponement or continuance of a hearing is within the discretion of the presiding officer, whether contested or uncontested by the parties. The board may postpone or continue a hearing on its own motion.

(2) A party may seek the postponement or continuance of a hearing ~~((shall be sought))~~ by written motion and according to the procedure set forth in WAC 461-08-475.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-490 Hearing briefs. Hearing briefs, if filed, ~~((should))~~ must be submitted to the board at least seven days before the time of hearing or other such time as ~~((the board may prescribe. For a full board case, an original and six copies must be filed. In a short board case, an original and three copies must be filed. In all cases where briefs are filed, a copy shall also be served on the other parties or their attorneys))~~ directed by the presiding officer. The original brief must be filed with the board and a copy served on the other parties or their attorneys. Additional copies must be submitted to the board as required by the presiding officer and consistent with the prehearing order. The board may permit or require the filing of additional briefs.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-495 Procedures at hearings. (1) **Presiding officer.** All hearings ~~((shall be))~~ are conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections and motions.

(2) **Testimony under oath.** ~~((Oaths shall be administered by the presiding officer or other officer with authority to administer oaths.))~~ All testimony to be considered by the board ~~((shall))~~ must be sworn or affirmed. The presiding officer, or other authorized officer, shall administer the oath to witnesses.

(3) **Recording.**

(a) An official recording of all evidentiary hearings ~~((shall))~~ must be made by manual, electronic, or other type of recording device.

(b) Unofficial use of photographic and recording equipment is permitted at hearings; however, anyone seeking to use such equipment must consult first with the presiding officer ~~((shall be consulted first and))~~, who may impose conditions on their use as necessary to prevent disruption of the hearing.

(4) **Order of presentation of evidence.**

(a) The presiding officer shall determine the proper order of presentation of evidence. As a general rule, the appealing party shall initially introduce its evidence except that in the case of an appeal from a regulatory order or an order assessing a penalty, the issuing agency shall initially introduce all evidence necessary to its case.

(b) The opposing party shall introduce its evidence after the ~~((appellant))~~ party initially presenting evidence has rested. Rebuttal and surrebuttal evidence will be received only at the discretion of the presiding officer.

(c) Witnesses may be called out of turn in contravention of this rule by agreement of all parties.

(5) **Opening statements.** Unless the presiding officer rules otherwise, parties shall present an oral opening statement setting out briefly a statement of the basic facts, disputes and issues of the case.

(6) **Written statement of qualifications of expert witnesses.** Any party who plans to introduce the testimony of any expert witness at the hearing shall submit as an exhibit to

the board and all parties at the hearing a written statement of the qualifications, experience, and expertise of each such expert witness.

(7) **Former employee as an expert witness.** Except when permitted by applicable state conflict of interest law, no former employee of the department or the board or the attorney general ~~((shall at any time after leaving the employment with the department appear, except when permitted by applicable state conflict of interest law,))~~ may appear as an expert witness on behalf of other parties in a formal board proceeding in which he or she took an active part in the ~~((investigation))~~ matter giving rise to the appeal as ~~((a))~~ an employee or representative of the department or board ~~((was taken)).~~

(8) **Objections and motions to strike.** Objections to the admission or exclusion of evidence ~~((shall))~~ must be in short form, stating the legal grounds of objection relied upon ~~((, and the transcript shall not include extended argument or debate)).~~

(9) **Rulings.** The presiding officer, on objection or independently, shall exclude all irrelevant or unduly repetitious evidence and all rulings upon objections to the admissibility of evidence shall be made in accordance with WAC 461-08-515 through 461-08-535.

AMENDATORY SECTION (Amending WSR 99-23-038, filed 11/12/99, effective 12/13/99)

WAC 461-08-555 Final decisions and orders. (1) **Full-board cases.** When the hearing on the petition for review has been heard by a majority of the board in a full-board case, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by them then may be adopted which shall contain findings and conclusions as to each contested issue of fact and law: Provided, That in the event that the full board considers the record and that four of the members cannot agree on a decision, the substantive decision under appeal will control. The board will formally adopt its final decision and order ~~((: Provided further, That this subsection does not apply to a request for review filed under RCW 90.58.210)).~~

(2) **Short-board cases.** When the hearing on the petition for review has been heard by two or more board members in a short-board case, and upon completion of the record and submission of the issues for decision and order, a written final decision and order concurred in by them then may be adopted which shall contain findings and conclusions as to each contested issue of fact and law: Provided, That in the event that the three board members consider the record and two members cannot agree on a decision, the substantive decision under appeal will control. The board will formally adopt its final decision and order.

(3) The board shall mail copies of the final decision and order ~~((shall be mailed by the board))~~ to each party to the petition for review or to the attorney or representative of record, if any. Service upon the representative ~~((shall))~~ constitutes service upon the party.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-565 Petitions for reconsideration. (1)(a) After issuance of a final decision, any party may file a petition for reconsideration with the board. Such petition must be filed and served on all parties within ten days of mailing of the final decision. The board may require an answer, or parties may elect to file an answer, to the petition for reconsideration. ~~((Copies of the petition for reconsideration, and an answer, if required, shall be served on the other parties of record.))~~ Any answer to a petition for reconsideration must be filed and served on all parties within five days of the date of receipt of the petition.

(b) The filing of a petition for reconsideration does not stay the effectiveness of the final decision of the board.

(c) In response to a petition for reconsideration, the board may deny it, or may reverse or modify its decision or may reopen the hearing. The board is deemed to have denied the petition if, within twenty days from the date the petition is filed, the board does not act on the petition or specify a date by which it will act on the petition.

(2) The time for filing a petition for judicial review does not commence until disposition of the petition for reconsideration. However, the filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

(3) The board shall mail copies of the final decision and order and of the board's disposition of any petition for reconsideration ~~((shall be mailed by the board))~~ to each party to the appeal or to the attorney or representative of record. Service on the representative ~~((shall))~~ constitutes service on the party.

AMENDATORY SECTION (Amending WSR 96-15-002, filed 7/3/96, effective 8/3/96)

WAC 461-08-575 Direct review to the court of appeals based upon an accepted certificate of appealability by the board. (1) Within thirty days after filing the petition for review with the superior court, a party may file an application for direct review with the superior court and must serve the board and all parties of record. The application for direct review shall request the board to file a certificate of appealability.

(2) If the board's jurisdiction is among the issues on review to the superior court, the board may, on its own motion, file an application for direct review with the superior court on the jurisdictional issue.

(3) From the date the board is served a copy of the application for direct review under subsection (1) of this section, the board shall have thirty days to grant or deny the request for a certificate of appealability. The board shall file its decision granting or denying the certificate of appealability with the superior court and serve the parties of record.

(4) The board may issue a certificate of appealability if it finds that delay in obtaining a final and prompt determination of the issues would be detrimental to any party or the public interest, and either of the following:

(a) Fundamental and urgent statewide or regional issues are raised; or

(b) The proceeding is likely to have significant precedential value.

(5) The board shall state in the certificate of appealability, or in its decision denying the certificate, which criteria set forth in subsection (4) of this section it applied and how those criteria were or were not met.

(6) Where the board issues a certificate of appealability, the parties ~~((shall))~~ have fifteen days from the date ~~((of service))~~ the certificate is served to file a notice of discretionary review in the superior court. The notice ~~((shall))~~ must include a copy of both the certificate of appealability and the final order or decision of the board being appealed.

(7) If the appellate court accepts review, the certificate of appealability shall be transmitted to the court of appeals as part of the certified record.

(8) If the certificate of appealability is denied, review shall be by the superior court. The superior court's decision may be appealed to the court of appeals.

WSR 07-03-077

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed January 17, 2007, 3:47 p.m., effective February 17, 2007]

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

Purpose: Adds language to clarify when hospitals need to submit revenue codes and procedure codes to cost centers crosswalk data to the department for calculation of rates and cost settlement, and clarifies the due date for receipt of the hospital's final settled Medicare cost report (form 2552-96) by the department for cost settlement.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-2598.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Adopted under notice filed as WSR 06-24-067 on December 4, 2006.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-550-2598(1), the department reimburses ~~department-approved~~ department of health (DOH)-approved critical access hospitals (CAHs) for inpatient and outpatient hospital services provided to fee-for-service medical assistance clients on a cost basis, using departmental weighted costs-to-charges (DWCC) ratios and a retrospective cost settlement process.

A final cost-benefit analysis is available by contacting Larry Linn, P.O. Box 45510, Health and Recovery Services Administration, Olympia, WA 98504-5510, phone (360) 725-1856, fax (360) 743-9152, e-mail linld@dshs.wa.gov. (The department voluntarily prepared an analysis of the costs and benefits of the proposed rule.)

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

Number of Sections Adopted at 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 1, Repealed 0.

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

Date Adopted: January 12, 2007.

Jim Schnellman, Chief
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 06-04-089, filed 1/31/06, effective 3/3/06)

WAC 388-550-2598 Critical access hospitals (CAHs).

(1) The department reimburses ~~((eligible))~~ department of health (DOH)-approved critical access hospitals (CAHs) for inpatient and outpatient hospital services provided to fee-for-service medical assistance clients on a cost basis, using departmental weighted costs-to-charges (DWCC) ratios and a retrospective cost settlement process. The department pays CAH fee-for-service hospital claims subject to retrospective cost settlement, adjustments such as a third-party payment amount, and any client responsibility amount.

(2) For inpatient and outpatient hospital services provided to clients enrolled in a managed care plan, DWCC rates for each CAH are incorporated into the calculations for the managed care capitated premiums. The department considers managed care Healthy Options DWCC payment rates to be cost. Cost settlements are not performed by the department for managed care claims.

(3) The following definitions and abbreviations and those found in WAC 388-500-0005 and 388-550-1050 apply to this section:

(a) "CAH," see "critical access hospital."

(b) ("~~CAH HFY~~" see "~~CAH hospital fiscal year~~."

(c) "~~CAH hospital fiscal year~~" means ~~each individual hospital's fiscal year.~~

(~~d~~) "Cost settlement" means a reconciliation of the fee-for-service interim CAH payments with a CAH's actual costs determined in conjunction with use of the CAH's final settled Medicare cost report (Form 2552-96) after the end of the CAH's HFY.

(~~e~~) (c) "Critical access hospital (CAH)" means a hospital that is approved by the department of health (DOH) for inclusion in DOH's critical access hospital program.

(~~f~~) (d) "Departmental weighted costs-to-charges (DWCC) rate" means a rate the department uses to determine a CAH payment. See subsection (8) for how the department calculates a DWCC rate.

(~~g~~) (e) "DWCC rate" see "departmental weighted costs-to-charges (DWCC) rate."

(f) "HFY" see "hospital fiscal year."

(g) "Hospital fiscal year" means each individual hospital's fiscal year.

(h) "Interim CAH payment" means the actual payment the department makes for claims submitted by a CAH for services provided during its current hospital fiscal year, using

the appropriate DWCC rate, as determined by the department.

(i) "Revenue codes and procedure codes to cost centers crosswalk" means a document that indicates the revenue and procedure codes that are grouped to each hospital's Medicare Cost Report in reported cost centers.

(4) To be reimbursed as a CAH by the department, a hospital must be approved by the department of health (DOH) for inclusion in DOH's critical access hospital program. The hospital must provide proof of CAH status to the department upon request. CAHs reimbursed under the CAH program must meet the general applicable requirements in chapter 388-502 WAC. For information on audits and the audit appeal process, see WAC 388-502-0240.

(5) A CAH must have and follow written procedures that provide a resolution to complaints and grievances.

(6) To ensure quality of care:

(a) A CAH is responsible to investigate any reports of substandard care or violations of the facility's medical staff bylaws; and

(b) A complaint or grievance regarding substandard conditions or care may be investigated by any one or more of the following:

(i) Department of health (DOH); or

(ii) Other agencies with review authority for department programs.

(7) The department may conduct a postpay or on-site review of any CAH.

(8) The department prospectively calculates fee-for-service and managed care inpatient and outpatient DWCC rates separately for each CAH. To calculate prospective interim inpatient and outpatient DWCC rates for each hospital currently in the CAH program, the department:

(a) Obtains from each CAH its estimated aggregate charge master change for its next HFY;

(b) Obtains from each CAH the costs-to-charges ratio of each respective cost center the "as filed" version of the Medicare ((HCFA-2552)) cost report the CAH initially submits for cost settlement of its most recently completed HFY((:

(i) ~~The costs-to-charges ratio of each respective service cost center; and~~

(ii) ~~Total costs, charges, and number of patient days of each respective accommodation cost center.);~~

(c) Obtains from each CAH the revenue codes and procedure codes to cost centers crosswalk related to the Medicare cost report used for cost settlement. Each CAH must indicate any differences between the revenue codes and procedure codes to cost centers crosswalk and the standard groupings of revenue codes and procedure codes to cost centers crosswalk statistics the department provides to the hospital from the department's CAH DWCC rate calculation model. (Example: A CAH reports to the department that for its DWCC rate calculation, the Anesthesia Cost Center, Revenue Code 370, should be grouped to the Surgery Cost Center, Revenue Code 360.)

(d) Obtains from the Medicaid management information system (MMIS) the following fee-for-service summary claims data submitted by each CAH for services provided during the same HFY identified in (b) of this subsection:

(i) Medical assistance program codes;

- (ii) Inpatient and outpatient claim types;
- (iii) Procedure codes, revenue codes, or diagnosis-related group (DRG) codes;
- (iv) Allowed charges and third party liability/client and department paid amounts; and
- (v) Units of service.

~~((f))~~ (e) Obtains from the managed care encounter data the following data submitted by each CAH for services provided during the same HFY identified in (b) of this section:

- (i) Medical assistance program codes;
- (ii) Inpatient and outpatient claim types;
- (iii) Procedure codes, revenue codes, or diagnosis-related group (DRG) codes; and
- (iv) Allowed charges.

~~((g))~~ (f) Separates the inpatient claims data and outpatient claims data;

~~((h))~~ (g) Obtains the cost center allowed charges by classifying inpatient and outpatient allowed charges from ~~((e) and)~~ (d) and (e) of this subsection billed by a CAH (using any one of, or a combination of, procedure codes, revenue codes, or DRG codes) into the related cost center in the CAH's "as filed" Medicare ~~((HCFA-2552))~~ cost report the CAH initially submits to the department~~((:))~~. The department:

(i) Uses the claims classifications and cost center combinations as defined in the department's CAH DWCC rate calculation model;

(ii) Assigns a CAH that does not have a cost center ratio that CAH's cost center average;

(iii) Allows changes only if a revenue codes and procedure codes to cost centers crosswalk has been submitted and a cost center average is being used; and

(iv) Does not allow an unbundling of cost centers.

~~((i))~~ (h) Determines the departmental-weighted costs for each cost center by multiplying the cost center's allowed charges from ~~((e))~~ (d) and (e) of this subsection for the appropriate inpatient or outpatient claim type by the related service cost center ratio;

~~((j))~~ (i) Sums all allowed charges from ~~((e))~~ (d) and (e) of this subsection;

~~((k))~~ (j) Sums all departmental-weighted costs for inpatient and outpatient claims from ~~((g))~~ (h) of this subsection;

~~((l))~~ (k) Multiplies each hospital's total departmental-weighted costs from ~~((h))~~ (j) of this subsection by the Medicare market basket inflation rate. The Medicare market basket inflation rate is published and updated periodically by the centers for Medicare and Medicaid services (CMS);

~~((m))~~ (l) Multiplies each hospital's total allowed charges from ~~((h))~~ (j) of this subsection by the CAH estimated charge master change from (a) of this subsection. If the charge master change factor is not available from the hospital, the department will apply a reasonable alternative factor; and

~~((n))~~ (m) Determines the DWCC inpatient and outpatient rates by dividing the ~~((total appropriate departmental-weighted costs from (9)(i) of this subsection by the total appropriate allowed charges from (h))~~ calculation result from (k) of this section by the calculation result from (l) of this subsection.

(9) For a currently enrolled hospital provider that is new to the CAH program, the basis for calculating initial prospective DWCC rates for inpatient and outpatient hospital claims for:

(a) Fee-for-service clients is:

(i) The hospital's most ~~((recently submitted))~~ recent "as filed" Medicare cost report, and

(ii) The appropriate MMIS summary claims data for that ~~((hospital fiscal year (HFY)))~~ HFY.

(b) Managed care clients is:

(i) The hospital's most ~~((recently submitted))~~ recent "as filed" Medicare cost report; and

(ii) The appropriate managed care encounter data for that HFY.

(10) For a newly licensed hospital that is also a CAH, the department uses the current statewide average DWCC rates for the initial prospective DWCC rates.

(11) For a CAH that comes under new ownership, the department uses the prior owner's DWCC rates.

(12) In addition to the prospective managed care inpatient and outpatient DWCC rates, the department:

(a) Incorporates the DWCC rates into the calculations for the managed care capitated premiums that will be paid to the managed care plans; and

(b) Requires all managed care plans having contract relationships with CAHs to pay the inpatient and outpatient DWCC rates applicable to managed care claims. For purposes of this section, the department considers the DWCC rates used to reimburse CAHs for care given to clients enrolled in a managed care plan to be cost. Cost settlements are not performed for managed care claims.

(13) For fee-for-service claims only, the department uses the same methodology as outlined in subsection (8) to perform ~~((s))~~ an interim retrospective cost settlement for each CAH after the end of the CAH's HFY, using "as filed" Medicare cost report data, the revenue codes and procedure codes to cost centers crosswalk provided by the CAH, and claims data from the ~~((MMIS related to))~~ fee-for-service claims. Specifically, the department:

(a) Compares actual department total interim CAH payments to the departmental-weighted CAH fee-for-service costs for the period being cost settled; and

(b) Pays the hospital the difference between CAH costs and interim CAH payments if actual CAH costs are determined to exceed the total interim CAH payments for that period. The department recoups from the hospital the difference between CAH costs and interim CAH payments if actual CAH costs are determined to be less than total interim CAH payments.

(14) The department performs finalized cost settlements using the same methodology as outlined in subsection (13) of this section, except that the department uses the hospital's final settled Medicare cost report instead of the initial "as filed" Medicare cost report. ~~((Whenever a CAH's Medicare cost report is settled by the Medicare fiscal intermediary.))~~ The CAH must ~~((send the settled))~~ submit its final settled Medicare cost report to the department ~~((to be used in))~~ by the sixtieth day of receiving its Medicare cost report that has been settled by the Medicare fiscal intermediary. The depart-

ment will use the final settled Medicare cost report for a final cost settlement.

**WSR 07-03-081
PERMANENT RULES
GAMBLING COMMISSION**

[Order 466—Filed January 18, 2007, 11:11 a.m., effective June 30, 2007]

Effective Date of Rule: June 30, 2007.

Purpose: The change increases licensing fees by approximately 3%. Fees have not been increased since June 30, 2003.

Citation of Existing Rules Affected by this Order: Amending WAC 230-04-202, 230-04-203, and 230-04-204.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-22-047 on October 27, 2006.

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 3, 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 3, Repealed 0.

Date Adopted: January 12, 2007.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 417, filed 12/6/02, effective 6/30/03)

WAC 230-04-202 Fees—Bona fide charitable/non-profit organizations. Bona fide charitable and nonprofit organizations shall submit the following fees to the commission when applying for gambling licenses, permits, miscellaneous changes, inspection services, or when assessed the cost of special investigation procedures by the commission:

<u>LICENSE TYPE</u>	<u>DEFINITION</u>	<u>FEF</u>
1. AMUSEMENT GAMES	(Fee based on annual gross gambling receipts)	
* Class A	Premises only	\$ ((54)) <u>55</u>
Class B	Up to \$10,000	\$ ((54)) <u>55</u>
Class C	Up to \$25,000	\$ ((294)) <u>303</u>
Class D	Up to \$50,000	\$ ((472)) <u>487</u>

<u>LICENSE TYPE</u>	<u>DEFINITION</u>	<u>FEF</u>
Class E	Over \$50,000	\$ ((822)) <u>848</u>

* Allows a charitable or nonprofit organization to enter into a contract with Class "B" or above commercial amusement game licensee to locate and operate amusement games on their premises.

2. BINGO GROUP

	(Fee based on annual gross gambling receipts)	VARIANCE *	
Class A	Up to \$ 25,000	\$ 1,000	\$ ((54)) <u>55</u>
Class B	Up to \$ 75,000	\$ 1,000	\$ ((174)) <u>176</u>
Class C	Up to \$ 150,000	\$ 2,000	\$ ((350)) <u>361</u>
Class D	Up to \$ 350,000	\$ 4,000	\$ ((944)) <u>974</u>
Class E	Up to \$ 650,000	\$ 8,000	\$ ((1,590)) <u>1,642</u>
Class F	Up to \$ 1,500,000	\$ 15,000	\$ ((3,196)) <u>3,304</u>
Class G	Up to \$ 2,000,000	\$ 23,000	\$ ((4,612)) <u>4,766</u>
Class H	Up to \$ 3,000,000	\$ 30,000	\$ ((6,162)) <u>6,370</u>
Class I	Up to \$ 4,000,000	\$ 38,000	\$ ((7,700)) <u>7,960</u>
Class J	Up to \$ 5,000,000	\$ 45,000	\$ ((9,238)) <u>9,550</u>
Class K	Up to \$ 6,000,000	\$ 53,000	\$ ((10,364)) <u>10,714</u>
Class L	Up to \$ 7,000,000	\$ 60,000	\$ ((11,846)) <u>12,246</u>
Class M	Up to \$ 8,000,000	\$ 65,000	\$ ((13,330)) <u>13,780</u>
Class N	Up to \$ 9,000,000	\$ 70,000	\$ ((14,500)) <u>14,990</u>
Class O	Up to \$ 10,000,000	\$ 75,000	\$ ((16,000)) <u>16,540</u>
Class P	Up to \$ 11,000,000	\$ 80,000	\$ ((17,500)) <u>18,090</u>
Class Q	Up to \$ 12,000,000	\$ 85,000	\$ ((21,000)) <u>21,708</u>
Class R	Up to \$ 13,000,000	\$ 90,000	\$ ((24,000)) <u>24,810</u>
Class S	Up to \$ 14,000,000	\$ 95,000	\$ ((27,000)) <u>27,912</u>

* A licensee will be allowed a one-time variance for each license class without having to upgrade or pay the penalties set forth in WAC 230-04-260: Provided, That a licensee utilizing the variance shall be required to upgrade to the higher license class upon renewal.

3. CARD GAMES

Class A	General (Fee to play charged)	\$ ((589)) <u>608</u>
Class B	Limited card games - hearts, rummy, pitch, pinochle, and cribbage (Fee to play charged)	\$ ((174)) <u>176</u>
Class C	Tournament only - no more than ten consecutive days per tournament	\$ ((54)) <u>55</u>
Class D	General (No fee to play charged)	\$ ((54)) <u>55</u>

4. FUND-RAISING EVENT

Class A	One event - not more than 24 consecutive hours	\$ ((350))	<u>361</u>
	First time applicant		
	*Previously licensed applicant	\$ ((206))	<u>212</u>
Class B	One event - not more than 72 consecutive hours	\$ ((589))	<u>608</u>
	First time applicant		
	*Previously licensed applicant	\$ ((361))	<u>373</u>
Class C	Additional participant in joint event (not lead organization)	\$ ((171))	<u>176</u>
Class D	Limited fund-raising event (one event - not more than six consecutive hours)		
	First time applicant	\$ ((154))	<u>159</u>
	**Previously licensed applicant	\$ ((103))	<u>106</u>
Class E	Fund-Raising Event Equipment Distributor - rents or leases, equipment for fund-raising event or recreational gaming activity for no more than ten times per year***	\$ ((233))	<u>240</u>
Class F	Fund-Raising Event Equipment Distributor - rents or leases equipment for fund-raising event or recreational gaming activity more than ten times per year.	\$ ((589))	<u>608</u>
*	Provides for a reduced fee when charitable and nonprofit organizations apply for an additional Class A or Class B fund-raising event.		
**	Provides for a fee reduction when charitable and nonprofit organizations apply for an additional Class D limited fund-raising event.		
***	Charitable and nonprofit organizations licensed to conduct fund-raising events may rent their equipment up to four occasions during the term of the license without getting licensed as a distributor.		

5. PUNCH BOARDS/PULL-TABS

	(Fee based on annual gross gambling receipts)		VARIANCE*
Class A	Up to \$ 50,000	\$ 5,000	\$ ((561)) <u>579</u>
Class B	Up to \$ 100,000	\$ 5,000	\$ ((1,002)) <u>1,034</u>
Class C	Up to \$ 200,000	\$ 10,000	\$ ((1,892)) <u>1,954</u>
Class D	Up to \$ 300,000	\$ 10,000	\$ ((2,750)) <u>2,842</u>
Class E	Up to \$ 400,000	\$ 10,000	\$ ((3,552)) <u>3,672</u>
Class F	Up to \$ 500,000	\$ 10,000	\$ ((4,288)) <u>4,432</u>
Class G	Up to \$ 600,000	\$ 10,000	\$ ((4,970)) <u>5,136</u>

5. PUNCH BOARDS/PULL-TABS

	(Fee based on annual gross gambling receipts)		VARIANCE*
Class H	Up to \$ 700,000	\$ 10,000	\$ ((5,594)) <u>5,782</u>
Class I	Up to \$ 800,000	\$ 10,000	\$ ((6,162)) <u>6,370</u>
Class J	Up to \$ 1,000,000	\$ 20,000	\$ ((6,986)) <u>7,222</u>
Class K	Up to \$ 1,250,000	\$ 25,000	\$ ((7,756)) <u>8,018</u>
Class L	Up to \$ 1,500,000	\$ 25,000	\$ ((8,470)) <u>8,756</u>
Class M	Up to \$ 1,750,000	\$ 25,000	\$ ((9,058)) <u>9,364</u>
Class N	Up to \$ 2,000,000	\$ 25,000	\$ ((9,594)) <u>9,918</u>
Class O	Up to \$ 2,500,000	\$ 30,000	\$ ((10,542)) <u>10,898</u>
Class P	Up to \$ 3,000,000	\$ 35,000	\$ ((11,200)) <u>11,578</u>
Class Q	Up to \$ 4,000,000	\$ 40,000	\$ ((13,200)) <u>13,646</u>
Class R	Up to \$ 5,000,000	\$ 50,000	\$ ((15,000)) <u>15,506</u>
Class S	Up to \$ 6,000,000	\$ 60,000	\$ ((17,000)) <u>17,574</u>
Class T	Up to \$ 7,000,000	\$ 70,000	\$ ((19,000)) <u>19,642</u>
Class U	Up to \$ 8,000,000	\$ 80,000	\$ ((21,000)) <u>21,708</u>
Class V	Over \$ 8,000,000	\$ 80,000	\$ ((23,000)) <u>23,776</u>

* A licensee will be allowed a one-time variance for each license class without having to upgrade or pay the penalties set forth in WAC 230-04-260: Provided, That a licensee utilizing the variance shall be required to upgrade to the higher license class upon renewal.

6. RAFFLES (Fee based on annual gross gambling receipts)

Class A	Up to \$ 5,000	\$ ((54)) <u>55</u>
Class B	Up to \$ 10,000	\$ ((171)) <u>176</u>
Class C	Up to \$ 25,000	\$ ((350)) <u>361</u>
Class D	Up to \$ 50,000	\$ ((589)) <u>608</u>
Class E	Up to \$ 75,000	\$ ((944)) <u>974</u>
Class F	Over \$ 75,000	\$ ((1,414)) <u>1,460</u>

7. COMBINATION LICENSE

CLASS A	Allows gross gambling receipts of up to \$ 25,000 from bingo, \$ 7,500 from raffles, and \$ 7,500 from amusement games, not to exceed \$ 30,000 combined gross gambling receipts from all such activities. Allows general card games where no fee to play is charged.	\$ ((106)) <u>109</u>
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7. COMBINATION LICENSE

CLASS B	Allows gross gambling receipts of up to \$ 60,000 from bingo, \$ 15,000 from raffles, and \$ 15,000 from amusement games, not to exceed \$ 75,000 combined gross gambling receipts from all such activities. Allows general card games where no fee to play is charged.	\$ ((276)) <u>285</u>
CLASS C	Allows gross gambling receipts of up to \$ 125,000 from bingo, \$ 30,000 from raffles, and \$ 30,000 from amusement games, not to exceed \$ 150,000 combined gross gambling receipts from all such activities. Allows general card games where no fee to play is charged.	\$ ((639)) <u>660</u>

8. SEPARATE PREMISES

BINGO	Per occasion (see WAC 230-04-300)	\$ 26
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9. PERMITS

AGRICULTURAL FAIR-BINGO	(See WAC 230-04-191)	\$ 26
RECREATIONAL GAMING ACTIVITY (RGA)	(See WAC 230-25-330 and 230-02-505)	\$ ((54)) <u>55</u>

10. CHANGES

NAME	(See WAC 230-04-310)	\$ 26
LOCATION	(See WAC 230-04-320) (Date or time)	\$ 26
FRE	(See WAC 230-04-325)	\$ 26
LICENSE CLASS	(See WAC 230-04-260)	\$ 26
DUPLICATE LICENSE	(See WAC 230-04-290)	\$ 26

11. SPECIAL FEES

INVESTIGATION	(See WAC 230-04-240)	As required
REPLACEMENT IDENTIFICATION STAMPS	(See WAC 230-08-017)	\$ 26
EXCEEDING LICENSE CLASS	(See WAC 230-04-260)	As required
REVIEW, INSPECTION AND/OR EVALUATION OF EQUIPMENT, PARAPHERNALIA, SERVICES, OR SCHEMES	(See WAC 230-12-315)	As required

12. SIX-MONTH PAYMENT PLAN

PLAN	(See WAC 230-04-190)	\$ 26
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AMENDATORY SECTION (Amending Order 417, filed 12/6/02, effective 6/30/03)

WAC 230-04-203 Fees—Commercial stimulant and other business organizations. All persons seeking to operate gambling activities shall submit the following fees to the commission when applying for gambling licenses, permits, miscellaneous changes, inspection services, or when assessed

the cost of special investigation procedures by the commission:

<u>LICENSE TYPE</u>	<u>DEFINITION</u>	
1. CARD GAMES		
Class B	Up to five tables of limited card games - hearts, rummy, pitch, pinochle, and/or cribbage (Fee to play charged)	\$ ((175)) <u>180</u>
Class C	Tournament only, no more than ten consecutive days per tournament.	
C-5	Up to five tables	\$ ((175)) <u>180</u>
C-10	Up to ten tables	\$ ((318)) <u>328</u>
C-15	Up to fifteen tables	\$ ((529)) <u>546</u>
Class D	General - Up to five tables (No fee to play charged)	\$ ((55)) <u>56</u>
Class E	*General (Fee to play charged)	
E-1	One table only	\$ ((422)) <u>436</u>
E-2	Up to two tables	\$ ((727)) <u>751</u>
E-3	Up to three tables	\$ ((1,210)) <u>1,250</u>
E-4	Up to four tables	\$ ((2,426)) <u>2,506</u>
E-5	Up to five tables	\$ ((3,650)) <u>3,772</u>
	Additional tables up to a maximum of fifteen may be authorized for an additional per table fee of \$ ((1,060)) <u>1,092</u> .	
	*In addition to the above initial license fee, the commission will assess all applicants/licensees the actual costs that exceed the license fee for conducting the initial investigation and inspection, any follow-up reviews or investigations involved in the approval of activities and schemes.	
Class F	Enhanced card room activities endorsement - Includes alternative fee collections (per hand; pot rake) and use of player-supported jackpot schemes.	Annual license fee \$ ((1,590)) <u>1,642</u>
2. CARD GAMES - HOUSE-BANKED		
	All tables within a card room operating any house-banked card game shall be licensed under this license class.	
	*Annual license fee	\$ ((6,368)) <u>6,582</u>
	Per table fee (up to fifteen tables)	\$ ((1,590)) <u>1,642</u>
	*In addition to the above initial license fee, the commission will assess all applicants the actual costs that exceed the license fee for conducting the initial license investigation and premises inspection. Any post licensing follow-up reviews, inspections, internal control evaluations or subsequent phases of operation shall also be charged actual costs. Licensees will be evaluated and charged for these additional authorizations/phases on an individual case by case basis.	
3. COMMERCIAL AMUSEMENT GAMES		
	(Fee based on annual gross gambling receipts)	
* Class A	Premises only	** \$ ((301/\$ 137)) <u>310/\$ 143</u>
Class B	Up to \$ 50,000	\$ ((422)) <u>436</u>
Class C	Up to \$ 100,000	\$ ((1,086)) <u>1,122</u>
Class D	Up to \$ 250,000	\$ ((2,426)) <u>2,506</u>
Class E	Up to \$ 500,000	\$ ((4,256)) <u>4,398</u>

LICENSE TYPE	DEFINITION		
Class F	Up to \$ 1,000,000		\$ ((7,306)) 7,552
Class G	Over \$ 1,000,000		\$ ((9,140)) 9,448
<p>* Allows a business that is qualified under WAC 230-04-138 (1)(f), (g), (h), (i), or (j) to enter into a contract with a class "B" or above commercial amusement game licensee to locate and operate amusement games upon their premises.</p> <p>** Provides for a fee reduction of \$ 164 when: Renewing an annual license; applying for an additional license(s) at the same premises; and/or applying for multiple licenses at the same premises.</p>			
4. PUNCH BOARDS/ (Fee based on annual gross			
PULL-TABS	gambling receipts)		VARIANCE*
Class A	Up to \$ 50,000	\$5,000	\$ ((577)) 596
Class B	Up to \$ 100,000	\$5,000	\$ ((1,030)) 1,064
Class C	Up to \$ 200,000	\$10,000	\$ ((1,942)) 2,006
Class D	Up to \$ 300,000	\$10,000	\$ ((2,826)) 2,920
Class E	Up to \$ 400,000	\$10,000	\$ ((3,650)) 3,772
Class F	Up to \$ 500,000	\$10,000	\$ ((4,408)) 4,556
Class G	Up to \$ 600,000	\$10,000	\$ ((5,108)) 5,280
Class H	Up to \$ 700,000	\$10,000	\$ ((5,748)) 5,942
Class I	Up to \$ 800,000	\$10,000	\$ ((6,332)) 6,546
Class J	Up to \$ 1,000,000	\$20,000	\$ ((7,180)) 7,422
Class K	Up to \$ 1,250,000	\$25,000	\$ ((7,970)) 8,238
Class L	Up to \$ 1,500,000	\$25,000	\$ ((8,704)) 8,998
Class M	Up to \$ 1,750,000	\$25,000	\$ ((9,340)) 9,624
Class N	Up to \$ 2,000,000	\$25,000	\$ ((9,862)) 10,194
Class O	Up to \$ 2,500,000	\$30,000	\$ ((10,836)) 11,202
Class P	Up to \$ 3,000,000	\$35,000	\$ ((11,200)) 11,578
Class Q	Up to \$ 4,000,000	\$40,000	\$ ((13,200)) 13,646
Class R	Up to \$ 5,000,000	\$50,000	\$ ((15,000)) 15,506
Class S	Up to \$ 6,000,000	\$60,000	\$ ((17,000)) 17,574
Class T	Up to \$ 7,000,000	\$70,000	\$ ((19,000)) 19,642
Class U	Up to \$ 8,000,000	\$80,000	\$ ((21,000)) 21,708
Class V	Over \$ 8,000,000	\$80,000	\$ ((23,000)) 23,776

LICENSE TYPE	DEFINITION		
<p>* A licensee will be allowed a one-time variance for each license class without having to upgrade or pay the penalties set forth in WAC 230-04-260: Provided, That a licensee utilizing the variance shall be required to upgrade to the higher license class upon renewal.</p>			
5. PUNCH BOARD AND PULL-TAB SERVICE BUSINESS			
	(See WAC 230-04-133)		\$ ((217))
	*Initial application fee		224
	Additional associate		\$ ((136)) 140
	Renewal		\$ ((53)) 54
*Includes up to two associates.			
6. DISTRIBUTOR (Fee based on annual gross sales of			
	gambling related supplies and equipment)		
(a)	Class A Nonpunch board/pull-tab only		\$ ((605)) 625
	Class B Up to \$ 250,000		\$ ((1,210)) 1,250
	Class C Up to \$ 500,000		\$ ((1,818)) 1,878
	Class D Up to \$ 1,000,000		\$ ((2,426)) 2,506
	Class E Up to \$ 2,500,000		\$ ((3,160)) 3,266
	Class F Over \$ 2,500,000		\$ ((3,890)) 4,020
<p>In addition to the annual fee, the commission will assess all applicants the actual costs incurred in conducting the investigation and inspection necessary for initial certification.</p>			
(b)	FUND-RAISING EVENT EQUIPMENT DISTRIBUTOR		
	Class A Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.		\$ ((239)) 247
	Class B Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.		\$ ((605)) 625
7. GAMBLING SERVICE SUPPLIER			
	(See WAC 230-04-119)		\$ ((630)) 651
<p>In addition to the annual fee, the commission will assess all applicants the actual costs incurred in conducting the investigation and inspection necessary for initial certification.</p> <p>A fee of \$ 136 shall be charged for each new contract initiated by the gambling service supplier.</p>			
8. LINKED BINGO PRIZE PROVIDER			
	(See WAC 230-04-126)		\$ ((4,048)) 4,184
9. MANUFACTURER (Fee based on annual gross			
	sales of gambling related supplies and equipment)		
Class A	Pull-tab dispensing devices only		\$ ((605)) 625
Class B	Up to \$ 250,000		\$ ((1,210)) 1,250
Class C	Up to \$ 500,000		\$ ((1,818)) 1,878
Class D	Up to \$ 1,000,000		\$ ((2,426)) 2,506

LICENSE TYPE	DEFINITION	
Class E	Up to \$ 2,500,000	\$ ((3,160)) <u>3,266</u>
Class F	Over \$ 2,500,000	\$ ((3,890)) <u>4,020</u>

In addition to the annual fee, the commission will assess all applicants the actual costs incurred in conducting the investigation and inspection necessary for initial certification, quality control inspection for additional activities or product lines, compliance suitability evaluations, and renewal of licenses when travel cost is incurred to complete the investigation.

10. PERMITS

AGRICULTURAL FAIR/
SPECIAL PROPERTY
BINGO

Class A	One location and event only (See WAC 230-04-191)	\$ 26
Class B	Annual permit for specified different events and locations (See WAC 230-04-193)	\$ ((175)) <u>180</u>

RECREATIONAL

GAMING ACTIVITY (RGA)	(See WAC 230-02-505 and 230-25-330)	\$ ((55)) <u>56</u>
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MANUFACTURER'S SPECIAL

SALES PERMIT	(See WAC 230-04-115)	*\$ 211
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*The two hundred eleven dollar fee is nonrefundable, whether the sales permit is approved or not. In addition, an applicant may be assessed additional fees incurred to process and determine suitability.

11. CHANGES

NAME	(See WAC 230-04-310)	\$ 26
LOCATION	(See WAC 230-04-320)	\$ 26
BUSINESS	(Same owners)	\$ ((55)) <u>56</u>
CLASSIFICATION	(See WAC 230-04-340)	
LICENSE CLASS	(See WAC 230-04-260) New class fee, less previous fee paid, plus	\$ 26
DUPLICATE LICENSE	(See WAC 230-04-290)	\$ 26
CORPORATE STOCK/LIMITED LIABILITY COMPANY SHARES/UNITS	(See WAC 230-04-360)	\$ ((55)) <u>56</u>
LICENSE TRANSFERS	(See WAC 230-04-125 and 230-04-340)	\$ ((55)) <u>56</u>

12. SPECIAL FEES

INVESTIGATION	(See WAC 230-04-240)	As required
IDENTIFICATION AND INSPECTION SERVICES STAMPS	(See WAC 230-08-017)	As required
QUALITY CONTROL INSPECTION FEES	(See WAC 230-30-030)	As required
REPLACEMENT OF IDENTIFICATION STAMPS	(See WAC 230-30-017)	\$ 26
EXCEEDING LICENSE CLASS	(See WAC 230-04-260)	As required
REVIEW, INSPECTION AND/OR EVALUATION OF EQUIPMENT, PARAPHERNALIA, SERVICES, OR SCHEMES	(See WAC 230-12-315)	As required
SPECIAL SALES PERMITS	(See WAC 230-04-115)	As required

LICENSE TYPE	DEFINITION	
ELECTRONIC CARD		
FACSIMILE TABLE		
IDENTIFICATION	(See WAC 230-08-017)	*\$ 361.51
STAMP	*Annually, for each separate table	

13. SIX-MONTH PAYMENT PLAN	(See WAC 230-04-190)	\$ 26
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AMENDATORY SECTION (Amending Order 456, filed 6/19/06, effective 7/20/06)

WAC 230-04-204 Fees—Individuals. Individuals shall submit the following fees to the commission when applying for gambling licenses, permits, miscellaneous changes, or when assessed the cost of special investigation procedures by the commission:

LICENSE TYPE	DEFINITION	SEE
1. CHARITABLE OR NON-PROFIT GAMBLING MANAGER	Original	\$ ((171)) <u>176</u>
	Renewal	\$ ((82)) <u>84</u>
	Change of Employer	\$ ((82)) <u>84</u>
2. LINKED BINGO PRIZE PROVIDER REPRESENTATIVE	Original	\$ ((239)) <u>247</u>
	Renewal	\$ ((146)) <u>150</u>
3. COMMERCIAL GAMBLING MANAGER	Original	\$ ((175)) <u>180</u>
	Renewal	\$ ((84)) <u>86</u>
	Change of Employer	\$ ((84)) <u>86</u>
4. DISTRIBUTOR'S OR GAMBLING SERVICES SUPPLIER REPRESENTATIVE	Original	\$ ((239)) <u>247</u>
	Renewal	\$ ((146)) <u>150</u>
5. MANUFACTURER'S REPRESENTATIVE	Original	\$ ((239)) <u>247</u>
	Renewal	\$ ((146)) <u>150</u>
6. PUBLIC CARD ROOM EMPLOYEE		
CLASS A - Performs duties as defined in WAC 230-02-415 in a class E card room.	Original	\$ ((175)) <u>180</u>
	Renewal	\$ ((84)) <u>86</u>
CLASS B - Performs duties as defined in WAC 230-02-415 in enhanced and house-banked card rooms.		
	Original, in-state	\$ ((237)) <u>245</u>
	Original, out-of-state	\$ ((295)) <u>304</u>
	Renewal	\$ ((146)) <u>150</u>

LICENSE TYPE	DEFINITION	FEE
	Transfer/Additional Employee/Conversion/ Emergency Waiver Request	\$ ((57)) <u>58</u>
7. OTHER FEES		
CHANGE OF NAME	(See WAC 230-04-310)	\$ 26
DUPLICATE LICENSE	(See WAC 230-04-290)	\$ 26
OUT-OF-STATE RECORDS INQUIRY	(See WAC 230-04-240)	As required
8.	If a license expires while an individual is on active military service, the individual may apply to have their license reissued at the renewal fee. The application must be received within six months after completing their active military service. The applicant shall provide evidence of the completion date of active military service.	

WSR 07-03-082

PERMANENT RULES

GAMBLING COMMISSION

[Order 606—Filed January 18, 2007, 11:12 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The gambling commission is rewriting its rules manual using plain English techniques (rules simplification project). We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. Rules relating to licensing fees were rewritten and adopted last year. After these rules were adopted, license fees were increased approximately 3%, effective June 30, 2007. These amendments update licensing rules rewritten under the rules simplification project, which will not become effective until January 1, 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 230-05-020, 230-05-025, 230-05-030, and 230-05-035.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-22-047 on October 27, 2006.

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: January 12, 2007.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

WAC 230-05-020 Charitable or nonprofit organization fees. Bona fide charitable and nonprofit organizations must pay the following fees to us when applying for gambling licenses, permits, miscellaneous changes, or inspection services:

1. Amusement games

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	\$((54)) <u>55</u>
Class B	Up to \$10,000	\$((54)) <u>55</u>
Class C	Up to \$25,000	\$((294)) <u>303</u>
Class D	Up to \$50,000	\$((472)) <u>487</u>
Class E	Over \$50,000	\$((822)) <u>848</u>

2. Bingo

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$25,000	\$((54)) <u>55</u>	\$1,000
Class B	Up to \$75,000	\$((171)) <u>176</u>	\$1,000
Class C	Up to \$150,000	\$((350)) <u>361</u>	\$2,000
Class D	Up to \$350,000	\$((944)) <u>974</u>	\$4,000
Class E	Up to \$650,000	\$((1,590)) <u>1,642</u>	\$8,000
Class F	Up to \$1,500,000	\$((3,196)) <u>3,304</u>	\$15,000
Class G	Up to \$2,000,000	\$((4,612)) <u>4,766</u>	\$23,000
Class H	Up to \$3,000,000	\$((6,162)) <u>6,370</u>	\$30,000
Class I	Up to \$4,000,000	\$((7,700)) <u>7,960</u>	\$38,000
Class J	Up to \$5,000,000	\$((9,238)) <u>9,550</u>	\$45,000
Class K	Up to \$6,000,000	\$((10,364)) <u>10,714</u>	\$53,000
Class L	Up to \$7,000,000	\$((11,846)) <u>12,246</u>	\$60,000
Class M	Up to \$8,000,000	\$((13,330)) <u>13,780</u>	\$65,000
Class N	Up to \$9,000,000	\$((14,500)) <u>14,990</u>	\$70,000
Class O	Up to \$10,000,000	\$((16,000)) <u>16,540</u>	\$75,000
Class P	Up to \$11,000,000	\$((17,500)) <u>18,090</u>	\$80,000
Class Q	Up to \$12,000,000	\$((21,000)) <u>21,708</u>	\$85,000
Class R	Up to \$13,000,000	\$((24,000)) <u>24,810</u>	\$90,000
Class S	Up to \$14,000,000	\$((27,000)) <u>27,912</u>	\$95,000

* See chapter 230-06 WAC, Exceeding license class.

3. Card games

License	Description	Fee
Class A	Nonhouse-banked - fee to play	\$((589)) <u>608</u>
Class B	Limited card games - hearts, rummy, pitch, pinochle, and cribbage - fee to play	\$((171)) <u>176</u>
Class C	Tournament only - no more than thirty consecutive days per tournament	\$((54)) <u>55</u>
Class D	Nonhouse-banked - no fee to play	\$((54)) <u>55</u>

4. Fund-raising event

License	Description	Fee
Class A	One event - not more than 24 consecutive hours	
	First time applicant	\$((350)) <u>361</u>
	Previously licensed applicant	\$((206)) <u>212</u>
Class B	One event - not more than 72 consecutive hours	
	First time applicant	\$((589)) <u>608</u>
	Previously licensed applicant	\$((361)) <u>373</u>
Class C	Additional participant in joint event - not lead organization	\$((171)) <u>176</u>
Class D	Limited fund-raising event - one event - not more than six consecutive hours	
	First time applicant	\$((154)) <u>159</u>
	Previously licensed applicant	\$((103)) <u>106</u>
Class E	Fund-raising event equipment distributor - rents or leases equipment no more than ten times per year	\$((233)) <u>240</u>
Class F	Fund-raising event equipment distributor - rents or leases equipment more than ten times per year	\$((589)) <u>608</u>

5. Punch boards/pull-tabs

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$((561)) <u>579</u>	\$5,000
Class B	Up to \$100,000	\$((1,002)) <u>1,034</u>	\$5,000
Class C	Up to \$200,000	\$((1,892)) <u>1,954</u>	\$10,000
Class D	Up to \$300,000	\$((2,750)) <u>2,842</u>	\$10,000
Class E	Up to \$400,000	\$((3,552)) <u>3,672</u>	\$10,000
Class F	Up to \$500,000	\$((4,288)) <u>4,432</u>	\$10,000
Class G	Up to \$600,000	\$((4,970)) <u>5,136</u>	\$10,000
Class H	Up to \$700,000	\$((5,594)) <u>5,782</u>	\$10,000
Class I	Up to \$800,000	\$((6,162)) <u>6,370</u>	\$10,000
Class J	Up to \$1,000,000	\$((6,986)) <u>7,222</u>	\$20,000

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class K	Up to \$1,250,000	\$((7,756)) <u>8,018</u>	\$25,000
Class L	Up to \$1,500,000	\$((8,470)) <u>8,756</u>	\$25,000
Class M	Up to \$1,750,000	\$((9,038)) <u>9,364</u>	\$25,000
Class N	Up to \$2,000,000	\$((9,594)) <u>9,918</u>	\$25,000
Class O	Up to \$2,500,000	\$((10,542)) <u>10,898</u>	\$30,000
Class P	Up to \$3,000,000	\$((11,200)) <u>11,578</u>	\$35,000
Class Q	Up to \$4,000,000	\$((13,200)) <u>13,646</u>	\$40,000
Class R	Up to \$5,000,000	\$((15,000)) <u>15,506</u>	\$50,000
Class S	Up to \$6,000,000	\$((17,000)) <u>17,574</u>	\$60,000
Class T	Up to \$7,000,000	\$((19,000)) <u>19,642</u>	\$70,000
Class U	Up to \$8,000,000	\$((21,000)) <u>21,708</u>	\$80,000
Class V	Over \$8,000,000	\$((23,000)) <u>23,776</u>	\$80,000

* See chapter 230-06 WAC, Exceeding license class.

6. Raffles

License	Annual Gross Gambling Receipts	Fee
Class A	Up to \$5,000	\$((54)) <u>55</u>
Class B	Up to \$10,000	\$((171)) <u>176</u>
Class C	Up to \$25,000	\$((350)) <u>361</u>
Class D	Up to \$50,000	\$((589)) <u>608</u>
Class E	Up to \$75,000	\$((944)) <u>974</u>
Class F	Over \$75,000	\$((1,414)) <u>1,460</u>

7. Combination license

License	Description	Fee
Class A	Allows gross gambling receipts of up to \$25,000 from bingo, \$7,500 from raffles, and \$7,500 from amusement games, not to exceed \$30,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$((106)) <u>109</u>
Class B	Allows gross gambling receipts of up to \$60,000 from bingo, \$15,000 from raffles, and \$15,000 from amusement games, not to exceed \$75,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$((276)) <u>285</u>

License	Description	Fee
Class C	Allows gross gambling receipts of up to \$125,000 from bingo, \$30,000 from raffles, and \$30,000 from amusement games, not to exceed \$150,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$((639)) <u>660</u>

8. Special property bingo

Once annually	\$26
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9. Permits

Recreational gaming activity	\$((54)) <u>55</u>
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10. Changes

Type	Fee
Name	\$26
Location	\$26
Fund-raising event date or time	\$26
License class	\$26
Duplicate license	\$26

11. Other fees

Type	Fee
Replacement identification stamps	\$26
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$26
Review, inspection and/or evaluation of equipment, paraphernalia, services, or schemes	Deposit and fees as required

12. Two part payment plan participation

Annual participation	\$26
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AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

WAC 230-05-025 Commercial stimulant fees. All commercial stimulant license applicants must pay the following fees to us when applying for gambling licenses:

1. Card games - Nonhouse-banked

License	Description	Fee
Class B	Up to five tables of limited card games - hearts, rummy, pitch, pinochle, and/or cribbage - fee to play	\$((175)) <u>180</u>
Class C	Tournament only, no more than thirty consecutive days per tournament	
C-5	Up to five tables	\$((175)) <u>180</u>
C-10	Up to ten tables	\$((318)) <u>328</u>
C-15	Up to fifteen tables	\$((529)) <u>546</u>
Class D	Up to five tables - no fee to play	\$((55)) <u>56</u>

License	Description	Fee
Class E	Fee to play	
E-1	One table only	\$((422)) <u>436</u>
E-2	Up to two tables	\$((727)) <u>751</u>
E-3	Up to three tables	\$((1,210)) <u>1,250</u>
E-4	Up to four tables	\$((2,426)) <u>2,506</u>
E-5	Up to five tables	\$((3,650)) <u>3,772</u>
Additional tables	Per table - up to a maximum of fifteen tables	\$((1,060)) <u>1,092</u>
Class F	Endorsement/upgrade of Class E includes permission to use alternative fee collections and use of player-supported jackpots	\$((1,590)) <u>1,642</u>

2. Card games - House-banked

All tables within a card room operating any house-banked card game must be licensed under this license class.

License	Fee
Annual	\$((6,368)) <u>6,582</u>
Additional fee per table - up to fifteen tables	\$((1,590)) <u>1,642</u>

3. Punch boards and pull-tabs

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$((577)) <u>596</u>	\$5,000
Class B	Up to \$100,000	\$((1,030)) <u>1,064</u>	\$5,000
Class C	Up to \$200,000	\$((1,942)) <u>2,006</u>	\$10,000
Class D	Up to \$300,000	\$((2,826)) <u>2,920</u>	\$10,000
Class E	Up to \$400,000	\$((3,650)) <u>3,772</u>	\$10,000
Class F	Up to \$500,000	\$((4,408)) <u>4,556</u>	\$10,000
Class G	Up to \$600,000	\$((5,108)) <u>5,280</u>	\$10,000
Class H	Up to \$700,000	\$((5,748)) <u>5,942</u>	\$10,000
Class I	Up to \$800,000	\$((6,332)) <u>6,546</u>	\$10,000
Class J	Up to \$1,000,000	\$((7,180)) <u>7,422</u>	\$20,000
Class K	Up to \$1,250,000	\$((7,970)) <u>8,238</u>	\$25,000
Class L	Up to \$1,500,000	\$((8,704)) <u>8,998</u>	\$25,000
Class M	Up to \$1,750,000	\$((9,310)) <u>9,624</u>	\$25,000
Class N	Up to \$2,000,000	\$((9,862)) <u>10,194</u>	\$25,000
Class O	Up to \$2,500,000	\$((10,836)) <u>11,202</u>	\$30,000

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class P	Up to \$3,000,000	\$((11,200)) <u>11,578</u>	\$35,000
Class Q	Up to \$4,000,000	\$((13,200)) <u>13,646</u>	\$40,000
Class R	Up to \$5,000,000	\$((15,000)) <u>15,506</u>	\$50,000
Class S	Up to \$6,000,000	\$((17,000)) <u>17,574</u>	\$60,000
Class T	Up to \$7,000,000	\$((19,000)) <u>19,642</u>	\$70,000
Class U	Up to \$8,000,000	\$((21,000)) <u>21,708</u>	\$80,000
Class V	Over \$8,000,000	\$((23,000)) <u>23,776</u>	\$80,000

*See chapter 230-06 WAC, Exceeding license class.

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

WAC 230-05-030 Fees for other businesses. All other business license applicants must pay the following fees to us when applying for gambling licenses, miscellaneous changes, or inspection services:

1. Commercial amusement games

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	*\$((301/\$137)) <u>310/\$143</u>
Class B	Up to \$50,000	\$((422)) <u>436</u>
Class C	Up to \$100,000	\$((1,086)) <u>1,122</u>
Class D	Up to \$250,000	\$((2,426)) <u>2,506</u>
Class E	Up to \$500,000	\$((4,256)) <u>4,398</u>
Class F	Up to \$1,000,000	\$((7,306)) <u>7,552</u>
Class G	Over \$1,000,000	\$((9,140)) <u>9,448</u>

* We reduce the license fee by \$164 when you apply for additional licenses at the same business premises, apply for multiple licenses at the same business premises, or a licensee is renewing an annual license.

2. Distributor

License	Annual Gross Sales	Fee
Class A	Nonpunch board/pull-tab only	\$((605)) <u>625</u>
Class B	Up to \$250,000	\$((1,210)) <u>1,250</u>
Class C	Up to \$500,000	\$((1,818)) <u>1,878</u>
Class D	Up to \$1,000,000	\$((2,426)) <u>2,506</u>
Class E	Up to \$2,500,000	\$((3,160)) <u>3,266</u>
Class F	Over \$2,500,000	\$((3,890)) <u>4,020</u>

3. Fund-raising event equipment distributor

License	Description	Fee
Class A	Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.	\$((239)) <u>247</u>

License	Description	Fee
Class B	Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.	\$((603)) <u>625</u>

4. Gambling service supplier

License	Fee
Annual	\$((630)) <u>651</u>
Financing, consulting, and management contract review	\$136

5. Linked bingo prize provider

License	Fee
Annual	\$((4,048)) <u>4,184</u>

6. Manufacturer

License	Annual Gross Sales	Fee
Class A	Pull-tab dispensing devices only	\$((605)) <u>625</u>
Class B	Up to \$250,000	\$((1,210)) <u>1,250</u>
Class C	Up to \$500,000	\$((1,818)) <u>1,878</u>
Class D	Up to \$1,000,000	\$((2,426)) <u>2,506</u>
Class E	Up to \$2,500,000	\$((3,160)) <u>3,266</u>
Class F	Over \$2,500,000	\$((3,890)) <u>4,020</u>

7. Permits

Type	Description	Fee
Agricultural fair	One location and event only	\$26
Agricultural fair annual permit	Annual permit for specified different events and locations	\$((175)) <u>180</u>
Recreational gaming activity		\$((55)) <u>56</u>
Manufacturer's special sales permit		\$211
Punch board and pull-tab service business permit	Initial application fee	\$217
Punch board and pull-tab service business permit	Renewal	\$53

8. Changes

Application	Description	Fee
Name		\$26
Location		\$26
Business classification	Same owners	\$((55)) <u>56</u>
Exceeding license class	New class fee, less previous fee paid, plus	\$26
Duplicate license		\$26
Corporate stock/limited liability company shares/units		\$((55)) <u>56</u>
License transfers		\$((55)) <u>56</u>

9. Other fees

Type	Fee
Defective punch board/pull-tab cost recovery fees	Up to \$100
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$26
Review of gambling equipment, supplies, services, or games	Cost reimbursement

10. Identification stamps

Type	Fee
(a) Punch boards and pull-tabs	
(i) Standard	Wagers fifty cents and below \$.27
	Wagers over fifty cents \$ 1.05
(ii) Progressive jackpot pull-tab series	Per series \$ 10.60
(iii) Pull-tab series with carry-over jackpots	Per series \$ 1.05
(b) Pull-tab dispensing devices	
(i) Mechanical and electro-mechanical	\$.27
(ii) Electronic	Dispensing devices that require initial and ongoing evaluation of electronic components or functions, such as reading encoded data on pull-tabs, accounting for income or prizes \$ 106.17 annually
Replacement of identification stamps	\$ 26
(c) Disposable bingo cards	
(i) Single game sets of individual cards or sheets of cards	\$.27
(ii) Multigame card packets	\$ 1.16
(iii) Cards used to play for linked bingo prizes	Fee per 250 cards \$.42
(iv) Cards used to play for linked bingo prizes	Fee per 5,000 cards \$ 8.49
(d) Coin or token-activated amusement games	
Annually - operated at any Class A amusement game license location	\$ 26.53
(e) Electronic bingo card daubers	
Annual	\$ 10.60
(f) Electronic card facsimile table	
Annual	\$ 361.51

11. Two-part payment plan participation

Annual participation	\$ 26
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AMENDATORY SECTION (Amending Order 600, filed 6/19/06, effective 1/1/08)

WAC 230-05-035 Individuals license fees. Individuals must pay the following fees to us when they apply for gambling licenses, permits, miscellaneous changes:

1. Charitable or nonprofit gambling manager

License	Fee
Original	\$((171)) <u>176</u>
Renewal	\$((82)) <u>84</u>
Change of employer	\$((82)) <u>84</u>

2. Linked bingo prize provider representative

License	Fee
Original	\$((239)) <u>247</u>
Renewal	\$((146)) <u>150</u>

3. Commercial gambling manager

License	Fee
Original	\$((175)) <u>180</u>
Renewal	\$((84)) <u>86</u>
Change of employer	\$((84)) <u>86</u>

4. Distributor's or gambling services supplier's representative

License	Fee
Original	\$((239)) <u>247</u>
Renewal	\$((146)) <u>150</u>

5. Manufacturer's representative

License	Fee
Original	\$((239)) <u>247</u>
Renewal	\$((146)) <u>150</u>

6. Public card room employee

License	Fee
Class A - Performs card room employee duties in a Class E card room	
Original	\$((175)) <u>180</u>
Renewal	\$((84)) <u>86</u>
Class B - Performs card room employee duties in enhanced and house-banked card rooms	
Original, in-state	\$((237)) <u>245</u>
Original, out-of-state	\$((295)) <u>304</u>
Renewal	\$((146)) <u>150</u>
Transfer/additional employee/conversion/emergency waiver request	\$((57)) <u>58</u>

7. Other fees

Change of name	\$ 26
Duplicate license	\$ 26

8. Military personnel returning from service

If a license expires while an individual is on active military service, the individual may apply to have their license reissued at the renewal fee. The application must be received within six months after completing their active military ser-

vice. The applicant must provide evidence of the completion date of active military service.

WSR 07-03-083
PERMANENT RULES
GAMBLING COMMISSION

[Order 468—Filed January 18, 2007, 11:13 a.m., effective February 18, 2007]

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

Purpose: Scheduling reconsideration hearings: The rule change authorizes the commission to automatically schedule petitions for reconsideration of final orders issued by the commission. It also clarifies the process for petitioners. If the petition for reconsideration is received less than fifteen business days before a regularly scheduled commission meeting, the petition will be heard at the meeting immediately following the regularly scheduled commission meeting.

Citation of Existing Rules Affected by this Order: Amending WAC 230-50-562.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-22-048 on October 27, 2006.

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 1, Repealed 0.

Date Adopted: January 12, 2007.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-09-072, filed 4/16/96, effective 7/1/96)

WAC 230-50-562 Final orders—When and how to file a petition for reconsideration of a final order. Any party to an adjudicative proceeding may file a petition for reconsideration of a final order. A petition for reconsideration of a final order under RCW 34.05.470 shall be filed with the commission in accordance with WAC 230-50-210 within ten days of service of a final order. The petition for reconsideration shall be administered in accordance with RCW 34.05.-470. If the petition is received at least fifteen business days before the next regularly scheduled meeting, the commission will schedule the petition to be heard at the upcoming meeting. If the petition is received less than fifteen business days before the next regularly scheduled meeting, the commission

will schedule the petition for reconsideration at the meeting immediately following the regularly scheduled commission meeting.

WSR 07-03-084
PERMANENT RULES
GAMBLING COMMISSION

[Order 465—Filed January 18, 2007, 11:14 a.m., effective February 18, 2007]

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

Purpose: The rule change will assist charitable and non-profit licensees because the potential benefit would be the elimination of tax on punchboard/pull-tab income. The resulting savings (potentially) could be thousands of dollars per licensee.

Citation of Existing Rules Affected by this Order: Amending WAC 230-20-055.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-22-049 on October 27, 2006.

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 1, 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 12, 2007.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-07-076, filed 3/19/96, effective 7/1/96)

WAC 230-20-055 Use of proceeds from authorized activities by charitable or nonprofit organizations. All net income from gambling activities must be used exclusively for the lawful purposes of the organization. All proceeds remaining after paying the necessary expenses of operating an activity authorized by RCW 9.46.0311 shall be used by the organization conducting the activity only for those purposes which are set out in RCW 9.46.0209 and as it may be amended and, if a commission licensee, only for those purposes disclosed to the commission in the application for a license.

WSR 07-03-085
PERMANENT RULES
GAMBLING COMMISSION

[Order 467—Filed January 18, 2007, 11:15 a.m., effective February 18, 2007]

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

Purpose: Card room tip reporting: The rule change requires more detailed procedures for the accountability of tips received by card room employees in house-banked card rooms, including the following:

1. Tip ("toke") drop boxes must be locked and remain under camera coverage at all times; and
2. Tips must be redeemed under surveillance; and
3. Card room employees (CRE) must accurately report all tips to their employer. This puts the burden on the CRE to report accurately; and
4. Tips received by the cage cashier must be counted by the shift/floor supervisor or security.

Citation of Existing Rules Affected by this Order: Amending WAC 230-40-855.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-23-032 on November 6, 2006.

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 1, Repealed 0.

Date Adopted: January 12, 2007.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 383, filed 4/14/00, effective 5/15/00)

WAC 230-40-855 Acceptance of tips from patrons for house-banked activities. Licensees may allow selected employees to accept tips from patrons. If allowed, tips shall be controlled in a manner to ensure they are only received by authorized persons, properly accounted for, and maintained separate from all other gaming funds. The following restrictions and procedures apply:

(1) No employee directly concerned with management, supervision, accounting, security, or surveillance shall solicit, accept or otherwise share any tip originating from any player or patron: Provided, That cage cashiers shall be allowed to accept tips.

(2) Each licensee shall establish procedures necessary to ensure that the acceptance of tips by dealers is observed by

the floor supervisor and surveillance. Procedures shall include an overt display of tips received, such as tapping the table with the tip prior to placing it in the tip container.

(3) All tips must be dropped into a locked tip container which prevents the removal of chips except by unlocking. Tip containers must remain under camera coverage of the closed circuit television system at all times.

(4) Tips to the cage cashier shall be deposited directly into the tip container by the patron. Cashier tip containers shall be located outside the cage enclosure. Tips received by a cage cashier must be counted by the shift/floor supervisor or security.

~~((4))~~ (5) Tips received shall be retained by employees or pooled among employees ~~((in such manner as determined by the licensee))~~ as described in the licensee's internal controls.

~~((5))~~ (6) Licensees shall establish and implement procedures for the ~~((proper))~~ accounting of tips received by authorized card room employees. The procedures shall be fully documented in the licensee's internal controls and shall describe in detail any methods used to allocate tips. ~~((Accounting and recording of tip income shall be in sufficient detail to meet federal income tax requirements.))~~

(7) All tips received by licensed card room employees must be redeemed under surveillance at the cashier's cage. Card room employees must accurately report all tips to their employer as described in the licensee's internal controls.

(8) All pooled tips must be redeemed under surveillance at the cashier's cage, count room or a gaming table.

WSR 07-03-086
PERMANENT RULES
GAMBLING COMMISSION

[Order 469—Filed January 18, 2007, 11:16 a.m., effective February 18, 2007]

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

Purpose: The commission voted to approve a petition for rule change from the Washington Charitable and Civic Gaming Association. Charitable and nonprofit organizations that offer bingo will be allowed a 50% variance on net return requirements for the calendar year 2006.

Citation of Existing Rules Affected by this Order: Amending WAC 230-20-059.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 06-24-029 on November 29, 2006.

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 1, 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 12, 2007.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 428, filed 3/17/04, effective 4/17/04)

WAC 230-20-059 Minimum cash flow requirements for bingo games—Contributions to stated purpose—Sanctions. Bingo shall be conducted only as a social pastime or for fund-raising to support the stated purpose(s) of a charitable or nonprofit organization. Organizations licensed to conduct bingo games shall comply with the following procedures and limitations:

Contributions.

(1) To ensure that organizations licensed to conduct bingo games meet the intent of RCW 9.46.010 and provide funds adequate to promote charitable and nonprofit programs, such organizations shall not allow their bingo operation to award prizes or pay expenses to conduct bingo games that are excessive and all capital expenditures for the bingo operation that exceed six thousand dollars shall be specifically approved by the governing board.

An organization licensed to conduct bingo games shall ensure that the adjusted cash flow from the bingo operation available for its charitable and nonprofit programs is at least the following amount during each calendar year:

- (a) For gross receipts above \$1,500,000 up to \$2,500,000 - 3% of gross receipts over \$1,500,000;
- (b) For gross receipts above \$2,500,000 up to \$3,500,000 - \$30,000 plus 4% of gross receipts over \$2,500,000;
- (c) For gross receipts above \$3,500,000 up to \$4,500,000 - \$70,000 plus 5% of gross receipts over \$3,500,000; and
- (d) For gross receipts above \$4,500,000 - \$120,000 plus 6% of gross receipts over \$4,500,000.

(e) If the licensee does not operate for a full year, the requirements shall be prorated based on full quarters operated.

Definitions.

(2) The following definitions shall apply to this section:

(a) "Gross receipts" shall mean the combined gross gambling receipts from bingo, pull-tab and punch board activities.

(b) "Adjusted cash flow from the bingo operation" shall mean the combined gross income of the bingo operation less all prizes and expenses, whether paid or accrued. For the purposes of computing expenses, depreciation or amortization, shall not be considered an expense of the bingo operation.

(c) "Bingo operation" shall mean bingo games and all associated activities conducted in conjunction with bingo games at the same location including punch boards, pull-tabs, snack bar, retail sales activities, rental of the bingo premises and drawings authorized under WAC 230-20-242.

Sanctions for failing to maintain a positive adjusted cash flow.

(3) To ensure a licensee maintains a positive cash flow and is not operating primarily for gambling purposes, adjusted cash flow shall be measured quarterly. If a licensee does not maintain a positive cash flow from the bingo operation during any two consecutive calendar quarters, measured independently, the director shall summarily suspend the organization's bingo license.

Sanctions for failing to meet adjusted cash flow requirements - relief.

(4)(a) If a bingo licensee fails to meet the adjusted cash flow requirements of subsection (1) of this section for any calendar year, administrative action shall be taken to revoke the organization's bingo license: Provided, That if a licensee fails to meet the minimum adjusted cash flow requirements for any calendar year and has maintained a positive cash flow as required by subsection (3) of this section. The director shall automatically grant relief allowing a twenty-five percent reduction to the annual dollar amount of required adjusted cash flow in subsection (1) of this section, for the year in which the licensee is out of compliance;

(b) No organization granted relief under (a) of this subsection, shall be eligible to receive relief for any of the four calendar years following the calendar year for which the relief was granted; and

(c) ~~((Relief may be granted under (a) of this subsection for the calendar year beginning January 1, 2003-))~~ For the calendar year 2006, the director shall automatically grant relief allowing up to a fifty percent reduction to the annual dollar amount of required adjusted cash flow in subsection (1) of this section.

WSR 07-03-087

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 18, 2007, 2:22 p.m., effective February 18, 2007]

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

Purpose: The department is amending WAC 388-515-1550 Medically needy in-home waiver (MNIW), as follows:

- DSHS is increasing the personal needs allowance (PNA) for the MNIW program to match the PNA allowed for the categorically needy waiver described in WAC 388-515-1505.
- The deduction for medical and remedial care expenses that were incurred as a result of imposition of assets penalty period is limited to zero.
- DSHS is making changes to the language in order to make rules clearer.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-515-1550.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.520, and 74.09.530.

Other Authority: RCW 74.04.050, 74.04.057, 74.09.500, 74.09.520, 74.09.530, section 206 (6)(b), chapter 276, Laws of 2004.

Adopted under notice filed as WSR 06-24-064 on December 4, 2006.

Changes Other than Editing from Proposed to Adopted Version: Corrected one spelling mistake in subsection (9)(c)(ii).

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 1, Repealed 0.

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

Date Adopted: January 18, 2007.

Jim Schnellman, Chief
Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-515-1550 Medically needy in-home waiver (MNIW) effective May 1, 2004. This section describes the financial eligibility requirements for waiver services under the medically needy in-home waiver (MNIW) and the rules used to determine a client's responsibility in the total cost of care.

- (1) To be eligible for MNIW, a client must:
 - (a) Not meet financial eligibility for Medicaid personal care or the COPES program;
 - (b) Be eighteen years of age or older;
 - (c) Meet the SSI-related criteria described in WAC 388-475-0050(1);
 - (d) Require the level of care provided in a nursing facility as described in WAC 388-106-0355;
 - (e) In the absence of waiver services described in WAC 388-106-0500, continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;
 - (f) Have attained institutional status as described in WAC 388-513-1320;
 - (g) Have been determined to be in need of waiver services as described in WAC 388-106-0510;
 - (h) Be able to live at home with community support services and choose to remain at home;
 - (i) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and
 - (j) Meet the resource and income requirements described in subsections (2) through (6) of this section.

(2) The department determines a client's nonexcluded resources under MNIW as described in WAC 388-513-1350 (~~((1) through (4)(a) and 388-513-1360;))~~.

(3) Nonexcluded resources, after disregarding excess resources described in subsection (4) of this section, must be at or below the resource standard described in WAC 388-513-1350 (~~((1) and (2))~~).

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

(a) In an amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; or

(iii) Necessary medical care covered under the state's Medicaid plan.

(b) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Are not the result of medical and remedial care expenses that were incurred as the result of imposition of a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(iii) Have not been used to satisfy a previous spenddown liability;

~~((iii))~~ (iv) Have not previously been used to reduce excess resources;

~~((iv))~~ (v) Have not been used to reduce client responsibility toward cost of care; and

~~((v))~~ (vi) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNIW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except Medicare premiums, not used to reduce excess resources in subsection (4) of this section;

(e) Allows an income deduction for a nonapplying spouse, equal to the one person medically needy income level (MNIL) less the nonapplying spouse's income, if the nonapplying spouse is living in the same home as the applying person.

(6) A client whose countable income exceeds the MNIL may become eligible for MNIW:

(a) When they have or expect to have medical expenses to offset their income which is over the MNIL; and

(b) Subject to availability in WAC 388-106-0535.

(7) The portion of a client's countable income over the MNIL is called "excess income."

(8) A client who has or will have "excess income" is not eligible for MNIW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(9) The following medical expenses may be used to meet spenddown if not already used in subsection (4) of this section to disregard excess resources or to reduce countable income as described in subsection (5)(d) of this section:

(a) An amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; and

(iii) Necessary medical care covered under the state's Medicaid plan.

(b) The cost of waiver services authorized during the base period.

(c) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Are not the result of medical and remedial care expenses that were incurred as the result of imposition of a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(iii) Have not been used to satisfy a previous spenddown liability;

~~((iii))~~ (iv) Have not been used to reduce client responsibility toward cost of care; and

~~((iv))~~ (v) Are amounts for which the client remains liable.

(10) Eligibility for MNIW is effective the first full month the client has met spenddown.

(11) In cases where spenddown has been met, medical coverage and MNIW begin the day services are authorized.

(12) A client who meets the requirements for MNIW chooses a three or six month base period. The months must be consecutive calendar months.

(13) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) in an amount equal to the one-person ~~((MNL))~~ Federal Poverty Level (FPL) described in WAC ~~((388-478-0070(1)(a)))~~ 388-478-0075(4);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources;

(d) Incurred medical expenses described in subsection (4) of this section not used to meet spenddown or reduce excess resources.

WSR 07-03-113

PERMANENT RULES

WASHINGTON STATE LOTTERY

[Filed January 22, 2007, 10:34 a.m., effective February 22, 2007]

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

Purpose: To adopt a new draw game called "Hit 5." The lottery computers will generate a ticket and a receipt evidencing payment, once wager is made. One or more plays will be

evidenced in the Hit 5 ticket. The tickets will be issued by a licensed lottery retailer and will list the set of five-number plays that belong to the ticket holder. The game's top prize will be the cashpot. The lottery drawing official will be lottery personnel designated by the director to conduct the drawings. The game play will be a number of any play integers from 1 through 39 inclusive.

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

Other Authority: RCW 67.70.040.

Adopted under notice filed as WSR 06-23-116 on January 18, 2007 [November 20, 2006].

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 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 1, 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 18, 2007.

Jana L. Jones

Director of Legal Services

Chapter 315-39 WAC

HIT 5 GAME RULES

NEW SECTION

WAC 315-39-010 Definitions for Hit 5 Game. (1)

Number: Any play integer from 1 through 39 inclusive.

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

(3) Play: One selection of five numbers.

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

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

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

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

NEW SECTION

WAC 315-39-020 Price of Hit 5 Game play. The price of each Hit 5 Game play shall be \$1.00. Each Hit 5 Game ticket shall contain at least one Hit 5 Game play.

NEW SECTION

WAC 315-39-030 Play for Hit 5 Game. (1) Type of play: A Hit 5 Game player must select five numbers in each play. A winning play is achieved only when 2, 3, 4, or 5 of the numbers selected by the player match, in any order, the five winning numbers drawn by the lottery.

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

NEW SECTION

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

WINNING COMBINATIONS	PRIZE CATEGORIES	ODDS OF WINNING (ONE PLAY)
All five winning numbers in one play	First Prize: Cashpot	1:575,757
Any four but not five winning numbers in one play	Second Prize: \$100.00	1:3,387
Any three but not four or five winning numbers in one play	Third Prize: \$10.00	1:102
Any two, but not three, four or five winning numbers in one play	Fourth Prize: \$1.00	1:9.6

(2) Prize amounts.

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

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

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

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

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

(f) In the event any player who holds two, three, four or five of the five winning numbers does not claim the prize won within one hundred eighty days after the drawing in which the prize was won, that player's prize shall be retained in the state lottery account for use, pursuant to RCW 67.70.190.

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

NEW SECTION

WAC 315-39-050 Ticket purchases. (1) Hit 5 Game tickets may be purchased daily in accordance with a schedule to be determined by the director. Licensed lottery retailers shall sell and redeem tickets only during their normal business hours. Hit 5 Game tickets may be purchased only from a licensed lottery retailer.

(2) Hit 5 Game tickets shall, on the front of the ticket, contain the selection of numbers, amount, drawing date, ticket serial number and reference numbers. The back of the ticket shall contain overall odds of winning, player instructions, player information, signature area, governing statutes and rules, and the ticket stock number. The front of the ticket may include the overall odds of winning.

NEW SECTION

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

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

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

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

WSR 07-03-117

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed January 22, 2007, 2:03 p.m., effective February 22, 2007]

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

Purpose: The amendment to WAC 308-61-135(3) is to add language dictated by amendments to chapter 9.45 RCW, RCW 46.12.101(6) and 46.12.102 enacted in 2006 by SSB 6676. The amendment to WAC 308-61-175(2) is dictated by

amendments to RCW 46.55.130(1) in 2006 by SHB 1504. The amendment in WAC 308-61-175 new subsection (10) is at the request of the Washington state patrol to check for stolen vehicles.

Citation of Existing Rules Affected by this Order: Amending WAC 308-61-135 and 308-61-175.

Statutory Authority for Adoption: RCW 46.55.190.

Adopted under notice filed as WSR 06-19-101 on September 19, 2006.

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 2, 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 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 22, 2007.

Mykel D. Gable
Assistant Director

AMENDATORY SECTION (Amending WSR 02-20-035, filed 9/24/02, effective 10/25/02)

WAC 308-61-135 Miscellaneous provisions. (1) The properly executed written authority to tow or other evidence of lawful possession shall suffice in lieu of current license plates or trip permits for unauthorized or abandoned vehicles.

(2) Billing invoices must indicate the time of day when an unauthorized or abandoned vehicle arrived at the secure storage area.

(3) A seller's report of sale properly filed with the department on a form prescribed by the department shall relieve a registered owner from liability for costs incurred in the removal and storage of an unauthorized/abandoned vehicle, in addition to relieving that person from other liability pursuant to RCW 46.12.101, unless the transferee on the seller's report had no knowledge of the filing.

(4) The junk vehicle affidavit of sale as described in RCW 46.55.230 may be used to sell a vehicle to a licensed hulk hauler, scrap processor, vehicle wrecking yard or it may be used as a supporting document for issuance of a title.

(5) A stored vehicle may be redeemed any time before the start of auctioning of that particular vehicle.

(6) The notification to be sent by first-class mail within twenty-four hours after the impound must be sent to any lessor or lessee, as well as to the last known registered and legal owner (lien holder) of the vehicle.

(7) The written notice of the right of redemption and opportunity for a hearing to contest the validity of an impoundment, to be sent with the twenty-four hour impoundment notice on an unauthorized vehicle impoundment, must

be separate and in addition to the notice of opportunity for a hearing given to those who redeem vehicles.

(8) As the record required in RCW 46.05.150(2) the registered tow truck operator must keep a copy of its twenty-four-hour impound notice to law enforcement.

(9) Information contained in the master log must include:

(a) The dates of impound and release of vehicles;

(b) Storage lot used if multiple lots;

(c) If impound was from public or from private property and the location where the vehicle was impounded;

(d) Identity of vehicle by year, make, model, license number, and vehicle identification number;

(e) Dates of all required notices to law enforcement and to vehicle owners;

(f) Date of auction advertisement and of auction;

(g) Amount of towing and storage lien;

(h) Amount of auction proceeds;

(i) Amount of surplus funds.

Entries on the master log must be made within seventy-two hours following the activity being logged.

AMENDATORY SECTION (Amending WSR 02-20-035, filed 9/24/02, effective 10/25/02)

WAC 308-61-175 Procedures for selling vehicles.

How should a registered tow truck operator properly identify a vehicle in its custody and prepare for a vehicle auction?

(1) For purposes of advertising the sale of abandoned vehicles the vehicle identification number must be used if no license plates are on the vehicle.

(2) ~~((A newspaper of general circulation in the county shall mean a newspaper which is one of three with the largest circulation in the county where the sale will be conducted. The publisher need not reside in that same county.~~

~~(3))~~ (3) If a vehicle in the custody of an operator is not identifiable, including no license plates or registration, the operator must conduct an examination of the vehicle only to determine its make, model, year and vehicle identification number which must be included on the abandoned vehicle report to the department.

~~((4))~~ (4) If the department cannot provide owner information on a vehicle after the operator submits an abandoned vehicle report, the operator may then inspect the vehicle as permitted in RCW 46.55.100(5) to determine whether owner information is within the vehicle.

~~((5))~~ (5) Upon inspection of the vehicle as provided in subsection ~~((4))~~ (3) of this section the operator may return the original abandoned vehicle report with additional information from the inspection of the vehicle to assist the department in providing owner information.

~~((6))~~ (6) The department may require an inspection by the appropriate law enforcement agency to verify the vehicle identification number of an unidentified vehicle. All such information must be reported to the department, which will communicate with such other states as may be necessary to determine whether the registered and legal owner information is available for the vehicle.

~~((7))~~ (7) After all reasonable efforts to obtain the owner information have proved unsuccessful, the vehicle may be disposed of in accordance with all procedures except that the

notification to the registered and legal owners by certified or registered mail may be omitted. A record of all steps taken to locate the owner(s) of the vehicle must be kept by the operator for a period of three years.

~~((8))~~ (7) If the operator elects to bid at auction, that bid must be disclosed as such, and must not merely be an effort to set a minimum for other bids. If an operator is the successful bidder and the bid exceeds the lien for towing and storage, the surplus funds must be remitted to the department just as in any other sale. The operator cannot elect to retain a vehicle at auction because the operator feels that the bidding is insufficient.

~~((9))~~ (8) The ~~((three-hour))~~ public viewing period required in RCW 46.55.130(1) must be held at all times during daylight hours.

~~((10))~~ (9) Auctions may be held on Saturdays or Sundays which are not legal holidays.

(10) Three days prior to any vehicle auction, tow companies must fax a listing of all vehicles, including year, make, model, and vehicle identification number, to their Washington state patrol business inspector. If there are any changes to the list, an updated/amended list must also be faxed to the Washington state patrol inspector.

WSR 07-03-118

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed January 22, 2007, 2:05 p.m., effective February 22, 2007]

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

Purpose: Hulk haulers will report to the department of licensing vehicles they sell to out-of-state or out-of-country wreckers and scrap processors to facilitate a more accurate database of destroyed Washington state titled vehicles. Scrap processors will maintain a copy of the ownership document for their files rather than a description of the ownership document.

Citation of Existing Rules Affected by this Order: Amending WAC 308-65-080 and 308-65-140.

Statutory Authority for Adoption: RCW 46.79.080.

Adopted under notice filed as WSR 06-17-042 on August 8, 2006.

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 2, 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 22, 2007.

Mykel D. Gable
Assistant Director

AMENDATORY SECTION (Amending WSR 00-13-020, filed 6/12/00, effective 7/13/00)

WAC 308-65-080 Hulk hauler—Procedures for acquiring and selling vehicles. On what ownership documents may I buy and sell vehicles/hulks? (1) Supporting acquisition for transport, resale. The hulk hauler may acquire vehicles or hulks for transport and resale to a licensed motor vehicle wrecker or scrap processor upon obtaining ownership documents in the form of a certificate of ~~((title))~~ ownership properly endorsed, from a state issuing a title, or a certificate of registration and notarized bill of sale from a jurisdiction issuing only a registration certificate or other approved ownership documents as follows:

(a) Affidavit of lost or stolen title signed by the owner on record with the department, and release of interest from the owner.

(b) Affidavit of sale of a junk vehicle from the landowner who has complied with RCW 46.55.230.

(c) Affidavit of sale from a registered tow truck operator.

(d) A court order.

(e) Acquisition from wreckers licensed by the department may be supported by obtaining the wrecker's invoice or bill of sale listing each vehicle by the wrecker's "yard number." Such invoice or bill of sale ~~((shall))~~ must be given to the scrap processor or vehicle wrecker purchasing the vehicles listed ~~((therein))~~.

(f) Bills of sale pursuant to WAC 308-63-020 for vehicles from nontitle jurisdictions that have had their titles surrendered to a state after having been declared a total loss and for vehicles of the type to which titles are not issued.

(2) Must possess supporting documentation. Before a hulk hauler may transport any vehicle for resale, he/she ~~((shall))~~ must have in his/her possession ownership documents to support lawful acquisition or possession, as enumerated in subsection (1) of this section. Such documentation ~~((shall))~~ must be in his/her possession at all times while the vehicle is transported.

(3) Handling vehicles. A hulk hauler may not operate as a wrecker or remove parts from vehicles, provided that the hulk hauler may remove the parts necessary to sell vehicle salvage to a licensed scrap processor, ~~((e.g.))~~ example, the upholstery, gasoline tank, and tires, so long as such parts are removed on the premises of a licensed wrecker or scrap processor where prior permission is granted or at a location approved by the department.

(4) May sell to licensed wreckers and scrap processors. Vehicles in the possession of a licensed hulk hauler may only be sold to a licensed wrecker or scrap processor.

(5) When sold to a licensed wrecker or scrap processor in another state or country, the licensed hulk hauler must furnish a written report to the department by the tenth of the month following sale of the vehicle. The report must contain the following:

(a) A description of each vehicle acquired by make, model, year and vehicle identification number;

(b) The date acquired, name of the person, firm or corporation from which obtained;

(c) A description of the ownership document, including any title or registration number.

This report must be made in duplicate, retaining the duplicate for the hulk hauler's files for a period of three years. The report must be accompanied by properly endorsed certificates of title or registration or such other adequate evidence of ownership as may come into the hulk hauler's possession.

AMENDATORY SECTION (Amending WSR 00-13-020, filed 6/12/00, effective 7/13/00)

WAC 308-65-140 Scrap processor—Procedures for monthly reports. How must I file monthly reports to the department? (1) Must maintain books and files.

(a) The scrap processor shall maintain the following books and files of all vehicles, acquired other than from a wrecker or out-of-state salvage company, which shall contain the following:

(i) A description of each vehicle acquired by make, model, year and vehicle identification number;

(ii) The date acquired, name of the person, firm or corporation from which obtained, and the wrecker license numbers if such person is licensed as a wrecker by the department;

(iii) A ~~((description of the document evidencing ownership, and if a certificate of title or registration, the title or registration number))~~ copy of the document evidencing ownership, as required by WAC 308-65-080; and

(iv) The license plate number and name of state in which vehicle was last registered.

(b) For all vehicles acquired from a licensed wrecker, a copy of the wrecker's invoice or bill of sale shall suffice as the record of acquisition and demolition.

(c) For vehicles acquired from out-of-state salvage companies, an invoice listing the vehicles and the affidavit of compliance with the out-of-state jurisdiction.

(d) For vehicle parts, an invoice or bill of sale describing the part and identifying the seller by name and address. That record will be available for inspection.

(e) Such records shall be maintained for three years and shall be subject to periodic inspection by authorized representatives of the department and appropriate law enforcement officers.

(2) Must furnish written reports. By the tenth of the month following acquisition of vehicles or hulks for demolition, each scrap processor shall submit a report, on the form prescribed by the department, listing each vehicle, whether or not such vehicles have been demolished. This report shall be made in duplicate, retaining the duplicate for the scrap processor's files. The report shall give such information as the scrap processor is required to keep by subsection (1) of this section, provided that the scrap processor need not include copies of a wrecker's invoice or bill of sale in such report so long as he/she retains copies of the invoices and bills of sale for a period of three years. It shall be accompanied by properly endorsed certificates of title or registration or such other adequate evidence of ownership as may come into the scrap processor's possession when he/she acquires vehicles for salvage from other than wreckers licensed by the department.

WSR 07-03-119

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed January 22, 2007, 2:08 p.m., effective February 22, 2007]

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

Purpose: Amendments to WAC 308-66-110, 308-66-120, and 308-66-210 are housekeeping in nature. New section WAC 308-66-177 further defines the requirement in RCW 46.70.180(9) for a deposit trust account.

Citation of Existing Rules Affected by this Order: Amending WAC 308-66-110, 308-66-120, and 308-66-210.

Statutory Authority for Adoption: RCW 46.70.160.

Adopted under notice filed as WSR 06-17-044 on August 8, 2006.

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 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 3, 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 22, 2007.

Mykel D. Gable
Assistant Director

AMENDATORY SECTION (Amending WSR 04-16-090, filed 8/3/04, effective 9/3/04)

WAC 308-66-110 Definitions. For the purpose of administering chapter 46.70 RCW, the following terms shall be construed in the following manner:

(1) "Offering" the sale of a vehicle shall include the distribution by any means of a list, with or without prices, of vehicles for sale.

(2) "Soliciting" the sale of a vehicle shall include an offer to effect the purchase or sale of a vehicle on behalf of another person.

(3) "Normal business hours" or "reasonable times" shall include, but not be limited to, the hours from 10:00 a.m. through 4:00 p.m. for five days each week. When a dealer closes the place of business during normal business hours, a sign must be posted on the main door of the business stating the time that the dealer will next be open for business and how the dealer may be contacted provided that this is not permission to routinely avoid maintaining normal business hours.

(4) An "employee" of a dealer is a person on the payroll who appears on the record of the dealer as an employee for whom social security, withholding tax, and all deductions required by law have been made.

(5) A "broker" shall mean any person acting independently, who for a commission, fee or any other form of compensation arranges or engages in the wholesale or retail purchase, sale or lease with option to purchase, of a vehicle.

(6) A "vehicle dealer identification card" is a card, prescribed by the department and issued by a licensed dealer, that is used to identify the principal of a dealership, including a corporate officer, a partner of a partnership, or sole proprietor, or a member of a limited liability company, or an "employee," for purposes of driving a vehicle bearing dealer license plates.

(7) A "demonstration permit" is a permit issued by a dealer to a prospective customer entitling the prospective customer to operate a particular vehicle for demonstration purposes.

(8) Current service agreement - The agreement between a vehicle manufacturer or vehicle distributor and a seller, stipulating that the seller will provide warranty adjustments for the owners of that manufacturer's or distributor's new vehicles which qualify for adjustments under the manufacturer's or distributor's warranty.

(9) New vehicle warranty - The warranty extended by a manufacturer or distributor to the first retail purchaser.

(10) "Closing" shall mean the process of completion of sale transaction.

(11) "Completion of sale" in the case of a consigned vehicle shall mean that the purchaser has possession of the vehicle, all liens against the vehicle are paid, the seller has the proceeds of sale, and title to the vehicle has been transferred to the retail purchaser.

(12) "Listing" shall mean a contract between a seller of a used mobile/manufactured home and a listing dealer for the dealer to locate a willing purchaser for that home.

(13) "Consignment" shall mean an arrangement whereby a vehicle dealer accepts delivery or entrustment of a vehicle and agrees to sell the vehicle on behalf of another.

(14) "Remanufactured" shall mean to remake or reprocess into a finished product by a large scale industrial process.

(15) "Guaranteed title" as it relates to a consigned vehicle shall mean a guarantee by the consignor to convey title to the consignee upon sale of the vehicle. The consignment agreement between the consignor and consignee shall comply with the provisions of WAC 308-66-155.

(16) "Used vehicle" in keeping with RCW 46.04.660, and for purposes of the requirement for a service agreement in RCW 46.70.101 (1)(a)(vii), a vehicle will be considered used if it meets the following requirements:

(a) It has been titled or registered to a bona fide retail purchaser/lessee for a period of 90 days or more; and

(b) The vehicle has been operated (driven) to the extent that its odometer registers 3,000 miles or more.

However, the requirements of (a) and (b) of this subsection will not apply if a bona fide retail purchaser/lessee sells, trades, or otherwise disposes of the vehicle prior to its having met those requirements. To document such an exemption, the subsequent wholesaling and retailing dealer must keep, as a dealer business record, a notarized affidavit from either the bona fide retail purchaser/lessee, or in the case of an imported vehicle, a notarized affidavit from the importer of the vehicle.

That affidavit will be prescribed by the department and must confirm that the retail purchaser/lessee was a bona fide retail purchaser/lessee.

(17) A "bona fide retail purchaser/lessee" is one who purchases or leases a vehicle for the purpose of using it, rather than for the purposes of resale or lease.

(18) The "principal" of a business as used herein means a true party of interest, including:

(a) The proprietor of a sole proprietorship;

(b) A partner of a partnership or a limited liability partnership;

(c) An officer of a corporation; ~~((☞))~~

(d) A member or manager of a limited liability company;

(e) A spouse, if he or she is a true party of interest;

(f) In addition, any owner of ten percent or more of the assets who is not already listed.

AMENDATORY SECTION (Amending WSR 04-16-090, filed 8/3/04, effective 9/3/04)

WAC 308-66-120 Dealer's license application. What information is needed to apply for a vehicle dealer license? (1) Each application shall contain in addition to the information required by RCW 46.70.041:

(a) The names and residential addresses of all owners of ten percent or more of the assets of the business;

(b) The name and address of the principal place of business;

(c) The names and addresses of each and every sub-agency, if any;

(d) A current balance sheet of assets, liabilities and owner's equity which shall have been prepared within sixty days of its submission, including proof of the assets;

(e) A statement of whether or not the applicant ~~((☞))~~, including any sole proprietor, partner, member, officer, or director of the firm, was the holder of a license issued pursuant to chapter 46.70 RCW which was revoked for cause and never reissued by the department, or suspended for cause and the terms of the suspension have not been fulfilled or assessed a monetary penalty that has not been paid;

(f) A list of all dealerships previously operated by each person named on the application and with which each person presently or was formerly connected or employed.

(2) An applicant must appear for a personal interview if requested by the department.

(3) The department may require a credit report for each person named on each application for a dealer's license.

(4) An applicant must provide as evidence of leasehold or ownership interest of business location either:

(a) A copy of the rental or lease agreement between the applicant and landowner showing the business location by commonly known address, or

(b) A copy of the county assessor's record showing ownership of the business location, the applicant's name and the commonly known address.

(5) An applicant must provide a bank reference for verifying financial condition consisting of:

(a) The name of the applicant's bank, a person to contact at that bank concerning the applicant's financial condition, or

(b) A letter of credit current within the last sixty days, or
 (c) A flooring agreement, if with a financial institution,
 or

(d) A line of credit with a financial institution.

(6) The department may require an applicant to provide evidence that the business location conforms to all zoning and land use ordinances.

(7) A corporate applicant must provide the corporation number and corporation name issued by the secretary of state's office authorizing the company to do business within this state.

(8) The business name and address on the license application and all required supporting documents must be the same.

(9) The applicant must provide a certification of completion in the dealer education program:

(a) At least one principal of each company applying for an original vehicle dealer license must receive certification in the dealer education program required by RCW 46.70.041 (1)(l).

(b) The department encourages as many principals of each company as possible to obtain such certification.

(c) For annual dealer license renewals, either a company principal or a managing employee may complete the continuing education program. The continuing education certificate will indicate that the dealership has fulfilled the requirement.

(d) Certifications for either original or renewal applications will be valid for twelve months.

(10) Any service agreement required by RCW 46.70.041 must be on file with the department. An acquisition or loss of a service agreement must be reported to the department in writing within ten days.

NEW SECTION

WAC 308-66-177 Trust account. The deposit trust account required by RCW 46.70.180(9) must be established and maintained within Washington state.

AMENDATORY SECTION (Amending WSR 04-16-090, filed 8/3/04, effective 9/3/04)

WAC 308-66-210 Statement of change in business structure, ownership interest or control. When do I report such a change? (1) With the exception of a corporation any person licensed as a dealer under chapter 46.70 RCW must, within ten days following any change in its business structure, file a new application and pay original licensing fees under the new entity.

(2) In addition, any new principals including, but not limited to, new corporate officers, directors, managing partners, members or trustees, must, within ten days of assuming such function, file an application including fingerprint cards and legal and financial history.

~~((2))~~ (3) Any person licensed as a vehicle manufacturer pursuant to chapter 46.70 RCW must inform the department in writing within ten days of the change to:

(a) The business structure of the licensee company and must file a new application and pay original licensing fees under the new entity;

(b) The mailing address of the licensee;

(c) The name and address of employees or agents designated pursuant to RCW 46.70.041 and 46.70.101 to provide service or repairs to vehicles located within the state of Washington. However, if the licensee requires warranty service to be performed by all of its dealers pursuant to current service agreements on file with the department, it need not advise the department of changes in such employees or agents.

~~((3))~~ (4) Any and all changes affecting the applicability of a surety bond shall be reflected by appropriate endorsement to such bond.

WSR 07-03-120

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed January 22, 2007, 2:10 p.m., effective February 22, 2007]

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

Purpose: Requires licensed vessel dealers to maintain the required deposit trust account in an in-state bank. Allows for subpoena authority in the protection of consumers.

Citation of Existing Rules Affected by this Order: Amending WAC 308-90-120.

Statutory Authority for Adoption: RCW 88.02.100.

Adopted under notice filed as WSR 06-17-043 on August 8, 2006.

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 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 22, 2007.

Mykel D. Gable
 Assistant Director

AMENDATORY SECTION (Amending Order DLR-162, filed 1/19/88)

WAC 308-90-120 Trust account. (1) The deposit trust account required by RCW 88.02.220 must be established and maintained within Washington state.

(2) The dealer's separate trust account cannot accrue interest.

~~((2))~~ (3) Any fees assessed by the depository against the trust account shall not be paid from purchasers trust funds.

WSR 07-03-121
PERMANENT RULES
PARKS AND RECREATION
COMMISSION

[Filed January 22, 2007, 2:58 p.m., effective February 22, 2007]

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

Purpose: The Washington state parks and recreation commission is responsible for protecting those natural resources under its jurisdiction while simultaneously facilitating and regulating appropriate public enjoyment of parks and parkways. This proposed rule-making action is intended to make necessary modifications to park rules and to accurately reflect changes to the agency's business practices and current use rules for specific park sites, SEP and the Seashore Conservation Area.

Citation of Existing Rules Affected by this Order: Repealing WAC 352-11-310, 352-11-508, 352-11-615, 352-11-800, 352-11-905, 352-11-908 and 352-32-280(3); and amending chapter 352-20 WAC; chapter 352-11 WAC, SEPA procedures; chapter 352-32 WAC, Public use of state park areas; and chapter 352-37 WAC, Ocean beaches.

Statutory Authority for Adoption: Chapter 79A.05 RCW.

Adopted under notice filed as WSR 06-24-075 on December 4, 2006.

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 5, Amended 0, Repealed 6.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 53, 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 11, 2007.

Jim French
 Administrator of Statewide
 Recreation Programs

AMENDATORY SECTION (Amending WSR 96-01-029, filed 12/11/95, effective 1/11/96)

WAC 352-11-020 Adoption by reference. The Washington state parks and recreation commission adopts the following sections or subsections of chapter 197-11 WAC by reference.

WAC

197-11-040 Definitions.
 197-11-050 Lead agency.
197-11-055 Timing of the SEPA process.
 197-11-060 Content of environmental review.

197-11-070 Limitations on actions during SEPA process.
 197-11-080 Incomplete or unavailable information.
 197-11-090 Supporting documents.
 197-11-100 Information required of applicants.
 197-11-210 SEPA/GMA integration.
 197-11-220 SEPA/GMA definitions.
 197-11-228 Overall SEPA/GMA integration procedures.
 197-11-230 Timing of an integrated GMA/SEPA process.
 197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
 197-11-235 Documents.
 197-11-250 SEPA/Model Toxics Control Act integration.
 197-11-253 SEPA lead agency for MTCA actions.
 197-11-256 Preliminary evaluation.
 197-11-259 Determination of nonsignificance for MTCA remedial action.
 197-11-262 Determination of significance and EIS for MTCA remedial actions.
 197-11-265 Early scoping for MTCA remedial actions.
 197-11-268 MTCA interim actions.
 197-11-300 Purpose of this part.
 197-11-305 Categorical exemptions.
 197-11-310 Threshold determination required.
 197-11-315 Environmental checklist.
 197-11-330 Threshold determination process.
 197-11-335 Additional information.
 197-11-340 Determination of nonsignificance (DNS).
 197-11-350 Mitigated DNS.
 197-11-360 Determination of significance (DS)/initiation of scoping.
 197-11-390 Effect of threshold determination.
 197-11-400 Purpose of EIS.
 197-11-402 General requirements.
 197-11-405 EIS types.
 197-11-406 EIS timing.
 197-11-408 Scoping.
 197-11-410 Expanded scoping. (Optional)
 197-11-420 EIS preparation.
 197-11-425 Style and size.
 197-11-430 Format.
 197-11-435 Cover letter or memo.
 197-11-440 EIS contents.
 197-11-442 Contents of EIS on nonproject proposals.
 197-11-443 EIS contents when prior nonproject EIS.
 197-11-444 Elements of the environment.
 197-11-448 Relationship of EIS to other considerations.
 197-11-450 Cost-benefit analysis.
 197-11-455 Issuance of DEIS.
 197-11-460 Issuance of FEIS.
 197-11-500 Purpose of this part.
 197-11-502 Inviting comment.
 197-11-504 Availability and cost of environmental documents.
 197-11-508 SEPA register.
 197-11-535 Public hearings and meetings.

197-11-545	Effect of no comment.	197-11-788	Responsible official.
197-11-550	Specificity of comments.	197-11-790	SEPA.
197-11-560	FEIS response to comments.	197-11-792	Scope.
197-11-570	Consulted agency costs to assist lead agency.	197-11-793	Scoping.
197-11-600	When to use existing environmental documents.	197-11-794	Significant.
197-11-610	Use of NEPA documents.	197-11-796	State agency.
197-11-620	Supplemental environmental impact statement—Procedures.	197-11-797	Threshold determination.
197-11-625	Addenda—Procedures.	197-11-799	Underlying governmental action.
197-11-630	Adoption—Procedures.	197-11-800	Categorical exemptions.
197-11-635	Incorporation by reference—Procedures.	197-11-810	Exemptions and nonexemptions applicable to specific state agencies.
197-11-640	Combining documents.	197-11-880	Emergencies.
197-11-650	Purpose of this part.	197-11-890	Petitioning DOE to change exemptions.
197-11-655	Implementation.	197-11-900	Purpose of this part.
197-11-660	Substantive authority and mitigation.	197-11-902	Agency SEPA policies.
197-11-680	Appeals.	197-11-904	Agency SEPA procedures.
197-11-700	Definitions.	197-11-906	Content and consistency of agency procedures.
197-11-702	Act.	197-11-908	Critical areas.
197-11-704	Action.	197-11-912	Procedures on consulted agencies.
197-11-706	Addendum.	197-11-914	SEPA fees and costs.
197-11-708	Adoption.	197-11-916	Application to ongoing actions.
197-11-710	Affected tribe.	197-11-920	Agencies with environmental expertise.
197-11-712	Affecting.	197-11-922	Lead agency rules.
197-11-714	Agency.	197-11-924	Determining the lead agency.
197-11-716	Applicant.	197-11-926	Lead agency for governmental proposals.
197-11-718	Built environment.	197-11-928	Lead agency for public and private proposals.
197-11-720	Categorical exemption.	197-11-930	Lead agency for private projects with one agency with jurisdiction.
197-11-722	Consolidated appeal.	197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city.
197-11-724	Consulted agency.	197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies.
197-11-726	Cost-benefit analysis.	197-11-936	Lead agency for private projects requiring licenses from more than one state agency.
197-11-728	County/city.	197-11-938	Lead agencies for specific proposals.
197-11-730	Decision maker.	197-11-940	Transfer of lead agency status to a state agency.
197-11-732	Department.	197-11-942	Agreements on lead agency status.
197-11-734	Determination of nonsignificance (DNS).	197-11-944	Agreements on division of lead agency duties.
197-11-736	Determination of significance (DS).	197-11-946	DOE resolution of lead agency disputes.
197-11-738	EIS.	197-11-948	Assumption of lead agency status.
197-11-740	Environment.	197-11-960	Environmental checklist.
197-11-742	Environmental checklist.	197-11-965	Adoption notice.
197-11-744	Environmental document.	197-11-970	Determination of nonsignificance (DNS).
197-11-746	Environmental review.	197-11-980	Determination of significance and scoping notice (DS).
197-11-750	Expanded scoping.	197-11-985	Notice of assumption of lead agency status.
197-11-752	Impacts.	197-11-990	Notice of action.
197-11-754	Incorporation by reference.		
197-11-756	Lands covered by water.		
197-11-758	Lead agency.		
197-11-760	License.		
197-11-762	Local agency.		
197-11-764	Major action.		
197-11-766	Mitigated DNS.		
197-11-768	Mitigation.		
197-11-770	Natural environment.		
197-11-772	NEPA.		
197-11-774	Nonproject.		
197-11-776	Phased review.		
197-11-778	Preparation.		
197-11-780	Private project.		
197-11-782	Probable.		
197-11-784	Proposal.		
197-11-786	Reasonable alternative.		

AMENDATORY SECTION (Amending WSR 96-01-029, filed 12/11/95, effective 1/11/96)

WAC 352-11-040 Additional definitions. In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings:

(1) "Agency" means the entire staff and appointed commission members constituting the Washington state parks and recreation commission.

(2) "Authorized public use" as used in WAC 197-11-800 Part nine - Categorical exemptions means that a particular parcel of real property has ~~((developed facilities which have))~~ been classified for public use, or has developed facilities subject to public use or has been specifically designated and classified for such public use ~~((without developed facilities))~~. No "authorized public use" shall be construed to have occurred on parcels of real property being held for future use and development nor on portions of existing park lands remote from existing public use facilities, including developed trail systems.

(3) "Commission" means the Washington state parks and recreation commission.

(4) "Decision maker" means any agency staff authorized to take an action as provided through agency delegation of authority.

(5) "Demolition of any structure or facility with recognized historical significance" as used in WAC 197-11-800 Part nine - Categorical exemptions means the destruction of any character-defining feature or other change which would degrade or destroy the significance of that structure or facility.

(6) "Director" means the director of the Washington state parks and recreation commission.

~~((5)) "Program" means any of the headquarters' sections or divisions of the Washington state parks and recreation commission that administers a program, such as, but not limited to, boating safety, winter recreation, and youth programs.~~

(6) "Regions" means any of the regional offices of the Washington state parks and recreation commission.

(7) "Section" means any section within the divisional structure of the Washington state parks and recreation commission.)) (7) "Existing roads in nonresidential areas" as used in WAC 197-11-800 Part nine - Categorical exemptions means any transportation corridor through the land affected, not formally zoned or designated for residential use, where such use does not interfere with normal public use of the property.

(8) "Grazing lease" as used in WAC 197-11-800 Part nine - Categorical exemptions shall include lands grazed through authorization prior to acquisition by the agency, regardless of formal "leasing."

AMENDATORY SECTION (Amending WSR 96-01-029, filed 12/11/95, effective 1/11/96)

WAC 352-11-055 Timing of the SEPA process. (1) ~~((Integrating SEPA and agency activities.))~~ The SEPA process shall be integrated with agency activities following and according to established agency SEPA procedures at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to seek to resolve potential problems.

(2) ~~((Timing of review of proposals. The agency shall prepare its threshold determination and environmental impact statement (EIS), if required, at the earliest possible point in the planning and decision-making process, when the~~

principal features of a proposal and its environmental impacts can be reasonably identified.

(a) A proposal exists when the agency is presented with an application or has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the environmental effects can be meaningfully evaluated.

(i) ~~The fact that proposals may require future agency approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts.~~

(ii) ~~Preliminary steps or decisions are sometimes needed before a proposal is sufficiently definite to allow meaningful environmental analysis.~~

(b) ~~Environmental reviews will normally begin when sufficient information is available for agency staff to make preliminary decisions. The agency may also organize environmental review in phases, as specified in WAC 197-11-060(5).~~

(c) ~~Appropriate consideration of environmental information shall be completed before the agency commits to a particular course of action under WAC 197-11-070.~~

(3) ~~Applications and rule making. The timing of environmental review for applications and for rule making shall be as follows:~~

(a) ~~At the latest, the agency shall begin environmental review, if required, when an application is complete. The agency may initiate review earlier and may have informal conferences with applicants. A final threshold determination or final environmental impact statement (FEIS) shall normally precede or accompany the final staff recommendation, if any, in a quasi-judicial proceeding on an application. The substance of an ex parte communication of parties with any member of the commission concerning the decision of action will be placed on the record and subject to public announcement and opportunity for rebuttal at public hearings as required by RCW 42.36.060.~~

(b) ~~For rule making, the DNS or DEIS shall normally accompany the proposed rule. A FEIS, if any, shall be issued at least seven days before adoption of a final rule under WAC 197-11-460(4).~~

~~(4))~~ Additional timing considerations.

(a) ~~((Commission staff receiving a completed application and environmental checklist shall forward such application and checklist to the responsible official who will determine whether the commission or another agency is the SEPA lead agency under WAC 197-11-050 and 197-11-922 through 197-11-940 within five working days. If the commission is not the lead agency, the responsible official shall send the completed environmental checklist and a copy of the application, together with an explanation of the determination to the identified lead agency.~~

(b) ~~Commission))~~ Agency staff receiving an application will forward it to the responsible official who will determine whether the proposal is an "action" and, if so, whether ~~((#))~~ another agency is the lead agency for the proposal. If not, the responsible official will determine if the action is "categorically exempt" from SEPA. If the proposal is an "action" and is not exempt, the responsible official will ask the applicant

to complete an environmental checklist. A new checklist is not needed if the responsible official and applicant agree that an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a complete checklist is included with the application.

(b) Notwithstanding the guidance and requirements of WAC 197-11-922 through 197-11-948, if the agency is presented with an application to undertake a project generally falling under the jurisdiction and/or environmental expertise of another state or local agency, staff will direct the applicant to initiate SEPA with the appropriate agency before it considers the action being requested by the applicant.

~~(c) ((If the only nonexempt action is commission approval of detailed project plans and specifications, an applicant may request that the commission complete SEPA compliance before the applicant submits the detailed plans and specifications.~~

~~(d) The commission)) Agency staff and applicants may hold preliminary discussions or exploration of ideas and options prior to commencing formal environmental review, under provisions of this chapter and chapter 197-11 WAC, subject to RCW 42.36.060.~~

~~((5) An overall decision to proceed with a course of action may involve a series of actions or decisions by one or more agencies. If several agencies have jurisdiction over a proposal, they shall coordinate their SEPA processes wherever possible. The agencies shall comply with lead agency determination requirements in WAC 197-11-050 and 197-11-922 through 197-11-948.~~

~~(6) To meet the requirement to insure that environmental values and amenities are given appropriate consideration along with economic and technical considerations, environmental documents and analysis shall be circulated and reviewed with other planning documents to the fullest extent possible.~~

~~(7) For its own public proposals, the responsible official may extend the time limits prescribed in this chapter.~~

~~(8) When the commission staff has prepared a commission agenda item for approval by the commission, the FEIS, DNS, or exemption statement shall accompany the agenda item to the commission for its review.)~~ (3) All commission actions require SEPA.

NEW SECTION

WAC 352-11-330 Threshold determination process—Additional considerations. (1) Applicants are required to fully complete an environmental checklist to aid the agency in rendering a threshold determination.

(2)(a) To make the final determination, the responsible official will consider: All comments received, mitigation measures proposed, and suggested changes to the project.

(b) If there are substantial changes to the project during the SEPA process, the final determination must undergo similar public notice as the initial determination. Projects without changes or only minor changes do not require public notice of a final determination.

AMENDATORY SECTION (Amending Order 84, filed 10/3/84)

WAC 352-11-350 Mitigated DNS. (1) An applicant may ask the agency whether issuance of a determination of significance (DS) is likely for a proposal. This request for early notice must:

(a) Be written;

(b) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the commission is lead agency; and

(c) Precede the agency's actual threshold determination for the proposal.

(2) The responsible official ~~((or his designee shall respond to the request within ten working days of receipt of the letter; the response shall:~~

~~(a) Be written;~~

~~(b) State whether the agency is considering issuance of a DS;~~

~~(c) Indicate the general or specific area(s) of concern that led the agency to consider a DS; and~~

~~(d) State)) can suggest that the applicant may change or clarify the proposal to mitigate the impacts indicated ((in the letter, revising)) and revise the environmental checklist as necessary to reflect the changes or clarifications.~~

(3) The agency shall not continue with the threshold determination until after receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the agency will make its threshold determination based on the changed or clarified proposal.

(a) If the agency's response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the applicant changes or clarifies the proposal to include all of those specific mitigation measures, the agency shall issue a determination of nonsignificance and circulate the DNS for comments as directed in WAC ~~((497-11-350))~~ 197-11-340 (2).

(b) If the agency indicated general or specific areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the agency shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(5) The agency may specify mitigation measures that would allow it to issue a DNS without a request for early notice from an applicant. If it does so, and the applicant changes or clarifies the proposal to include those measures, the agency shall issue a DNS and circulate it for review under WAC 197-11-350(2).

(6) When an applicant changes or clarifies the proposal, the clarifications or changes may be included in written attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s), the agency may require the applicant to submit a new checklist.

~~(7) ((The agency may change or clarify features of its own proposals before making the threshold determination.~~

~~(8))~~ The agency's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification of or changes to a proposal, as opposed to a written request for early notice, shall not bind the agency to consider the clarifications or changes in its threshold determination.

~~((9))~~ (8) When an applicant submits a changed or clarified proposal pursuant to this section, it shall be considered part of the applicant's application for a permit or other approval for all purposes, including enforcement of the permit or other approval. Unless the agency's decision expressly states otherwise, when a mitigated DNS is issued for a proposal, any decision approving the proposal shall be based on the proposal as changed or clarified pursuant to this section.

AMENDATORY SECTION (Amending Order 84, filed 10/3/84)

WAC 352-11-420 EIS preparation. For draft and final EISs and supplemental environmental impact statements (SEISs):

(1) Preparation of the EIS is the responsibility of the agency, by or under the direction of its responsible official, as specified by the agency's procedures. No matter who participates in the preparation of the EIS, it is the EIS of the agency. The responsible official, prior to distributing an EIS, shall be satisfied that it complies with this chapter and chapter 197-11 WAC.

(2) The agency may have an EIS prepared by agency staff, an applicant or its agent, or by an outside consultant retained by either an applicant or the agency. The agency shall assure that the EIS is prepared in a professional manner and with appropriate interdisciplinary methodology. The responsible official shall direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document.

(3) If a person other than the agency is preparing the EIS, the agency shall:

(a) Coordinate any scoping procedures so that the individual preparing the EIS receives all substantive information submitted by any agency and the public that is needed by the person;

(b) Assist in obtaining any information on file with another agency that is needed by the person preparing the EIS;

(c) Allow any party preparing an EIS access to all public records of the agency that relate to the subject of the EIS, under RCW 42.17.250 through 42.17.340.

(4) Normally, the agency will prepare an EIS(~~s~~) for its own proposals.

(5) For applicant proposals, the agency normally will require the applicant to prepare or help prepare the EIS at the applicant's expense, under provisions of this chapter and chapter 197-11 WAC.

(6) The agency may require an applicant to provide information that the agency does not possess, including specific investigations. The applicant is not required to supply

information that is not required under this chapter and chapter 197-11 WAC.

AMENDATORY SECTION (Amending Order 84, filed 10/3/84)

WAC 352-11-510 Public notice requirements. (1) The agency shall give public notice when issuing a DNS under WAC ~~((197-11-350))~~ 197-11-340(2), a scoping notice under WAC 352-11-420, or a draft EIS under WAC 197-11-455.

(2) ~~((Whenever possible, the agency shall integrate the public notice required under this section with existing notice procedures for the agency's permit or approval required for the proposal.~~

~~(a) When more than one permit or approval required from or by the agency has public notice requirements, the notice procedures that would reach the widest audience shall be used, if possible.~~

~~(b) If the public notice requirements for the permit or approval must be completed at a specific time in the permitting process and that timing does not coincide with the timing requirements for SEPA public notice, the agency must use one or more public notice methods in subsection (3) of this section.~~

~~(c) If there are no public notice requirements for any of the permits/approvals required for a proposal, the agency must use one or more public notice methods in subsection (3) of this section.~~

~~(3))~~ The agency shall use one or more of the following methods of public notice, taking into consideration the geographic area affected by the proposal, the size and complexity of the proposal, the public notice requirements for the permit or approval required from the agency, other public notice(s) required by agencies with jurisdiction, public interest expressed in the proposal, and whether the proposal is a project or regulation:

(a) Notifying persons or groups who have expressed interest in the proposal, of the type of proposal, or proposals in the geographic area in which the proposal will be implemented if approved;

(b) Publication in a newspaper of general circulation in the area in which the proposal will be implemented;

(c) Posting the property for site-specific proposals;

(d) Notifying the news media; ~~((and or))~~

(e) Placing notice in appropriate regional, neighborhood, ethnic, or trade journals;

(f) Hosting a public hearing on the proposal; or

(g) Other methods of notice expressly authorized by the department of ecology.

~~((4))~~ (3) The agency may require an applicant to perform the public notice requirement at the applicant's expense.

AMENDATORY SECTION (Amending WSR 96-01-029, filed 12/11/95, effective 1/11/96)

WAC 352-11-665 Policies and procedures for conditioning or denying permits or other approvals. (1)(a) The overriding policy of the Washington state parks and recreation commission is to avoid or mitigate adverse environmental impacts which may result from the agency's decisions.

(b) ~~((The commission shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:~~

~~(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;~~

~~(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;~~

~~(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;~~

~~(iv) Preserve important historic, cultural, and natural aspects of our national heritage;~~

~~(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;~~

~~(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and~~

~~(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.~~

~~(c) The agency recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.~~

~~(d)) The agency shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.~~

(2) Policies - specific. ~~((The commission is responsible for the following approvals, permits, or rulemaking and for the acquisition of land suitable for parks, for repair, maintenance and new construction of park facilities which have potential to impact the environment and which are subject to the provisions of this chapter:~~

~~(a) Authority to acquire and develop parks and parkways (chapter 43.51 RCW);~~

~~(b) Grant concessions or leases in state parks and parkways (RCW 43.51.040(5));~~

~~(c) Grant franchises and easements for any legitimate purpose on parks and parkways (RCW 43.51.060(5));~~

~~(d) Enter into agreements whereby individuals or companies may rent undeveloped parks or parkway land for grazing, agricultural, or mineral development (RCW 43.51.060(7));~~

~~(e) Lease park land for television stations (RCW 43.51.062 and 43.51.063);~~

~~(f) Grant permits for improvement of parks (RCW 43.51.130 through 43.51.160);~~

~~(g) Administer the seashore conservation area including:~~

~~(i) Establish reasonable regulations for the use and control of vehicular traffic on or along the ocean beach highways (RCW 43.51.680, 79.94.340 and 79.94.360);~~

~~(ii) Sale of sand from accretions to supply the needs of cranberry growers (RCW 43.51.685); and or~~

~~(iii) Grant leases and permits for the removal of sands for construction purposes (RCW 43.51.685).~~

~~(h) Stewardship, management and development of resources, including land acquisition in accordance with the~~

State Wildlife and Recreation Lands Management Act (chapter 43.98B RCW);

~~(i) Administration, acquisition, development, operation and maintenance of snowmobile facilities (RCW 46.10.080);~~

~~(j)) Agency policies, plans, rules and regulations are rooted in the agency's legislation, stewardship policies and rules promulgated by the agency. The following may be used to fulfill the intent of SEPA and may be used to mitigate significant adverse environmental impacts of agency actions:~~

~~(a) Authorities provided to the agency through Title 79A RCW Public recreation lands;~~

~~(b) Any other approval authority which may be granted to the commission in the future;~~

~~(c) Rules promulgated under Title 352 WAC;~~

~~(d) Approved commission and administrative policies;~~

~~(e) Other state agencies' applicable habitat conservation plans;~~

~~(f) Acquisition, development and maintenance of scenic and recreational highways, and rest areas, including landscaping and signing (chapter 47.39 RCW)((;~~

~~(k) Review and approval or disapproval of plans for acquisition and operation of parks and recreation facilities by any port district (RCW 53.08.270);~~

~~(l) Acquisition, development, operation and maintenance of recreational trails (chapter 67.32 RCW);~~

~~(m) Development of a statewide scenic rivers program plan, including proposals for acquisition and development of public access sites and facilities (chapter 79.72 RCW);~~

~~(n) Grant approvals for the construction, operation and maintenance of winter recreational devices, including but not limited to ski lifts, ski tows, j bars, t bars, ski mobiles, chair lifts and similar devices and equipment (RCW 70.88.010 through 70.88.040).~~

~~(o) Any other approval authority which may be granted to the commission in the future.~~

~~(3)(a) SEPA procedures. When the environmental document for a proposal for approval by the agency shows it will cause significant adverse impacts that the proponent does not plan to mitigate, the responsible official shall consider whether:~~

~~(i) The environmental document identified mitigation measures that are reasonable and capable of being accomplished;~~

~~(ii) Other local, state, or federal requirements and enforcement would mitigate the significant adverse environmental impacts; and~~

~~(iii) Reasonable mitigation measures are sufficient to mitigate the significant adverse impacts.~~

~~(b) The responsible official may:~~

~~(i) Condition the approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal is inconsistent with the policies in subsection (1) of this section.~~

~~(ii) Deny the permit or approval for a proposal if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in subsection (1) of this section.~~

~~(c) The procedures in WAC 197-11-660 must also be followed when conditioning or denying permits or other approvals).~~

(3) The agency may exercise substantive authority to mitigate the environmental impacts of a project, according to the limitations provided in WAC 197-11-660, by conditioning or denying that project based upon agency SEPA policies.

AMENDATORY SECTION (Amending WSR 96-01-029, filed 12/11/95, effective 1/11/96)

WAC 352-11-910 Designation of responsible official.

~~(1) ((The ultimate responsible official is the commission. Normally, the operational responsibility shall be delegated via the director to the (manager), environmental programs. The manager, environmental programs may delegate this authority to the assistant manager, environmental programs and to the regional environmental specialists.)) The authority of responsible official is delegated via the director, or designee, to staff.~~

(2) Depending upon the size and scope of the proposed action, ~~((consideration may be given to establishing))~~ the responsible official may be established at the level of ((assistant director, resources development, Washington state parks and recreation commission, or at the level of)) director, deputy director, or assistant deputy director.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 352-11-310	Threshold determination process—Additional considerations.
WAC 352-11-508	Notice of environmental documents.
WAC 352-11-615	Coordination on combined agency—Federal action.
WAC 352-11-800	Threshold levels adopted by counties/cities.
WAC 352-11-905	Responsibilities of individuals and work units within the agency.
WAC 352-11-908	Critical areas.

AMENDATORY SECTION (Amending WSR 05-24-030, filed 11/30/05, effective 12/31/05)

WAC 352-32-010 Definitions. Whenever used in this chapter the following terms shall be defined as herein indicated:

"Aircraft" shall mean any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible, balloon, helicopter, etc. The term aircraft shall not include paraglider or remote controlled aircraft.

"Aquatic facility" shall mean any structure or area within a state park designated by the director or designee for aquatic activities, including, but not limited to, swimming pools, wading pools, swimming beaches, floats, docks, ramps, piers or underwater parks.

"Bivouac" shall mean to camp overnight on a vertical rock climbing route on a ledge or in a hammock sling.

"Campfires" shall mean any open flame from a wood source.

"Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Camping party" shall mean an individual or a group of people (two or more persons not to exceed eight) that is organized, equipped and capable of sustaining its own camping activity in a single campsite. A "camping party" is a "camping unit" for purposes of RCW 79A.05.065.

"Commercial recreation use" is a recreational activity in a state park that is packaged and sold as a service by an organization or individual, other than state parks or a state park concessionaire.

"Commercial recreation provider" is any individual or organization that packages and sells a service that meets the definition of a commercial recreation use.

"Commercial use (nonrecreation)" is any activity involving commercial or business purpose within a state park that may impact park facilities, park visitors or staff and is compatible with recreational use and stewardship, limited in duration and does not significantly block/alter access or negatively impact recreational users.

"Commission" shall mean the Washington state parks and recreation commission.

"Conference center" shall mean a state park facility designated as such by the director or designee that provides specialized services, day-use and overnight accommodations available by reservation for organized group activities.

"Day area parking space" shall mean any designated parking space within any state park area designated for daytime vehicle parking.

"Director" shall mean the director of the Washington state parks and recreation commission or the director's designee.

"Disrobe" shall mean to undress so as to appear nude.

"Emergency area" is an area in the park separate from the designated overnight camping area, which the park manager decides may be used for camping when no alternative camping facilities are available within reasonable driving distances.

"Environmental interpretation" shall mean the provision of services, materials, publications and/or facilities, including environmental learning centers (ELCs), for other than basic access to parks and individual camping, picnicking, and boating in parks, that enhance public understanding, appreciation and enjoyment of the state's natural and cultural heritage through agency directed or self-learning activities.

"Environmental learning centers (ELCs)" shall mean those specialized facilities, designated by the director or designee, designed to promote outdoor recreation experiences and environmental education in a range of state park settings.

"Extra vehicle" shall mean each additional unhitched vehicle in excess of the one recreational vehicle that will be parked in a designated campsite or parking area for overnight.

"Fire" shall mean any open flame from any source or device including, but not limited to, campfires, stoves, candles, torches, barbecues and charcoal.

"Fish" shall mean all marine and freshwater fish and shellfish species including all species of aquatic invertebrates.

"Geocache" shall mean geocaches, letterboxes, and related activities. Geocaching is an outdoor treasure hunting game in which participants (called "geocachers") use a Global Positioning System receiver or other navigational techniques to hide and seek containers (called "geocaches" or "caches").

"Group" shall mean twenty or more people engaged together in an activity.

"Group camping areas" are designated areas usually primitive with minimal utilities and site amenities and are for the use of organized groups. Facilities and extent of development vary from park to park.

"Hiker/biker campsite" shall mean a campsite that is to be used solely by visitors arriving at the park on foot or bicycle.

"Intimidate" means to engage in conduct that would make a reasonable person fearful.

"Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor and a moped.

"Multiple campsite" shall mean a designated and posted camping facility encompassing two or more individual standard, utility or primitive campsites.

"Obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by a permit issued pursuant to WAC 352-32-165 shall not constitute obstruction of pedestrian or vehicular traffic.

"Overflow area" shall mean an area in a park separate from designated overnight and emergency camping areas, designated by the park manager, for camping to accommodate peak camping demands in the geographic region.

"Overnight accommodations" shall mean any facility or site designated for overnight occupancy within a state park area.

"Paraglider" shall mean an unpowered ultralight vehicle capable of flight, consisting of a fabric, rectangular or elliptical canopy or wing connected to the pilot by suspension lines and straps, made entirely of nonrigid materials except for the pilot's harness and fasteners. The term "paraglider" shall not include hang gliders or parachutes.

"Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Personal watercraft" means a vessel of less than sixteen feet that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on, or being

towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

"Popular destination park" shall mean any state park designated by the director or designee as a popular destination park because, it is typically occupied to capacity on Friday or Saturday night during the high use season.

"Primitive campsite" shall mean a campsite not provided with flush comfort station nearby and which may not have any of the amenities of a standard campsite.

"Public assembly" shall mean a meeting, rally, gathering, demonstration, vigil, picketing, speechmaking, march, parade, religious service, or other congregation of persons for the purpose of public expression of views of a political or religious nature for which there is a reasonable expectation that ~~((more than one hundred))~~ a minimum of twenty persons will attend based on information provided by the applicant. Public assemblies must be open to all members of the public, and are generally the subject of attendance solicitations circulated prior to the event, such as media advertising, flyers, brochures, word-of-mouth notification, or other form of prior encouragement to attend.

Alternatively, the agency director or designee may declare an event to be a public assembly in the following cases: Where evidentiary circumstances and supporting material suggest that more than one hundred persons will attend, even where the applicant does not indicate such an expectation; or where there is reason to expect a need for special preparations by the agency or the applicant, due to the nature or location of the event.

"Ranger" shall mean a duly appointed Washington state parks ranger who is vested with police powers under RCW 79A.05.160, and shall include the park manager in charge of any state park area.

"Recreation vehicle" shall mean a vehicle/trailer unit, van, pickup truck with camper, motor home, converted bus, or any similar type vehicle which contains sleeping and/or housekeeping accommodations.

"Remote controlled aircraft" shall mean nonpeopled model aircraft that are flown by using internal combustion, electric motors, elastic tubing, or gravity/wind for propulsion. The flight is controlled by a person on the ground using a hand held radio control transmitter.

"Residence" shall mean the long-term habitation of facilities at a given state park for purposes whose primary character is not recreational. "Residence" is characterized by one or both of the following patterns:

(1) Camping at a given park for more than thirty days within a forty-day time period April 1 through September 30; or forty days within a sixty-day time period October 1 through March 31. As provided in WAC 352-32-030(7), continuous occupancy of facilities by the same camping party shall be limited to ten consecutive nights April 1 through September 30. Provided that at the discretion of the park ranger the maximum stay may be extended to fourteen consecutive nights if the campground is not fully occupied. Campers may stay twenty consecutive nights October 1 through March 31 in one park, after which the camping unit must vacate the overnight park facilities for three consecutive nights. The time period shall begin on the date for which the first night's fee is paid.

(2) The designation of the park facility as a permanent or temporary address on official documents or applications submitted to public or private agencies or institutions.

"Seaweed" shall mean all species of marine algae and flowering sea grasses.

"Sno-park" shall mean any designated winter recreational parking area.

"Special groomed trail area" shall mean those sno-park areas designated by the director as requiring a special groomed trail permit.

"Special recreation event" shall mean a group recreation activity in a state park sponsored or organized by an individual or organization that requires reserving park areas, planning, facilities, staffing, or other services beyond the level normally provided at the state park to ensure public welfare and safety and facility and/or environmental protection.

"Standard campsite" shall mean a designated camping site which is served by nearby domestic water, sink waste, garbage disposal, and flush comfort station.

"State park area" shall mean any area under the ownership, management, or control of the commission, including trust lands which have been withdrawn from sale or lease by order of the commissioner of public lands and the management of which has been transferred to the commission, and specifically including all those areas defined in WAC 352-16-020. State park areas do not include the seashore conservation area as defined in RCW 79A.05.605 and as regulated under chapter 352-37 WAC.

"Trailer dump station" shall mean any state park sewage disposal facility designated for the disposal of sewage waste from any recreation vehicle, other than as may be provided in a utility campsite.

"Upland" shall mean all lands lying above mean high water.

"Utility campsite" shall mean a standard campsite with the addition of electricity and which may have domestic water and/or sewer.

"Vehicle" shall include every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway. For the purposes of this chapter, this definition excludes bicycles, wheelchairs, motorized foot scooters, electric personal assistive mobility devices (EPAMDs), snowmobiles and other nonlicensed vehicles.

"Vehicle parking permit" means the permit issued on a daily, multiple day or annual basis for parking a vehicle in any state park area designated for daytime vehicle parking, excluding designated sno-park parking areas.

"Vessel" shall mean any watercraft used or capable of being used as a means of transportation on the water.

"Walk-in campsite" shall mean a campsite that is accessed only by walking to the site and which may or may not have vehicle parking available near by.

"Watercraft launch ((site))" ((shall mean any facility located in a state park area designated for the purpose of placing or retrieving any vehicle-borne or trailer-borne)) is any developed launch ramp designated for the purpose of placing or retrieving watercraft into or out of the water.

"Water trail advisory committee" shall mean the twelve-member committee constituted by RCW 79A.05.420.

"Water trail camping sites" shall mean those specially designated group camp areas identified with signs, that are near water ways, and that have varying facilities and extent of development.

"Wood debris" shall mean down and dead tree material.

AMENDATORY SECTION (Amending WSR 98-04-065, filed 2/2/98, effective 3/5/98)

WAC 352-32-01001 Feeding wildlife. No person shall intentionally feed, attract, or artificially sustain wildlife in state park areas. The feeding of indigenous wildlife is prohibited in all state park areas unless otherwise posted. This section does not apply to authorized feeding programs established with the Washington state department of fish and wildlife.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 03-01-079, filed 12/13/02, effective 1/13/03)

WAC 352-32-030 Camping. (1) Camping facilities of the state parks within the Washington state parks and recreation commission system are designed and administered specifically to provide recreational opportunities for park visitors. Use of park facilities for purposes which are of a nonrecreational nature, such as long-term residency at park facilities, obstructs opportunities for recreational use, and is inconsistent with the purposes for which those facilities were designed.

No person or camping party may use any state park facility for residence purposes, as defined (WAC 352-32-010).

(2) No person shall camp in any state park area except in areas specifically designated and/or marked for that purpose or as directed by a ranger.

(3) Occupants shall vacate camping facilities by removing their personal property therefrom no later than 1:00 p.m., if the applicable camping fee has not been paid or if the time limit for occupancy of the campsite has expired or the site is reserved by another party. Remaining in a campsite beyond the established checkout time shall subject the occupant to the payment of an additional camping fee.

(4) Use of utility campsites by tent campers shall be subject to payment of the utility campsite fee except when otherwise specified by a ranger.

(5) A campsite is considered occupied when it is being used for purposes of camping by a person or persons who have paid the camping fee within the applicable time limits or when it has been reserved through the appropriate procedures of the reservation system. No person shall take or attempt to take possession of a campsite when it is being occupied by another party, or when informed by a ranger that such site is occupied, or when the site is posted with a "reserved" sign. In the case of a reserved site, a person holding a valid reservation for that specific site may occupy it according to the rules relating to the reservation system for that park. In order to afford the public the greatest possible use of the state park system on a fair and equal basis, campsites in those parks not on the state park reservation system will be available on a first-come, first-serve basis. No person shall hold or attempt

to hold campsite(s), for another camping party for present or future camping dates, except as prescribed for multiple campsites. Any site occupied by a camping party must be actively utilized for camping purposes.

(6) One person may register for one or more sites within a multiple campsite by paying the multiple campsite fee and providing the required information ~~((on))~~ regarding the occupants of the other sites. An individual may register and hold a multiple campsite for occupancy on the same day by other camping parties. Multiple campsites in designated reservation parks ~~((are reservable))~~ may be reserved under the reservation system.

(7) In order to afford the general public the greatest possible use of the state park system, on a fair and equal basis, and to prevent residential use, continuous occupancy of facilities by the same camping party shall be limited. Campers may stay ten consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights, April 1 through September 30, not to exceed thirty days in a forty-day time period~~((:))~~; provided that at the discretion of the park ranger the maximum stay may be extended to fourteen consecutive nights if the campground is not fully occupied. Campers may stay twenty consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights, October 1 through March 31, not to exceed forty days in a sixty-day time period. This limitation shall not apply to those individuals who meet the qualifications of WAC 352-32-280 and 352-32-285.

(8) A maximum of eight people shall be permitted at a campsite overnight, unless otherwise authorized by a ranger. The number of vehicles occupying a campsite shall be limited to one car and one recreational vehicle: Provided, That one additional vehicle without built-in sleeping accommodations may occupy a designated campsite when in the judgment of a ranger the constructed facilities so warrant. The number of tents allowed at each campsite shall be limited to the number that will fit on the developed tent pad or designated area as determined by a ranger.

(9) Persons traveling by bicycles, motor bikes or other similar modes of transportation and utilizing campsites shall be limited to eight persons per site, provided no more than four motorcycles may occupy a campsite.

(10) Water trail camping sites are for the exclusive use of persons traveling by human and wind powered beachable vessels as their primary mode of transportation to the areas. Such camping areas are subject to the campsite capacity limitations as otherwise set forth in this section. Exceptions for emergencies may be approved by the ranger on an individual basis. Water trail site fees, as published by state parks, must be paid at the time the site is occupied.

(11) Overnight stays (bivouac) on technical rock climbing routes will be allowed as outlined in the park's site specific climbing management plan. All litter and human waste must be contained and disposed of properly.

(12) Emergency camping areas may be used only when all designated campsites are full and at the park ranger's discretion. Persons using emergency areas must pay the applicable campsite fee and must vacate the site when directed by the park ranger.

(13) Designated overflow camping areas may be used only when all designated campsites in a park are full and the demand for camping in the geographic area around the park appears to exceed available facilities. Persons using overflow camping areas must pay the applicable campsite fee.

(14) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 98-04-065, filed 2/2/98, effective 3/5/98)

WAC 352-32-037 Environmental learning centers (ELCs). All ELCs ~~((are reservable))~~ can be reserved by:

- (1) Complying with the reservation procedure; and
- (2) Paying the appropriate fees and deposits ~~((both of which are))~~ as published by state parks.

Use of ELCs shall be on a first-come-first-served basis if the facility is not reserved.

AMENDATORY SECTION (Amending WSR 03-01-079, filed 12/13/02, effective 1/13/03)

WAC 352-32-045 Reservations for use of designated group facilities. (1) All designated group facilities shall be reservable by groups as defined in WAC 352-32-010.

(2) All designated group facilities shall have a predetermined use capacity. No group exceeding this capacity in number shall use these areas. Groups making reservations shall be charged the applicable fee for a minimum of 20 people.

(3) Use of designated group facilities may be by reservation. Requests made at ~~((the))~~ park, not on central reservation system, for reservations for groups of 20 to 250 shall be made 15 days in advance and for groups in excess of 250 shall be made 30 days in advance of the proposed use date, using the group use permit. All conditions outlined on the group use permit shall be binding on the group.

(4) Submittal of the group use permit request and payment in full of appropriate fees are required for the use of these facilities. Fees must be paid by credit card, certified check or money order. Fees are published by state parks. Refunds will be made only to those groups which cancel their reservations thirty or more days before the effective date of the reservations.

(5) For overnight group use, parking will be in the provided, defined areas. If additional parking is required, it may be available in the park's extra vehicle parking facility following the payment of the appropriate extra vehicle parking fee.

(6) The organization or delegated group leader making the reservation is responsible for any damages or extra cleaning that occurs as a result of the use of the facility(ies) beyond normal care and wear.

(7) Facility reservations for parks not on the central reservation system are made at the park and will be accepted for the calendar year, on or after the first working day in January of that calendar year. Reservations shall be made by a person of the age of majority, who must be in attendance during the group's activities. Reservations at the parks will be accepted in writing, in person, or by phone at the discretion of the park manager. In person and phone reservation requests shall only

be accepted at the park during normal park operation hours. All reservation requests will be processed in order of arrival. Group facility areas not reserved are available on a first-come, first-serve basis.

(8) Any group wishing to sell or dispense alcoholic beverages must request and obtain all appropriate licenses and permits. In order to sell alcoholic beverages, the group must obtain a temporary concession permit from the headquarters office of the (~~Washington state parks and recreation~~) commission.

(9) It shall be within the authority of the park manager, or his representative, to rescind the rights of a reservation, and remove from the park, any or all members of the group whose behavior, at any time, is in conflict with any state laws, becomes detrimental to the health and safety of the group or other park users, or becomes so unruly as to affect the reasonable enjoyment of the park by other park users.

AMENDATORY SECTION (Amending WSR 98-04-065, filed 2/2/98, effective 3/5/98)

WAC 352-32-047 Special recreation event permit.

Any person or group, hereinafter referred to as the "applicant," desiring to make use of a portion of a state park for a special recreation event which will require special planning, facilities, staffing, or environmental protection measures, or the closure of the area to, or restriction of, established recreational uses, shall apply for a special recreation event permit. The director or designee may consult with the appropriate local government in reviewing the application and may issue a permit subject to conditions established by the agency. Such conditions may include but not be limited to the closure of the specified area to other recreational activities, including motor vehicle traffic, which are determined to have the potential to interfere with the event or which could risk the safety of the recreating public or the special event participants. However, no such permit may result in the unreasonable exclusion of recreationists from the remainder of the park. All events authorized under this permit shall be open to public participation and/or observation.

A special recreation event permit shall be issued only for recreational events where there is a reasonable expectation that a minimum of twenty persons will participate. The event must be oriented towards a recreational pursuit. Not more than three permits will be issued to a given applicant for a similar event at the same park during a one-year period.

Persons or organizations that desire to conduct a special recreation event in a state park shall submit a permit application obtainable at any state park and the basic permit application fee as published by state parks to the park where the event is proposed to take place.

If the agency determines it is necessary, the applicant must submit a completed environmental checklist along with the application. Upon request, the agency may assist the applicant in completing the environmental checklist and may request compensation in accordance with agency State Environmental Policy Act (SEPA) rules, chapter 352-11 WAC.

Permit applications must be submitted at least sixty days in advance of the proposed event so that the information supplied in the application may be verified and so that the agency

can notify and coordinate action with officials of other jurisdictions and agencies responsible for health, safety and welfare. The sixty-day time limit is also necessary to comply with SEPA review requirements to identify any potential environmental impacts and mitigation. This requirement for an application to be filed sixty days prior to an event may be waived in rare circumstances where arrangements can be made in a shorter time while still complying with all other requirements of this section.

Such application shall be submitted at least (~~thirty~~) sixty days in advance of the proposed date of the event, to allow, where applicable, for necessary internal review and analysis, consultation with local governments, public notice, establishment of permit conditions, and required agency preparations and coordination. The director or designee shall approve or disapprove a permit application and establish the conditions for an approved application. The permittee must pay any fees published by state parks for the use of park lands or facilities. The director or designee shall determine the need for any fees necessary to cover costs incurred by the agency for additional staffing, equipment, facilities, or special services not normally provided by state parks, as well as the need for any bond, damage deposit, or liability insurance arising from any potential hazards associated with the conduct of the event. Any such fees, bond, damage deposit, or liability insurance shall be provided by the applicant prior to the issuance of the permit.

If additional unanticipated costs are incurred by the commission resulting from the event, the applicant shall reimburse the commission for such costs in a timely manner. If the additional costs are not paid, the director may recover such costs from the bond or damage deposits provided. Any funds remaining from the bond or damage deposit shall be returned to the applicant.

AMENDATORY SECTION (Amending WSR 03-01-079, filed 12/13/02, effective 1/13/03)

WAC 352-32-056 Peace and quiet. To insure peace and quiet for visitors:

(1) No person shall conduct themselves so that park users are disturbed in their sleeping quarters or in campgrounds or park employees in their sleeping quarters between the quiet hours of 10:00 p.m. and 6:30 a.m.

(2) No person shall, at any time, use sound-emitting electronic equipment including electrical speakers, radios, phonographs, televisions, or other such equipment, at a volume which emits sound beyond the person's vehicle or immediate area of use, individual camp or picnic site that may disturb other park users without specific permission of the park ranger.

(3) Engine driven electric generators may be operated only between the hours of 8:00 a.m. and 9:00 p.m.

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-32-057 Disturbances. Disorderly conduct, or conduct with the intent to intimidate or obstruct pedestrian or vehicular traffic, or which otherwise impedes or disturbs

state park employees or volunteers in the performance of their duties, or which impedes or disturbs the general public in the use and enjoyment of state park areas, is prohibited.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-060 Pets. (1) All pets or domestic animals must be kept under physical control, on a leash no greater than eight feet in length, or otherwise physically restrained, at all times while in a state park area.

(2) Pets and domestic animals may not be allowed to dig or otherwise disturb or damage the natural or cultural features of any state park area.

(3) In any state park area, pets or domestic animals, except for assistance ~~((dogs))~~ animals for persons with disabilities, are not permitted on any designated swimming beach; within a natural area preserve; during the skiing season on any designated alpine ski site or cross country ski trail in which the track has been prepared, set, or groomed; or in any public building unless so posted.

(4) In any state park area, pets or domestic animals, except for assistance dogs for persons with disabilities, may be prohibited in areas where there could be conflict with domestic livestock or agricultural activities on adjacent land for the protection of wildlife, sensitive natural systems, special cultural areas, or for other recreational or health and safety purposes, if approved by the director or designee and so posted.

(5) No person shall allow his/her pet or domestic animal to bite or in any way molest or annoy other park visitors. No person shall permit his/her pet or domestic animal to bark or otherwise disturb the peace and tranquillity of the park.

(6) Any person bringing a pet or domestic animal into a state park area shall dispose of animal feces in a plastic or paper sack. The sack shall then be deposited in a solid waste container.

(7) Pet off-leash areas may be approved and designated by the director or designee. Approved pet off-leash areas will be exempt from subsections (1), (2), and (3) of this section. Approved pet off-leash areas may be closed permanently or temporarily by the director or designee for the protection of wildlife, sensitive natural systems, and special cultural areas. Any park area designated for pets off-leash shall be conspicuously posted as such by the director or designee.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

~~((8))~~ (9) This section shall not apply to the recreational use of horses, llamas, sled dogs, or similar animals as authorized by WAC 352-32-070.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-070 Use of horses, llamas, sled dogs or similar animals for recreation. (1) No horses, llamas, sled dogs or similar animals used for recreation shall be permitted on trails in any state park area, except where designated and posted to specifically or conditionally permit such activity.

The director or designee may open or close trails to such use. This decision shall include an evaluation of factors including, but not limited to, conflict with other park users, public safety, and damage to park resources and/or facilities. This evaluation shall include a reasonable effort to involve interested trail users of the park in question, including, at a minimum, one public meeting advertised and conducted in the region where the park is located. Trails designated open for such use may be temporarily closed by the park manager due to emergency health, safety, or resource protection considerations.

(2) No horses, llamas, sled dogs or similar animals used for recreation shall be permitted off trails in any state park area, except where authorized by the commission and posted to specifically or conditionally permit such activity.

(3) Horses, llamas, sled dogs or similar animals used for recreation shall not be permitted in any designated swimming areas, campgrounds - except designated horse((-)) or pack-oriented camping areas - or picnic areas, nor within a natural area preserve.

(4) Horses, llamas, sled dogs or similar animals used for recreation shall not be permitted within natural areas or natural forest areas, except that relocation of existing equestrian or other similar trails into natural areas or natural forest areas may be permitted upon a finding by the director or designee that such relocation is for the purpose of reducing overall resource impacts to a state park area.

(5) No person shall ride any horse or other animal in such a manner that might endanger life or limb of any person or animal, or damage park resources and/or facilities, and no person shall allow a horse or other animal to stand unattended or insecurely tied. Persons using horses or other animals for recreation shall obey regulatory signs, including those permanently or temporarily erected, that govern the timing, location, speed, type and/or manner of use.

(6) Any person bringing a horse, llama, sled-dog or similar animal into a state park area shall cleanup animal feces in parking lots, at trail heads and other central locations used by park visitors.

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-085 Technical rock climbing. (1) Whenever used in this section, technical rock climbing shall mean climbing while using such aids as pitons, carabiners or snap links, chalk, ropes, fixed or removable anchors, or other similar equipment. Technical rock climbing includes bouldering and free soloing (respectively low and high elevation climbing without ropes).

(2) Technical rock climbing will be allowed in state parks except it is:

- (a) Not permitted in natural area preserves;
- (b) Conditioned in heritage areas, natural areas and natural forest areas;
- (c) Not permitted where the director or designee has closed the area pursuant to subsection (3) of this section;

(d) Limited in state park areas without climbing management plans pursuant to subsection (6) of this section to the use of routes with established fixed protection, new routes that do not use fixed protection, nor require gardening/cleaning with any type of cleaning tool;

(e) Not permitted in state park areas closed to public use.

(3) The director or designee may, permanently or for a specified period or periods of time, close any state park area to technical rock climbing if the director or designee concludes that a technical rock climbing closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources. Prior to closing any park or park area to technical rock climbing, the director or ~~((the))~~ designee shall hold a public meeting in the general area of the park or park area to be closed to technical rock climbing. Prior notice of the meeting shall be published in a newspaper of general circulation in the area and at the park at least thirty days prior to the meeting. In the event that the director or designee determines that it is necessary to close a rock climbing area immediately to protect against an imminent and substantial threat to the health, safety and welfare of the public, park visitors or staff, or park resource, the director or designee may take emergency action to close a park area to rock climbing without first complying with the publication and hearing requirements of this subsection. Such emergency closure may be effective for only so long as is necessary for the director or designee to comply with the publication and hearing requirements of this subsection.

(4) The director or designee shall ensure that any park area closed to technical rock climbing pursuant to subsection (3) of this section is conspicuously posted as such at the entrance of said park area. Additionally, the director or designee shall maintain a list of all parks and park areas closed to technical rock climbing pursuant to subsection (3) of this section.

(5) The director or designee shall establish a committee of technical rock climbers, to advise park staff on park management issues related to technical rock climbing for each state park area where deemed necessary by the agency.

(6) Each state park area with an established advisory committee of technical rock climbers will have a climbing management plan which will specify technical rock climbing rules concerning overnight stays on climbing routes, bolting, power drills, stabilization of holds, group size and activities, gardening/cleaning of routes pursuant to chapter 352-28 WAC and RCW 79A.05.165, chalk, special use designations for climbing areas, protection of sensitive park resources, and other such issues required by the director or designee. Climbing management plans that relate to natural forest areas or heritage areas must be approved by the commission. The director or designee shall ensure that any technical rock climbing rules contained in a climbing management plan are conspicuously posted at the entrance of the affected park area.

(7) Bolting will be allowed as specified in climbing management plans.

(8) The use of power drills will be allowed only if the park climbing management plans specifically permit under specified conditions for bolt replacement and bolt installation on new routes. They are otherwise prohibited.

(9) The addition of holds onto the rock face by any means, including gluing, chipping, or bolting is prohibited.

(10) Except as provided in WAC 352-32-310, any violation of this section and rules contained in the park management plan and posted at the park is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 04-01-067, filed 12/12/03, effective 1/12/04)

WAC 352-32-121 Other weapons. No person shall display, discharge or propel across, in, or into any upland state park area as defined in WAC 352-32-010, a bow and arrow, spear, spear gun, harpoon, or air or gas weapon, or any device capable of injuring or killing any person or animal, or damaging or destroying any public or private property, except where the commission for good cause has authorized a special recreational activity upon finding that it is not inconsistent with state park use.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-069, filed 12/9/04, effective 1/9/05)

WAC 352-32-125 Fires and campfires. All fires, except campfires, fires for stoves, candles, torches, barbecues and charcoal, are prohibited in state parks. Campfires are restricted to within the designated campfire pit, ring or other provided campfire enclosure and the flame must be no higher than two feet. On ocean beaches, campfires must be at least one hundred feet from the dunes, no more than four feet in diameter and no more than four feet high. No campfires are allowed on any shellfish bed. Park rangers may impose additional restrictions on fires for the protection of the health, safety and welfare of the public, park visitors or staff, or for the protection of park resources.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-24-030, filed 11/30/05, effective 12/31/05)

WAC 352-32-130 Aircraft. (1) No aircraft shall land on or take off from any body of water or land area in a state park area not specifically designated for landing aircraft. This provision does not apply to official aircraft used in the performance of search and rescue missions, medical emergencies, law enforcement activities, emergency evacuations or fire fighting activities. It also does not apply in cases where the director or designee specifically authorizes such landings or take offs, in writing, associated with the operational, or administrative needs of the agency or state.

(2) Individuals who have complied with the registration process provided or who have obtained a special recreation event permit pursuant to WAC 352-32-047 may launch and land paragliders in state park areas specifically designated by the director or designee as available for paragliding. Prior to any such designation, the director or designee shall advertise and conduct a public meeting in the region where the park is located. The director or designee shall consider the potential

impacts of paragliding in the proposed area, including but not limited to the following factors: The degree of conflict paragliding may have with other park uses, public safety issues, and any potential damage to park resources/facilities. Any park designated for paragliding shall be conspicuously posted as such by the agency.

(3) Individuals paragliding in state parks must:

(a) Comply with the registration process provided for such purposes;

(b) Observe all applicable laws and regulations;

(c) Never destroy or disturb park facilities, natural features, or historical or archeological resources;

(d) Conduct themselves with thoughtfulness, courtesy and consideration for others, and not interfere with other recreational activities;

(e) Conduct themselves in compliance with the following basic safety regulations:

(i) Comply with specific site operational rules that are posted;

(ii) Fly in a manner consistent with the pilot rating held;

(iii) Preplanned landings should be made in areas no smaller than forty feet wide by one hundred feet long;

(iv) Make preflight checks of weather, equipment and site conditions;

(v) Observe all published traffic and right of way flight guidelines, including yielding right of way to all aircraft;

(vi) Wear protective clothing, headgear, Coast Guard approved flotation gear, reserve parachute, supplemental oxygen and communication equipment as appropriate for conditions;

(vii) Fly in a manner that does not create a hazard for other persons or property;

(viii) Fly only during daylight hours, or hours otherwise specified by posting at the site;

(ix) Do not fly over congested areas of parks or open air assembly of persons;

(x) Fly only in designated areas of parks;

(xi) Fly with visual reference to the ground surface at all times(-);

(xii) Do not tether paraglider to the ground or other stable nonmovable object.

(f) Not fly while under the influence of alcohol or drugs.

(4) Individuals flying remote controlled aircraft must do so only within flying areas designated by the director or designee and only when following the remote controlled aircraft management plan approved by the director or designee and posted for that designated area.

(a) Prior to any such designation, the director or designee shall advise and conduct a public meeting in the region where the park is located. The director or designee shall consider the potential impacts of remote controlled aircraft flying in the proposed area, including, but not limited to, the following factors: The degree of conflict remote controlled aircraft flying may have with other park uses, public safety issues, and any potential damage to park resources/facilities. Any park area designated for remote controlled aircraft flying shall be conspicuously posted as such by the director or designee.

(b) The director or designee shall establish a committee to advise park staff on park management issues related to

remote controlled aircraft flying for each state park area designated as a remote controlled aircraft flying site.

(c) Each state park area with an established advisory committee, which includes remote controlled aircraft flyers will have an approved management plan which will specify remote controlled aircraft flying rules concerning types of aircraft, flying hours, identified approved flying zones, identified runways for take-offs and landings, engine muffler requirements, use of and posting of radio frequency, fuel spills and cleanup. The director or designee shall ensure that any remote controlled aircraft flying rules contained in the remote controlled aircraft flying management plan are conspicuously posted at the entrance of the affected park area.

(d) The director or designee may permanently, or for a specified period or periods of time, close any designated flying area to remote controlled aircraft flying if the director or designee concludes that a remote controlled aircraft flying closure is necessary for the protection of the health, safety, and welfare of the public, park visitors or staff, or park resources. Prior to closing any designated flying area to remote controlled aircraft flying, the director or designee shall hold a public meeting near the state park area to be closed to remote controlled aircraft flying. Prior notice of the meeting shall be published in a newspaper of general circulation in the area and at the park at least thirty days prior to the meeting. In the event that the director or designee or park manager determines that it is necessary to close a designated flying area immediately to protect against an imminent and substantial threat to the health, safety, and welfare of the public, park visitors or staff, or park resources, the director or designee or park manager may take emergency action to close a state park area to remote controlled aircraft flying without first complying with the publication and meeting requirements of this subsection. Such emergency closure may be effective for only so long as is necessary for the director or designee to comply with the publication and meeting requirements of this subsection. The director or designee shall ensure that any designated flying area closed to remote controlled aircraft flying is conspicuously posted as such at the entrance of the affected park area.

(e) Except as provided in WAC 352-32-310, any violation of this section or failure to abide by a conspicuously posted remote controlled aircraft flying rule is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 98-04-065, filed 2/2/98, effective 3/5/98)

WAC 352-32-140 Fireworks. No person shall possess, discharge, set off, or cause to be discharged, in or into any state park area, any firecrackers, torpedoes, rockets, fireworks, explosives, or substance harmful to the life or safety of persons or property. Provided that the director or designee may issue permits for firework displays subject to conditions established by the agency and as provided in chapter 70.77 RCW.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-15001 Little Spokane River natural area—Prohibited uses. (1) The Little Spokane River Natural Area was established by the commission to conserve a unique natural environment in a nearly undeveloped state for passive low density outdoor recreation activities. To conserve the natural resources, scenic beauty and tranquility of the area, the following are prohibited within the Little Spokane River Natural Area:

- (a) Bicycles.
- (b) Camping.
- (c) Commercial development or activities.
- (d) Consumption of alcoholic beverages.
- (e) Fires or fireworks.
- (f) Horseback riding.
- (g) Hunting.
- (h) Motorized boats, personal watercraft, or boats propelled by means other than oars or paddles; use of canoes, rowboats, kayaks and rafts is specifically authorized.
- (i) Pets including all dogs except assistance dogs for persons with disabilities.
- (j) Swimming, or use of innertubes, air mattresses or similar floatation devices.
- (k) Travel by foot, skis or snowshoes off designated trails or outside designated corridors.

(2) This section does not apply to government employees, or their agents in the performance of their duties, or search and rescue, medical emergency response, law enforcement or fire fighting activities.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-157 Lakes located partially within state park boundaries—Internal combustion engines prohibited. (1) In order to preserve the scenic quality, peace and tranquility, and to protect and preserve wildlife, increase visitor safety, and to limit the degradation of lake water quality, the ~~((Washington state parks and recreation))~~ commission, in conjunction with the following ordinance(s), prohibits the use of internal combustion engines on the following lakes partially within park boundaries:

Cascade Lake at Moran State Park, San Juan county ordinance 10.16.030.

(2) This provision does not apply to government employees, or their agents in the performance of their duties, or search and rescue, medical emergency response, law enforcement or fire fighting activities.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-165 Public assemblies, meetings. (1) Public assemblies are permitted in state park areas on

grounds which are open to the public generally, provided a permit therefore has been issued as herein provided.

(2) An application for such a permit may be submitted on such forms as may be provided by the commission, or in any written form so long as the permit application sets forth the following:

- (a) Name, address and phone number of the applicant;
- (b) Date, time, duration, nature and place of the proposed event, including a description or schedule of events and activities;
- (c) Estimate of the number of persons expected to attend including the basis for the estimate;
- (d) Special equipment, including temporary structures such as speakers' stands, platforms, lecterns, chairs, benches or the like, and any sound amplification equipment to be used in connection with the event;
- (e) Special facilities, including emergency first aid, additional sanitation and refuse collection facilities, to be used in connection with the event;
- (f) Crowd control to be provided by the event sponsor;
- (g) Designation of a responsible contact individual with whom park officials may coordinate event activities, plans and preparations.

(3) The equipment and facilities referenced in subsection (2)(d) and (e), of this section, are to be provided by the event sponsor, unless other mutually satisfactory arrangements are made to use locally available commission owned equipment and facilities.

(4) The applicant must supply satisfactory evidence of arrangements for such equipment, facilities, and crowd control.

(5) ~~((The applicant must submit a completed environmental checklist along with the application. Environmental checklists are available at libraries, city planning offices, state parks, and similar outlets.))~~ If the agency determines it is necessary, the applicant must submit a completed environmental checklist along with the application. Upon request, the agency will assist the applicant in completing the environmental checklist and may ~~((be compensated))~~ request compensation in accordance with agency State Environmental Policy Act (SEPA) rules, chapter 352-11 WAC ~~((497-11-914))~~.

(6) Permit applications must be submitted at least sixty days in advance of the proposed event so that the information supplied in the application may be verified and so that the agency can notify and coordinate action with officials of other jurisdictions and agencies responsible for health, safety and welfare. The sixty-day time limit is also necessary in order to comply with SEPA review requirements to identify any potential environmental impacts and mitigation. This requirement for an application to be filed sixty days prior to an event may be waived in rare circumstances where arrangements can be made in a shorter time while still complying with all other requirements of this section.

(7) The permit application must be submitted along with a nonrefundable permit fee as published by state parks to the Washington State Parks and Recreation Commission, 7150 Cleanwater ~~((Lane))~~ Drive, P.O. Box 42650, Olympia, Washington 98504-2650. The director, or designee, may issue a permit consistent with the application, or otherwise

modified in a manner which is acceptable to the applicant. The following criteria will be evaluated in considering a permit application:

(a) The ability of the applicant to finance, plan and manage the activity in accordance with sanitation, safety, medical care, fire control, security, crowd, noise, and traffic control requirements, and consistent with the protection of park resources and image;

(b) The extent to which the proposed activity, in both nature and timing, threatens interference with customary usage of the park by members of the public or interferes with the convenience of park neighbors and the general public;

(c) The experience of the applicant in performing similar activities in the past;

(d) Measures undertaken to mitigate any changes in customary park usage or damage to park resources caused by the activity.

(8) Following an evaluation of the above listed criteria, the director or designee will issue a permit unless:

(a) The application does not adequately address the evaluation criteria; or

(b) A prior application for the same time and place has been made which has been or will be granted; or

(c) The event will present a clear and present danger to the public health or safety; or

(d) The event is of such nature or duration that it cannot reasonably be accommodated in the particular park area requested. In considering this, the director or designee shall take into account the potential for significant environmental impact.

(9) The director or designee will acknowledge receipt of the permit application within ten days. The acknowledgment will estimate the timeline for processing the application based on the complexity of the requested use. The director or designee shall make the final ruling on the permit application as soon as possible but no later than ten days prior to the proposed event. The granting of this permit does not exempt the applicant from complying with other state, county or local permit requirements nor does it excuse compliance with the State Environmental Policy Act, where applicable. A threshold determination will be made by the agency to determine potential environmental impact. Applicants should be aware that timelines may exist under the State Environmental Policy Act and implementing regulations which are independent of this permit requirement.

(10) All permit denials will be in writing, will contain a statement of the specific reasons for the denial, and will advise the applicants of the right to request judicial review of the denial as provided in subsection (12) of this section.

(11) A permit issued may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is maintained. It may also contain reasonable limitations on the time and area within which the event is permitted.

(a) The commission may require applicants to arrange for general liability insurance to cover participants, and the state of Washington will be named as an additional insured.

(b) The commission may require the filing of a bond with satisfactory surety payable to the state, to cover costs such as restoration, rehabilitation and cleanup of the area

used, and other costs resulting from the permittee activity. In lieu of a bond, a permittee may elect to deposit cash equal to the amount of the required bond.

(12) Applicants whose permit application is denied may in writing request that the commission seek judicial review of the denial, in which event the commission shall timely seek a declaratory judgment pursuant to the Uniform Declaratory Judgment Act, chapter 7.24 RCW, and Superior Court Rule 57, in the superior court for Thurston County. Such requests shall be mailed, or otherwise delivered to the Director, Washington State Parks and Recreation Commission, 7150 Cleanwater ((Lane)) Drive, P.O. Box 42650, Olympia, Washington 98504-2650, within ten days from the date the application is denied.

AMENDATORY SECTION (Amending WSR 98-04-065, filed 2/2/98, effective 3/5/98)

WAC 352-32-170 Rubbish. (1) No person shall leave, deposit, drop, or scatter bottles, broken glass, ashes (except human crematory ashes), waste paper, cans, or other rubbish, in a state park area, except in a garbage can or other receptacle designated for such purposes.

(2) No person shall deposit any household or commercial garbage, refuse, waste, or rubbish, which is brought as such from any private property, in any state park area garbage can or other receptacle designed for such purpose.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-32-175 Water. No person shall take greater than five gallons of water from state park areas for personal or commercial use outside state park boundaries, except for:

(1) Those with signed agreements with state parks for water use;

(2) Registered campers and overnight moorage visitors;

(3) Those persons who have paid the trailer dump station or watercraft launch fees when filling fresh water holding tanks in recreational vehicles or vessels;

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-195 Solicitation. Except as may be otherwise allowed in connection with a permit issued under WAC 352-32-165 or 352-32-047, or a cooperative agreement pursuant to RCW 79A.05.070(2), no person shall engage in commercial solicitation, or sell or peddle any services, goods, wares, merchandise, liquids, or edibles for human consumption in any state park area, except by concession or permit granted by the commission.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-069, filed 12/9/04, effective 1/9/05)

WAC 352-32-210 Consumption of alcohol in state park areas. (1) Opening, possessing alcoholic beverage in an open container, or consuming any alcoholic beverages in any state park or state park area is prohibited except in the following designated areas and under the following circumstances in those state parks or state park areas not posted by the director or designee as closed to alcohol pursuant to subsection (4) of this section:

(a) In designated campsites or in other overnight accommodations, by registered occupants or their guests; provided ELC users obtain written permission through state parks application process;

(b) In designated picnic areas, which shall include those sites within state park areas where picnic tables, benches, fireplaces, and/or outdoor kitchens are available, even though not signed as designated picnic areas and public meeting rooms;

(c) In any reservable group day use facility by any authorized group which has paid the reservation fee and applicable damage deposit and which has obtained prior permit authorization to have alcohol by the park manager; and

(d) In any building, facility or park area operated and maintained under a concession agreement, wherein the concessionaire has been licensed to sell alcoholic beverages by the Washington state liquor control board, and where the dispensation of such alcoholic beverages by such concessionaire has been approved by the commission.

(2) Opening, possessing alcoholic beverage in an open container, or consuming any alcoholic beverages is prohibited at the following locations:

(a) Dash Point State Park;

(b) Saltwater State Park;

(c) Sacajawea State Park;

Except in the following designated areas and under the following circumstances:

(i) In designated campsites, or in other overnight accommodations by registered occupants or their guests.

(ii) In any building, facility or park area operated and maintained under a concession agreement wherein the concessionaire has been licensed to sell alcoholic beverages by the Washington state liquor control board, and where the dispensation of such alcoholic beverages by such concessionaire has been approved by the commission.

(iii) In any reservable group day use facility by any authorized group which has paid the reservation fee and applicable damage deposit and which has obtained prior permit authorization to have alcohol by the park manager.

(3) The director or designee may, for a specified period or periods of time, close any state park or state park area to alcohol if the director or designee concludes that an alcohol closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources. The director or designee shall consider factors including but not limited to the effect or potential effect of alcohol on public and employee safety, park appearance, atmosphere, and noise levels, conflicts with other park uses or users, the demand for law enforcement, and the demand on agency staff. Prior to closing any park or park area to alcohol,

the director or designee shall hold a public hearing in the general area of the park or park area to be closed to alcohol. Prior notice of the meeting shall be published in a newspaper of general circulation in the area. In the event the director or designee determines that an immediate alcohol closure is necessary to protect against an imminent and substantial threat to the health, safety and welfare of the public, park visitors or staff, or park resources, the director or designee may take emergency action to close a park or park area to alcohol without first complying with the publication and hearing requirements of this subsection. Such emergency closure may be effective for only so long as is necessary for the director or designee to comply with the publication and hearing requirements of this subsection.

(4) The director or designee shall ensure that any park or park area closed to alcohol pursuant to subsection (3) of this section is conspicuously posted as such at the entrance to said park or park area. Additionally, the director or designee shall maintain for public distribution a current list of all parks and park areas closed to alcohol pursuant to subsection (3) of this section.

(5) Dispensing alcoholic beverages from containers larger than two gallons is prohibited in state park areas except when authorized in writing and in advance by the park manager.

(6) The provisions of this rule shall not apply to any part of the Seashore Conservation Area, as designated and established by RCW 79A.05.605.

(7) Opening, consuming, or storing alcoholic beverages in Fort Simcoe State Park and Squaxin Island State Park is prohibited.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-069, filed 12/9/04, effective 1/9/05)

WAC 352-32-235 Use of metal detectors in state parks. The use and operation of metal detectors, as well as the removal of small contemporary materials, is permitted within selected state parks as designated by the director or designee, in accordance with all commission direction on land management, and subject to the conditions and limitations specified.

(1) The use of metal detectors is permitted only within specified portions of approved state parks as posted for public reference. Metal detecting may be allowed in an approved campsite occupied by the registered ((~~detectorist~~)) metal detector user and in unoccupied campsites within approved campgrounds.

(2) The use of metal detectors within a state park shall be limited to daylight hours that the park has posted as "open." No use shall be allowed during periods of seasonal or emergency park closure, except where otherwise posted.

(3) Any person wishing to use a metal detector shall so indicate to park personnel at the park where the use is to occur, by complying with the registration process provided for such purpose.

(4) Exceptional uses of metal detectors in state parks may be allowed through the issuance of a special recreation event application, available from the agency.

(5) This section does not apply to commission employees while engaged in the performance of their duties.

(6) Persons operating metal detectors in state parks and state park areas shall:

(a) Observe all laws and regulations.

(b) Never destroy or disturb park facilities, natural features, or historical or archeological resources. No item which is, or appears to be of historical or archaeological significance, may be removed from the site at which it was found. Any such find shall be immediately reported to park personnel, and the area in which the find occurred shall be closed.

(c) Limit digging implements to ice picks, screwdrivers and probes not to exceed two inches in width and sand scoops not to exceed six inches in width and eight inches in length, containing perforations no less than one-half inch in width, to be used only on sand surfaces. Any holes dug shall be limited to six inches maximum depth and shall be immediately refilled and the surface restored to its earlier condition.

(d) Properly dispose of all found or recovered trash and litter.

(e) Conduct themselves with thoughtfulness, courtesy and consideration for others, and not interfere with other recreational activities. An operator shall not allow any emitted metal detector sound audible to other park users.

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-32-237 Geocache. (1) In order to place a cache on state parks' property, an individual or organization must obtain a geocache placement permit from state parks. Any cache located on state parks' property that does not have a permit on file is subject to removal from its location, and after notification of the owner (if known), may be disposed of within ten days.

(2) The geocache owner must check the geocache at least every ninety days unless an extension is approved by the park manager not to exceed one hundred eighty days. Proof of the check will be by e-mail, letter, or personal communication by the owner with the park manager or designee, and the owner's entry in the cache log book indicating the date of inspection.

(3) The following items shall not be placed in the geocache: Food items; illegal substances; medications; personal hygiene products; pornographic materials; inappropriate, offensive, or hazardous materials or weapons of any type. Log books are required for each cache and are to be provided by the owner of the cache.

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-069, filed 12/9/04, effective 1/9/05)

WAC 352-32-250 Standard fees charged. Fees shall be charged in parks operated by the commission for use of lands, facilities, programs, services, and materials as published by state parks: Provided, however, That the commis-

sion may suspend any or all of these fees if revenues generated by the fees are not returned to the benefit of the parks: Provided further, That the director or designee has the authority to discount fees in order to take advantage of marketing opportunities to encourage use and increase revenues. Any such discounts shall be effective for a limited period of time up to one year in duration. The director or designee may consider the following factors in temporarily establishing or discounting fees:

Prevailing rates for comparable facilities;

Day of the week;

Season of the year;

Amenities of the park area and site;

Demand for facilities;

Low-income eligibility requirements as adopted by state parks; and

Such other considerations as the director or designee deems appropriate. The director or designee shall prescribe the specific details and manner in which fees shall be applied. The director or designee may also waive fees for marketing or promotional purposes or to redress visitor complaints. The director or designee may also establish temporary fees for a maximum of one year for new facilities or services. An administrative fee, as published by state parks, will be assessed for replacement of lost, damaged, or destroyed passes or permits.

(1) The director or designee may authorize reciprocity or cooperative arrangements with other state and/or federal agencies for the use of annual permits for like services, provided, that Washington licensed vehicles and/or residents shall be required to have and/or display the appropriate Washington permit or other permit as approved by the director or designee(§).

(2) Overnight camping - standard campsite; utility campsite; emergency campsite; overflow campsite; hiker/biker campsite; walk-in campsite; primitive campsite for nonmotorized for motorized vehicle - fees will be charged as published by state parks. Payment for utility campsite will be collected whether utility hookups are actually used or not, except when otherwise specified by a ranger(§).

(3) Overnight camping - multiple campsites: Where campsites are designated and posted as a "multiple campsite," an individual may rent the multiple campsite by paying the multiple campsite fee and providing the required information on the occupants of the other sites. The multiple campsite fee will be calculated by multiplying the standard, utility or primitive campsite fee, as applicable, by the number of individual campsites to be used in the designated multiple campsite(§).

(4) Group camping area - certain parks: Individual camping units using these facilities must pay campsite fees as published by state parks(§).

(5) Convenience camping - fees will be charged for use of overnight accommodations such as yurts, cabins, platform tents, etc.

(6) Conference center facilities - fees will be charged for use of facilities and services as set forth in the fee schedule published by state parks and will include, but not be limited to: Overnight accommodations in individual recreational housing units or dormitory units; use of meeting rooms, performance venues and rally areas; linen and janitorial services;

group food services; and use of equipment, supplies, and staff time necessary to support group activities. Certain deposits, reservation and cancellation fees also apply as set forth in the fee schedule published by state parks and may not be refundable.

~~((6))~~ (7) Environmental interpretation:

(a) Service fees will be established by the director or designee in order to recover, to the maximum extent practicable, all direct and indirect costs of environmental interpretation services on a program-wide basis based on anticipated attendance.

(b) Material and publication fees will be established by the director or designee. All material and publication fees will be deposited in the parks improvement account to be used for purposes specified in RCW 79A.05.060.

(c) Facility use, including environmental learning center fees, will be established by the commission. A facility use fee schedule is available by contacting Washington State Parks and Recreation Commission, 7150 Cleanwater ~~((Lane))~~ Drive, P.O. Box 42650, Olympia, WA 98504-2650~~((:))~~.

~~((7))~~ (8) Adirondacks - not to include those located in ELC areas: Occupancy shall be limited to the number of built-in bunks provided~~((:))~~.

~~((8))~~ (9) Extra vehicle overnight parking fee will be charged for each additional unhitched vehicle in excess of the one recreational vehicle allowed at each campsite: Provided, An extra vehicle overnight parking fee shall not be imposed when:

(a) Up to four motorcycles occupy one campsite, exclusive of other vehicles or recreation vehicles; or

(b) When the recreational vehicle and the towed vehicle arrive at the park hitched together, and after the camper has registered for and occupied the assigned campsite either the recreational vehicle or the towed vehicle remain parked at the campsite for the duration of the camper's stay~~((:))~~.

~~((9))~~ (10) Unattended vehicle overnight parking permit: Unoccupied vehicles parked overnight in designated areas must register and pay the nightly permit fee. The permit must be prominently displayed in the vehicle~~((:))~~.

~~((10))~~ (11) Watercraft launch ~~((site))~~ permit fee~~((--))~~ shall be charged ~~((according to))~~ at designated facilities ~~((provided))~~. Watercraft launch permit shall not be required for:

(a) ~~((Vehicles, other than those))~~ Registered ~~((as extra))~~ overnight ~~((parking vehicles, registered for camping or overnight mooring))~~ guests in the park containing the watercraft launch ~~((site))~~;

(b) ~~((Vehicles of persons using any recreational housing or conference facilities at Fort Worden State Park;~~

~~((e) Vehicles of))~~ Persons holding limited-income senior citizen, disability or disabled veteran passes;

~~((d))~~ (c) Vehicles displaying a valid annual natural investment permit (watercraft launch) ~~((site))~~ permit~~((:))~~

~~((11) Annual watercraft launch site permit valid for one year from month of purchase at any launch site designated by the director or designee. Permit must be displayed as instructed on permit backing;))~~

(12) Trailer dump station fee - fee shall not be required for:

(a) Registered camping vehicles in the park containing the dump station;

(b) Vehicles of persons holding limited-income senior citizen, disability or disabled veterans passes;

(c) Vehicles displaying a valid annual natural investment permit.

(13) Variable pricing - variable prices will apply for use of campsites and/or facilities during such periods as the director or designee may specify~~((:))~~.

(14) Popular destination park - a surcharge will apply for use of standard or utility campsites located in a popular destination park during such periods as the director may specify.

(15) Water trail site fees - for one day/night will be set by the commission~~((:))~~.

~~((15))~~ (16) In addition to the regular fee, a surcharge may be imposed for failure to pay the self-registration fee~~((:))~~.

~~((16))~~ (17) Group day use facilities - a minimum daily permit fee will be charged for groups of 20 or more~~((:))~~.

~~((17))~~ (18) Reservation transaction - fees will be charged as published by state parks~~((:))~~ and are not refundable.

~~((18))~~ (19) Moorage facilities - fee will be charged as published by state parks~~((:))~~.

~~((19))~~ (20) Hot showers, electric stoves - fees will be charged as published by state parks. Fees published by state parks do not apply in those circumstances set forth in WAC 352-32-280 and 352-32-285 as now or hereafter amended~~((:))~~.

~~((20))~~ (21) Film permits and site location fees will be charged as outlined in chapter 352-74 WAC.

(22) Off-season pass fees will be charged as published by state parks.

(23) Administrative fees will be charged as published by state parks for the replacement of lost, stolen or destroyed passes and permits.

(24) Commercial recreation provider permit registration - a fee shall be charged, as published by state parks for registration as a commercial recreation provider~~((:))~~.

~~((21))~~ (25) Commercial recreation provider permit - a fee shall be charged, as published by state parks for obtaining a permit to engage in commercial recreational use of state parks, as defined in WAC 352-32-010.

~~((22))~~ (26) Sno-park permit - seasonal and daily permit fees will be charged as published by state parks.

~~((23))~~ (27) Special groomed trail permit - a statewide special groomed trail permit will be required for use of special groomed trail areas. The fee charged will be as published by state parks.

~~((24))~~ (28) Wood debris collection permit - fee will be charged for collection and removal of wood debris from a state park area pursuant to RCW 4.24.210. The fee may be waived for volunteers assisting with emergency salvage and storm cleanup in the parks.

~~((25))~~ (29) Merchandise - prices for merchandise including but not limited to interpretive, recreational and historic materials, literature, food, beverage, grocery and other items at agency operated sales points will be based on market rates and practices.

~~((26))~~ (30) Back country camping permit - fee will be charged as published by state parks for selected state park areas as designated by the director.

~~((27))~~ (31) Group use registration - fee will be charged for groups of a size to be specified in the fee schedule on a park by park basis who have not otherwise reserved group facilities.

~~((28))~~ (32) Special event - fees will be charged based on the cost of providing events and market rates for comparable activities at other locations.

~~((29))~~ (33) Public assembly - permit fees based on costs as indicated in WAC 352-32-165.

(34) Aquatic and other state park facilities - fees will be charged as published by state parks.

~~((30))~~ Vehicle parking permit:

~~(a) The director or designee shall designate state parks where a vehicle parking permit shall be required for parking and shall publish a fee schedule to include any or all of the following:~~

~~(i) A single day or multiple day vehicle parking permit;~~

~~(ii) An annual vehicle parking permit;~~

~~(b) Vehicle parking permits shall not be required for:~~

~~(i) Vehicles registered for overnight accommodations, other than those registered as extra overnight parking vehicles;~~

~~(ii) Vehicles whose occupants hold a current pass authorized in WAC 352-32-251, Limited income senior citizen, disability, and disabled veteran passes;~~

~~(iii) Vehicles whose occupants hold a current watercraft launch site permit;~~

~~(iv) Vehicles whose occupants perform volunteer activities approved by the park ranger;~~

~~(v) Vehicles whose occupants engage in official business as authorized by agreement or otherwise approved by the park ranger;~~

~~(e) Any vehicle parking permit must be displayed as instructed on the permit.~~

~~(31))~~ (35) Checks dishonored by nonacceptance or nonpayment (NSF checks) - handling fee and interest:

(a) A handling fee may be assessed consistent with the maximum amount allowed in the office of state procurement, department of general administration's state contract and as published by state parks for checks as defined by chapter 62A.3-104 RCW, dishonored by nonacceptance or nonpayment.

(b) Interest at the maximum rate allowable may be charged on the NSF check as defined by chapter 62A.3-515 RCW, and as published by state parks for a check not paid within fifteen days after a statutory notice of dishonor is sent to maker's last known address.

(36) Fees subject to certificate of participation (COP) and as determined by the commission.

AMENDATORY SECTION (Amending WSR 05-24-030, filed 11/30/05, effective 12/31/05)

WAC 352-32-251 Limited income senior citizen, disability, and disabled veteran passes. (1)(a) Persons who are senior citizens, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for

at least the past twelve consecutive months shall, upon application to the commission accompanied by either a copy of a federal income tax return filed for the previous calendar year, or a senior citizen property tax exemption pursuant to RCW 84.36.381, or a notarized affidavit of income on a form provided by the commission, receive a limited income senior citizen pass at no charge, which entitles the holder's camping party to ~~((free parking at any state park,))~~ free use of trailer dump stations, watercraft launch sites, and to a 50 percent reduction in ~~((any))~~ the campsite fee~~((s)),~~ or moorage fee~~((s levied))~~ as published by ((the commission)) state parks. Limited income senior citizen passes shall remain valid so long as the pass holder meets eligibility requirements.

(b) Proof submitted to the commission for the return of a senior citizen pass surrendered upon request to a commission employee who has reason to believe the user does not meet the eligibility criteria shall be the same as listed in subsections (1) and (5) of this section for original pass issuance.

(2) Persons who are:

(a) Permanently disabled, legally blind, or profoundly deaf, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past twelve consecutive months shall, upon application to the commission, receive a five year disability pass at no charge ((and));

(b) Temporarily disabled ((persons)) and who meet the eligibility requirements of RCW 79A.05.065 and have been residents of Washington state for at least the past twelve consecutive months shall, upon application to the commission, receive a one year disability pass at no charge ((which entitles the holder's camping party to free parking at any state park,)); and

(c) Residents of Washington who have been issued a card, decal (placard) or special license plate for a permanent disability under RCW 46.16.381 shall be entitled, along with the members of their camping party to free use of trailer dump stations, watercraft launch sites, and to a 50 percent reduction in ((any)) the campsite fee((s)), or moorage fee((s levied)) as published by ((the commission)) state parks.

(3) Persons who are veterans, meet the eligibility requirements of RCW 79A.05.065, and have been residents of Washington state for at least the past twelve consecutive months shall, upon application to the commission, receive a lifetime disabled veteran pass at no charge. Pass holders must provide proof of continued residency as determined by the director or designee. The pass entitles the holder's camping party to ~~((free parking at any state park and to))~~ free use of ~~((any))~~ a state park campsite, trailer dump station, watercraft launch site, moorage facility, and reservation service.

(4) Applications for limited income senior citizen, disability, and disabled veteran passes shall be made on forms prescribed by the commission.

(5) Verification of age shall be by original or copy of a birth certificate, notarized affidavit of age, witnessed statement of age, baptismal certificate, or driver's license. Verification of residency shall be by original or copy of a Washington state driver's license, voter's registration card, or senior citizen property tax exemption.

~~(6) ((For pass holders who travel by vehicle or recreational vehicle, camping party shall include the pass holder~~

~~and up to seven guests of the holder who travel with the holder and use one campsite or portion of a designated group camping or emergency area. There is no additional fee for one extra vehicle without built-in sleeping accommodations that is part of the camping party of a pass holder at one campsite or portion of a designated group camping or emergency area, when in the judgment of a ranger, the constructed facilities so warrant, and the total number of guests of the holder do not exceed seven.~~

~~(7) For pass holders who travel by a mode of transportation other than vehicle or recreational vehicle, camping party shall include the pass holder and up to seven guests who travel with the pass holder and use one campsite or portion of a designated group camping or emergency area.~~

~~(8)) Pass holders must be present and show their valid pass and identification upon registration or when requested by any commission employee or representative.~~

~~(7) Pass holders that violate or abuse the privileges of their pass, as listed below, may be subject to suspension of their pass and assessed other fees.~~

~~(a) Duplicate or multiple reservations for the same night - thirty-day suspension.~~

~~(b) Use of pass by unauthorized person - sixty-day suspension and/or a fee equal to two times the campsite fee.~~

~~(c) Two or more no-shows (failure to use or cancel reservation) for reservations between May 1 and November 1 - ninety-day suspension.~~

~~(d) Repeated park rule violations - minimum ninety-day suspension.~~

~~The pass will be confiscated by the ranger on duty or their designee and sent to the Olympia headquarters office. At the end of the suspension the pass will be returned to the authorized pass holder at no cost.~~

~~(8) Pass holders may appeal a suspension of their pass by providing written justification/explanation to the state parks director or designee at 7150 Cleanwater Drive, P.O. Box 42650, Olympia, WA 98504.~~

~~(9) Pass holder discounts shall apply only to those fees listed in subsections (1), (2), and (3) of this section. Pass holder discounts will not apply to all other fees as published by state parks, including but not limited to, extra vehicles, vacation housing, yurts, and cabins.~~

~~(10) If the conditions of a pass holder change or the pass holder changes residency to a place outside Washington state during the time period when a pass is valid such that a pass holder no longer meets the eligibility requirements of RCW 79A.05.065 and WAC 352-32-251, the pass becomes invalid, and the pass holder shall return the pass to the commission or surrender the pass to a state park representative.~~

~~(11) Any violation of this section is an infraction under chapter 7.84 RCW.~~

AMENDATORY SECTION (Amending WSR 03-01-079, filed 12/13/02, effective 1/13/03)

WAC 352-32-252 Off-season senior citizen pass— Fee. (1) Persons who are senior citizens, are at least sixty-two years of age, and have been residents of Washington state for at least the past twelve consecutive months shall, upon application to the commission, receive an off-season senior citizen

pass which entitles the holder's camping party to camp at any camping areas made available by the commission, as well as use of agency mooring facilities, at no cost beyond the charges provided for in subsection (3) of this section, effective October 1 through March 31, and Sunday through Thursday nights in April as determined by the director and posted. Each such pass shall be valid only during one off-season period.

(2) Applications for off-season senior citizen passes shall be made on forms prescribed by the commission and shall be accepted only after August 1 for the following off-season period.

(3) There shall be a fee for each off-season senior citizen pass. Limited income senior citizen pass holders may purchase the off-season pass at a 50 percent discount. A surcharge equal to the fee for an electrical hookup published by state parks shall be assessed for each night an off-season senior citizen pass holder uses a campsite with an electrical hookup.

~~(4) ((For pass holders who travel by car or recreational vehicle camping party shall include the pass holder and up to seven guests of the holder who travel with the holder and use one campsite or portion of a designated group camping or emergency area. One additional vehicle without built-in sleeping accommodations may be part of the camping unit of a holder at one campsite or portion of a designated group camping or emergency area, when in the judgment of a ranger, the constructed facilities so warrant, and the total number of guests of the holder do not exceed seven.~~

~~(5) For pass holders who travel by a mode of transportation other than car or recreational vehicle, camping party shall include the pass holder and up to seven guests who travel with the holder and use one campsite or portion of a designated group camping or emergency area.) Pass holders must be present and show their valid pass and identification upon registration or when requested by any commission employee or representative.~~

~~(5) Pass holder discounts shall apply only to those fees in subsections (1) and (3) of this section. Pass holder discounts will not apply to other fees as published by state parks, including but not limited to, extra vehicles, vacation housing, yurts, and cabins.~~

(6) If a pass holder changes residency to a place outside Washington state during the time period when a pass is valid, the pass becomes invalid and the pass holder shall return the pass to the commission or surrender the pass to a state park representative.

~~(7) Any violation of this section is an infraction under chapter 7.84 RCW.~~

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-280 Applicability of standard fees. The fees published by state parks pursuant to RCW 79A.05.-070(6), shall not apply in the following circumstances:

(1) Whenever fees are charged by a concessionaire pursuant to a valid concession agreement granted by the commission pursuant to RCW 79A.05.030(5).

(2) Whenever fees are established pursuant to a development or management plan authorized or directed to be prepared by the legislature or state agency other than the commission, as, for example the Fort Worden State Park development and management plans.

~~(3) ((Whenever any law enforcement officer occupies a campsite if the following conditions are met:~~

~~(a) The law enforcement officer's authority is effective in the geographic area where the campsite is located.~~

~~(b) The park manager, or his representative, has determined that the officer's police powers may be useful in maintaining a peaceful environment in the park.~~

~~(c) The officer agrees to act in his official capacity if requested by park staff.~~

(4)) Whenever any improvement club or voluntary association, or committees representing such clubs or associations, acting pursuant to the commission's permission granted pursuant to RCW 79A.05.140 - 79A.05.155, utilizes any park facilities. Continuous occupancy of facilities by the same person or persons qualifying under this subsection shall be limited to 30 consecutive nights, unless otherwise approved by the director or designee.

~~((5))~~ (4) Whenever any individual, appointed by a court of law to perform work in a park in lieu of other sentencing, utilizes any park facilities.

~~((6))~~ (5) Whenever any individual utilizes any park facility in accordance with the terms of any contract, lease, or concession agreement, with the commission.

(6) The limit placed on any camper by WAC 352-32-030(5) shall not apply to persons qualifying under this section.

AMENDATORY SECTION (Amending WSR 98-04-065, filed 2/2/98, effective 3/5/98)

WAC 352-32-300 Easement, franchise, license, and special use permit applications and fees. (1) A party that desires to have a request for an easement, franchise, license, or special use permit considered by the commission shall submit an application on a form provided by the director to the:

Washington State Parks and
Recreation Commission
7150 Cleanwater ((Lane)) Drive
P.O. Box 42650
Olympia, WA 98504-2650

Each application from a party other than a government agency shall be accompanied by a nonrefundable application fee according to a schedule adopted by the commission.

A party shall pay the commission processing and use fees as apply according to a schedule adopted by the commission.

A party shall pay the commission for any appraisal, appraisal review, and survey costs incurred by the commission during the consideration of an application for an easement, franchise, license, or special use permit. The amount of any appraisal, appraisal review, and survey costs shall be determined by the director or designee.

An application fee and any processing fees, use fees, and appraisal, appraisal review, and survey payments shall be submitted to the commission at the address listed above and shall be in the form of a check or money order payable to the ~~((Washington state parks and recreation))~~ commission.

(2) The application fee, processing fee, use fee, and the appraisal, appraisal review, and survey payments established by subsection (1) of this section may be waived by the director or designee when the director or designee determines that the action authorized by an easement, franchise, license, or special use permit will be of benefit to the general public, if approved by the commission.

AMENDATORY SECTION (Amending WSR 01-20-036, filed 9/26/01, effective 10/27/01)

WAC 352-32-340 Approval of community-based park improvements—Policies. The director((-) or ~~((the director's))~~ designee, shall approve or disapprove all permits for community-based park improvements. Specific policies concerning community-based park improvements are available upon request.

A community-based park improvement is a construction project, proposed to be accomplished by individuals, groups, churches, charities, organizations, agencies, clubs, or associations using donated labor and/or materials, that results in a permanent change to state park lands or structures, or that creates an additional structure on state park lands.

AMENDATORY SECTION (Amending WSR 05-01-069, filed 12/9/04, effective 1/9/05)

WAC 352-32-350 Seaweed harvest. (1) For the purposes of this section, seaweed is defined as all species of marine algae and flowering sea grasses.

(2) Pursuant to RCW 79A.05.165(1), all state park areas are closed to the harvest of seaweed except Fort Ebey, Fort Flagler and Fort Worden state parks which are open to the noncommercial harvest of seaweed in accordance with RCW 79.96.210 from April 16 - May 15 each year. Seaweed harvesting in state park areas is limited to posted park hours.

(3) Seaweed shall be harvested using the following techniques: The leaves of bull kelp (*Nereocystis*) will be cut no closer than twenty-four inches (61 cm) above the bulb, and short stemmed kelps such as sugar wrack (*Laminaria*) and wing kelp (*Alaria*) are to be cut no closer than twelve inches (30 cm) above the anchor point. Cutting will be done using a knife or similar instrument, leaving the anchor point in place at all times. No tearing of the plants from the substrate or trimming is allowed, and rakes, tined forks, or similar tools are prohibited. The limit weight is ten pounds wet weight (fresh-picked before cleaning) per person per day, and drying or partial drying is prohibited prior to weighing. Each harvester must use a scale to determine when the harvest weight limit has been reached, and use their own container. Multiple limits may not be combined in the same container.

(4) The director ~~((of state parks))~~ or designee may take immediate action to reduce harvest levels where there is evidence of environmental damage. Such state park areas shall post changes in the daily harvest limits to inform the public of the reduced harvest levels.

(5) No person shall harvest or possess any seaweed within a state park area closed to harvest pursuant to subsection (2) or (4) of this section, except as necessary for scientific research authorized in writing by the environmental program manager at state parks.

(6) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-24-030, filed 11/30/05, effective 12/31/05)

WAC 352-37-020 Definitions. Whenever used in this chapter the following terms shall have the meanings herein defined unless the context clearly indicates otherwise:

"Aircraft" shall mean any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible, balloon, helicopter, etc. The term aircraft shall not include paraglider or remote controlled aircraft.

"Campfires" shall mean any open flame from a wood source.

"Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Commission" shall mean the Washington state parks and recreation commission.

"Director" shall mean the director of the Washington state parks and recreation commission or the director's designee.

"Driveable beach" shall mean that area of the ocean beaches lying between the upper or landward limit of the hard sand area and the clam beds.

"Dry sand area" shall mean that area lying above and to the landward side of the hard sand area as defined in this section.

"Fire" shall mean any open flame from any source or device including, but not limited to, campfires, stoves, candles, torches, barbeques and charcoal.

"Geocache" means geocaches, letterboxes, and related activities. Geocaching is an outdoor treasure hunting game in which participants (called geocachers) use a Global Positioning System receiver or other navigational techniques to hide and seek containers (called "geocaches" or "caches").

"Hard sand area" shall mean that area over which the tide ebbs and flows on a daily basis; and which is sufficiently hard or firm to support the weight of, and to provide unhindered traction for, an ordinary passenger vehicle.

"Hovercraft" shall mean a powered vehicle supported by a cushion of air capable of transporting persons.

"Intimidate" means to engage in conduct which would make a reasonable person fearful.

"Long Beach Peninsula" shall mean that area of the ocean beaches as defined in this section lying between Cape Disappointment on the south and Leadbetter Point on the north.

"Motor vehicle" shall mean every vehicle that is self-propelled. For the purposes of this chapter, a motor vehicle must be approved for highway use in accordance with Title 46 RCW.

"North Beach" shall mean that area of the ocean beaches as defined in this section lying between Damon Point on the south and Cape Flattery on the north.

"Obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by a permit issued pursuant to WAC 352-32-165 shall not constitute obstruction of pedestrian or vehicular traffic.

"Ocean beaches" shall mean all lands fronting on the Pacific Ocean between Cape Disappointment and Leadbetter Point; between Toke Point and the south jetty on Point Chehalis; and between Damon Point and the Makah Indian Reservation, and occupying the area between the line of ordinary high tide and the line of extreme low tide, as these lines now are or may hereafter be located, and, where applicable, between the Seashore Conservation Line, as established by survey of the (~~Washington state parks and recreation~~) commission and the line of extreme low tide, as these lines now are or may hereafter be located, or as defined in RCW 79A.05.605, provided, that the ocean beaches shall not include any lands within the established boundaries of any Indian reservation.

"Parasail" shall mean a parachute-type device attached to a rope pulled by a motor vehicle, resulting in the participant being lifted from the ground by the force of the wind.

"Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Seashore conservation area" shall mean all lands now or hereafter under state ownership or control as defined in RCW 79A.05.605.

"South Beach" shall mean that area of the ocean beaches as defined in this section lying between Toke Point on the south and the south jetty on Point Chehalis on the north.

"Wind/sand sailer" shall mean a wheeled, wind-driven recreational conveyance.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-030 Vehicular traffic—Where permitted—Generally. Subject to the restrictions set forth in subsequent sections of this chapter, and except at the point of intersection of any access road and the beach, the use of motor vehicles on and along the ocean beaches shall be permitted only on that area between the extreme upper or landward limit of the hard sand area and the clam beds, defined as the "driveable beach" in WAC 352-37-020. The operation of any vehicle is prohibited above and on the landward side of the driveable beach. The provisions of this section shall not apply to official vehicles engaged in authorized law enforcement, maintenance, or sanitary patrol activities or emergency vehicles while engaged in the performance of any necessary service.

The Long Beach Peninsula, South Beach, and North Beach Recreation Management Plans, as referenced in RCW

79A.05.600 through 79A.05.695, as adopted by local governments located on the same beach and approved by the commission, identify those areas where the operation or parking of any vehicle is prohibited. Exceptions that allow for the use of any vehicles in these areas identified as exclusive pedestrian/nonmotorized use areas are found in WAC 352-37-070. Except as provided in WAC (~~352-37-220~~) 352-37-330, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-040 Long Beach Peninsula. (1) Leadbetter Point exclusive pedestrian/nonmotorized vehicle use area is described as the area from the northern tip of Leadbetter Point to the north side of the Oysterville beach access road.

(a) Motor vehicles are not allowed year round in the area located between the northern tip of Leadbetter Point and the southern boundary of Leadbetter Point State Park.

(b) Motor vehicles are not allowed in the area located between the southern boundary of Leadbetter Point State Park to the north side of the Oysterville beach access road, from April 15 to the day following Labor Day of the same year.

(2) Long Beach/Seaview exclusive pedestrian/nonmotorized vehicle use area is described as the area from the south side of the Bolstad Avenue beach access road south to the north side of the Seaview beach access road at 38th Avenue.

Motor vehicles are not allowed from April 15 to the day following Labor Day of the same year.

(3) Ft. Canby unit exclusive pedestrian/nonmotorized vehicle use area is described as the area from the north jetty of the Columbia River located in Cape Disappointment State Park to north head/south boundary of Beard's Hollow.

Motor vehicles are not allowed on Benson Beach in front of Cape Disappointment State Park for the entire year. Motor vehicles may not be used on the beach in front of the state park for any clam season at any time of the year.

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 90-07-050, filed 3/19/90, effective 4/19/90)

WAC 352-37-050 South Beach. (1) East North Cove exclusive pedestrian/nonmotorized vehicle use area is described as the beach on the Pacific County owned property described as the north half of the northeast quarter section of the southwest quarter section of the southwest quarter of Section 4, Township 14N, Range 11 WWM.

Motor vehicles are not allowed from April 15 to the day following Labor Day of the same year.

(2) The Willapa National Wildlife Refuge/Warrenton Cannery road beach access exclusive pedestrian/nonmotorized vehicle use area is described as the area south of the south edge of the Warrenton Cannery beach access road east to east boundary line of the Willapa National Wildlife Refuge.

(a) Part west of Willapa National Wildlife Refuge. In the portion of this area west of the west boundary line of the Willapa National Wildlife Refuge, motor vehicles are not allowed from April 15 to the day following Labor Day of the same year.

(b) Part within the Willapa National Wildlife Refuge. In the portion of this area within Willapa National Wildlife Refuge, motor vehicles are not allowed from April 15 to the day following Labor Day of the same year. Motor vehicles may not be used in the wildlife refuge during the portion of any clam season which is between April 15 and the day following Labor Day of the same year.

(3) Twin Harbors Gap road to the south jetty exclusive pedestrian/nonmotorized vehicle use area is described as that area from the northern edge of the Twin Harbors beach access road to the south jetty on Point Chehalis.

(a) On the beach in front of the Westport Light State Park, motorized vehicles are not allowed from April 15 to the day following Labor Day of the same year. Motor vehicles may not be used on the beach in front of the state park during the portion of any clam season which is between April 15 and the day following Labor Day of the same year.

(b) On the beach in front of Westhaven State Park motorized vehicles are not allowed for the entire year. Motor vehicles may not be used on the beach in front of the state park for any clam season at any time of the year.

(c) In the balance of the area, motorized vehicles are not allowed from April 15 to the day following Labor Day of the same year.

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 90-07-050, filed 3/19/90, effective 4/19/90)

WAC 352-37-060 North Beach. (1) North jetty to Marine View Drive beach access exclusive pedestrian/nonmotorized vehicle use area is described as that area from the south edge of the Marine View Drive beach access to the north jetty of the Chehalis River.

Motor vehicles will not be allowed in this area from April 15 to the day after Labor Day of the same year.

(2) Pacific Way to Chance A La Mer beach access exclusive pedestrian/nonmotorized vehicle use area is described as the area from the north edge of the Pacific Way beach access road north to the south edge of the Chance A La Mer beach access road.

Motor vehicles are not allowed April 15 to the day after Labor Day of the same year.

(3) Ocean City beach access north for 1.8 miles exclusive pedestrian/nonmotorized vehicle use area is described as that area from the northern edge of the Ocean City beach access road north for 1.8 miles.

Motor vehicles are not allowed in this area from April 15 to the day after Labor Day of the same year.

(4) Benner Gap road north to the north bank of the Copalis River exclusive pedestrian/nonmotorized vehicle use area is described as the area from the north edge of the Benner Gap beach access road north to the north bank of the Copalis River. If the Copalis River shifts south of the north boundary

of Griffiths-Priday State Park, the north boundary of Griffiths-Priday State Park shall be the north boundary of this area.

Motor vehicles are not allowed in this area for the entire year.

(5) Copalis Rock north to Boone Creek exclusive pedestrian/nonmotorized vehicle use area is described as the area from the north edge of Copalis Rock north to the north bank of Boone Creek.

Motor vehicles are not allowed in this area from April 15 to the day following Labor Day of the same year.

(6) Roosevelt Beach Gap road north to Annelyde Gap road exclusive pedestrian/nonmotorized vehicle use area is described as the area from the north edge of the Roosevelt beach access road to the south edge of the Annelyde beach access road.

Motor vehicles are not allowed in this area from April 15 to the day following Labor Day of the same year.

(7) Moclips Gap road north to the south boundary of the Quinault Indian reservation exclusive pedestrian/nonmotorized vehicle use area is described as the area from the north edge of the Moclips beach access road (Second Street) to the south boundary of the Quinault Indian reservation.

Motor vehicles are not allowed in this area from April 15 to the day following Labor Day of the same year.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-070 Conditions under which motor vehicles may be used in the exclusive pedestrian/nonmotorized use areas. Unless specifically (~~excepted~~) accepted in the description of the times during which motor vehicles are not allowed for each exclusive pedestrian/nonmotorized vehicle use area, motor vehicles may be used in the pedestrian/nonmotorized vehicle use areas under the following circumstances:

(1) Motor vehicles may be used in the areas during any recreational razor clam digging seasons designated by the department of fisheries which take place partially or entirely during the period when motor vehicles are otherwise not allowed to use the area.

(2) Motor vehicles may also be used in the areas during special events approved by the commission as set forth in WAC 352-37-200 Special group recreation event permit, which specifically allows the use of motorized vehicles. The vehicle may be used for access or in the event.

(3) As provided by RCW 79A.05.660, public vehicles operated in the performance of official duties and vehicles responding to an emergency can use the areas at any time.

(4)(a) Motor vehicles may be used to remove sand from a beach access, gap road, or other area provided that all required permits have been obtained and the removal complies with all applicable requirements.

(b) On the Long Beach Peninsula pursuant to RCW 4.24.210, 79A.05.035(5), and 79A.05.655(3), the Pacific County planning department and the city of Long Beach may issue permits for wood debris removal during any period of

closure to vehicular traffic, in their respective jurisdictions, if in the opinion of said jurisdiction the amount, size, and location of such wood debris is determined to constitute a hazard to the general public and/or impede the movement of public vehicles on the ocean beach. Said permits shall be valid for twenty-four hours only. Persons seeking permits for removal of wood debris within the seashore conservation area must apply to the director or designee for a wood debris removal permit.

(5)(a) Motor vehicles may be used to remove wood debris under RCW 4.24.210 and 79A.05.035(5) provided that all required permits have been obtained and the removal complies with all applicable requirements.

(b) On the Long Beach Peninsula in accordance with RCW 79A.05.655(4), the Pacific County planning department and the city of Long Beach may issue permits, on their respective jurisdictions, for the removal of sand on the ocean beach during periods of closure to vehicular traffic. Said sand removal shall occur only on beach access roads and private property under the terms of a covenant, easement, or deed that allows such activity. The local jurisdictions shall exercise good judgment in setting the terms of such sand removal permits. Such terms should prohibit sand removal during weekends, holidays, festivals, and other occasions when and where there is increased use of the ocean beach by the public. The hours of sand removal shall also be specified and shall prohibit this activity from occurring too early or too late in the day in order to minimize disturbance of nearby businesses, residents, and visitors.

(6) In case of an emergency, motor vehicles may be used to maintain and construct erosion control devices, including bulkheads, provided that all required permits have been obtained and the operation of the vehicles and the construction complies with all applicable requirements.

AMENDATORY SECTION (Amending WSR 92-19-098, filed 9/17/92, effective 10/18/92)

WAC 352-37-080 Equestrian traffic. (1) Equestrian traffic shall be permitted on and along the ocean beaches within the seashore conservation area year round except where prohibited by this rule or other provision of statute or rule.

(2) Equestrian traffic shall be permitted only on that area between the extreme upper and landward limit of the hard sand area and the clam beds.

(3) Equestrian access shall be permitted at the point of intersection of any access road and the beach or any equestrian trail designated by the commission. Upland owners shall also be allowed equestrian access to and from their property, except for commercial purposes.

(4) Within the seashore conservation area, equestrian traffic shall yield the right of way to all pedestrian or vehicular traffic.

(5) Horses shall be ridden at a walk or led through areas of heavy pedestrian concentration.

(6) Equestrian traffic will not be permitted on the Long Beach Peninsula between Bolstad Avenue beach access road and 10th Street beach access road from April 15 to the day following Labor Day of the same year.

(7) Except as provided in WAC (~~(352-37-220)~~) 352-37-330, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-090 Pedestrians to be granted right of way. Vehicular and equestrian traffic shall at all times yield the right of way to pedestrians and nonmotorized vehicles on the ocean beaches. Except as provided in WAC (~~(352-37-220)~~) 352-37-330, any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-37-095 Disturbances. Disorderly conduct, or conduct with the intent to intimidate or obstruct pedestrian or vehicular traffic, or which otherwise impedes or disturbs state park employees or volunteers in the performance of their duties, or which impedes or disturbs the general public in the use and enjoyment of state park areas, is prohibited.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-100 Parking. Parking of vehicles shall be permitted only in an area extending one hundred feet westward from the upper or landward limit of the hard sand area, or driveable beach area (WAC 352-37-020) or where otherwise specifically designated by the (~~(Washington state parks and recreation)~~) commission. Beach parking shall only be allowed in areas open for beach driving. Except as provided in WAC 352-37-220, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-105 Fires and campfires. All fires, except campfires, fires for stoves, candles, torches, barbecues and charcoal, are prohibited in state parks. Campfires are restricted to within the designated campfire pit, ring or other provided campfire enclosure and the flame must be no higher than two feet. On ocean beaches, campfires must be at least one hundred feet from the dunes, no more than four feet in diameter and no more than four feet high. No campfires are allowed on any shellfish bed. Park rangers may impose additional restrictions on fires for the protection of the health, safety and welfare of the public, park visitors or staff, or for the protection of park resources.

Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 92-19-098, filed 9/17/92, effective 10/18/92)

WAC 352-37-110 Overnight parking or camping prohibited. Overnight parking or camping shall be prohib-

ited on any area of the ocean beaches. Except as provided in WAC (~~(352-37-220)~~) 352-37-330, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 92-19-098, filed 9/17/92, effective 10/18/92)

WAC 352-37-130 Speed limits. (1) No person shall operate any motor vehicle on or along any ocean beach at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, animal, vehicle or other conveyance on or entering the driveable beach in compliance with legal requirements in the duty of all persons to use due care.

(2) Except when a special hazard exists that requires lower speed for compliance with subsection (1) of this section, the maximum speed limit for operation of motor vehicles on the ocean beaches shall be twenty-five miles per hour.

(3) The driver of every motor vehicle operating on the ocean beaches shall, consistent with the requirements of subsection (1) of this section, drive at an appropriate reduced speed when approaching and crossing a beach access road, when approaching one or more parked vehicles, when approaching or traveling past or in the vicinity of a pedestrian or group of pedestrians, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or beach conditions.

(4) Except as provided in WAC (~~(352-37-220)~~) 352-37-330, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 90-07-050, filed 3/19/90, effective 4/19/90)

WAC 352-37-140 Certain practices prohibited. The following practices while operating any motor vehicle on or along the ocean beaches are specifically prohibited:

- (1) Squirreling;
- (2) Circling;
- (3) Cutting figure eights;
- (4) Racing;

(5) The operation of any motor vehicle in such a manner as to constitute a threat to the operator thereof, his or her passengers, pedestrians or equestrians using the beaches, animals or any other vehicle or other property.

(6) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 90-07-050, filed 3/19/90, effective 4/19/90)

WAC 352-37-170 Aircraft. (1) On the North Beach airplanes may land and take off on the ocean beach in the area commencing at the Copalis River north to the "rocks."

(2) The use of the beach by aircraft shall be subject to the jurisdiction of the aeronautics commission and all state and federal laws applicable to aircraft and pilots. Except as specified in subsection (1) of this section, airplanes shall only be allowed to make emergency landings on the ocean beaches.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-190 Excluded/limited recreation activities. The following forms of public outdoor recreation activities or devices are prohibited on the ocean beaches unless specifically designated therefore or authorized by the director or designee as a special recreation event.

(1) Vehicles not licensed and certificated pursuant to chapters 46.12 and 46.16 RCW.

(2) Wind/sand sailers.

(3) Parasails.

(4) Hovercraft.

(5) Powered parasail.

(6) Ultra-light aircraft.

(7) Powered hang gliders.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-01-068, filed 12/9/04, effective 1/9/05)

WAC 352-37-200 Special group recreation event permit. (1) Any person or group desiring to make use of a portion of the ocean beaches for a group recreation event which will require the closure of the area to certain conflicting recreational uses, may apply to the director for a special group recreation event permit. The director, or ((his/her)) designee, may issue such a permit after consultation with the appropriate local government, if the event does not unduly interfere with normal public recreation. Such authorization shall include the closure of the specified area to recreational activities, including motor vehicle traffic, which are determined to have the potential to interfere with the event or which could risk the safety of the recreating public or the special event participants. However, no such authorization may result in the unreasonable exclusion of pedestrian recreationists from the specified portion of the ocean beach; all events authorized under this permit shall be open to public participation and/or observation.

(2) In determining whether to issue the permit, the director or designee will review the proposal for consistency with established approval criteria developed by the agency, which are designed to ensure the appropriateness of the event to the ocean beaches, and the basis for any associated public recreation restrictions. The criteria are available upon request from the agency.

(3) A special group recreation event permit shall be issued only for recreational events where there is a reasonable expectation that a minimum of twenty persons will participate. The event must be oriented towards a recreational pursuit. Not more than three permits will be issued to a given applicant for the same event during a one-year period. The group recreation activity must be consistent with the seashore conservation area (RCW 79A.05.600 through 79A.05.630), and may include an activity otherwise excluded under this chapter. Special group recreation events shall not exceed three days or seventy-two hours.

(4) Persons or organizations that desire to conduct a special group recreation event on the ocean beaches shall submit a permit application provided by the director and appropriate fees to the:

Washington State Parks and
Recreation Commission
7150 Cleanwater ((Lane)) Drive
P.O. Box 42650
Olympia, WA 98504-2650

Such application shall be submitted at least fifteen days in advance of the proposed date of the event, to allow for necessary internal review and analysis, consultation with local governments, public notice, establishment of permit conditions, and required agency preparations and coordination. The director or ((his/her)) designee shall approve or disapprove a permit application and establish the conditions for an approved application. The permittee must pay any fees published by state parks for the use of park lands or facilities. The director or ((the)) designee shall determine the need for any fees necessary to cover costs incurred by the agency, as well as the need for any bond, damage deposit, or liability insurance arising from any potential hazards associated with the character of the event. Any such fees, bond, damage deposit, or liability insurance shall be provided prior to the issuance of the permit.

(5) If additional costs are incurred by the commission resulting from the event, the applicant shall reimburse the commission for such costs in a timely manner. If the additional costs are not paid, the director or designee may recover such costs from the bond or damage deposits provided if previously required. Any funds remaining from the bond or damage deposit shall be returned to the applicant.

AMENDATORY SECTION (Amending WSR 90-07-050, filed 3/19/90, effective 4/19/90)

WAC 352-37-210 Severability clause. If any provision of these rules or their application to any person or circumstance is held invalid, the remainder of these rules(;) or their application to other persons or circumstances is not affected.

NEW SECTION

WAC 352-37-255 Geocache. (1) In order to place a cache on state parks' property, an individual or organization must obtain a geocache placement permit from state parks. Any cache located on state parks' property that does not have a permit on file is subject to removal from its location, and after notification of the owner (if known), may be disposed of within ten days.

(2) The geocache owner must check the geocache at least every ninety days unless an extension is approved by the park manager, not to exceed one hundred eighty days. Proof of the check will be by e-mail, letter, or personal communication by the owner with the park manager or designee, and the owner's entry in the cache log book indicating the date of inspection.

(3) The geocache may be placed on Washington state parks and recreation commission managed property only by written permission from the commission.

(4) The following items shall not be placed in the geocache: Food items; illegal substances; medications; personal hygiene products; pornographic materials; inappropriate, offensive, or hazardous materials or weapons of any type. Log books are required for each cache and are to be provided by the owner of the cache.

(5) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-24-030, filed 11/30/05, effective 12/31/05)

WAC 352-37-300 Sanitation. No person shall, in the seashore conservation area:

(1) Drain or dump refuse or waste from any trailer, camper, automobile, or other vehicle, or vessel, except in designated disposal areas or receptacles.

(2) Urinate or defecate except in designated facilities.

(3) Pollute, or in any way contaminate by dumping or otherwise depositing therein any waste or refuse of any nature, kind, or description, including human or animal bodily waste, any stream, river, lake, or other body of water running in, through, or adjacent to, the seashore conservation area.

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 05-24-030, filed 11/30/05, effective 12/31/05)

WAC 352-37-330 Penalties. Any violation designated in this chapter as a civil infraction shall constitute a misdemeanor until the violation is included in a civil infraction monetary schedule adopted by rule by the state supreme court pursuant to chapter 7.84 RCW, except that a violation of WAC 352-37-230 shall at all times be a gross misdemeanor.

WSR 07-03-127

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed January 23, 2007, 9:06 a.m., effective February 23, 2007]

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

Purpose: Rule making is required to clean up rule chapters. WAC 308-96A-306 was included in the new chapter 308-96B WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-96A-306.

Statutory Authority for Adoption: RCW 46.16.381.

Adopted under notice filed as WSR 06-23-029 on November 6, 2006.

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 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

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

Date Adopted: January 23, 2007.

Elizabeth A. Luce
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-96A-306 Definitions—Individual with disabilities special parking privileges.

WSR 07-03-128

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed January 23, 2007, 9:08 a.m., effective February 23, 2007]

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

Purpose: Subsection (3)(a) of these rules say a court order is required when a vehicle/vessel is no longer in possession of the person claiming the lien. However, RCW 60.08-010 says the chattel lien is valid even if the chattel is returned to the owners. RCW 60.80.020 also says a person has ninety days from the date of delivery of the chattel to the owner to file the lien. A rule change is required to bring these rules into compliance with applicable laws.

Citation of Existing Rules Affected by this Order: Amending WAC 308-56A-310 and 308-93-445.

Statutory Authority for Adoption: RCW 88.020 [88.02-070], 88.02.100.

Adopted under notice filed as WSR 06-23-060 on November 8, 2006.

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 2, 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 2, 2007.

Mykel D. Gable
Assistant Director
Vehicle Services

AMENDATORY SECTION (Amending WSR 06-17-145, filed 8/22/06, effective 9/22/06)

WAC 308-56A-310 Personal property lien—Chattel.

(1) **What is a chattel lien?** For the purposes of this section a chattel lien is a process by which a person may sell or take ownership of a vehicle when:

(a) They provide services or materials for a vehicle at the request of the registered owner; and

(b) The person who provided the services and/or materials has not been compensated.

(2) **What documents are required to obtain a certificate of ownership for a vehicle?** The required documents include:

(a) A completed (~~(affidavit of sale chattel lien))~~ Vehicle/Vessel Chattel Lien Sale Affidavit form provided or approved by the department; and

(b) A certified copy of the lien filing that is filed with the county auditor; and

(c) A copy of the letter(s) sent by the lien applicant via first class mail, and certified or registered mail, to the registered and legal owners of record, including the return receipt; and

~~(d) ((A copy of the certified or registered mail, including the return receipt, to the address of the current registered and legal owners of the lien filing; and~~

~~(e))~~ Affidavit of service by mail; and

~~((f))~~ (e) Application for certificate of ownership; and

~~((g))~~ (f) Other documents that may be required by law or rule.

(3) **When is a Washington court order required to issue a certificate of ownership as a result of a chattel lien?** A Washington court order is required when:

(a) ~~((The vehicle is no longer in the possession of the person claiming the chattel lien; or~~

~~(b))~~ Someone other than the owner of record requested the services and/or materials; or

~~((c))~~ (b) There is no record of the vehicle on file with the department~~((-or))~~.

(4) **What laws regulate chattel liens?** Chapter 60.08 RCW regulates chattel liens.

AMENDATORY SECTION (Amending WSR 06-17-145, filed 8/22/06, effective 9/22/06)

WAC 308-93-445 Personal property lien—Chattel.

(1) **What is a chattel lien?** For the purposes of this chapter, a chattel lien is a process by which a person may sell or take ownership of a vessel when:

(a) They provide services or materials for the vessel at the request of the registered owner; and

(b) The person who provided the services and/or materials has not been compensated.

(2) **What documents are required to issue a certificate of ownership for a vessel?** The required documents include:

(a) A completed (~~(affidavit of sale chattel lien))~~ Vehicle/Vessel Chattel Lien Sale Affidavit form provided or approved by the department; and

(b) A certified copy of the lien filing that is filed with the county auditor; and

(c) A copy of the letter(s) sent by the lien applicant via first class mail, and certified or registered mail, to the registered and legal owners of record, including the return receipt; and

~~(d) ((A copy of the certified or registered mail, including the return receipt, to the address of the current registered and legal owner notifying the current registered and legal owner of the lien filing, and an))~~ Affidavit of service by mail; and

(e) Application for certificate of ownership; and

(f) Other documents that may be required by law or rule.

(3) **When is a Washington court order required to issue a certificate of ownership as a result of a chattel lien?** A court order is required when:

(a) ~~((The vessel is no longer in the possession of the person claiming the chattel lien; or~~

~~(b))~~ Someone other than the owner of record requested the services and/or materials; or

~~((c))~~ (b) There is no record of the vessel on file with the department.

(4) **What laws regulate chattel liens?** Chapters 60.08 and 60.10 RCW regulate chattel liens.

WSR 07-03-135

PERMANENT RULES

UNIVERSITY OF WASHINGTON

[Filed January 23, 2007, 10:40 a.m., effective February 23, 2007]

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

Purpose: To streamline, clarify, and update the Washington Administrative Code regarding meeting practices of the University of Washington's board of regents and other UW governing bodies.

Citation of Existing Rules Affected by this Order: Amending WAC 478-04-030.

Statutory Authority for Adoption: RCW 28B.20.130 and chapter 42.30 RCW.

Adopted under notice filed as WSR 06-22-072 on October 31, 2006.

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 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 1, Repealed 0.

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

Date Adopted: January 18, 2007.

Rebecca Goodwin Dearnorff
UW Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 05-21-133, filed 10/19/05, effective 11/19/05)

WAC 478-04-030 Meetings of the board of regents.

(1) Public meetings. Regular and special meetings of the board of regents and committees thereof as required by applicable law shall be open to the public, except for executive sessions which may be held as permitted by applicable law. Board members may appear at any meeting through any means that permits communications with all other persons at the meeting. Persons wishing to appear before the board to make a presentation shall comply with the procedures as specified in subsection (8) of this section.

(2) Regular meetings. Regular meetings of the board shall be held pursuant to a schedule and at locations established yearly by resolution of the board and published periodically in the *Washington State Register*. The president of the board, with the concurrence of a majority of the members of the board, may cancel any regular meeting. All such regular meetings will be conducted in conformance with the laws of the state of Washington governing such meetings.

~~((The board shall give no less than twenty-four hours notice of cancellation of a regular meeting.~~

~~(2))~~ (3) Special meeting. The president of the university, the president of the board, or any six members of the board may call a special meeting at any time. Not less than twenty-four hours before any special meeting, the secretary shall have notified each member of the board by written notice of the time, place, and the business to be transacted at the meeting. Such notice shall be distributed ~~((and posted))~~ in accordance with the laws of the state governing such meetings. The presence of a regent at the meeting or the regent's written waiver of notice filed with the secretary shall constitute a waiver of receiving written notice of the meeting. When the meeting is called to deal with an emergency involving injury or damage, or the likelihood of injury or damage, to persons or property, and the time requirements for notice provided for above would be impractical and increase the likelihood of such injury or damage, such required notice may be dispensed with and the secretary shall notify each member of the board by the best means possible under the circumstances.

~~((3) Notice of agenda for regular meeting. Not less than four days before any regular meeting, the secretary shall mail to each member of the board a reminder of the regular meeting and a preliminary agenda setting forth the matters which are to be considered at the meeting.)~~

(4) Addenda to the agenda at regular or special meetings. Addenda to the agenda of either a regular or a special meeting may be permitted at the commencement of or during such meeting, except that final disposition shall not be taken on addenda to the agenda of a special meeting unless notice as required by applicable law has been given.

(5) Quorum. A majority of the entire board shall be necessary to constitute a quorum at all regular meetings and special meetings.

~~(6) ((Order of business. The following shall be the order of business at each regular meeting of the board:
Report of the president of the board;
Report of the president of the university;
Consent agenda (including approval of minutes);
Reports of standing committees of the board;
Reports of special committees of the board; and
Any other business that may properly come before the board.~~

~~The following shall be the order of business at each special meeting of the board:
Reading of notice of meeting;
The special business for which the meeting was called; and~~

~~Any other business that may properly come before the board.~~

~~The order of business of the board may be changed or suspended at any meeting by a majority of the regents present. An item shall be removed from the consent agenda by request of any regent.~~

~~(7))~~ (7) Minutes. The minutes of all regular and special meetings of the board shall be kept by the secretary. Such minutes, following approval, shall be open to public inspection in the office of the secretary of the board of regents during regular university business hours.

~~((8) Public meetings. Regular and special meetings of the board of regents and committees thereof as required by applicable law shall be open to the public, except for executive sessions which may be held as permitted by applicable law. Board members may appear at any meeting through a telephone or video conferencing device that permits communications with all other persons at the meeting. Persons wishing to appear before the board to make a presentation shall comply with the procedures as specified in subsection (11) of this section.~~

~~(9))~~ (7) Committee of the whole meetings. Meetings of the board as a committee of the whole may be held before regular or special meetings of the board or at such time and such place as the president of the board may direct from time to time.

~~((10) Executive sessions. During any regular or special meeting of the board or committee, the board or committee may hold an executive session to discuss matters as permitted in applicable laws of the state of Washington.~~

~~(11))~~ (8) Communications to and appearance before the board. Any persons who wish to communicate to the board or appear before the board shall do so as follows:

(a) Communications to the board. Any person who wishes to bring a matter to the attention of the board may do so by submitting such communication in writing to the secretary of the board of regents. The secretary shall bring such written communications to the attention of the president of the board and the president of the university for direction as to response and/or transmittal to the board.

(b) Appearance before the board. The meetings of the board of regents are intended for presentation of agenda items by the chairs of the respective standing committees and by the president of the university for discussion and action by the members of the board. Public testimony on agenda items, or on other relevant items which any person may wish to call

to the attention of the board, may be taken by the appropriate standing committee or by the committee of the whole. The chair of each committee shall have the discretion to limit the time and order of appearances as deemed desirable for a fair presentation of views consistent with the other business before the committee. In an unusual case, this subsection may be waived by the president of the board or by any other six members of the board.

(c) Petition to board for promulgation, amendment, or repeal of rule. Persons having an interest in the promulgation, amendment, or repeal of a "rule" as defined in RCW 34.05.010 may submit a written petition to the university's rules coordination office. Any petition so submitted shall contain the name and address of the petitioner or petitioners, a description of the persons on whose behalf the petition is presented if it is presented in a representative capacity, a statement of the interest of the petitioner and/or the persons on whose behalf it is presented, and a statement of the reasons supporting the petition. If the petition is for the promulgation of a rule, it shall contain the proposed rule. If the petition is for an amendment of an existing rule, it shall contain the rule with the proposed deletions lined out and proposed additions underlined or italicized. If the petition is for the repeal of a rule, it shall contain a copy of the rule proposed to be repealed. The petition shall be considered by the board at the first regular meeting held not less than thirty days after the date the petition was submitted to the rules coordination office, provided that the board may consider the petition at any earlier regular or special meeting of the board.

Within sixty days after submission of a petition to the rules coordination office that is for the promulgation, amendment, or repeal of a "rule," as defined in RCW 34.05.010, the board shall either deny the petition in writing or initiate rule-making procedures in accordance with RCW 34.05.330.

~~((12))~~ (9) Rules of procedure. *Robert's Rules of Order*, latest revised edition, shall govern all meetings of the board and its committees except where such rules of order are superseded by the bylaws of the board of regents or standing orders of the board. Any member of the board may make a motion which need not be seconded in order to bring the subject of the motion before the board for action.

NEW SECTION

WAC 478-04-035 Meetings of other university governing boards. Regular meetings of university governing boards shall be held pursuant to schedules and at locations published periodically in the *Washington State Register*. All such regular meetings will be conducted in conformance with the laws of the state of Washington and policies of the board of regents governing such meetings.

WSR 07-03-136

PERMANENT RULES

UNIVERSITY OF WASHINGTON

[Filed January 23, 2007, 11:02 a.m., effective February 23, 2007]

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

Purpose: To amend the University of Washington's smoking policy and related rules in chapter 478-136 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 478-136-012 and 478-136-030.

Statutory Authority for Adoption: RCW 28B.20.130 and chapter 70.160 RCW.

Adopted under notice filed as WSR 06-21-077 on October 17, 2006.

Changes Other than Editing from Proposed to Adopted Version: The word "no" was added to the first sentence of new section WAC 478-136-035(2), to change the policy name from "smoking policy" to "no smoking policy" to be consistent with other references to the policy throughout the amended 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 1, Amended 2, 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 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 18, 2007.

Rebecca Goodwin Deardorff
UW Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 02-06-020, filed 2/25/02, effective 3/28/02)

WAC 478-136-012 Definitions. (1) "Facilities" includes all structures, grounds, parking lots, waterfront, and airspace owned or operated by the University of Washington. Specific rules also apply to parking lots, bicycle and skateboard use (chapter 478-116 WAC), boat moorage facilities (chapter 478-138 WAC and *University Handbook*, Volume 4, Part VII, Chapter 3, Section 2), residence halls (chapter 478-156 WAC), airspace use (*University Handbook*, Volume 4, Part VII, Chapter 3, Section 5), nonuniversity speakers on campus (*University Handbook*, Volume 4, Part VII, Chapter 3, Section 4), ~~((smoking (*University Handbook*, Volume 4, Part VII, Chapter 6),))~~ and use of facilities by the Associated Students University of Washington (ASUW), Graduate and Professional Student Senate (GPSS), and other affected organizations (*University Handbook*, Volume 3, Part III, Chapter 5).

(2) "Use of facilities" includes, but is not limited to: The holding of events, the posting and removal of signs, all forms of advertising, commercial activities, and charitable solicitation.

(3) "Approved event" means a use of university facilities which has received preliminary approval from an academic

or administrative unit and which has received final approval from the committee on the use of university facilities.

AMENDATORY SECTION (Amending WSR 06-13-021, filed 6/13/06, effective 7/14/06)

WAC 478-136-030 Limitations on use. (1) Freedom of expression is a highly valued and indispensable quality of university life. However, university facilities may not be used in ways which obstruct or disrupt university operations, the freedom of movement, or any other lawful activities. Additionally, use of university facilities may be subject to reasonable time, place and manner restrictions.

(2) University facilities may be used for events and forums regarding ballot propositions and/or candidates who have filed for public office so long as the event has received preliminary approval by an administrative or academic unit and final approval by the committee on the use of university facilities. There are, however, certain limitations on the use of university facilities for these political activities.

(a) First priority for the use of campus facilities shall be given to regularly scheduled university activities.

(b) University facilities may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office only when the full rental cost of the facility is paid. However, use of state funds for payment of facility rental costs is prohibited.

(c) Forums or debates may be scheduled at full facility rental rates if all parties to a ballot proposition election or all candidates who have filed for office for a given position, regardless of party affiliation, are given equal access to the use of facilities within a reasonable time.

(d) No person shall solicit contributions on university property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(e) Public areas outside university buildings may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office, excluding solicitation of funds, provided the other normal business of the university is not disrupted and entrances to and exits from buildings are not blocked.

(f) University facilities or services may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(3) University facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities serve an educational purpose, as determined by the committee on the use of university facilities.

(4) Nothing in these rules is intended to alter or affect the regular advertising, promotional, or underwriting activities carried on, by, or in the regular university media or publications. Policies concerning advertising, promotional or underwriting activities included in these media or publications are under the jurisdiction of and must be approved by their respective management or, where applicable, advisory committees, in accordance with applicable state and federal laws.

(5) In accordance with WAC 478-136-010, the university will make its facilities available only for purposes related to the educational mission of the university, as determined by the committee on the use of university facilities, including but not limited to instruction, research, public assembly, and student activities. When permission is granted to use university facilities for approved instructional or related purposes, as a condition of approval, the user of university facilities agrees to include in all materials nonendorsement statements in the form approved by the committee on the use of university facilities. "Materials" includes all communications, advertisement, and any other printed, electronic, or broadcast/telecast information related to the user's activities offered in university facilities. The committee will determine the content, size of print and placement of the nonendorsement language. The university will not make its facilities available for instructional or related purposes that compete with courses or programs offered by the university.

(6) Solicitation, or distribution of handbills, pamphlets and similar materials by anyone, whether a member of the university community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where such solicitation or distribution would significantly impinge upon the primary business being conducted.

(7) Solicitation and distribution of materials in university residence halls are governed by residence hall policies. No solicitation of a commercial nature is permitted in university residence halls. Commercial advertising may be allowed, and is restricted to certain designated areas of each residence hall, when it is related to the university's mission and approved by the department of housing and food services.

(8) Electronic amplification on the grounds of the campus is prohibited with the following exceptions:

(a) The lawn area immediately west of the Husky Union Building will be available for open-air speaking events using directional and volume-controlled speech amplification equipment provided by the university. Use of the Husky Union Building lawn site will be available to registered or official student organizations and faculty or staff groups on a first-come, first-served basis. The amplification system will be issued upon presentation of a currently valid student, faculty or staff identification card at the Husky Union Building Reservation Office.

(b) The committee on the use of university facilities may grant permission, under special circumstances, for the use of other amplification equipment on the lawn site west of the Husky Union Building or in other outdoor locations. Permission should be requested through:

University of Washington
Secretary to the Committee on the
Use of University Facilities
239M Gerberding Hall
Box 351241
Seattle, WA 98195-1241

(or phone: 206-543-9233), sufficiently in advance of the program to allow timely consideration.

(9)(a) No person may use university facilities to camp, except if permission to do so has been granted in accordance

with the provisions of chapters 478-116 and 478-136 WAC or except as provided in (b) of this subsection. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws.

(b) This provision does not prohibit use of the university residence facilities in accordance with chapter 478-156 WAC or the use of facilities where the employee remains overnight to fulfill the responsibilities of his or her position or where a student remains overnight to fulfill the requirements of his or her course of study.

(10) Within the limits of applicable laws, the University of Washington is committed to establishing and maintaining safe conditions for persons attending football games in Husky Stadium or other athletic events or concerts in campus facilities. Accordingly, the rules enumerated below will apply to all such events and be strictly enforced.

(a) The possession or consumption of alcoholic beverages or illegal drugs is prohibited, except for alcohol allowed under a permit or license obtained under subsection (13) of this section. In addition to having the beverages or drugs confiscated, violators may be subject to university disciplinary action and/or legal proceedings, and removal from the events.

(b) Air horns, glass bottles, cans, picnic baskets, bota bags, ice chests, and thermoses (in excess of two-quart capacity) are prohibited. Individuals possessing such will not be admitted to, or will be removed from, Husky Stadium or other athletic or concert facilities until the items have been stored temporarily at locations provided for that purpose or disposed of in some other manner.

(c) Except for designated outdoor smoking sites, as provided in WAC 478-136-035, smoking is prohibited in ((the seating areas of) all portions of all athletic stadia, including, but not limited to, the seating areas, public concourses, and enclosed and covered spaces. ((Smoking is permitted on pedestrian concourses.))

(d) All persons entering events in Husky Stadium or other athletic venues or events in other campus auditoria or facilities shall be subject to having all containers, bags, backpacks, coolers, or similar items visually inspected. Security personnel shall first ask permission to visually inspect the item and advise the person that he/she may refuse. Persons who refuse to allow inspection shall be allowed to return the item to a vehicle or otherwise dispose of it, after which admission shall be allowed. Persons who refuse the visual inspection and refuse to dispose of the item shall be denied entry.

(11) Only public service announcements and acknowledgment of sponsors will be allowed on scoreboards at athletic venues.

(a) For purposes of this section, a public service announcement is defined as an announcement which promotes the activities or services of federal, state or local governments, including the University of Washington, or non-profit organizations, or generally contributes to the community's welfare and interests.

(b) In acknowledgment of their sponsorship of the scoreboards or sponsorship of events and programs, sponsors may propose public service announcements for display on the scoreboard during athletic events. The public service announcement may be accompanied by a sponsor's name or logo, but in keeping with university policy may not directly promote the products or services of the company. The text and graphics of public service announcements must be submitted at least three days in advance to the department of intercollegiate athletics for approval by the university.

(c) In addition to these public service announcements, sponsors also may be acknowledged by the display of corporate logos, trademarks, or other approved messages upon panels located on the scoreboard.

~~(12) ((The University of Washington is committed to maintaining a safe and healthful work and educational environment for all faculty, staff, students, and visitors. Accordingly, the University of Washington establishes the following smoking policy to protect nonsmokers from exposure to smoke in their university-associated environments and to protect life and property against fire hazards:~~

~~(a) Except as provided in subsections (10)(c) and (12)(b) of this section, smoking is prohibited in all university vehicles, inside all buildings owned or occupied by the university and/or used by the university's faculty, staff or students and at any outside areas or locations that may directly or indirectly affect the air supply of buildings or carry smoke into buildings.~~

~~(b) Smoking may be permitted in student rooms in university residence halls and apartments in university student housing in accordance with smoking regulations established for those facilities by the vice president for student affairs.~~

~~(c) The director of environmental health and safety may designate specific outdoor locations as no smoking areas.~~

~~(d) Any student, staff, or faculty member who violates the university smoking policy may be subject to disciplinary action. In addition, violations of the university smoking policy may be subject to enforcement by the University of Washington police department.~~

~~(13))~~ Alcoholic beverages may be possessed, sold, served, and consumed at university facilities only if the procedures set forth in this section are followed.

(a) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.

(b) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.

(c) Alcoholic beverages may be possessed, sold, served, and consumed at the faculty center, as so designated by the university board of regents to the Washington state liquor control board, pursuant to a spirits, beer, and wine private club license issued by the Washington state liquor control board.

(d) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.

(e) Except as provided in (c) and (d) of this subsection, alcoholic beverages may be possessed, sold, served, and consumed at university facilities only under permits/licenses issued by the Washington state liquor control board and only as follows:

(i) Events at which alcohol is to be sold must be approved by the committee on the use of university facilities and an application to the committee must be accompanied by a request for written authorization under (f) of this subsection or proof that the seller holds an appropriate license; and

(ii) Events at athletic venues at which alcohol is to be possessed, sold, served, or consumed must not be within the spectator viewing areas and must have restricted attendance, and a university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) of this subsection; and

(iii) A university unit, or an individual or organization applying for a permit/license must have obtained approval under (f) of this subsection; and

(iv) Sale, service, and consumption of alcohol is to be confined to specified room(s) or area(s) specified on the license or permit. Unopened containers may not be sold or served. No alcohol is permitted to be taken off-premises.

(f) Written authorization to apply for a special occasion license to sell alcoholic beverages or a banquet permit to serve and consume alcoholic beverages at university facilities must be obtained from the committee on the use of university facilities prior to applying for a special occasion license or banquet permit from the Washington state liquor control board. Authorization should be requested through the University of Washington, secretary to the committee on the use of university facilities, sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor control board at least thirty days or more before the event.) Written authorization to apply for such a permit/license shall accompany the application filed with the Washington state liquor control board.

(g) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

NEW SECTION

WAC 478-136-035 No smoking policy for university facilities. (1) The University of Washington is committed to maintaining a safe and healthful work and educational environment for all faculty, staff, students, and visitors. Accordingly, the University of Washington establishes the following no smoking policy, consistent with chapter 70.160 RCW (I-901), to protect individuals from exposure to second-hand smoke in their university-associated environments and to protect life and property against fire hazards.

(a) Except as provided in subsection (1)(b) and (c) of this section, smoking of all kinds is prohibited in all university facilities, including, but not limited to, vehicles, inside all buildings owned, occupied, or managed by the university and/or used by the university's faculty, staff, students, or visitors, and at any outside areas or locations, including, but not limited to, bus shelters, benches, and walkways.

(b) Smoking, while not permitted in on-campus residence halls, may be permitted in a limited portion of designated university student housing in accordance with smoking regulations established for those facilities by the vice-provost for student life.

(c) Smoking may be permitted in specific designated outdoor locations approved by the director of environmental health and safety as smoking areas in accordance with chapter 70.160 RCW and published on the environmental health and safety web site. Signage also identifies the designated locations.

(2) Violations of the university no smoking policy are subject to enforcement by the University of Washington police department or other jurisdictional law enforcement agencies with regulatory responsibility. In addition, any student, staff, or faculty member who violates the university no smoking policy may be subject to disciplinary action.

WSR 07-03-142

PERMANENT RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed January 23, 2007, 1:01 p.m., effective February 23, 2007]

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

Purpose: To recognize the validity of Oregon commercial licenses when fishing the Washington side of the border where the Columbia River forms a common border between the two states. This allows both Washington and Oregon commercial-license holders (charter and gillnet vessels) to fish the other state's portion of the Columbia River. The rule does not, however, allow Oregon charter vessels to pick up or discharge passengers from the Washington shore.

Statutory Authority for Adoption: RCW 77.65.010.

Other Authority: RCW 77.04.020, 77.04.130.

Adopted under notice filed as WSR 06-23-045 on November 7, 2006.

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 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, 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 23, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-20-005 Oregon-Washington commercial license reciprocity. The following Oregon licenses are equivalent to Washington licenses and are valid in the concurrent waters of the Columbia River:

(1) An Oregon Columbia River gill net salmon vessel permit issued under ORS 508.775 - ORS 508.796 is equivalent to a Washington salmon gill net fishery license issued under RCW 77.65.160 (1)(a) or (c) in the concurrent waters of the Columbia River. A person who holds an Oregon Columbia River gill net salmon vessel permit may land salmon in Washington that were taken in the Columbia River salmon gill net salmon fishery.

(2) An Oregon ocean charter vessel license issued under ORS 830.435 is equivalent to a Washington charter license issued under RCW 77.65.150 in the concurrent waters of the Columbia River downstream of the bridge at Longview, except that an Oregon vessel may not take on or discharge passengers for any purpose from any Washington port, the Washington shore, or a dock, landing, or other point in Washington.

**WSR 07-03-145
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed January 23, 2007, 2:45 p.m., effective March 1, 2007]

Effective Date of Rule: March 1, 2007.

Purpose: WAC 296-126-023, 296-128-035, and 296-131-010, payment interval rules. The purpose of this rule making is to incorporate the payment interval administrative policy into the rules. By integrating the policy into rule and expanding the rule to clarify different payment interval approaches, the payment interval rule will be easier to use, understand, and provide greater certainty and consistency without having to rely on additional documents. The adoption will:

1. Retain the requirement that employers must pay all wages at no longer than monthly intervals on regular pay days.
2. Continue to require an employer to implement a regular payroll system in which wages from up to seven days before pay day may be withheld if paying at a monthly interval.
3. Continue to require that paychecks must be mailed on the established payday and funds provided by direct deposit or electronic means must be available on the established payday.
4. Employers are required to pay wages no later than ten days after the end of the pay period, except for monthly payroll systems.
5. Allow employers to establish separate pay periods for regular and overtime wages plus commission and other specialty pay as long as workers are paid no later than the pay day for the following pay period.

Citation of Existing Rules Affected by this Order: Amending WAC 296-126-023, 296-128-035, and 296-131-010.

Statutory Authority for Adoption: Chapters 49.12, 49.30, and 49.46 RCW.

Adopted under notice filed as WSR 06-17-136 on August 22, 2006.

Changes Other than Editing from Proposed to Adopted Version: The following sections were amended between the proposed and adopted versions (bold and italics indicate change):

WAC 296-126-023:

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

<u><i>If pay period is:</i></u>	<u><i>Then payday must be no later than:</i></u>	<u><i>And employer must pay wages for at least:</i></u>
<u><i>Monthly, starting on 1st day of the month</i></u>	<u><i>Last day of the month</i></u>	<u><i>1st day of the month - 24th day of the month</i></u>

(6) An employer shall pay ~~nonbase overtime~~ wages owed to an employee ~~(including overtime, bonus pay, and other categories of specialty pay in addition to base pay)~~ on the regular pay day for the pay period in which ~~such nonbase~~ ~~the overtime~~ wages were earned. If the correct amount of ~~nonbase overtime~~ wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for ~~nonbase overtime~~ wages; however, the payment of ~~nonbase overtime~~ wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and ~~in no even may payment be delayed beyond overtime wages must be paid by the regular payday period~~ following the ~~next~~ pay period ~~in which the nonbase wages were earned~~.

Example: Employer establishes two semi-monthly pay periods. ~~the~~ The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the payday of the 25th; the second pay period covers the 16th day of the month with the payday of the 10th of the following month to the last day of the month. The employer pays a base hourly wage of fifteen dollars per hour, plus a ten percent commission. An employee works overtime in each of the pay periods. Unless a different payment interval

applies by law, the employer must pay ~~overtime the base hourly~~ wages no later than the ~~25th 10th~~ day of the ~~following~~ month for the ~~overtime earned during the~~ first pay period, and no later than the ~~10th 25th~~ day of the following month for the ~~overtime earned during the~~ second pay period. ~~The employer may pay the additional commission wages no later than the 10th day of the following month for commissions earned during the first pay period, and no later than the 25th day of the following month for commissions earned during the second pay period.~~

<u>If pay period is:</u>	<u>And if payday for regular wages is:</u>	<u>Then payday for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All **base regular** wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to **base pay regular wages**) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays **base regular** wages to covered employees at no less than the applicable minimum wage rate.

WAC 296-128-035

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

<u>If pay period is:</u>	<u>And if payday for regular wages is:</u>	<u>Then payday for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(6) An employer shall pay **nonbase overtime** wages owed to an employee (~~including overtime, bonus pay, and other categories of specialty pay in addition to base pay~~) on the regular pay day for the pay period in which **such nonbase the overtime** wages were earned. If the correct amount of **nonbase overtime** wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for **nonbase overtime** wages; however, the payment of **nonbase overtime** wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and ~~in no even may payment be delayed beyond overtime wages must be paid by the regular payday period~~ following the **next** pay period ~~in which the nonbase wages were earned~~.

Example: Employer establishes two semi-monthly pay periods. ~~the~~ The first pay period covers **work performed** from the 1st day of the month to the 15th day of the month ~~with the payday of the 25th~~; the second pay period covers the 16th day of the month ~~with the payday of the 10th of the following month to the last day of the month~~. ~~The employer pays a base hourly wage of fifteen dollars per hour, plus a ten percent commission. An employee works overtime in each of the pay periods.~~ Unless a different payment interval applies by law, the employer must pay **overtime the base hourly** wages no later than the ~~25th 10th~~ day of the ~~following~~ month for the ~~overtime earned during the~~ first pay period, and no later than the ~~10th 25th~~ day of the following month for the ~~overtime earned during the~~ second pay period. ~~The employer may pay the additional commission wages no later than the 10th day of the following month for commissions earned during the first pay period, and no later than the 25th day of the following month for commissions earned during the second pay period.~~

<u>If pay period is:</u>	<u>And if payday for regular wages is:</u>	<u>Then payday for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All base regular wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to base pay regular wages) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays base regular wages to covered employees at no less than the applicable minimum wage rate.

WAC 296-131-010:

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

<u>If pay period is:</u>	<u>Then payday must be no later than:</u>	<u>And employer must pay wages for at least:</u>
<u>Monthly, starting on 1st day of the month</u>	<u>Last day of the month</u>	<u>1st day of the month - 24th day of the month</u>

(6) An employer shall pay nonbase overtime wages owed to an employee (including overtime, bonus pay, and other categories of specialty pay in addition to base pay) on the regular pay day for the pay period in which such nonbase the overtime wages were earned. If the correct amount of nonbase overtime wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for nonbase overtime wages; however, the payment of nonbase overtime wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and in no even may payment be delayed beyond overtime wages must be paid by the regular payday period following the next pay period in which the nonbase wages were earned.

Example: Employer establishes two semi-monthly pay periods. ~~the~~ The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the payday of the 25th; the second pay period covers the 16th day of the month with the payday of the 10th of the following month to the last day of the month. The employer pays a base hourly wage of fifteen dollars per hour, plus a

~~ten percent commission. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay overtime the base hourly wages no later than the 25th 10th day of the following month for the overtime earned during the first pay period, and no later than the 10th 25th day of the following month for the overtime earned during the second pay period. The employer may pay the additional commission wages no later than the 10th day of the following month for commissions earned during the first pay period, and no later than the 25th day of the following month for commissions earned during the second pay period.~~

<u>If pay period is:</u>	<u>And if payday for regular wages is:</u>	<u>Then payday for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All base regular wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to base pay regular wages) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays base regular wages to covered employees at no less than the applicable minimum wage 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 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, 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 3, Repealed 0.

Date Adopted: January 23, 2007.

Judy Schurke
Acting Director

AMENDATORY SECTION (Amending Order 89-16, filed 10/24/89, effective 11/24/89)

WAC 296-128-035 Payment interval. ~~((All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days. To facilitate book-keeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the next pay period.))~~ (1) This rule shall apply to employers and employees subject to chapter 49.46 RCW.

Note: Employers and employees not subject to this regulation may still be subject to the payment interval requirements of WAC 296-126-023 or 296-131-010.

(2) Definitions:

(a) "Monthly interval" means a one-month time period between established pay days.

(b) "Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(c) "Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(d) "Pay period" means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly or monthly.

(3) An employer shall pay all wages owed to an employee on an established regular pay day at no longer than monthly payment intervals. If federal law provides specific payment interval requirements that are more favorable to an employee than the payment interval requirements provided under this rule, federal law shall apply.

(4) If an employer pays wages on the basis of a pay period that is less than a month, the employer shall establish a regular pay day no later than ten calendar days after the end of the pay period, unless expressly provided otherwise by law.

Example 1: Employer establishes a weekly pay period. The workweek is from Sunday January 1 through Saturday January 7. Unless a different payment interval applies by law, the employer must pay wages no later than January 17.

Example 2: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day of the month). Unless a different payment interval applies by law, the employer must pay wages no later than the 25th day of the current month for the first pay period, and no later than the 10th day of the following month for the second pay period.

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

<u>If pay period is:</u>	<u>And if pay day for regular wages is:</u>	<u>Then pay day for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(6) An employer shall pay overtime wages owed to an employee on the regular pay day for the pay period in which the overtime wages were earned. If the correct amount of overtime wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for overtime wages; provided, that the payment of overtime wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and overtime wages must be paid by the regular pay day following the next pay period.

Example: Employer establishes two semi-monthly pay periods. The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the pay day of the 25th; the second pay period covers the 16th day of the month to the last day of the month with the pay day of the 10th of the following month. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay the overtime wages no later than the 10th day of the following month for the overtime earned during the first pay period, and no later than the 25th day of the following month for the overtime earned during the second pay period.

<u>If pay period is:</u>	<u>And if pay day for regular wages is:</u>	<u>Then pay day for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(7) Mailed paychecks shall be postmarked no later than the established pay day. If the established pay day falls on a weekend day or holiday when the business office is not open, mailed paychecks shall be postmarked no later than the next business day. Employers that pay employees by direct deposit or other electronic means shall ensure that such wage payments are made and available to employees on the established pay day.

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All regular wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to regular wages) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays regular wages to covered employees at no less than the applicable minimum wage rate.

AMENDATORY SECTION (Amending Order 89-16, filed 10/24/89, effective 11/24/89)

WAC 296-126-023 Payment interval. ~~((All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days. To facilitate book-keeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the next pay period.))~~ (1) This rule shall apply to employers and employees subject to chapter 49.12 RCW.

Note: Employers and employees not subject to this regulation may still be subject to the payment interval requirements of WAC 296-128-035 or 296-131-010.

(2) Definitions:

(a) "Monthly interval" means a one-month time period between established pay days.

(b) "Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(c) "Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(d) "Pay period" means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly or monthly.

(3) An employer shall pay all wages owed to an employee on an established regular pay day at no longer than monthly payment intervals. If federal law provides specific payment interval requirements that are more favorable to an

employee than the payment interval requirements provided under this rule, federal law shall apply.

(4) If an employer pays wages on the basis of a pay period that is less than a month, the employer shall establish a regular pay day no later than ten calendar days after the end of the pay period, unless expressly provided otherwise by law.

Example 1: Employer establishes a weekly pay period. The workweek is from Sunday January 1 through Saturday January 7. Unless a different payment interval applies by law, the employer must pay wages no later than January 17.

Example 2: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day of the month). Unless a different payment interval applies by law, the employer must pay wages no later than the 25th day of the current month for the first pay period, and no later than the 10th day of the following month for the second pay period.

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

	<u>Then pay day must be no later than:</u>	<u>And employer must pay wages for at least:</u>
<u>If pay period is:</u>		
<u>Monthly, starting on 1st day of the month</u>	<u>Last day of the month</u>	<u>1st day of the month - 24th day of the month</u>

(6) An employer shall pay overtime wages owed to an employee on the regular pay day for the pay period in which the overtime wages were earned. If the correct amount of overtime wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for overtime wages; however, the payment of overtime wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and overtime wages must be paid by the regular pay day following the next pay period.

Example: Employer establishes two semi-monthly pay periods. The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the pay day of the 25th; the second pay period covers the 16th

day of the month with the pay day of the 10th of the following month. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay overtime wages no later than the 10th day of the following month for the overtime earned during the first pay period, and no later than the 25th day of the following month for the overtime earned during the second pay period.

<u>If pay period is:</u>	<u>And if pay day for regular wages is:</u>	<u>Then pay day for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(7) Mailed paychecks shall be postmarked no later than the established pay day. If the established pay day falls on a weekend day or holiday when the business office is not open, mailed paychecks shall be postmarked no later than the next business day. Employers that pay employees by direct deposit or other electronic means shall ensure that such wage payments are made and available to employees on the established pay day.

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All regular wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to regular wages) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays regular wages to covered employees at no less than the applicable minimum wage rate.

AMENDATORY SECTION (Amending Order 89-15, filed 10/24/89, effective 11/24/89)

WAC 296-131-010 Payment interval. ((All wages due shall be paid at no longer than monthly intervals to each employee on established regular pay days, unless federal law requires more frequent pay intervals. To facilitate bookkeeping, an employer may implement a regular payroll system in which wages from up to seven days before pay day may be withheld from the pay period covered and included in the

next pay period.)) (1) This rule shall apply to employers and employees engaged in agricultural labor as defined in RCW 50.04.150 and subject to WAC 296-131-001.

Note: Employers and employees not subject to this regulation may still be subject to the payment interval requirements of WAC 296-126-023 or 296-128-035.

(2) Definitions:

(a) "Monthly interval" means a one-month time period between established pay days.

(b) "Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(c) "Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(d) "Pay period" means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly or monthly.

(3) An employer shall pay all wages owed to an employee on an established regular pay day at no longer than monthly payment intervals. If federal law provides specific payment interval requirements that are more favorable to an employee than the payment interval requirements provided under this rule, federal law shall apply.

(4) If an employer pays wages on the basis of a pay period that is less than a month, the employer shall establish a regular pay day no later than ten calendar days after the end of the pay period, unless expressly provided otherwise by law.

Example 1: Employer establishes a weekly pay period. The workweek is from Sunday January 1 through Saturday January 7. Unless a different payment interval applies by law, the employer must pay wages no later than January 17.

Example 2: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day of the month). Unless a different payment interval applies by law, the employer must pay wages no later than the 25th day of the current month for the first pay period, and no later than the 10th day of the following month for the second pay period.

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

<u>If pay period is:</u>	<u>Then pay day must be no later than:</u>	<u>And employer must pay wages for at least:</u>
<u>Monthly, starting on 1st day of the month</u>	<u>Last day of the month</u>	<u>1st day of the month - 24th day of the month</u>

(6) An employer shall pay overtime wages owed to an employee on the regular pay day for the pay period in which the overtime wages were earned. If the correct amount of overtime wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for overtime wages; however, the payment of overtime wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and overtime wages must be paid by the regular pay day following the next pay period.

Example: Employer establishes two semi-monthly pay periods. The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the pay day of the 25th; the second pay period covers the 16th day of the month to the last day of the month with the pay day of the 10th of the following month. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay overtime wages no later than the 10th day of the following month for the overtime earned during the first pay period, and no later than the 25th day of the following month for the overtime earned during the second pay period.

<u>If pay period is:</u>	<u>And if pay day for regular wages is:</u>	<u>Then pay day for overtime wages must be no later than:</u>
<u>1st of the month - 15th day of the month</u>	<u>25th of the month</u>	<u>10th of the following month</u>
<u>16th of the month - 30th or 31st of the month</u>	<u>10th of the following month</u>	<u>25th of the following month</u>

(7) Mailed paychecks shall be postmarked no later than the established pay day. If the established pay day falls on a weekend day or holiday when the business office is not open, mailed paychecks shall be postmarked no later than the next business day. Employers that pay employees by direct deposit or other electronic means shall ensure that such wage payments are made and available to employees on the established pay day.

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All regular wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to regular wages) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays regular wages to covered employees at no less than the applicable minimum wage rate.

**WSR 07-03-150
PERMANENT RULES
DEPARTMENT OF HEALTH**

(Medical Quality Assurance Commission)

[Filed January 23, 2007, 3:59 p.m., effective February 23, 2007]

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

Purpose: WAC 246-919-615 Delegation of authority to initiate investigations (physicians) and 246-918-010 Delegation of authority to initiate investigations (physician assistants). The rule pertains to delegation of authority to the department of health staff and one clinical member of the commission to initiate investigations after complaints have been assessed.

Statutory Authority for Adoption: RCW 18.71.017 and 18.71A.020.

Other Authority: RCW 18.130.050(12), 18.130.080.

Adopted under notice filed as WSR 06-21-107 on October 17, 2006.

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 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, 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: December 1, 2006.

Blake T. Maresh
Executive Director

NEW SECTION

WAC 246-919-615 Delegation of authority to initiate investigations. The commission delegates to a case management team the authority to initiate an investigation when the commission or the department receives information, by

means of a complaint or otherwise, that a licensee may have engaged in unprofessional conduct or may be unable to practice with reasonable skill and safety by reason of a mental or physical condition. The case management team will consist of, at a minimum, a commission member licensed under chapter 18.71 or 18.71A RCW, the executive director or his or her designee, an investigator and a staff attorney.

NEW SECTION

WAC 246-918-010 Delegation of authority to initiate investigations. The commission delegates to a case management team the authority to initiate an investigation when the commission or the department receives information that a licensee may have engaged in unprofessional conduct or may be unable to practice with reasonable skill and safety by reason of a mental or physical condition. The case management team will consist of, at a minimum, a commission member licensed under chapter 18.71 or 18.71A RCW, the executive director or his or her designee, an investigator and a staff attorney.

WSR 07-03-153

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed January 23, 2007, 3:09 p.m., effective June 1, 2007]

Effective Date of Rule: June 1, 2007.

Purpose: The purpose of this rule making is to clarify the arsenic and benzene appendices from chapter 296-62 WAC and move them into their appropriate chapters.

Citation of Existing Rules Affected by this Order: Amending WAC 296-848-30005 Training, 296-848-30030 Medical evaluations, 296-849-11050 Training and 296-849-12030 Medical evaluations; and repealing WAC 296-62-07525 Appendix A substance safety data sheet, 296-62-07527 Appendix B substance technical guidelines, 296-62-07529 Appendix C medical surveillance guidelines, and 296-62-07354 Appendices—Inorganic arsenic.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 06-23-126 on November 21, 2006.

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 4, Amended 4, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 4, Repealed 4.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 23, 2007.

Judy Schurke
Acting Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-62-07354	Appendices—Inorganic arsenic.
WAC 296-62-07525	Appendix A substance safety data sheet—Benzene.
WAC 296-62-07527	Appendix B substance technical guidelines—Benzene.
WAC 296-62-07529	Appendix C medical surveillance guidelines for benzene.

AMENDATORY SECTION (Amending WSR 05-01-173, filed 12/21/04, effective 5/1/05)

WAC 296-848-30005 Training.

You must:

• Train employees:

– Who are exposed above the action level (AL) of 5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) of air;

OR

– Who could experience eye or skin irritation from exposure.

• Provide training:

– At the time of initial assignment;

AND

– At least every twelve months after initial training.

• Make sure training and information includes all of the following:

– A review of ~~((this chapter))~~ WAC 296-848-100 through 296-848-40045, and 296-848-500.

~~((The information found in another chapter:~~

~~■ Go to the General occupational health standards, chapter 296-62 WAC;~~

~~**AND**~~

~~■ Find Appendix A Inorganic Arsenic Substance Information Sheet, WAC 296-62-07354(1);) – The following health information about inorganic arsenic:~~

~~• Inorganic arsenic is a poison and can affect your body if it's swallowed or inhaled.~~

~~• Exposure to airborne concentrations of inorganic arsenic may cause lung cancer and can be a skin irritant.~~

~~• Arsenic trichloride can be absorbed readily through your skin and is especially dangerous.~~

~~• Wash hands thoroughly before eating or smoking to help minimize your risk for swallowing inorganic arsenic.~~

– The purpose for medical evaluations and a description of how you are fulfilling the medical evaluation requirements of this chapter found in Medical evaluations, WAC 296-848-30030.

• Make a copy of ~~((each of the following))~~ this chapter readily available to all employees required to be trained under this section(~~(:~~

~~—This chapter;~~

~~AND~~

~~—These appendices found in another chapter, the General occupational health standards, chapter 296-62 WAC:~~

~~■ Appendix A Inorganic Arsenic Substance Information Sheet, WAC 296-62-07354(1);~~

~~■ Appendix B Substance Technical Guidelines, WAC 296-62-07354(2);~~

~~■ Appendix C Medical Surveillance Guidelines, WAC 296-62-07354(3)).~~

- Reference:**
- To see additional training and information requirements in other chapters, go to the:
 - Respirators rule, chapter 296-842 WAC.
 - Safety and health core rules, chapter 296-800 WAC, and find the section titled, Inform and train your employees about hazardous chemicals in your workplace, WAC 296-800-17030.
 - When following these requirements, include specific information about potential exposures to inorganic arsenic, such as the types of operations, locations, quantities, exposure sources, exposure controls, inorganic arsenic use, and storage.

AMENDATORY SECTION (Amending WSR 05-01-173, filed 12/21/04, effective 5/1/05)

WAC 296-848-30030 Medical evaluations.

IMPORTANT:

• Medical evaluations conducted under this section will satisfy the medical evaluation requirement found in another chapter, Respirators, chapter 296-842 WAC.

You must:

• Make medical evaluations available to current employees who have been, are, or will be exposed to inorganic arsenic concentrations above the AL:

– At least thirty days in any twelve-month period;

OR

– A total of ten years or more of combined employment with you or previous employers with at least thirty days of exposure per year.

• Make medical evaluations available at no cost to employees.

– Pay all costs, including travel costs and wages associated with any time spent outside of the employee's normal work hours.

• Make medical evaluations available at reasonable times and places.

• Make medical evaluations available by completing Steps 1 through 6 of the Medical Evaluation Process for each employee covered.

- Note:**
- Employees who wear respirators need to be medically evaluated to make sure the respirator will not harm them, before they are assigned work in areas requiring respirators. Employees who decline to receive medical examination and testing to monitor for health effects caused by inorganic arsenic are not excluded from receiving a separate medical evaluation for a respirator use.
 - If employers discourage participation in medical monitoring for health effects caused by inorganic arsenic, or in any way interfere with an employee's decision to continue with this program, this interference may represent unlawful dis-

crimination under RCW 49.17.160, Discrimination against employee filing, instituting proceeding, or testifying prohibited—Procedure—Remedy.

Helpful tool:

Declination form for nonemergency related medical evaluations.

You may use this optional form to document employee decisions to decline participation in the medical evaluation process for exposure to inorganic arsenic. To see this form, go to the Resources section within this chapter.

Medical Evaluation Process

Step 1: Identify employees who qualify, as stated above, for medical evaluations.

Step 2a: Make medical evaluations available for employees identified in Step 1 at the following times:

- Initially, when employees are assigned to work in an area where exposure monitoring results are, or will likely be, above the action level for at least thirty days in a twelve-month period.
- Periodically as specified in Table 3.
- When employment with exposure ends, if the employee has not had an evaluation within the six-month period before exposure ends. Include in these evaluations the same content as specified in Table 4 for initial evaluations, excluding a chest X ray.

Table 3

Frequencies for Periodic Medical Evaluations

For:	Provide periodic medical evaluations every:
Employees less than forty-five years old with less than ten years of exposure above the AL	Twelve months;
Employees forty-five or older; AND Employees with more than ten years of exposure above the AL	Six months; AND Twelve months to obtain a fourteen by seventeen-inch posterior-anterior chest X ray for monitoring purposes, unless the LHCP has determined a different frequency for periodic X rays.

Step 2b: Provide appropriate medical examination and emergency treatment when an employee identified in Step 1 develops signs or symptoms commonly associated with inorganic arsenic exposure.

Step 3: Select a licensed health care professional (LHCP) who will conduct or supervise examinations and procedures.

Step 4: Make sure the LHCP receives all of the following before the medical evaluation is performed:

- A copy of(~~(:~~
- ~~–))~~ this chapter(~~(:~~

~~AND~~

~~—The following information found in the General occupational health standards, chapter 296-62 WAC:~~

■ ~~Appendix A Inorganic Arsenic Substance Information Sheet, WAC 296-62-07354(1).~~

■ ~~Appendix B Substance Technical Guidelines, WAC 296-62-07354(2).~~

■ ~~Appendix C Medical Surveillance Guidelines, WAC 296-62-07354(3)).~~

- A description of the duties of the employee being evaluated and how these duties relate to inorganic arsenic exposure.

- The anticipated or representative exposure monitoring results for the employee being evaluated.

- A description of the personal protective equipment (PPE) each employee being evaluated uses or will use.

- Information from previous employment-related examinations when this information is not available to the examining LHCP.

- Instructions that the written opinions the LHCP provides you be limited to the following information:

- Results from examinations and tests.

- The LHCP's opinion about whether or not medical conditions were found that would increase the employee's risk for impairment from exposure to inorganic arsenic.

- Any recommended limitations for:

- Inorganic arsenic exposure;

AND

- Use of respirators or other PPE.

- A statement that the employee has been informed of medical results and medical conditions caused by inorganic arsenic exposure requiring further examination or treatment.

Step 5: Make the medical evaluation available to the employee. Make sure it includes the content listed in Table 4, Content of Medical Evaluations.

Step 6: Obtain the LHCP's written opinion for the employee's medical evaluation and give a copy to the employee.

- Make sure the written opinion is limited to the information specified for written opinions in Step 4.

Note: If the written opinion contains specific findings or diagnoses unrelated to occupational exposure, send it back and obtain a revised version without the additional information.

Table 4
Content of Medical Evaluations

When conducting:	Include:
An initial evaluation	<ul style="list-style-type: none"> • A work history and medical history including: <ul style="list-style-type: none"> – Smoking history. – The presence and degree of respiratory symptoms such as breathlessness, cough, sputum production, and wheezing. • A physical examination that includes: <ul style="list-style-type: none"> – A fourteen by seventeen-inch posterior-anterior chest X ray and the International Labor Office UICC/Cincinnati (ILO U/C) rating.

Table 4
Content of Medical Evaluations

When conducting:	Include:
	<ul style="list-style-type: none"> – A nasal and skin examination. • Additional examinations the licensed healthcare professional (LHCP) believes appropriate based on the employee's exposure to inorganic arsenic or respirator use.
Periodic evaluations for employees less than forty-five years old with less than ten years of exposure above the action level (AL)	<ul style="list-style-type: none"> • The same content as specified for initial evaluations repeated every twelve months.
Periodic evaluations for employees: <ul style="list-style-type: none"> • Forty-five or older; OR <ul style="list-style-type: none"> • With more than ten years of exposure above the AL 	<ul style="list-style-type: none"> • The following content repeated every six months: <ul style="list-style-type: none"> – A work history and medical history including: <ul style="list-style-type: none"> ■ Smoking history. ■ The presence and degree of respiratory symptoms such as breathlessness, cough, sputum production, and wheezing. – A physical examination that includes a nasal and skin examination. – Additional examinations the LHCP believes appropriate based on the employee's exposure to inorganic arsenic or respirator use. • A physical examination, repeated every twelve months, that obtains a fourteen by seventeen-inch posterior-anterior chest X ray and the International Labor Office UICC/Cincinnati (ILO U/C) rating.

NEW SECTION

WAC 296-848-60010 Health information about inorganic arsenic.

- Make this section readily available to employees as required in Training, WAC 296-848-30005.

- Provide this section to the licensed health care professional (LHCP) as required in Step 4 of the medical evaluation process found in Medical evaluations, WAC 296-848-30030.

Table 5

General Health Information About Inorganic Arsenic

What is inorganic arsenic?
In this chapter, "inorganic arsenic" means: <ul style="list-style-type: none"> – The element arsenic; – Arsenic-containing compounds that don't contain the element carbon; – Copper aceto-arsenite. <p>Arsine is a gaseous inorganic arsenic compound not addressed by requirements in this chapter. It's addressed in a separate chapter, Respiratory hazards, chapter 296-841 WAC.</p>
How does inorganic arsenic get into my body?
Inorganic arsenic enters your body when you: <ul style="list-style-type: none"> – Breathe in (inhale) airborne particles such as dusts, fume, sprays, or other aerosols that contain inorganic arsenic. You will also inhale inorganic arsenic particles when you smoke tobacco products that have become contaminated from contact with inorganic arsenic at work. Some compounds, including arsenic trichloride, can be inhaled as a vapor; – Swallow (ingest) food, drink, cosmetics such as lip balm, sweat and other substances that become contaminated from contact with inorganic arsenic at work. <p>Inorganic arsenic particles brought home on your clothes, shoes, or body can be inhaled or ingested by household members.</p> <p>Some inorganic arsenic compounds enter your body when eye or skin contact occurs. Arsenic trichloride is one example of a compound that is readily absorbed through the eyes and skin.</p>
What happens after inorganic arsenic enters my body?
Once inorganic arsenic enters your body, some of it is changed into a less harmful organic form by the liver. Both the organic and inorganic forms leave your body in urine. Most of the arsenic will be gone within several days, although some will remain in your body for several months and even longer.
Why is medical monitoring necessary?
Although exposure to inorganic arsenic is associated with various health effects, the most serious health effects are lung and skin cancer . The medical monitoring requirements in this chapter are established to minimize your risk for these diseases.
To learn more about the medical monitoring process, see Medical evaluation, WAC 296-848-30030.
What health effects and symptoms are linked with exposure to inorganic arsenic?

Table 5

General Health Information About Inorganic Arsenic

Exposure to inorganic arsenic is associated with various health effects ranging from temporary local effects such as skin irritation to lasting systematic effects due to gradual (chronic) or sudden (acute) poisoning. Such effects should not occur if the requirements in this chapter are followed.
Skin Health Effects:
Arsenic trioxide, arsenic trichloride, and other trivalent compounds can cause skin irritation from direct contact. <ul style="list-style-type: none"> – The following moist mucous membranes are most sensitive to irritation: <ul style="list-style-type: none"> ■ Eye and inner eyelid (conjunctiva); ■ Linings inside the nose, mouth, and respiratory system. – Other sites most vulnerable irritation also include: <ul style="list-style-type: none"> ■ Eyelids; ■ Angles (the space between 2 planes) of the ears, nose, and mouth; ■ Moist and macerated (softened by moisture) areas of skin; ■ Wrists; ■ Genitalia, if personal hygiene is poor. <p>Inorganic arsenic is also capable of causing keratoses (small corns or warts), especially on palms and soles.</p> <p>Trivalent arsenic compounds are corrosive to skin: <ul style="list-style-type: none"> – Brief contact won't cause irritation, but prolonged contact causes localized engorgement (hyperemia) which later forms vesicular (blister-like) or pustular (pimple-like) eruptions. – Exposure can create perforations (holes) in the nasal septum (the tissue dividing the nasal cavity in half). <p>Arsenic trioxide and arsenic pentoxide exposure have been linked to skin sensitization (acquired sensitivity or allergy) and contact dermatitis (inflammation due to allergic or irritant reaction).</p> </p>
Acute Poisoning Effects:
Acute poisoning is usually linked to ingestion, not inhalation, of inorganic arsenic. Cases of acute poisoning rarely occur in occupational settings and inhalation-related cases are exceedingly rare.
When acute poisoning is due to ingestion , the following gastrointestinal symptoms develop within 1/2 to 4 hours: <ul style="list-style-type: none"> – Tightening (constriction) of the throat followed by difficulty or inability to swallow (dysphagia), pain in the region above the belly button (epigastric pain), vomiting, and watery diarrhea. Blood may appear in vomit and stools; – Shock may develop due to severe fluid loss when the amount of inorganic arsenic swallowed is sufficiently high. Death can occur in 24 hours.

Table 5

General Health Information About Inorganic Arsenic

When acute poisoning is due to inhalation:

- The following symptoms develop first:
 - Cough;
 - Chest pain;
 - Shortness of breath (dyspnea);
 - Giddiness;
 - Headache;
 - Extreme general weakness.
- Gastrointestinal symptoms will follow.

Chronic Poisoning Effects:

Cases of chronic poisoning caused by **ingestion** are also rare. Symptoms are:

- Weight loss;
- Nausea and diarrhea alternating with constipation;
- Skin pigmentation and eruptions;
- Hair loss;
- Numbness in hands and feet, "pins and needles" sensation, muscle weakness, and other symptoms resulting from peripheral neuritis;
- Horizontal white lines (striations) on fingernails and toenails.

Inhalation of inorganic arsenic is the most common cause of chronic poisoning in occupational settings. Symptoms associated with this condition are divided into 3 phases.

- 1st phase, earliest symptoms:
 - Weakness;
 - Loss of appetite;
 - Some nausea;
 - Occasional vomiting;
 - Sense of heaviness in the stomach;
 - Some diarrhea.
- 2nd phase symptoms:
 - Inflammation of the eyes and inner eyelid (conjunctivitis);
 - Inflammation, accompanied by an abundant discharge from mucous membranes (a catarrhal state) of the nose, larynx, and respiratory passage;
 - Symptoms associated with the common cold (Coryza), hoarseness, and mild tracheobronchitis may occur;
 - Skin lesions are common (eczematoid and allergic in type). Perforations (holes) in the nasal septum (the tissue dividing the nasal cavity in half) are the most typical lesions of the upper respiratory tract.
- 3rd phase symptoms (related to peripheral neuritis):

Table 5

General Health Information About Inorganic Arsenic

- Numbness in hands and feet, "pins and needles" sensation, muscle weakness.
- In severe cases, motor paralysis occurs: Initially affecting the toe extensors and the peronei (outer portion of the lower leg).
- "Wrist drop" or "foot drop" (resulting from paralysis of flexor muscles of feet and hands) **only occurs in the most severe cases.**

NEW SECTION

WAC 296-848-60020 Medical guidelines.

- Make this section readily available to employees as required in Training, WAC 296-848-30005.
- Provide this section to the licensed health care professional (LHCP) as required in Step 4 of the medical evaluation process found in Medical evaluations, WAC 296-848-30030.

Table 6

Medical Guidelines

For Evaluating Employees With Exposure

Part 1: DOSH's Requirements

In addition to requiring employers to train employees and protect them from inorganic arsenic exposure, this chapter (the Arsenic rule) requires employers to monitor their employees' health with assistance from licensed health care professionals (LHCPs).

- For employees who will use respirators, the LHCP will also need to provide the employer with a written medical opinion clearing the employee for workplace respirator use.

These guidelines were designed to support an informed partnership between the LHCP and the employer when monitoring the health of employees exposed to inorganic arsenic.

The employer initiates this partnership by providing the LHCP with a copy of the chapter and other supporting information about the employee and job conditions. The LHCP can then become familiar with the medical monitoring requirements found in WAC 296-848-30030 and 296-848-30080, which address:

- Frequency and content for routine (initial and periodic) medical examinations and consultations;
- Emergency and other unplanned medical follow-up;
- Medical opinions;
- Medical records retention and content.

Part 2: Inorganic Arsenic Toxicology

Health information about inorganic arsenic, WAC 296-848-50020 provides **basic information** about the health effects and symptoms associated with inorganic arsenic exposure.

In addition, consider the following information:

Table 6
Medical Guidelines

For Evaluating Employees With Exposure

Acute Poisoning

Exfoliative dermatitis and peripheral neuritis may develop in patients who survive health effects due to acute poisoning (by ingestion).

Acute toxic symptoms of trivalent arsenical poisoning are caused by severe inflammation of the mucous membranes and greatly increased permeability of the blood capillaries.

Acute and Chronic Poisoning

In cases of acute and chronic poisoning, toxic effects to the myocardium (the middle layer of the heart) reported on EKG changes are now largely discounted and are attributed to electrolyte disturbances concomitant with arsenicalism.

Arsenic has a depressant effect upon bone marrow, with disturbances of both red blood cell production (erythropoiesis) and myelopoiesis.

Chronic Poisoning

Cases of chronic poisoning caused by ingestion are generally linked to patients taking prescribed medications. However, sputum from inhaled inorganic arsenic can be swallowed in addition to other ingested inorganic arsenic due to hand-to-mouth transfer.

Skin lesions are usually melanotic and keratotic and may occasionally take the form of an intradermal cancer of the squamous cell type, but without infiltrative properties.

Chronic hepatitis and cirrhosis have been described. Liver damage is still debated and as yet the question is unanswered.

Polyneuritis may be the prominent feature, but more frequently there are numbness and parasthenias of "glove and stocking" distribution. Horizontal white lines (striations) on the fingernails and toenails are commonly seen and are considered a diagnostic accompaniment of arsenical polyneuritis.

References:

- Other sources for toxicology information include:
 - ToxFAQs™ and the Toxicological Profile for Arsenic. Both of these free documents are available from the Agency for Toxic Substances and Disease Registry (ATSDR) and can be obtained by:
 - Visiting <http://www.atsdr.cdc.gov/toxprofiles>
 - OR
 - Calling 1-888-422-8737.
 - A variety of technical resources on arsenic, available from the National Institutes for Occupational Safety and Health (NIOSH) by visiting <http://www.cdc.niosh/topics/chemicals.html>

Table 6
Medical Guidelines

For Evaluating Employees With Exposure

Part 3: Clinical Evaluation of Employees Exposed to Inorganic Arsenic

IMPORTANT:

- When an employee will use a respirator during work, the LHCP will need to determine whether the employee can safely wear a respirator and what limitations, if any, apply.

Guidance for Physical Examinations

In addition to its immediate diagnostic usefulness, a patient's initial examination will provide a baseline for comparing future test results.

This chapter establishes the minimum content for medical examinations. Additional tests such as lateral and oblique X rays or pulmonary function test may be useful.

You should also include palpation of superficial lymph nodes and a complete blood count when employees are exposed to any of the following compounds:

- Copper aceto-arsenite;
- Potassium arsenite;
- Sodium arsenite;
- Other arsenicals associated with lymphatic cancer.

Arsenic trioxide and other inorganic arsenical dusts don't give rise to radiological evidence or pneumoconiosis.

AMENDATORY SECTION (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

WAC 296-849-11050 Training.

You must:

- Provide training and information to employees:
 - At the time of initial assignment to a work area where benzene is present;

AND

- At least every twelve months after initial training for employees exposed to airborne concentrations at or above the action level (AL) of 0.5 parts per million (ppm).

- Make sure training and information includes all of the following:

- Specific information on benzene for each hazard communication training topic. For the list of hazard communication training topics, go to the Safety and health core rules, chapter 296-800 WAC, and find Inform and train your employees about hazardous chemicals in your workplace, WAC 296-800-17030;

AND

- An explanation of the contents of ~~((each of the following))~~ this chapter and guidance about where to find a copy ~~((=~~

- ~~This chapter.~~

- ~~The following found in another chapter, the General occupational health standards, chapter 296-62 WAC:~~

- ~~The substance safety data sheet — benzene, found in WAC 296-62-07525, Appendix A.~~

~~◆ The substance technical guidelines—benzene, found in WAC 296-62-07527, Appendix B.~~

~~◆ The medical surveillance guidelines for benzene, found in WAC 296-62-07529, Appendix C)) of it;~~

AND

– A description of the medical evaluation requirements of this chapter found in:

■ Medical evaluations, WAC 296-849-12030;

AND

■ Medical removal, WAC 296-849-12050.

Reference: To see additional training and information requirements in other chapters, go to the:

- Respirators rule, chapter 296-842 WAC, and find the Training section, WAC 296-842-16005.
- Safety and health core rules, chapter 296-800 WAC, and find the section titled, Inform and train your employees about hazardous chemicals in your workplace, WAC 296-800-17030.

AMENDATORY SECTION (Amending WSR 05-13-152, filed 6/21/05, effective 8/1/05)

WAC 296-849-12030 Medical evaluations.

IMPORTANT:

Medical evaluations conducted under this section will satisfy the medical evaluation requirement found in Respirators, chapter 296-842 WAC.

You must:

- Provide the relevant medical follow-up specified in Tables 4 and 5 to any employee exposed to benzene during an emergency.

- Make medical evaluations available to current employees who meet the following criteria:

- Potential or actual exposure to benzene at or above the action level (AL) for at least thirty days in any twelve-month period.

- Potential or actual exposure to benzene at or above either permissible exposure limit (PEL) for at least ten days in a twelve-month period.

- Past exposure to concentrations above 10 ppm benzene for at least thirty days in a twelve-month period before November 11, 1988.

- Current or past work as a tire building machine operator using solvents containing more than 0.1% benzene during tire building operations.

You must:

- Make medical evaluations available at no cost to employees.

- Pay all costs, including travel costs and wages associated with any time spent outside of the employee's normal work hours;

- Make medical evaluations available at reasonable times and places;

- Make medical evaluations available by completing Steps 1 through 6 of the medical evaluation process for each employee covered.

Note: • Employees who wear respirators need to be medically evaluated to make sure the respirator will not harm them, before they are assigned work in areas requiring respirators. Employees who decline to receive medical examination and testing to monitor for health effects caused by benzene are

not excluded from receiving a separate medical evaluation for a respirator use.

- If employers discourage participation in medical monitoring for health effects caused by benzene, or in any way interfere with an employee's decision to continue with this program, this interference may represent unlawful discrimination under RCW 49.17.160, Discrimination against employee filing, instituting proceeding, or testifying prohibited—Procedure—Remedy.

Helpful tool:

Declination form for nonemergency related medical evaluations.

- You may use this optional form to document employee decisions to decline participation in the medical evaluation process for exposure to benzene.

Medical evaluation process:

Step 1: Identify employees who qualify, as stated above, for medical evaluations.

Step 2: Make medical evaluations available for employees identified in Step 1 at the following times:

- Initially, before the employee starts a job or task assignment where benzene exposure will occur.

- Every twelve months from the initial medical evaluation.

- Whenever the employee develops signs or symptoms commonly associated with toxic benzene exposure.

- After benzene exposure from an emergency.

Step 3: Select a licensed health care professional (LHCP) who will conduct or supervise medical evaluations and make sure:

- Individuals who conduct pulmonary function tests have completed a training course in spirometry sponsored by an appropriate governmental, academic, or professional institution, if they are not licensed physicians;

AND

- Your LHCP uses an accredited laboratory, such as one accredited by a nationally or state-recognized organization, to conduct laboratory tests.

Step 4: Make sure the LHCP receives all of the following before the medical evaluation is performed:

- A copy of ((: –)) this chapter.

((~~The following information found in the General occupational health standards, chapter 296-62 WAC:~~

- ~~■ Appendix A, the substance safety data sheet—benzene, found in WAC 296-62-07525.~~

- ~~■ Appendix B, the substance technical guidelines—benzene, found in WAC 296-62-07527.~~

- ~~■ Appendix C, the medical surveillance guidelines for benzene, found in WAC 296-62-07529.))~~

- A description of the duties of the employee being evaluated and how these duties relate to benzene exposure.

- The anticipated or representative exposure monitoring results for the employee being evaluated.

- A description of the personal protective equipment (PPE) each employee being evaluated uses or will use.

- Information from previous employment-related examinations when this information is not available to the examining LHCP.

- Instructions that the written opinions the LHCP provides, be **limited to** the following information:

- Specific records, findings, or diagnosis relevant to the employee's ability to work around benzene.
- The occupationally relevant results from examinations and tests.
- A statement about whether or not medical conditions were found that would increase the employee's risk for impairment from exposure to benzene.
- Any recommended limitations for benzene exposure.
- Whether or not the employee can use respirators and any recommended limitations for respirator or other PPE use.
- A statement that the employee has been informed of medical results and medical conditions caused by benzene exposure requiring further explanation or treatment.

Step 5: Provide the medical evaluation to the employee. Make sure it includes the content listed in Table 4, Content of medical evaluations, and Table 5, Medical follow-up requirements.

Step 6: Obtain the LHCP's written opinion for each employee's medical evaluation and give a copy to the employee within fifteen days of the evaluation date.

- Make sure the written opinion is limited to the information specified for written opinions in Step 4.

Note: If the written opinion contains specific findings or diagnoses unrelated to occupational exposure, send it back and obtain a revised version without the additional information.

IMPORTANT:

These tables apply when conducting medical evaluations, including medical follow-up for employees exposed to benzene during emergencies.

**Table 4
Content of Medical Evaluations**

When conducting	Include
An initial evaluation	<ul style="list-style-type: none"> • A detailed history including: <ul style="list-style-type: none"> - Past work exposure to benzene or other hematological toxins; - Exposure to marrow toxins outside of current employment; - Exposure to ionizing radiation; - Family history of blood dyscrasias including hematological neoplasms; - History of blood dyscrasias including genetic hemoglobin abnormalities, bleeding abnormalities, and abnormal function of formed blood elements; - History of renal or liver dysfunction; - History of medications routinely taken. • A complete physical examination:

When conducting	Include
	<ul style="list-style-type: none"> - Include a pulmonary function test and specific evaluation of the cardiopulmonary system if the employee is required to use a respirator for at least thirty days a year. • A complete blood count including a: <ul style="list-style-type: none"> - Leukocyte count with differential; - Quantitative thrombocyte count; - Hematocrit; - Hemoglobin; - Erythrocyte count and indices (MCV, MCH, MCHC). • Additional tests the examining LHCP determines are necessary based on alterations in the components of the blood or other signs that may be related to benzene exposure. • Medical follow-up as required in Table 5.
Annual evaluations	<ul style="list-style-type: none"> • An updated medical history covering: <ul style="list-style-type: none"> - Any new exposure to potential marrow toxins; - Changes in medication use; - Any physical signs associated with blood disorders. • A complete blood count including a: <ul style="list-style-type: none"> - Leukocyte count with differential; - Quantitative thrombocyte count; - Hematocrit; - Hemoglobin; - Erythrocyte count and indices (MCV, MCH, MCHC). • Additional tests that the examining LHCP determines necessary, based on alterations in the components of the blood or other signs that may be related to benzene exposure.

When conducting	Include
	<ul style="list-style-type: none"> • A pulmonary function test and specific evaluation of the cardiopulmonary system every three years if the employee is required to use a respirator for at least thirty days a year. • Medical follow-up as required in Table 5.
Evaluations triggered by employee signs and symptoms commonly associated with the toxic effects of benzene exposure	<ul style="list-style-type: none"> • An additional medical examination that addresses elements the examining LHCP considers appropriate.
Evaluations triggered by employee exposure during an emergency	<ul style="list-style-type: none"> • A urinary phenol test performed on the exposed employee's urine sample within seventy-two hours of sample collection. <ul style="list-style-type: none"> – The urine sample must be collected at the end of the work shift associated with the emergency; – The urine specific gravity must be corrected to 1.024. • Medical follow-up as required in Table 5. <p>Reference: Employees who are not covered by medical evaluation requirements in this chapter may be covered by medical evaluation requirements in other chapters such as Emergency response, chapter 296-824 WAC.</p>

**Table 5
Medical Follow-up Requirements**

If	Then
<ul style="list-style-type: none"> • The complete blood count test result is normal. 	<ul style="list-style-type: none"> • No further evaluation is required.
<ul style="list-style-type: none"> • The complete blood count test shows any of the following abnormal conditions: 	<ul style="list-style-type: none"> • Repeat the complete blood count within two weeks:

If	Then
<ul style="list-style-type: none"> – A leukocyte count less than 4,000 per mm³ or an abnormal differential count; <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> – A thrombocyte (platelet) count that is either: <ul style="list-style-type: none"> ■ More than 20% below the employee's most recent values; ■ Outside the normal limit (95% C.I.) according to the laboratory; <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> – The hematocrit or hemoglobin level is either of the following, and can not be explained by other medical reasons: <ul style="list-style-type: none"> ■ Below the normal limit (outside the 95% C.I.), as determined by the laboratory for the particular geographical area; ■ Persistently decreasing compared to the employee's preexposure levels. 	<ul style="list-style-type: none"> – If the abnormal condition persists, refer the employee to a hematologist or an internist for follow-up medical examination and evaluation, unless the LHCP has good reason to believe it is unnecessary; – The hematologist or internist will determine what follow-up tests are necessary; <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> • Follow the requirements found in Medical removal, WAC 296-849-12050.
Results from the urinary phenol test conducted during an emergency evaluation show phenol levels less than 75 mg/L.	<ul style="list-style-type: none"> • No further evaluation is required.

If	Then
<p>Results from the urinary phenol test conducted during an emergency evaluation show phenol levels equal or more than 75 mg/L.</p>	<ul style="list-style-type: none"> • Provide a complete blood count monthly for three months. Include a: <ul style="list-style-type: none"> – Leukocyte count with differential; – Thrombocyte count; – Erythrocyte count; AND • If any of the abnormal conditions previously listed in this table for complete blood count results are found: <ul style="list-style-type: none"> – Provide the employee with periodic examinations, if directed by the LHCP; AND – Refer the employee to a hematologist or an internist for follow-up medical examination and evaluation unless the LHCP has good reason to believe a referral is unnecessary; AND <ul style="list-style-type: none"> – Follow the requirements found in Medical removal, WAC 296-849-12050; AND <ul style="list-style-type: none"> – The hematologist or internist will determine what follow-up tests are necessary.

NEW SECTION

WAC 296-849-60010 Health information about benzene.

- Include an explanation of the contents of this section to employees as required in Training, WAC 296-849-11050.
- Provide a copy of this section to the licensed health care professional (LHCP) as required in Step 4 of the medical evaluation process found in Medical evaluations, WAC 296-849-12030.

**Table 7
General Health Information About Benzene**

<p>What is benzene?</p>
<p>Benzene is a clear, colorless liquid with a pleasant, sweet odor. It evaporates into air very quickly. The odor of benzene does not provide adequate warning of its hazard.</p> <p>In this chapter, "benzene " means:</p> <ul style="list-style-type: none"> – Liquid benzene, benzene vapor, and benzene in liquid mixtures and the vapor released by these liquids. The CAS Registry Number that identifies benzene is 71-43-2. <p>Synonyms for benzene include: Benzol, benzole, coal naphtha, cyclohexatriene, phenyl hydride, pyrobenzol. Benzin, petroleum benzin, and benzine are chemicals that do not contain benzene.</p>
<p>How am I exposed to benzene?</p>
<p>Benzene exposure occurs when you:</p> <ul style="list-style-type: none"> – Breathe in (inhale) vapor or liquid particles (from actions such as spraying or splashing) containing benzene; – Have skin or eye contact with liquid or vapor containing benzene. Benzene is absorbed through the skin. Absorption occurs more rapidly with abraded skin or when benzene is present in solvents (as an ingredient or contaminant) which are readily absorbed; – Swallow (ingest) benzene.
<p>What happens after I'm exposed to benzene?</p>
<p>Some benzene that enters your body will be absorbed into the bloodstream. Once in the bloodstream, benzene travels throughout your body and can be temporarily stored in the bone marrow and fat.</p> <p>Benzene is converted to products, called metabolites, in the liver and bone marrow. Some of the harmful effects of benzene exposure are caused by these metabolites.</p> <p>Most of the metabolites of benzene leave the body in the urine within 48 hours after exposure.</p>
<p>Why is medical monitoring necessary?</p>
<p>Medical monitoring is necessary to detect changes in your body's blood-forming system, including the bone marrow. These changes can occur due to repeated or prolonged, unprotected exposure to benzene, even at relatively low concentrations. Such changes can lead to various blood disorders, ranging from anemia to leukemia, an irreversible, fatal disease. Many of these disorders may occur without symptoms.</p> <p>Benzene is classified as a confirmed human carcinogen (Group 1) by the International Agency for Research on Cancer (IARC).</p> <p>To learn more about the medical monitoring process, see Medical evaluation, WAC 296-849-12030.</p>

**Table 7
General Health Information About Benzene**

<p>What health effects are linked to benzene exposure?</p> <p>Unprotected exposure to benzene is associated with various health effects including symptoms and diseases associated with either short-term (acute) exposure or long-term exposure (chronic).</p> <p>Acute effects from inhaling high vapor concentrations:</p> <p>An initial stimulatory effect on the central nervous system (brain and spinal cord) can occur, characterized by exhilaration, nervous excitation (irritability), and/or giddiness. This may be followed by a period of depression, drowsiness, or fatigue.</p> <p>Headache, dizziness, nausea, or a feeling of intoxication may develop.</p> <p>A sensation of tightness in the chest may occur, accompanied by breathlessness. Ultimately the victim may lose consciousness.</p> <p>In severe inhalation cases, tremors, convulsions, and death may follow due to respiratory paralysis or circulatory collapse in a few minutes to several hours.</p> <p>Acute effects from inhaling liquid benzene:</p> <p>Aspiration of small amounts of liquid benzene immediately causes pulmonary edema (excessive accumulation of fluid in lung tissues) and hemorrhage of pulmonary tissue.</p> <p>Skin contact:</p> <p>Direct contact may cause redness (erythema).</p> <p>Benzene has a defatting action on skin. Repeated or prolonged contact may result in any of the following:</p> <ul style="list-style-type: none"> - Primary irritation; - Dry skin; - Scaling dermatitis (inflammation); - Development of secondary skin infections. <p>Effects on the eyes and mucous membranes:</p> <p>Localized effects from vapor or liquid contact on the eye are slight. High concentrations of benzene are irritating to eyes (causing a stinging sensation) and mucous membranes of the nose and respiratory tract.</p> <p>Effects due to prolonged exposure:</p> <p>The blood forming (hematopoietic) system is the main target for benzene's toxic effects. These effects can vary from anemia to leukemia, an irreversible, fatal disease. Many of the toxic effects may occur without symptoms.</p> <p>Most importantly, prolonged exposure to small quantities of benzene vapor is damaging to the blood forming system. This damage has occurred at concentrations of benzene that may not cause irritation of mucous membranes or unpleasant sensory effects.</p> <p>Early signs and symptoms are varied and often not readily noticed and nonspecific. These include:</p> <ul style="list-style-type: none"> - Subjective complaints of headache, dizziness, and loss of appetite may precede or follow clinical signs;

**Table 7
General Health Information About Benzene**

<ul style="list-style-type: none"> - Rapid pulse and low blood pressure, in addition to a physical appearance of anemia, may accompany a subjective complaint of shortness of breath and excessive tiredness. <p>Other symptoms may occur as the condition progresses:</p> <ul style="list-style-type: none"> - Bleeding from the nose, gums, or mucous membranes; AND - Development of purpuric spots (small bruises).
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NEW SECTION

WAC 296-849-60020 Medical guidelines for benzene.

- Include an explanation of the contents of this section to employees as required in Training, WAC 296-849-11050.
- Provide a copy of this section to the licensed health care professional (LHCP) as required in Step 4 of the medical evaluation process found in Medical evaluations, WAC 296-849-12030.

**Table 8
Medical Guidelines For Evaluating Employees Exposed to Benzene**

<p>Part 1: Becoming familiar with medical requirements in this chapter</p> <p>In addition to requiring employers to train employees and protect them from exposure to benzene, this chapter (the Benzene rule) requires employers to monitor their employees' health with assistance from licensed health care professionals (LHCPs).</p> <ul style="list-style-type: none"> • For employees who will use respirators, the LHCP will also need to provide the employer with a written medical opinion clearing the employee for workplace respirator use. <p>These guidelines were designed to support an informed partnership between the LHCP and the employer when monitoring the health of employees exposed to benzene. The employer initiates this partnership by providing the LHCP with a copy of the chapter and other supporting information about the employee and job conditions. The LHCP can then become familiar with the medical monitoring requirements found in WAC 296-849-12030 through 296-849-12080, which address:</p> <ul style="list-style-type: none"> • Frequency and content for routine (initial and periodic) medical examinations and consultations; • Emergency and other unplanned medical follow-up; • Medical opinions; • Employee medical removal; • Medical records retention and content.
--

Table 8
Medical Guidelines For Evaluating Employees Exposed to Benzene

<p>Part 2: Benzene toxicology</p> <p>Benzene is primarily an inhalation hazard. Systematic absorption may cause depression of the hematopoietic system, pancytopenia, aplastic anemia, and leukemia. Clinical evidence of leukopenia, anemia, and thrombocytopenia, singly or in combination, has been frequently reported among the first signs.</p> <p>Health information about benzene, WAC 296-848-50010, provides basic information about the health effects and symptoms associated with benzene exposure.</p> <p>Reference:</p> <ul style="list-style-type: none"> • Other sources for toxicology information include: <ul style="list-style-type: none"> – ToxFAQs™ and the Toxicological Profile for Benzene. This free document is available from the Agency for Toxic Substances and Disease Registry (ATSDR) and can be obtained by: <ul style="list-style-type: none"> ■ Visiting http://www.atsdr.cdc.gov/toxprofiles OR ■ Calling 1-888-422-8737 – A variety of technical resources on benzene from the National Institutes for Occupational Safety and Health (NIOSH) by visiting http://www.cdc.niosh/topics/chemicals.html
<p>Part 3: Treatment of acute toxic effects</p> <p>When providing assistance to someone contaminated with benzene, make sure you are adequately protected and do not risk being overcome by benzene vapor.</p> <p>Remove the patient from exposure immediately.</p> <p>Give oxygen or artificial resuscitation, if indicated.</p> <p>Flush eyes, wash skin if contaminated and remove all contaminated clothing.</p> <p>Recovery from mild exposures is usually rapid and complete. Symptoms of intoxication may persist following severe exposures.</p>
<p>Part 4: Preventive considerations</p> <p>The principal effects of benzene exposure which form the basis for the requirements in this chapter are pathological changes in the hematopoietic system, reflected by changes in the peripheral blood and manifesting clinically as pancytopenia, aplastic anemia, and leukemia.</p> <p>Consequently, the medical monitoring program is designed to observe, on a regular basis, blood indices for early signs of these effects, and although early signs of leukemia are not usually available, emerging diagnostic technology and innovative regimes make consistent surveillance for leukemia, as well as other hematopoietic effects, essential.</p>

Table 8
Medical Guidelines For Evaluating Employees Exposed to Benzene

<p>Symptoms and signs of benzene toxicity can be nonspecific. Only a detailed history and appropriate investigative procedure will enable a physician to rule out or confirm conditions that place the employee at increased risk.</p> <p>Bone marrow may appear normal, aplastic, or hyperplastic, and may not, in all situations, correlate with peripheral blood forming tissues. Because of variations in the susceptibility to benzene morbidity, there is no "typical" blood picture.</p> <p>The onset of effects of prolonged benzene exposure may be delayed for many months or years after the actual exposure has ceased and identification or correlation with benzene exposure must be sought out in the occupational history.</p> <p>There are special provisions for medical tests in the event of hematologic abnormalities or for emergency situations.</p> <ul style="list-style-type: none"> – This chapter specifies that blood abnormalities that persist must be referred "unless the physician has good reason to believe such referral is unnecessary." Examples of conditions that could make a referral unnecessary despite abnormal blood limits are iron or folate deficiency, menorrhagia, or blood loss due to some unrelated medical abnormality. – Blood values that require referral to a hematologist or internist are noted under Part 5: Hematology guidelines.
<p>Part 5: Hematology guidelines</p> <p>The following guidelines are established to assist the examining LHCP with regard to which laboratory tests are necessary and when to refer an employee to the specialist. A minimum battery of tests is to be performed using strictly standardized methods.</p> <p>Basic tests</p> <ul style="list-style-type: none"> • The following must be determined by an accredited laboratory: <ul style="list-style-type: none"> – Red and white cell counts; – Platelet counts; – White blood cell differential; – Hematocrit; – Red cell indices. • The normal ranges for the red cell and white cell counts are influenced by altitude, race, and sex, and therefore should be determined by the accredited laboratory in the specific area where the tests are performed. • Either a decline from an absolute normal or an individual's baseline to a subnormal value or a rise to a supra-normal value, are indicative of potential toxicity, particularly if all blood parameters decline.

Table 8

Medical Guidelines For Evaluating Employees Exposed to Benzene

- The normal total white blood count is approximately 7,200/mm³ plus or minus 3,000;
- For cigarette smokers the white count may be higher and the upper range may be 2,000 cells higher than normal for the laboratory;
- In addition, infection, allergies and some drugs may raise the white cell count;
- The normal platelet count is approximately 250,000 with a range of 140,000 to 400,000. Counts outside this range should be regarded as possible evidence of benzene toxicity.
- Certain abnormalities found through routine screening are of greater significance in the benzene-exposed worker and **require prompt consultation with a specialist**, namely:
 - Thrombocytopenia;
 - A trend of decreasing white cell, red cell, or platelet indices in an individual over time is more worrisome than an isolated abnormal finding at one test time. The importance of trend highlights the need to compare an individual's test results to baseline and/or previous periodic tests;
 - A constellation or pattern of abnormalities in the different blood indices is of more significance than a single abnormality. A low white count not associated with any abnormalities in other cell indices may be a normal statistical variation, whereas if the low white count is accompanied by decreases in the platelet and/or red cell indices, such a pattern is more likely to be associated with benzene toxicity and merits thorough investigation;
 - Anemia, leukopenia, macrocytosis or an abnormal differential white blood cell count should alert the physician to further investigate and/or refer the patient if repeat tests confirm the abnormalities. If routine screening detects an abnormality, follow-up tests which may be helpful in establishing the etiology of the abnormality are the peripheral blood smear and the reticulocyte count;
 - The extreme range of normal for reticulocytes is 0.4 to 2.5 percent of the red cells, the usual range being 0.5 to 1.2 percent of the red cells, but the typical value is in the range of 0.8 to 1.0 percent;

Table 8

Medical Guidelines For Evaluating Employees Exposed to Benzene

- A decline in reticulocytes to levels of less than 0.4 percent is to be regarded as possible evidence (unless another specific cause is found) of benzene toxicity requiring accelerated surveillance. An increase in reticulocyte levels to about 2.5 percent may also be consistent with (but is not as characteristic of) benzene toxicity.

Additional tests

1. Peripheral blood smears:

- Collecting the sample: As with reticulocyte count, the smear should be with fresh uncoagulated blood obtained from a needle tip following venipuncture or from a drop of earlobe blood (capillary blood). If necessary, the smear may, under certain limited conditions, be made from a blood sample anticoagulated with EDTA (but never with oxalate or heparin).
- Prepping the smear: When the smear is to be prepared from a specimen of venous blood which has been collected by a commercial Vacutainer type tube containing neutral EDTA, the smear should be made as soon as possible after the venesection. A delay of up to twelve hours is permissible between the drawing of the blood specimen into EDTA and the preparation of the smear if the blood is stored at refrigerator (not freezing) temperature.
- Minimum mandatory observations:
 - The differential white blood cell count;
 - Description of abnormalities in the appearance of red cells;
 - Description of any abnormalities in the platelets;
 - A careful search must be made throughout of every blood smear for immature white cells such as band forms (in more than normal proportion, i.e., over 10 percent of the total differential count), any number of metamyelocytes, myelocytes, or myeloblasts. Any nucleate or multinucleated red blood cells should be reported. Large "giant" platelets or fragments of megakaryocytes must be recognized;
 - An increase in the proportion of band forms among the neutrophilic granulocytes is an abnormality deserving special mention, for it may represent a change which should be considered as an early warning of benzene toxicity in the absence of other causative factors (most commonly infection). Likewise, the appearance of metamyelocytes, in the absence of another probable cause, is to be considered a possible indication of benzene-induced toxicity;

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- An upward trend in the number of basophils, which normally do not exceed about 2.0 percent of the total white cells, is to be regarded as possible evidence of benzene toxicity. A rise in the eosinophil count is less specific but also may be suspicious of toxicity if it rises above 6.0 percent of the total white count;
- The normal range of monocytes is from 2.0 to 8.0 percent of the total white count with an average of about 5.0 percent. About 20 percent of individuals reported to have mild but persisting abnormalities caused by exposure to benzene show a persistent monocytosis. The findings of a monocyte count which persists at more than 10 to 12 percent of the normal white cell count (when the total count is normal) or persistence of an absolute monocyte count in excess of 800/mm³ should be regarded as a possible sign of benzene-induced toxicity;
- A less frequent but more serious indication of benzene toxicity is the finding in the peripheral blood of the so-called "pseudo" (or acquired) Pelger-Huet anomaly. In this anomaly many, or sometimes the majority, of the neutrophilic granulocytes possess two round nuclear segments - less often one or three round segments - rather than three normally elongated segments. When this anomaly is not hereditary, it is often but not invariably predictive of subsequent leukemia. However, only about two percent of patients who ultimately develop acute myelogenous leukemia show the acquired Pelger-Huet anomaly. Other tests that can be administered to investigate blood abnormalities are discussed below; however, such procedures should be undertaken by the hematologist.

2. Sucrose water test and Ham test:

- An uncommon sign, which cannot be detected from the smear, but can be elicited by a "sucrose water test" of peripheral blood, is transient paroxysmal nocturnal hemoglobinuria (PNH), which may first occur insidiously during a period of established aplastic anemia, and may be followed within one to a few years by the appearance of rapidly fatal acute myelogenous leukemia. Clinical detection of PNH, which occurs in only one or two percent of those destined to have acute myelogenous leukemia, may be difficult; if the

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"sucrose water test" is positive, the somewhat more definitive Ham test, also known as the acid-serum hemolysis test, may provide confirmation.

Important clinical findings

1. Individuals documented to have developed acute myelogenous leukemia years after initial exposure to benzene may have progressed through a preliminary phase of hematologic abnormality. In some instances pancytopenia (i.e., a lowering in the counts of all circulating blood cells of bone marrow origin, but not to the extent implied by the term "aplastic anemia") preceded leukemia for many years.

- Depression of a single blood cell type or platelets may represent a harbinger of aplasia or leukemia. The finding of two or more cytopenias, or pancytopenia in a benzene-exposed individual, must be regarded as highly suspicious of more advanced although still reversible, toxicity.
- "Pancytopenia" coupled with the appearance of immature cells (myelocytes, myeloblasts, erythroblasts, etc.), with abnormal cells (pseudo Pelger-Huet anomaly, atypical nuclear heterochromatin, etc.), or unexplained elevations of white blood cells must be regarded as evidence of benzene overexposure unless proved otherwise.
- Many severely aplastic patients manifested the ominous findings of:
 - 5 to 10 % myeloblasts in the marrow;
 - Occasional myeloblasts and myelocytes in the blood;
 - 20 to 30 monocytes.
- It is evident that isolated cytopenias, pancytopenias, and even aplastic anemias induced by benzene may be reversible and complete recovery has been reported on cessation of exposure. However, since any of these abnormalities is serious, the employee must immediately be removed from any possible exposure to benzene vapor.
 - Certain tests may substantiate the employee's prospects for progression or regression. One such test would be an examination of the bone marrow, but the decision to perform a bone marrow aspiration or needle biopsy is made by the hematologist.

2. The findings of basophilic stippling in circulating red blood cells (usually found in one to five percent of red cells following marrow injury), and detection in the bone marrow of what are termed "ringed sideroblasts" must be taken seriously, as they have been noted in recent years to be premonitory signs of subsequent leukemia.

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3. Recently peroxidase-staining of circulating or marrow neutrophil granulocytes, employing benzidine dihydrochloride, have revealed the disappearance of, or diminution in, peroxidase in a sizable proportion of the granulocytes, and this has been reported as an early sign of leukemia. However, relatively few patients have been studied to date. Granulocyte granules are normally strongly peroxidase positive. A steady decline in leukocyte alkaline phosphatase has also been reported as suggestive of early acute leukemia.
- Peroxidase and alkaline phosphatase staining are usually undertaken when the index of suspicion for leukemia is high.
4. Exposure to benzene may cause an early rise in serum iron, often but not always associated with a fall in the reticulocyte count. Thus, serial measurements of serum iron levels may provide a means of determining whether or not there is a trend representing sustained suppression of erythropoiesis.
5. Measurement of serum iron, determination of peroxidase and of alkaline phosphatase activity in peripheral granulocytes can be performed in most pathology laboratories.

WSR 07-03-163
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed January 24, 2007, 8:06 a.m., effective April 1, 2007]

Effective Date of Rule: April 1, 2007.

Purpose: Changes are being made throughout the safety and health rules administered and enforced by the division of occupational safety and health (DOSHS) to correct inaccurate references and other housekeeping changes. Changes are also being made to amend some of the requirements to match federal regulations.

The following sections were amended to correct inaccurate references: WAC 296-24-23503, 296-27-00103, 296-27-01107, 296-27-01119, 296-32-200, 296-45-025, 296-54-535, 296-54-707, 296-56-60003, 296-56-60081, 296-59-001, 296-59-003, 296-62-050, 296-62-07373, 296-62-07425, 296-62-07621, 296-65-005, 296-65-007, 296-65-010, 296-65-012, 296-65-017, 296-78-500, 296-78-71019, 296-78-730, 296-99-030, 296-99-040, 296-99-065, 296-155-160, 296-155-456, 296-155-605, 296-155-615, 296-301-225, 296-304-04005, 296-304-08009, 296-304-14007, 296-304-15001, 296-304-16001, 296-304-17011, 296-304-20001, 296-806-42516, 296-809-70002, 296-824-100, 296-824-20005, 296-824-70005, 296-828-20010, 296-828-20030, 296-835-11035, 296-835-12015, 296-843-12005, 296-849-100, 296-860-100, 296-860-20020, 296-860-20040, 296-860-20050, 296-863-20025, and 296-900-14020.

The following sections were amended to correct typographical and other housekeeping errors: WAC 296-27-01113, 296-32-220, 296-37-575, 296-56-60009, 296-62-020, 296-62-11005, 296-67-001, 296-78-835, 296-115-015, 296-115-035, 296-115-050, 296-115-070, 296-301-130, 296-303-01001, 296-303-02001, 296-304-01001, 296-304-05003, 296-304-05005, 296-304-06013, 296-304-11003, 296-305-01009, 296-806-405, 296-806-45004, 296-807-100, 296-807-14035, 296-807-15010, 296-807-17020, 296-807-18050, 296-823-18015, 296-823-18055, 296-828-20015, 296-828-300, 296-835-12025, 296-863-30020, 296-863-50005, 296-863-700, 296-874-20052, 296-874-40004, 296-878-10005, 296-900-130, and 296-900-150.

The following sections were amended to make our rules match federal regulations:

WAC 296-56-60010, OSHA requirements for emergency action plans were moved into this section; WAC 296-62-07460, amendments were made to the Butadiene requirements to match OSHA regulations; WAC 296-155-305, changes were made to this section to match the Federal Highway Administration's Manual on Uniform Traffic Control as adopted by the Washington state department of transportation; WAC 296-155-706, amendments were made to this section to match OSHA's removal of requirements regarding slip resistance of metal decking; and WAC 296-304-01007, amendments adding a model fire safety plan were made to match OSHA's language.

Repealed Sections: WAC 296-24-217 and 296-62-051, these titles weren't repealed when the rest of the corresponding WACs were.

Citation of Existing Rules Affected by this Order: Amending WAC 296-24-23503 General requirements, 296-27-00103 Partial exemption for employers with ten or fewer employees, 296-27-01107 General recording criteria, 296-27-01113 Recording criteria for cases involving occupational hearing loss, 296-27-01119 Forms, 296-32-200 Scope and application, 296-32-220 General, 296-37-575 Record-keeping requirements, 296-45-025 Variances, 296-54-535 Hand and portable powered tools, 296-54-707 Labor camps, 296-56-60003 Variance and procedure, 296-56-60009 Accident prevention program, 296-56-60010 Emergency action plans [new section], 296-56-60081 Multipiece and single-piece rim wheels, 296-59-001 Foreword, 296-59-003 Scope and application, 296-62-020 Definitions applicable to all sections of this chapter, 296-62-050 Application for waiver or variances, 296-62-07373 Communication of EtO hazards to employees, 296-62-07425 Communication of cadmium hazards to employees, 296-62-07460 Butadiene, 296-62-07621 Communication of hazards to employees, 296-62-11005 Adequate system, 296-65-005 Asbestos worker training course content, 296-65-007 Asbestos supervisor training course content, 296-65-010 Asbestos worker certification, 296-65-012 Asbestos supervisor certification, 296-65-017 Contractor certification, 296-67-001 Process safety management of highly hazardous chemicals, 296-78-500 Foreword, 296-78-71019 Exhaust systems, 296-78-730 Electrical service and equipment, 296-78-835 Vehicles, 296-99-030 What training must an employer provide for employees?, 296-99-040 What practices must an employer follow for entry into grain storage structures?, 296-99-065 What preventive maintenance

program must an employer implement?, 296-115-015 Definitions applicable to all sections of this chapter, 296-115-035 Specific inspection requirements, 296-115-050 General requirements, 296-115-070 Rules of navigation, 296-155-160 Gases, vapors, fumes, dusts, and mists, 296-155-305 Signaling and flaggers, 296-155-456 Hazardous (classified) locations, 296-155-605 Equipment, 296-155-615 Material handling equipment, 296-155-706 Structural steel assembly, 296-301-130 Extractors, 296-301-225 Workroom ventilation, 296-303-01001 General industrial safety standards, 296-303-02001 Washroom machines, 296-304-01001 Definitions, 296-304-01007 Fire safety plan, 296-304-04005 Welding, cutting and heating in way of preservative coatings, 296-304-05003 Ladders, 296-304-05005 Guarding of deck openings and edges, 296-304-06013 Health and sanitation, 296-304-08009 Powder-actuated fastening tools, 296-304-11003 Drums and containers, 296-304-14007 Criteria governing accreditation to certificate vessels' cargo gear, 296-304-15001 General duties—Exemptions, 296-304-16001 General, 296-304-17011 Proof tests—Loose gear, 296-304-20001 General provisions, 296-305-01009 Appeals, 296-806-405 Summary, 296-806-42516 Safeguard storage bins, 296-806-45004 Safeguard work-holding devices (chucks), 296-807-100 Scope, 296-807-14035 Use air tools safely, 296-807-15010 Make sure employees are aware tools are in use and wear appropriate personal protective equipment (PPE), 296-807-17020 Visually inspect jacks and keep them in good working order, 296-807-18050 Use proper flanges, 296-809-70002 Follow these requirements when classifying a confined space as a nonpermit confined space, 296-823-18015 Make sure these practices for contaminated material and waste are followed, 296-823-18055 Make sure these additional criteria are followed for HIV and HBV production facilities, 296-824-100 Scope, 296-824-20005 Develop an emergency response plan, 296-824-70005 Follow the appropriate postemergency response requirements, 296-828-20015 Training, 296-828-20030 Medical evaluations, 296-828-300 Definitions, 296-835-11035 Prepare dip tanks before cleaning, 296-835-12015 Provide bottom drains, 296-835-12025 Provide additional fire protection for large dip tanks, 296-843-12005 Develop and maintain a written site-specific health and safety plan (HASP), 296-849-100 Scope, 296-860-100 Scope, 296-860-20020 Construct and maintain rail yard walkways for employee safety, 296-860-20040 Maintain overhead clearances, 296-860-20050 Maintain side clearances, 296-863-20025 Provide fall protection on order pickers, 296-863-30020 Maintain your PITs properly, 296-863-50005 Use the appropriate PITs in hazardous (classified) locations, 296-863-700 Definitions, 296-874-20052 Provide fall protection for employees on scaffolds, 296-874-40004 Prevent supported scaffolds from tipping, 296-874-40006 Make sure supported scaffolds are properly supported, 296-878-10005 Summary, 296-900-130 Citation and notice, 296-900-14020 Increases to adjusted base penalties and 296-900-150 Certifying violation corrections; and repealing WAC 296-24-217 Servicing multipiece and single-piece rim wheels and 296-62-051 Ergonomics.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 06-22-086 on October 31, 2006.

Changes Other than Editing from Proposed to Adopted Version: Amendments to WAC 296-62-14533 were removed from this proposal because that section was already under revision through a different rule project. No other changes were made from the proposed to adopted version.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 5, 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 98, 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 103, Repealed 2.

Date Adopted: January 23, 2007.

Judy Schurke
Acting Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-24-217 Servicing multipiece and single-piece rim wheels.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-24-23503 General requirements. (1) Application. This section applies to overhead and gantry cranes, including semigantry, cantilever gantry, wall cranes, storage bridge cranes, and others having the same fundamental characteristics. These cranes are grouped because they all have trolleys and similar travel characteristics.

(2) New and existing equipment. All new overhead and gantry cranes constructed and installed on or after the effective date of these standards, shall meet the design specifications of the American National Standards Institute, Safety Code for Overhead and Gantry Cranes, ANSI B30.2.0-1967. Overhead and gantry cranes constructed before the effective date of these standards, should be modified to conform to those design specifications, unless it can be shown that the crane cannot feasibly or economically be altered and that the crane substantially complies with the requirements of this section. (See ~~((WAC 296-350-700 variance from WISHA rules))~~ chapter 296-900 WAC, Administrative rules, for information on applying for a variance.)

(3) Modifications. Cranes may be modified and rerated provided such modifications and the supporting structure are checked thoroughly for the new rated load by a qualified

engineer or the equipment manufacturer. The crane shall be tested in accordance with WAC 296-24-23521(2). New rated load shall be displayed in accordance with (5) of this section.

(4) Wind indicators and rail clamps.

(a) Outdoor storage bridges shall be provided with automatic rail clamps. A wind-indicating device shall be provided which will give a visible or audible alarm to the bridge operator at a predetermined wind velocity. If the clamps act on the rail heads, any beads or weld flash on the rail heads shall be ground off.

(b) Calculations for wind pressure on outside overhead traveling cranes shall be based on not less than 30 pounds per square foot of exposed surface.

(5) Rated load marking. 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.

(6) Clearance from obstruction.

(a) Minimum clearance of 3 inches overhead and 2 inches laterally shall be provided and maintained between crane and obstructions in conformity with Specification No. 61 Crane Manufacturers Association of America, Inc., 8720 Red Oak Blvd., Suite 201, Charlotte, NC 28217.

(b) Where passageways or walkways are provided obstructions shall not be placed so that safety of personnel will be jeopardized by movements of the crane.

(7) Clearance between parallel cranes. If the runways of two cranes are parallel, and there are no intervening walls or structure, there shall be adequate clearance provided and maintained between the two bridges.

(8) Designated personnel. Only designated personnel shall be permitted to operate a crane covered by this section.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-00103 Partial exemption for employers with ten or fewer employees. (1) Basic requirement.

(a) If your company had ten or fewer employees at all times during the last calendar year, you do not need to keep injury and illness records unless WISHA, OSHA, or the BLS informs you in writing that you must keep records under this section. However, as required by WAC ((~~296-27-03101~~) 296-27-031), all employers covered by the WISH Act must report any workplace incident that results in a fatality or the hospitalization of two or more employees.

(b) If your company had more than ten employees at any time during the last calendar year, you must keep injury and illness records unless your establishment is classified as a partially exempt industry under WAC 296-27-00105.

(2) Implementation.

(a) **Is the partial exemption for size based on the size of my entire company or on the size of an individual business establishment?** The partial exemption for size is based on the number of employees in the entire company.

(b) **How do I determine the size of my company to find out if I qualify for the partial exemption for size?** To determine if you are exempt because of size, you need to determine your company's peak employment during the last

calendar year. If you had no more than ten employees at any time in the last calendar year, your company qualifies for the partial exemption for size.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-01107 General recording criteria. (1) Basic requirement. You must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in any of the following: Death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. You must also consider a case to meet the general recording criteria if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

(2) Implementation.

(a) **How do I decide if a case meets one or more of the general recording criteria?** A work-related injury or illness must be recorded if it results in one or more of the following:

(i) Death. See (b) of this subsection.

(ii) Days away from work. See (c) of this subsection.

(iii) Restricted work or transfer to another job. See (d) of this subsection.

(iv) Medical treatment beyond first aid. See (e) of this subsection.

(v) Loss of consciousness. See (f) of this subsection.

(vi) A significant injury or illness diagnosed by a physician or other licensed health care professional. See (g) of this subsection.

(b) **How do I record a work-related injury or illness that results in the employee's death?** You must record an injury or illness that results in death by entering a check mark on the OSHA 300 Log in the space for cases resulting in death. You must also report any work-related fatality to WISHA within eight hours, as required by WAC ((~~296-27-03101~~) 296-800-32005).

(c) **How do I record a work-related injury or illness that results in days away from work?** When an injury or illness involves one or more days away from work, you must record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away and an entry of the number of calendar days away from work in the number of days column. If the employee is out for an extended period of time, you must enter an estimate of the days that the employee will be away, and update the day count when the actual number of days is known.

(i) **Do I count the day on which the injury occurred or the illness began?** No, you begin counting days away on the day after the injury occurred or the illness began.

(ii) **How do I record an injury or illness when a physician or other licensed health care professional recommends that the worker stay at home but the employee comes to work anyway?** You must record these injuries and illnesses on the OSHA 300 Log using the check box for cases with days away from work and enter the number of calendar days away recommended by the physician or other licensed

health care professional. If a physician or other licensed health care professional recommends days away, you should encourage your employee to follow that recommendation. However, the days away must be recorded whether the injured or ill employee follows the physician or licensed health care professional's recommendation or not. If you receive recommendations from two or more physicians or other licensed health care professionals, you may make a decision as to which recommendation is the most authoritative, and record the case based upon that recommendation.

(iii) How do I handle a case when a physician or other licensed health care professional recommends that the worker return to work but the employee stays at home anyway? In this situation, you must end the count of days away from work on the date the physician or other licensed health care professional recommends that the employee return to work.

(iv) How do I count weekends, holidays, or other days the employee would not have worked anyway? You must count the number of calendar days the employee was unable to work as a result of the injury or illness, regardless of whether or not the employee was scheduled to work on those day(s). Weekend days, holidays, vacation days or other days off are included in the total number of days recorded if the employee would not have been able to work on those days because of a work-related injury or illness.

(v) How do I record a case in which a worker is injured or becomes ill on a Friday and reports to work on a Monday, and was not scheduled to work on the weekend? You need to record this case only if you receive information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the weekend. If so, you must record the injury or illness as a case with days away from work or restricted work, and enter the day counts, as appropriate.

(vi) How do I record a case in which a worker is injured or becomes ill on the day before scheduled time off such as a holiday, a planned vacation, or a temporary plant closing? You need to record a case of this type only if you receive information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the scheduled time off. If so, you must record the injury or illness as a case with days away from work or restricted work, and enter the day counts, as appropriate.

(vii) Is there a limit to the number of days away from work I must count? Yes, you may "cap" the total days away at one hundred eighty calendar days. You are not required to keep track of the number of calendar days away from work if the injury or illness resulted in more than one hundred eighty calendar days away from work and/or days of job transfer or restriction. In such a case, entering one hundred eighty in the total days away column will be considered adequate.

(viii) May I stop counting days if an employee who is away from work because of an injury or illness retires or leaves my company? Yes, if the employee leaves your company for some reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work or days of restriction/job

transfer. If the employee leaves your company because of the injury or illness, you must estimate the total number of days away or days of restriction/job transfer and enter the day count on the 300 Log.

(ix) If a case occurs in one year but results in days away during the next calendar year, do I record the case in both years? No, you only record the injury or illness once. You must enter the number of calendar days away for the injury or illness on the OSHA 300 Log for the year in which the injury or illness occurred. If the employee is still away from work because of the injury or illness when you prepare the annual summary, estimate the total number of calendar days you expect the employee to be away from work, use this number to calculate the total for the annual summary, and then update the initial log entry later when the day count is known or reaches the one hundred eighty day cap.

(d) How do I record a work-related injury or illness that results in restricted work or job transfer? When an injury or illness involves restricted work or job transfer but does not involve death or days away from work, you must record the injury or illness on the OSHA 300 Log by placing a check mark in the space for job transfer or restriction and an entry of the number of restricted or transferred days in the restricted workdays column.

(i) How do I decide if the injury or illness resulted in restricted work? Restricted work occurs when, as the result of a work-related injury or illness:

- You keep the employee from performing one or more of the routine functions of his or her job, or from working the full workday that he or she would otherwise have been scheduled to work; or
- A physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of his or her job, or not work the full workday that he or she would otherwise have been scheduled to work.

(ii) What is meant by "routine functions"? For recordkeeping purposes, an employee's routine functions are those work activities the employee regularly performs at least once per week.

(iii) Do I have to record restricted work or job transfer if it applies only to the day on which the injury occurred or the illness began? No, you do not have to record restricted work or job transfers if you, or the physician or other licensed health care professional, impose the restriction or transfer only for the day on which the injury occurred or the illness began.

(iv) If you or a physician or other licensed health care professional recommends a work restriction, is the injury or illness automatically recordable as a "restricted work" case? No, a recommended work restriction is recordable only if it affects one or more of the employee's routine job functions. To determine whether this is the case, you must evaluate the restriction in light of the routine functions of the injured or ill employee's job. If the restriction from you or the physician or other licensed health care professional keeps the employee from performing one or more of his or her routine job functions, or from working the full workday the injured or ill employee would otherwise have worked, the

employee's work has been restricted and you must record the case.

(v) **How do I record a case where the worker works only for a partial work shift because of a work-related injury or illness?** A partial day of work is recorded as a day of job transfer or restriction for recordkeeping purposes, except for the day on which the injury occurred or the illness began.

(vi) **If the injured or ill worker produces fewer goods or services than he or she would have produced prior to the injury or illness but otherwise performs all of the routine functions of his or her work, is the case considered a restricted work case?** No, the case is considered restricted work only if the worker does not perform all of the routine functions of his or her job or does not work the full shift that he or she would otherwise have worked.

(vii) **How do I handle vague restrictions from a physician or other licensed health care professional, such as that the employee engage only in "light duty" or "take it easy for a week"?** If you are not clear about the physician or other licensed health care professional's recommendation, you may ask that person whether the employee can do all of his or her routine job functions and work all of his or her normally assigned work shift. If the answer to both of these questions is "Yes," then the case does not involve a work restriction and does not have to be recorded as such. If the answer to one or both of these questions is "No," the case involves restricted work and must be recorded as a restricted work case. If you are unable to obtain this additional information from the physician or other licensed health care professional who recommended the restriction, record the injury or illness as a case involving restricted work.

(viii) **What do I do if a physician or other licensed health care professional recommends a job restriction meeting the definition, but the employee does all of his or her routine job functions anyway?** You must record the injury or illness on the OSHA 300 Log as a restricted work case. If a physician or other licensed health care professional recommends a job restriction, you should ensure that the employee complies with that restriction. If you receive recommendations from two or more physicians or other licensed health care professionals, you may make a decision as to which recommendation is the most authoritative, and record the case based upon that recommendation.

(ix) **How do I decide if an injury or illness involved a transfer to another job?** If you assign an injured or ill employee to a job other than his or her regular job for part of the day, the case involves transfer to another job.

Note: This does not include the day on which the injury or illness occurred.

(x) **Are transfers to another job recorded in the same way as restricted work cases?** Yes, both job transfer and restricted work cases are recorded in the same box on the OSHA 300 Log. For example, if you assign, or a physician or other licensed health care professional recommends that you assign, an injured or ill worker to his or her routine job duties for part of the day and to another job for the rest of the day, the injury or illness involves a job transfer. You must record an injury or illness that involves a job transfer by placing a check in the box for job transfer.

(xi) **How do I count days of job transfer or restriction?** You count days of job transfer or restriction in the same way you count days away from work, using (c)(i) through (viii) of this subsection. The only difference is that, if you permanently assign the injured or ill employee to a job that has been modified or permanently changed in a manner that eliminates the routine functions the employee was restricted from performing, you may stop the day count when the modification or change is made permanent. You must count at least one day of restricted work or job transfer for such cases.

(e) **How do I record an injury or illness that involves medical treatment beyond first aid?** If a work-related injury or illness results in medical treatment beyond first aid, you must record it on the OSHA 300 Log. If the injury or illness did not involve death, one or more days away from work, one or more days of restricted work, or one or more days of job transfer, you enter a check mark in the box for cases where the employee received medical treatment but remained at work and was not transferred or restricted.

(i) **What is the definition of medical treatment?"Medical treatment"** means the management and care of a patient to combat disease or disorder. For the purposes of this section, medical treatment does not include:

- Visits to a physician or other licensed health care professional solely for observation or counseling;
- The conduct of diagnostic procedures, such as X rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes (e.g., eye drops to dilate pupils); or
- "First aid" as defined in (e) of this subsection.

(ii) **What is "first aid"?** For the purposes of this section, "first aid" means the following:

- Using a nonprescription medication at nonprescription strength (for medications available in both prescription and nonprescription form, a recommendation by a physician or other licensed health care professional to use a nonprescription medication at prescription strength is considered medical treatment for recordkeeping purposes);
- Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);
- Cleaning, flushing or soaking wounds on the surface of the skin;
 - Using wound coverings such as bandages, Band-Aids™, gauze pads, etc.; or using butterfly bandages or Steri-Strips™ (other wound closing devices such as sutures, staples, etc., are considered medical treatment);
 - Using hot or cold therapy;
 - Using any nonrigid means of support, such as elastic bandages, wraps, nonrigid back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes);
 - Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, back boards, etc.);
 - Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister;
 - Using eye patches;

- Removing foreign bodies from the eye using only irrigation or a cotton swab;
- Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means;
- Using finger guards;
- Using massages (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes); or
- Drinking fluids for relief of heat stress.

(iii) Are any other procedures included in first aid?

No, this is a complete list of all treatments considered first aid for the purpose of this section.

(iv) Does the professional status of the person providing the treatment have any effect on what is considered first aid or medical treatment? No, the treatments listed in (e)(ii) of this subsection are considered to be first aid regardless of the professional status of the person providing the treatment. Even when these treatments are provided by a physician or other licensed health care professional, they are considered first aid for the purposes of this section. Similarly, treatment beyond first aid is considered to be medical treatment even when it is provided by someone other than a physician or other licensed health care professional.

(v) What if a physician or other licensed health care professional recommends medical treatment but the employee does not follow the recommendation? If a physician or other licensed health care professional recommends medical treatment, you should encourage the injured or ill employee to follow that recommendation. However, you must record the case even if the injured or ill employee does not follow the physician or other licensed health care professional's recommendation.

(f) Is every work-related injury or illness case involving a loss of consciousness recordable? Yes, you must record a work-related injury or illness if the worker becomes unconscious, regardless of the length of time the employee remains unconscious.

(g) What is a "significant" diagnosed injury or illness that is recordable under the general criteria even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness? Work-related cases involving cancer, chronic irreversible disease, a fractured or cracked bone, or a punctured eardrum must always be recorded under the general criteria at the time of diagnosis by a physician or other licensed health care professional.

Note: OSHA believes that most significant injuries and illnesses will result in one of the criteria listed in WAC 296-27-01107(1): Death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness. However, there are some significant injuries, such as a punctured eardrum or a fractured toe or rib, for which neither medical treatment nor work restrictions may be recommended. In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of diagnosis but are likely to be recommended as the disease progresses. Cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis, even if medical treatment

or work restrictions are not recommended, or are postponed, in a particular case.

AMENDATORY SECTION (Amending WSR 03-24-085, filed 12/2/03, effective 1/1/04)

WAC 296-27-01113 Recording criteria for cases involving occupational hearing loss. (1) Basic requirement. You must record a hearing loss case on the OSHA Log if an employee's hearing test (audiogram) reveals that a recordable threshold shift (RTS) in one or both ears has occurred.

(2) Implementation.

(a) How do I evaluate the current audiogram to determine whether a recordable threshold shift has occurred?

(i) If the employee has never previously experienced a recorded hearing loss, you must compare the employee's current audiogram with that employee's baseline audiogram. If the employee has previously experienced a recorded hearing loss, you must compare the employee's current audiogram with the employee's revised baseline audiogram (the audiogram reflecting the employee's previously recorded hearing loss case.)

(ii) The employee has a recordable threshold shift when:

- There is a change in the hearing threshold, relative to the baseline audiogram for that employee, of an average of 10 decibels (dB) or greater at 2000, 3000, and 4000 hertz (Hz) in one or both ears.

AND

- The employee's overall hearing loss (threshold) is 25 dB or greater (averaged at 2000, 3000, and 4000 Hz) in the same ear as the change.

Note: Audiometric test results reflect the employee's overall hearing ability in comparison to audiometric zero.

(b) May I adjust the current audiogram to reflect the effects of aging on hearing? Yes. When you are determining whether an RTS has occurred, you may age adjust the employee's current audiogram results by using Tables A-1 or A-2, as appropriate, in Appendix A of this chapter. You may not use an age adjustment when determining whether the employee's total hearing level is 25 dB or more above audiometric zero.

(c) Do I have to record the hearing loss if I am going to retest the employee's hearing? No, if you retest the employee's hearing within thirty days of the first test, and the retest does not confirm the RTS, you are not required to record the hearing loss case on the OSHA 300 Log. If the retest confirms the RTS, you must record the hearing loss illness within seven calendar days of the retest. If subsequent audiometric testing indicates that an RTS is not persistent, you may erase or line-out the recorded entry.

(d) Are there any special rules for determining whether a hearing loss case is work-related? No. You must use the rules in WAC 296-27-01103 to determine if the hearing loss is work-related. If an event or exposure in the work environment either caused or contributed to the hearing loss, or significantly aggravated a preexisting hearing loss, you must consider the case to be work-related.

(e) If a physician or other licensed health care professional determines the hearing loss is not work-related, do I still need to record the case? No. If a physician or other

licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, you are not required to consider the case work-related or to record the case on the OSHA 300 Log.

(f) **How do I complete the OSHA 300 Log for hearing loss?** When you enter a recordable hearing loss case on the OSHA 300 Log, you must check the 300 Log column for hearing loss.

AMENDATORY SECTION (Amending WSR 03-24-085, filed 12/2/03, effective 1/1/04)

WAC 296-27-01119 Forms. (1) Basic requirement. You must use OSHA 300, 300-A, and 301 forms, or equivalent forms, for recordable injuries and illnesses. The OSHA 300 form is called the Log of Work-Related Injuries and Illnesses, the 300-A is the Summary of Work-Related Injuries and Illnesses, and the OSHA 301 form is called the Injury and Illness Incident Report.

(2) Implementation.

(a) **What do I need to do to complete the OSHA 300 Log?** You must enter information about your business at the top of the OSHA 300 Log, enter a one or two line description for each recordable injury or illness, and summarize this information on the OSHA 300-A at the end of the year.

(b) **What do I need to do to complete the OSHA 301 Incident Report?** You must complete an OSHA 301 Incident Report form, or an equivalent form, for each recordable injury or illness entered on the OSHA 300 Log.

(c) **How quickly must each injury or illness be recorded?** You must enter each recordable injury or illness on the OSHA 300 Log and 301 Incident Report within seven calendar days of receiving information that a recordable injury or illness has occurred.

(d) **What is an equivalent form?** An equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces. Many employers use an insurance form instead of the OSHA 301 Incident Report, or supplement an insurance form by adding any additional information listed on the OSHA form.

(e) **May I keep my records on a computer?** Yes, if the computer can produce equivalent forms when they are needed, as described under WAC 296-27-02111 and 296-27-03103, you may keep your records using the computer system.

(f) **Are there situations where I do not put the employee's name on the forms for privacy reasons?** Yes, if you have a "privacy concern case," you may not enter the employee's name on the OSHA 300 Log. Instead, enter "privacy case" in the space normally used for the employee's name. This will protect the privacy of the injured or ill employee when another employee, a former employee, or an authorized employee representative is provided access to the OSHA 300 Log under WAC 296-27-02111. You must keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so you can update the cases and provide the information to the government if asked to do so.

(g) **How do I determine if an injury or illness is a privacy concern case?** You must consider the following injuries or illnesses to be privacy concern cases:

- An injury or illness to an intimate body part or the reproductive system;
- An injury or illness resulting from a sexual assault;
- Mental illnesses;
- HIV infection, hepatitis, or tuberculosis;
- Needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (WAC 296-27-01109 for definitions); **and**
- Other illnesses if the employee independently and voluntarily requests that his or her name not be entered on the log.

(h) **May I classify any other types of injuries and illnesses as privacy concern cases?** No, this is a complete list of all injuries and illnesses considered privacy concern cases for the purposes of this section.

(i) **If I have removed the employee's name, but still believe that the employee may be identified from the information on the forms, is there anything else that I can do to further protect the employee's privacy?** Yes, if you have a reasonable basis to believe that information describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, you may use discretion in describing the injury or illness on both the OSHA 300 and 301 forms. You must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but you do not need to include details of an intimate or private nature. For example, a sexual assault case could be described as "injury from assault," or an injury to a reproductive organ could be described as "lower abdominal injury."

(j) **What must I do to protect employee privacy if I wish to provide access to the OSHA Forms 300 and 301 to persons other than government representatives, employees, former employees or authorized representatives?** If you decide to voluntarily disclose the forms to persons other than government representatives, employees, former employees or authorized representatives (as required by WAC 296-27-02111 and 296-27-03103), you must remove or hide the employees' names and other personally identifying information, except for the following cases. You may disclose the forms with personally identifying information only:

- (i) To an auditor or consultant hired by the employer to evaluate the safety and health program;
- (ii) To the extent necessary for processing a claim for workers' compensation or other insurance benefits; or
- (iii) To a public health authority or law enforcement agency for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, 45 CFR 164.512.

(3) **Falsification, failure to keep records or reports.**

(a) RCW 49.17.190(2) of the act provides that "whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this

chapter shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than six months or by both."

(b) Failure to maintain records or file reports required by this chapter, or in the detail required by the forms and instructions issued under this chapter, may result in the issuance of citations and assessment of penalties as provided for in ((WAC 296-800-35002 through 296-800-35052)) chapter 296-900 WAC, Administrative rules.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-32-200 Scope and application. (1) This chapter sets forth safety and health standards that apply to the work conditions, practices, means, methods, operations, installations and processes performed at telecommunications centers and at telecommunications field installations, which are located outdoors or in building spaces used for such field installations. "Center" work includes the installation, operation, maintenance, rearrangement, and removal of communications equipment and other associated equipment in telecommunications switching centers. "Field" work includes the installation, operation, maintenance, rearrangement, and removal of conductors and other equipment used for signal or communication service, and of their supporting or containing structures, overhead or underground, on public or private rights of way, including buildings or other structures.

(2) These standards do not apply:

(a) To construction work, as defined in chapter 296-155 WAC, nor

(b) To installations under the exclusive control of electric utilities used for the purpose of communications or metering, or for generation, control, transformation, transmission, and distribution of electric energy, which are located in buildings used exclusively by the electric utilities for such purposes, or located outdoors on property owned or leased by the electric utilities or on public highways, streets, roads, etc., or outdoors by established rights on private property.

(3) Operations or conditions not specifically covered by this chapter are subject to all the applicable standards contained in chapter 296-24 WAC, general safety and health standards, and chapter 296-800 WAC, the safety and health core rules. Operations which involve construction work, as defined in chapter 296-155 WAC are subject to all the applicable standards contained in chapter 296-155 WAC, safety standards for construction work.

(4) This standard shall augment the Washington state general safety and health standards, general occupational health standards, electrical workers safety rules, and any other standards which are applicable to all industries governed by chapter 80, Laws of 1973, Washington Industrial Safety and Health Act. In the event of any conflict between any portion of this chapter and any portion of any of the general application standards, the provisions of this chapter 296-32 WAC, shall apply.

(5) In exceptional cases where compliance with specific provisions of this chapter can only be accomplished to the serious detriment and disadvantage of an operation, variance

from the requirement may be permitted by the director of the department of labor and industries after receipt of application for variance which meets the requirements of WAC ((296-350-700)) 296-900-11005.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-32-220 General. (1) Buildings containing telecommunications centers.

(a) Illumination. Lighting in telecommunication centers shall be provided in an amount such that continuing work operations, routine observations, and the passage of employees can be carried out in a safe and healthful manner.

(b) Specific tasks in centers, such as splicing cable and the maintenance and repair of equipment frame lineups, the employer shall install permanent lighting or portable supplemental lighting to attain a higher level of illumination.

(c) Refer to WAC 296-800-210 which shall apply as minimum standards of illumination for industrial interiors.

(d) Illumination of field work. Whenever natural light is insufficient to illuminate the worksite, artificial illumination shall be provided to enable the employee to perform the work safely.

(2) Working surfaces.

(a) Working surfaces shall be in conformance with the latest edition of the general safety and health standard WAC 296-24-735 through 296-24-76523, and chapter 296-800 WAC, the safety and health core rule book.

(b) Guard rails and toe boards may be omitted on distribution frame mezzanine platforms to permit access to equipment. This exemption applies only on the side or sides of the platform facing the frames and only on those portions of the platform adjacent to equipped frames.

(3) Working spaces.

(a) Space shall be provided for access to all medium high and high voltage equipment.

(b) Every structure, new or old, designed for human occupancy shall be provided with exits to permit the prompt escape of occupants in case of fire or other emergency. The means of egress shall be a continuous and unobstructed way of exit travel from any point in a building or structure to a public way and consist of three separate and distinct parts; the way of exit access, the exit and the way of exit discharge. A means of egress comprises the vertical and horizontal ways of travel and shall include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, escalators, horizontal exits, courts and yards.

(c) "Maintenance aisles," or "wiring aisles," between equipment frame lineups are working spaces and are not a means of egress for purposes of WAC ((296-24-550 and)) 296-800-310.

(4) Special doors.

(a) When blastproof or power actuated doors are installed in specially designed hardsite security buildings and spaces, they shall be designed and installed so that they can be used as a means of egress in emergencies.

(b) When high voltage apparatus is isolated in a supplementary enclosure, interlocks shall be provided on all access

doors. Warning signs shall be provided, which are visible both when the guard or cover is in place or removed.

(5) Equipment, machinery and machine guarding.

(a) When power plant machinery in telecommunications centers is operated with commutators and couplings uncovered, the adjacent housing shall be clearly marked to alert personnel to the rotating machinery.

(b) All power switches on power panels shall be in an open position when they are not controlling an operating circuit. Before opening any power circuit, the load shall be reduced. "Men working" signs, or similar wording shall be placed on switches associated with motors or generators under repair.

(c) When working on the brushes of a machine in operation, employees shall use care not to break a circuit. When it is necessary to remove a brush from the holder, the machine shall be shut down.

(d) Only fuse pullers specifically designed for that purpose shall be used when replacing cartridge type fuses.

(6) Battery handling.

(a) Eye protection devices which provide side as well as frontal eye protection for employees shall be provided when measuring storage battery specific gravity or handling electrolyte, and the employer shall ensure that such devices are used by the employees.

(b) The employer shall also ensure that acid resistant gloves and aprons shall be worn for protection against spattering.

(c) Facilities for quick drenching or flushing of the eyes and body shall be provided unless the storage batteries are of the enclosed type and equipped with explosion proof vents, in which case sealed water rinse or neutralizing packs may be substituted for the quick drenching or flushing facilities.

(d) Employees assigned to work with storage batteries shall be instructed in emergency procedures such as dealing with accidental acid spills.

(e) Electrolyte (acid or base, and distilled water) for battery cells shall be mixed in a well ventilated room. Acid or base shall be poured gradually, while stirring, into the water. Water shall never be poured into concentrated (greater than 75 percent) acid solutions. Electrolyte shall never be placed in metal containers nor stirred with metal objects.

(f) When taking specific gravity readings, the open end of the hydrometer shall be covered with an acid resistant material while moving it from cell to cell to avoid splashing or throwing the electrolyte.

(g) Ventilation, shall be provided to ensure diffusion of the gasses from the battery to prevent the accumulation of an explosive type mixture.

(h) Racks and trays shall be substantial and treated to be resistant to the electrolyte.

(i) Floors shall be of acid resistant construction or be protected from acid accumulation.

(7) Hazardous materials.

(a) Highway mobile vehicles and trailers stored in garages in accordance with WAC 296-24-47513 (4)(b) may be equipped to carry more than one LP-gas container, but the total capacity of LP-gas containers per work vehicle stored in garages shall not exceed 100 pounds of LP-gas.

(b) All container valves shall be closed when not in use.

(8) Compressed gas.

(a) When using or transporting nitrogen cylinders, special compartments, racks, or blocking shall be provided to prevent cylinder movement.

(b) Regulators shall be removed or guarded before a cylinder is transported.

(9) Support structures.

(a) No employee, or any material or equipment, shall be supported or permitted to be supported on any portion of a pole structure, platform, ladder, walkway or other elevated structure or aerial device unless the employer ensures that the support structure is first inspected by a competent person and it is determined to be strong, in good working condition and properly secured in place.

(b) Workers shall not throw anything from pole to ground, from pole to pole or from ground to pole.

(10) Power exposures.

(a) The employer shall ensure that no employee approaches or takes any conductive object closer to any electrically energized overhead power lines and parts than prescribed in Table 1 unless:

(i) The employee is insulated or guarded from the energized parts (insulating gloves rated for the voltage involved shall be considered adequate insulation), or

(ii) The energized parts are insulated or guarded from the employee and any other conductive object at a different potential, or

(iii) The power conductors and equipment are deenergized and grounded.

(b) While handling communication wires, metal sheaths, or communication equipment, contact shall be avoided with street lamp brackets, trolley span wires, power guys, transformer cases and any other power equipment that may be energized. The safest possible working position shall be assumed before starting work.

(c) Communication employees shall never work in the pole space on jointly used poles between normal primary and secondary attachments.

(d) Where a hazard of a power contact exists, due to use of long handled tools, proper rubber equipment shall be used.

TABLE 1

APPROACH DISTANCES TO EXPOSED ENERGIZED OVERHEAD POWER LINES AND PARTS

Voltage Range (phase to phase, RMS)	Approach Distance (inches)
300 V and less _____	(1)
Over 300 V, not over 750 V _____	12
Over 750 V not over 2 kV _____	18
Over 2 kV, not over 15 kV _____	24
Over 15 kV, not over 37 kV _____	36
Over 37 kV, not over 87.5 kV _____	42
Over 87.5 kV, not over 121 kV _____	48
Over 121 kV, not over 140 kV _____	54

(1) Avoid contact.

AMENDATORY SECTION (Amending WSR 04-10-026, filed 4/27/04, effective 8/1/04)

WAC 296-37-575 Recordkeeping requirements. (1) Recording and reporting.

(a) The employer shall comply with the requirements of chapters 296-27, ~~((296-350, and))~~ 296-800, and 296-900 WAC.

(b) The employer shall record the occurrence of any diving-related injury or illness which requires any dive team member to be hospitalized for 24 hours or more, specifying the circumstances of the incident and the extent of any injuries or illnesses.

(2) Availability of records.

(a) Upon the request of the director of the department of labor and industries or his duly authorized designees, the employer shall make available for inspection and copying any record or document required by this standard.

(b) Records and documents required by this standard shall be provided upon request to employees, designated representatives, and the assistant director in accordance with chapter 296-802 WAC. Safe practices manuals (WAC 296-37-530), depth-time profiles (WAC 296-37-540), recording of dives (WAC 296-37-545), decompression procedure assessment evaluations (WAC 296-37-545), and records of hospitalizations (WAC 296-37-575) shall be provided in the same manner as employee exposure records or analyses using exposure or medical records. Equipment inspections and testing records which pertain to employees (WAC 296-37-570) shall also be provided upon request to employees and their designated representatives.

(c) Records and documents required by this standard shall be retained by the employer for the following period:

(i) Dive team member medical records (physician's reports) (WAC 296-37-525) - five years;

(ii) Safe practices manual (WAC 296-37-530) - current document only;

(iii) Depth-time profile (WAC 296-37-540) - until completion of the recording of dive, or until completion of decompression procedure assessment where there has been an incident of decompression sickness;

(iv) Recording dive (WAC 296-37-545) one year, except five years where there has been an incident of decompression sickness;

(v) Decompression procedure assessment evaluations (WAC 296-37-545) - five years;

(vi) Equipment inspections and testing records (WAC 296-37-570) - current entry or tag, or until equipment is withdrawn from service;

(vii) Records of hospitalizations (WAC 296-37-575) - five years.

(d) After the expiration of the retention period of any record required to be kept for five years, the employer shall forward such records to the National Institute for Occupational Safety and Health, Department of Health and Human Services. The employer shall also comply with any additional requirements set forth in chapter 296-802 WAC.

(e) In the event the employer ceases to do business:

(i) The successor employer shall receive and retain all dive and employee medical records required by this standard; or

(ii) If there is no successor employer, dive and employee medical records shall be forwarded to the National Institute for Occupational Safety and Health, Department of Health and Human Services.

AMENDATORY SECTION (Amending WSR 98-07-009, filed 3/6/98, effective 5/6/98)

WAC 296-45-025 Variances. Under certain circumstances, an employer may obtain a variance from the director of the department of labor and industries or an authorized representative. Until such time as a variance is granted, the employer and employees must comply with the mandatory provisions of this chapter. The procedure and requirements for variances are found in chapter ~~((296-350))~~ 296-900 WAC, Administrative rules.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-535 Hand and portable powered tools.

(1) Each hand and portable powered tool, including any tool provided by an employee, must be maintained in serviceable condition.

(2) Each tool, including any tool provided by an employee, must be inspected before initial use during each workshift. The inspection must include at least the following:

(a) Handles and guards, to ensure that they are sound and tight-fitting, (properly shaped, free of splinters and sharp edges, and in place);

(b) Controls, to ensure proper function;

(c) Chain saw chains, to ensure proper adjustment;

(d) Chain saw mufflers, to ensure that they are operational and in place;

(e) Chain brakes and/or nose shielding devices, to ensure that they are in place and function properly;

(f) Heads of shock, impact-driven and driving tools, to ensure that there is no mushrooming.

(3) Each tool must be used and maintained according to the following requirements:

(a) Each tool is used only for purposes for which it was designed.

(b) Any shock, impact-driven or driving tool is repaired or removed from service when the head begins to chip.

(c) The cutting edge of each tool is sharpened according to manufacturer's specifications whenever it becomes dull during the workshift.

(d) Each tool is stored in the provided location when not being used at a worksite.

Note: See ~~((WAC 296-24-650))~~ chapter 296-807 WAC, Portable power tools, for rules on the use and maintenance of tools and other equipment not covered by this chapter.

AMENDATORY SECTION (Amending WSR 99-17-117, filed 8/18/99, effective 12/1/99)

WAC 296-54-707 Labor camps. Temporary labor camps for logging operations must meet the requirements of ~~((WAC 296-24-125))~~ chapter 296-833 WAC, Temporary housing for workers.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-56-60003 Variance and procedure. Conditions may exist under which certain state standards will not have practical application. In these cases, the director of the department of labor and industries has made provisions for the issuance of variances. The director or his/her authorized representative may, pursuant to this section, RCW 49.17.080 and 49.17.090, and ~~((WAC 296-350-700))~~ chapter 296-900 WAC, upon receipt of application and after investigation by the department, permit a variation from the requirements of this chapter. Any variance is limited to the particular case and application. It shall remain posted during the time which it is in effect. Variance application forms may be obtained from the department.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-56-60009 Accident prevention program.

(1) An accident prevention program, which provides equitable management-employee participation, shall be established in all establishments, industrial plants, or operations.

(2) It shall be the responsibility of the employer to initiate and maintain the accident prevention program necessary to comply with this section. The division of WISHA services may be contacted for assistance in initiating and maintaining an effective accident prevention program.

(3) All accident prevention programs shall be tailored to the needs of the particular operation.

(4) Employer and employee representatives, as elected, delegated or appointed, shall attend and actively take part in frequent and regular safety committee meetings.

(5) Accident prevention programs shall provide for employer-employee safety meetings and frequent and regular safety inspections of job sites, materials, equipment, and operating procedures.

(6) A record of safety activities, such as inspections and meetings, shall be maintained by the employer for a period covering the previous twelve months and shall be made available, upon request, to noncompliance personnel of the department of labor and industries.

(7) Employees shall individually comply with all safety rules and cooperate with management in carrying out the accident prevention program.

(8) To make effective the preceding statement and promote on-the-job accident prevention, committees shall be established in each port. These committees shall consist of an equal number of port or stevedore company and longshoremen representatives at the job level with the industry or company safety supervisor serving as secretary and coordinator. Some functions of the committee are to maintain the interest of the workers in accident prevention by providing for their actual participation in the program, to direct their attention to the real causes of accidents, and to provide a means for making practical use of their intimate knowledge of working conditions and practices.

(9) It is intended that this program will produce mutually practical and effective recommendations regarding correction of accident-producing circumstances and conditions.

Note: For first-aid requirements, see WAC 296-800-150.

((Note: For emergency plan and fire prevention requirements, see chapter 296-24 WAC Part G-1.))

NEW SECTION

WAC 296-56-60010 Emergency action plans. (1) Scope and application. This section requires all employers to develop and implement an emergency action plan. The emergency action plan shall be in writing (except as provided in subsection (5)(d) of this section) and shall cover those designated actions employers and employees must take to ensure employee safety from fire and other emergencies.

Note: When an employer directs his or her employees to respond to an emergency that is beyond the scope of the emergency action plan developed in accordance with this section, then chapter 296-824 WAC shall apply.

(2) **Elements.** The following elements, at a minimum, shall be included in the plan:

(a) Emergency escape procedures and emergency escape route assignments;

(b) Procedures to be followed by employees who remain to operate critical plant operations before they evacuate;

(c) Procedures to account for all employees after emergency evacuation has been completed;

(d) Rescue and medical duties for those employees who are to perform them;

(e) The preferred means of reporting fires and other emergencies; and

(f) Names or regular job titles of persons or departments that can be contacted for further information or explanation of duties under the plan.

(3) **Alarm system.** The employer shall establish an employee alarm system that provides warning for necessary emergency action and for reaction time for safe escape of employees from the workplace or the immediate work area.

(4) **Evacuation.** The employer shall establish the types of evacuation to be used in emergency circumstances.

(5) **Training.**

(a) Before implementing the emergency action plan, the employer shall designate and train a sufficient number of persons to assist in the safe and orderly emergency evacuation of employees.

(b) The employer shall review the plan with each employee covered by the plan at the following times:

(i) Initially when the plan is developed;

(ii) Whenever the employee's responsibilities or designated actions under the plan change; and

(iii) Whenever the plan is changed.

(c) The employer shall review with each employee upon initial assignment those parts of the plan that the employee must know to protect the employee in the event of an emergency. The written plan shall be kept at the workplace and be made available for employee review.

(d) Employers with ten or fewer employees may communicate the plan orally to employees and need not maintain a written plan.

AMENDATORY SECTION (Amending Order 88-11, filed 7/6/88)

WAC 296-56-60081 Multipiece and single-piece rim wheels. Servicing of multipiece and single-piece rim wheels in marine terminal and other maritime work locations on large vehicles is regulated by requirements of ~~((WAC 296-24-2170+))~~ chapter 296-864 WAC, Split (multipiece) rim and single-piece rim wheels.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-59-001 Foreword. (1) This vertical standard is promulgated in accordance with applicable provisions of the Washington State Administrative Procedure Act, chapter 34.04 RCW, and the Washington Industrial Safety and Health Act, chapter 49.17 RCW.

(2) The requirements of this chapter shall be applied through the department of labor and industries, division of industrial safety and health, in accordance with administrative procedures provided for in chapter 49.17 RCW, and chapters 296-27, ~~((296-350,))~~ 296-360, ~~((and))~~ 296-800, and 296-900 WAC.

AMENDATORY SECTION (Amending Order 88-11, filed 7/6/88)

WAC 296-59-003 Scope and application. (1) The rules of this chapter are applicable to all persons, firms, corporations, or others engaged in the operation of organized ski areas and facilities within the jurisdiction of the department of labor and industries. These rules shall augment the WAC general horizontal standards, specifically referenced WAC vertical standards, and specifically referenced national standards or manuals.

(2) In the event that specific provisions of this chapter may conflict with any other WAC chapter, national standard, or manual, the provisions of this chapter shall prevail.

(3) The rules of this chapter shall not be applied to rescue crews during the time that rescue procedures are in process provided that reasonably prudent methods, equipment, and processes are employed. Personnel directly engaged in rescue operations shall not be subjected to the immediate restraint provisions of RCW 49.17.130.

(4) Nothing herein contained shall prevent the use of existing ski lift and tow equipment during its lifetime unless specific requirements of this chapter require retrofitting or modifications, provided that it shall be in conformance with applicable national or state code requirements at the time of manufacture and be maintained in good condition to conform with safety factors for the materials and method of manufacture used.

(5) Severability. If any provision of this chapter, or its application to any person, firm, corporation, or circumstance is held invalid under state (RCW) or national (Public Law) laws, the remainder of this chapter, or the application of the provision to other persons or circumstances is not affected.

(6) Variance and procedure. Recognizing that conditions may exist which do not exactly meet the literal requirements of this or other applicable Title 296 WAC standards, pursuant

to RCW 49.17.080 and 49.17.090, the director of the department of labor and industries or his/her authorized representative may permit a variance when other means of providing an equivalent measure of protection are afforded. The specific requirements and procedures for variance application are contained in chapter ~~((s 296-350 and 296-360))~~ 296-900 WAC, Administrative rules. Application forms may be obtained from the assistant director for safety and health or from regional departmental offices.

AMENDATORY SECTION (Amending Order 94-07, filed 7/20/94, effective 9/20/94)

WAC 296-62-020 Definitions applicable to all sections of this chapter. Unless the context indicates otherwise, words used in this chapter shall have the meaning given in this section.

(1) "Adequate" or "effective" means compliance with terms and intent of these standards.

(2) "Appendix" means references or recommendations to be used as guides in applying the provisions of this chapter.

(3) "Approved" means approved by the director of the department of labor and industries or his 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 296-24-006 shall apply)), or by an organization that is specifically named in a rule, such as Underwriters' Laboratories (UL), Mine Safety and Health Administration (MSHA), or the National Institute for Occupational Safety and Health (NIOSH).~~

(4) "Authorized person" means a person approved or assigned by the employer to perform a specific type of duty or duties or to be at a specific location or locations at the job site.

(5) "Coal tar pitch volatiles" as used in WAC 296-62-07515, Table I, include the fused polycyclic hydrocarbons which volatilize from the distillation residues of coal, petroleum, (excluding asphalt), wood, and other organic matter. Asphalt (CAS 8052-42-4, and CAS 64742-93-4) is not covered under the "coal tar pitch volatiles" standard.

(6) "Competent person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective action to eliminate them.

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

(8) "Director" means the director of the department of labor and industries, or his designated representative.

(9) "Employer" means 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~~((f-))~~, and charitable organizations: Provided, That any persons, partnership, or business entity not having employees, and who is covered by the industrial insurance act shall be considered both an employer and an employee.

(10) "Hazard" means that condition, potential or inherent, which can cause injury, death, or occupational disease.

(11) "Occupational disease" means such disease or infection as arises naturally and proximately out of employment.

(12) "Qualified" means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated ability to solve or resolve problems relating to the subject matter, the work, or the project.

(13) "Shall" or "must" means mandatory.

(14) "Should" or "may" means recommended.

(15) "Suitable" means that which fits, or has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

(16) "Worker," "personnel," "person," "employee," and other terms of like meaning, unless the context of the provision containing such term indicates otherwise, mean an employee of an employer who is employed in the business of their 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 their personal labor for an employer whether by manual labor or otherwise.

(17) "Work place" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control~~((f-))~~and. This includes, but is not limited to, all work places covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

(18) Abbreviations used in this chapter:

(a) "ANSI" means American National Standards Institute.

(b) "ASHRE" means American Society of Heating and Refrigeration Engineers.

(c) "BTU" means British thermal unit.

(d) "BTUH" means British thermal unit per hour.

(e) "CFM" means cubic feet per minute.

(f) "CFR" means Code of Federal Register.

(g) "CGA" means Compressed Gas Association.

(h) "ID" means inside diameter.

(i) "MCA" means Manufacturing Chemist Association or Chemical Manufacturer Association (CMA).

(j) "NEMA" means National Electrical Manufacturing Association.

(k) "NFPA" means National Fire Protection Association.

(l) "OD" means outside diameter.

(m) "WAC" means Washington Administrative Code.

(n) "WISHA" means Washington Industrial Safety and Health Act (chapter 80, Laws of 1973).

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-62-050 Application for waiver or variances. See WAC ~~((296-350-700 Variance from WISHA rules))~~ 296-900-11005, Applying for a variance.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-62-07373 Communication of EtO hazards to employees. (1) Signs and labels.

(a) The employer shall post and maintain legible signs demarcating regulated areas and entrances or accessways to regulated areas that bear the following legend:

DANGER
ETHYLENE OXIDE
CANCER HAZARD AND REPRODUCTIVE HAZARD
AUTHORIZED PERSONNEL ONLY
RESPIRATORS AND PROTECTIVE CLOTHING MAY BE REQUIRED
TO BE WORN IN THIS AREA

(b) The employer shall ensure that precautionary labels are affixed to all containers of EtO whose contents are capable of causing employee exposure at or above the action level or whose contents may reasonably be foreseen to cause employee exposure above the excursion limit, and that the labels remain affixed when the containers of EtO leave the workplace. For the purpose of this subsection, reaction vessels, storage tanks, and pipes or piping systems are not considered to be containers. The labels shall comply with the requirements of chapter 296-839 WAC, Content and distribution of material safety data sheets (MSDSs) and label information, and WAC 296-800-170 of ((WISHA's chemical hazard and communication standard, and)) the safety and health core rules. Labels shall include the following legend:

(i)

DANGER
CONTAINS ETHYLENE OXIDE
CANCER HAZARD AND REPRODUCTIVE HAZARD; and

(ii) A warning statement against breathing airborne concentrations of EtO.

(c) The labeling requirements under WAC 296-62-07355 through 296-62-07389 do not apply where EtO is used as a pesticide, as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), when it is labeled pursuant to that act and regulations issued under that act by the Environmental Protection Agency.

(2) Material safety data sheets. Employers who are manufacturers or importers of EtO shall comply with the requirements regarding development of material safety data sheets as specified in WAC 296-62-05413 of the hazard communication standard.

(3) Information and training.

(a) The employer shall provide employees who are potentially exposed to EtO at or above the action level or above the excursion limit with information and training on

EtO at the time of initial assignment and at least annually thereafter.

(b) Employees shall be informed of the following:

(i) The requirements of WAC 296-62-07353 through 296-62-07389 with an explanation of its contents, including Appendices A and B;

(ii) Any operations in their work area where EtO is present;

(iii) The location and availability of the written EtO final rule; and

(iv) The medical surveillance program required by WAC 296-62-07371 with an explanation of the information in Appendix C.

(c) Employee training shall include at least:

(i) Methods and observations that may be used to detect the presence or release of EtO in the work area (such as monitoring conducted by the employer, continuous monitoring devices, etc.);

(ii) The physical and health hazards of EtO;

(iii) The measures employees can take to protect themselves from hazards associated with EtO exposure, including specific procedures the employer has implemented to protect employees from exposure to EtO, such as work practices, emergency procedures, and personal protective equipment to be used; and

(iv) The details of the hazard communication program developed by the employer, including an explanation of the labeling system and how employees can obtain and use the appropriate hazard information.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-62-07425 Communication of cadmium hazards to employees. (1) General. In communications concerning cadmium hazards, employers shall comply with the requirements of WISHA's Chemical Hazard Communication Standard, WAC 296-800-170, 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:

(2) Warning signs.

(a) 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.

(b) Warning signs required by (a) 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

(c) The employer shall assure that signs required by this subsection are illuminated, cleaned, and maintained as necessary so that the legend is readily visible.

(3) Warning labels.

(a) 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 (b) of this subsection.

(b) The warning labels shall include at least the following information:

DANGER CONTAINS CADMIUM CANCER HAZARD AVOID
CREATING DUST CAN CAUSE LUNG AND KIDNEY DISEASE

(c) Where feasible, installed cadmium products shall have a visible label or other indication that cadmium is present.

(4) Employee information and training.

(a) 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.

(b) 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.

(c) The employer shall make the training program understandable to the employee and shall assure that each employee is informed of the following:

(i) The health hazards associated with cadmium exposure, with special attention to the information incorporated in WAC 296-62-07441, Appendix A;

(ii) 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;

(iii) The engineering controls and work practices associated with the employee's job assignment;

(iv) 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;

(v) The purpose, proper selection, fitting, proper use, and limitations of protective clothing;

(vi) The purpose and a description of the medical surveillance program required by WAC 296-62-07423;

(vii) The contents of this section and its appendices;

(viii) The employee's rights of access to records under WAC ((~~296-62-05213 and~~) 296-800-170 and chapter 296-802 WAC); and

(ix) The purpose, proper use, limitations, and other training requirements for respiratory protection as required in chapter 296-62 WAC, Part E.

(d) Additional access to information and training program and materials.

(i) The employer shall make a copy of this section and its appendices readily available without cost to all affected employees and shall provide a copy if requested.

(ii) The employer shall provide to the director, upon request, all materials relating to the employee information and the training program.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

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 repre-

sentative 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. The initial monitoring required under this subitem shall be completed within sixty days of the introduction of BD into the workplace.

(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 296-842 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.
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.

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 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.

(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 screen-

ing 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.

(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 Article 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; biethylene; bivinyll; 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).**
+	+	+	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.

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/m(3)).

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/m(3)) (based on 3 L air volume).

Reliable quantitation limit: 155 ppb (343 ug/m(3)) (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; bivinyll; butadiene; divinyl; buta-1,3-diene; alpha-gamma-butadiene; erythrene; NCI-C50602; pyrrolylene; vinyl ethylene.

(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:

$$\text{mg/m}^3 = (\text{A})(\text{B})/(\text{C})(\text{D})$$

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/m³ to ppm:

$$\text{ppm} = (\text{mg/m}^3)(24.46)/54.09$$

Where:

mg/m³ = 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 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 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

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.

Table with 2 columns: DISEASE, FAMILY MEMBER. Rows include 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
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? _____

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?
yes no

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 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-62-07621 Communication of hazards to employees. (1) Signs and labels.

(a) The employer shall post and maintain legible signs demarcating regulated areas and entrances or accessways to regulated areas that bear the following legend:

DANGER MDA MAY CAUSE CANCER LIVER TOXIN
 AUTHORIZED PERSONNEL ONLY
 RESPIRATORS AND PROTECTIVE CLOTHING
 MAY BE REQUIRED TO BE WORN IN THIS AREA

(b) The employer shall ensure that labels or other appropriate forms of warning are provided for containers of MDA within the workplace. The labels shall comply with the requirements of chapter 296-839 WAC, Content and distribution of material safety data sheets (MSDSs) and label information, and WAC 296-800-170 of the safety and health core rules, and the labels shall include the following legend:

(i) For pure MDA

DANGER CONTAINS MDA MAY CAUSE CANCER LIVER TOXIN

(ii) For mixtures containing MDA

DANGER CONTAINS MDA CONTAINS MATERIALS
 WHICH MAY CAUSE CANCER LIVER TOXIN

(2) Material safety data sheets (MSDS).

(a) Employers shall obtain or develop, and shall provide access to their employees, to a material safety data sheet (MSDS) for MDA. In meeting this obligation, employers shall make appropriate use of the information found in Appendices A and B.

(b) Employers who are manufacturers or importers shall:

(i) Comply with subdivision (1)(b) of this section as appropriate; and

(ii) Comply with the requirement in WISHA hazard communication standard, WAC 296-62-054, that they deliver to downstream employers an MSDS for MDA.

(3) Information and training.

(a) The employer shall provide employees with information and training on MDA, in accordance with WAC 296-800-170, at the time of initial assignment and at least annually thereafter.

(b) In addition to the information required under WAC 296-800-170, the employer shall:

(i) Provide an explanation of the contents of WAC 296-62-076, including Appendices A and B, and indicate to employees where a copy of the standard is available;

(ii) Describe the medical surveillance program required under WAC 296-62-07625, and explain the information contained in Appendix C; and

(iii) Describe the medical removal provision required under WAC 296-62-07625.

(4) Access to training materials.

(a) The employer shall make readily available to all affected employees, without cost, all written materials relating to the employee training program, including a copy of this regulation.

(b) The employer shall provide to the director, upon request, all information and training materials relating to the employee information and training program.

AMENDATORY SECTION (Amending Order 73-3, filed 5/7/73)

WAC 296-62-11005 Adequate system. Adequate ventilation systems shall be installed as needed to control concentrations of airborne contaminants below (~~(applicable threshold limit values)~~) permissible exposure limits.

AMENDATORY SECTION (Amending WSR 96-05-056, filed 2/16/96, effective 4/1/96)

WAC 296-65-005 Asbestos worker training course content. An approved asbestos worker training course shall consist of four days of training with a minimum of thirty-two hours. This initial training course shall provide, at a minimum, information on the following topics:

(1) The physical characteristics of asbestos including types, fiber size, aerodynamic characteristics and physical appearance.

(2) Examples of different types of asbestos and asbestos-containing materials. Real asbestos shall be used only for observation by trainees and shall be enclosed in sealed unbreakable containers.

(3) The health hazards of asbestos including the nature of asbestos related diseases, routes of exposure, dose-response relationships, synergism between cigarette smoking and asbestos exposure, latency period of diseases, hazards to immediate family, and the health basis for asbestos standards.

(4) Employee personal protective equipment including the classes and characteristics of respirator types, limitations of respirators, proper selection, inspection, donning, use, maintenance and storage procedure, methods for field check-

ing of the facepiece-to-face seal (positive and negative-pressure checks), qualitative and quantitative fit testing procedures, variability between field and laboratory protection factors, factors that alter respirator fit (e.g., eye glasses and facial hair), the components of a proper respiratory protection program, respirator program administrator, requirements on oil lubricated reciprocating piston compressors for breathing air, and selection and use of personal protective clothing. Qualitative or quantitative fit testing shall be performed on at least one student for demonstration purposes and in accordance with WAC 296-62-07715 and 296-62-07739.

(5) Use, storage and handling of launderable clothing, nonslip footwear, gloves, eye protection and hard hats.

(6) Medical monitoring procedures and requirements, including the provisions of (~~WAC 296-62-071 through 296-62-07121 and 296-62-07725~~) chapter 296-842 WAC, any additional recommended procedures and tests, benefits of medical monitoring and employee access to records.

(7) Air monitoring procedures and requirements specified in WAC 296-62-07709, including a description of equipment, sampling methods and strategies, reasons for air monitoring, types of samples, including area, personal and clearance samples, current standards with proposed changes if any, employee observation and notification, recordkeeping and employee access to records, interpretation of air monitoring results, and analytical methods for bulk and air samples.

(8) State-of-the-art work practices for asbestos removal and encapsulation activities including purpose, proper construction and maintenance of barriers and decontamination enclosure systems, posting of warning signs, electrical and ventilation system lock-out, proper working techniques and tools with vacuum attachments for minimizing fiber release, use of wet methods and surfactants, use of negative-pressure ventilation equipment for minimizing employee exposure to asbestos fibers and contamination prevention, scoring and breaking techniques for rigid asbestos products, glove bag techniques, recommended and prohibited work practices, potential exposure situations, emergency procedures for sudden releases, use of HEPA vacuums and proper clean-up and disposal procedures. Work practice requirements for removal, encapsulation, enclosure, repair, and waste transportation shall be discussed individually. Appropriate work practices for both indoor and outdoor asbestos projects shall be included.

(9) Personal hygiene including entry and exit procedures for the work area, use of showers and prohibition of eating, drinking, smoking and chewing (gum or tobacco) in the work area. Potential exposures, such as family exposure shall also be included.

(10) Additional safety hazards that may be encountered during asbestos removal and encapsulation activities and hazard abatement, including electrical hazards, scaffold and ladder hazards, slips, trips and falls, confined spaces, noise, and heat stress.

(11) The requirements, procedures and standards established by:

(a) The Environmental Protection Agency, 40 CFR Part 61, Subparts A and M, and 40 CFR Part 763.

(b) Washington state department of ecology.

(c) Local air pollution control agencies.

(d) Washington state department of labor and industries, division of industrial safety and health, chapter 49.17 RCW (Washington Industrial Safety and Health Act), chapter 49.26 RCW (Health and safety—Asbestos), and ensuing regulations.

(12) Actual worksite considerations.

(13) The instruction required by this section shall include, at a minimum fourteen hours of hands-on training for the following:

(a) Glove bag techniques;

(b) The opportunity to don respirators including half facepiece and full facepiece air purifying respirators, powered air purifying respirators (PAPR), and Type-C supplied-air respirators;

(c) Removal of sprayed-on or troweled-on material, and pipe lagging;

(d) Basic construction of a decontamination unit, and proper entry and exit;

(e) Suit-up in protective clothing consisting of coveralls, foot coverings and head coverings.

(14) Course review, a review of the key aspects of the training course.

(15) Asbestos-containing materials shall not be used for hands-on training.

(16) In recognition that asbestos abatement is an evolving industry, the department reserves the right to require additional subjects to be taught and to specify the amount of time which shall be allotted to adequately cover required subjects. To assure adequate coverage of required material, each sponsor shall be provided and required to incorporate into the training course, a detailed outline of subject matter developed by the department.

AMENDATORY SECTION (Amending WSR 96-05-056, filed 2/16/96, effective 4/1/96)

WAC 296-65-007 Asbestos supervisor training course content. An approved asbestos supervisor training course shall consist of at least five days of training. This initial training course shall include lectures, demonstrations, at least fourteen hours of hands-on training, course review and a written examination. Audio-visual materials, where appropriate, are recommended to complement lectures. The training course shall provide, at a minimum, information on the following topics:

(1) The physical characteristics of asbestos and asbestos-containing materials including identification of asbestos, aerodynamic characteristics, typical uses, physical appearance, hazard assessment considerations, and a summary of abatement control options.

(2) Health effects related to asbestos exposure including the nature of asbestos related diseases, routes of exposure, dose-response relationships and the lack of a safe level of exposure, synergism between asbestos exposure and cigarette smoking, latency period, hazards to the immediate family and the health basis for the standard.

(3) Employee personal protective equipment including the classes and characteristics of respirator types, limitations of respirators, proper selection, inspection, donning, use, maintenance, and storage procedures, methods for field

checking of the facepiece-to-face seal (positive and negative pressure checks), variability between field and laboratory protection factors, quantitative and qualitative fit test requirements, factors that alter respirator fit (facial hair, scars, etc.), the components of a proper respirator program, requirements for oil lubricated reciprocating compressors, maintenance of Type-C systems, standards for breathing air, selection and use of personal protective clothing, use, storage, and handling of nondisposable clothing, and regulations covering personal protective equipment.

(4) State-of-the-art work practices for asbestos removal and encapsulation activities including purpose, proper construction and maintenance of barriers and decontamination enclosure systems, posting of warning signs, electrical and ventilation system lock-out, proper working techniques and tools with vacuum attachments for minimizing fiber release, use of wet methods and surfactants, use of negative-pressure ventilation equipment for minimizing employee exposure to asbestos fibers and contamination prevention, scoring and breaking techniques for rigid asbestos products, glove bag techniques, recommended and prohibited work practices, potential exposure situations, emergency procedures for sudden releases, use of HEPA vacuums and proper clean-up and disposal procedures. Work practice requirements for removal, encapsulation, and repair shall be discussed separately. Appropriate work practices for both indoor and outdoor asbestos projects shall be included.

(5) Personal hygiene including entry and exit procedures for the work area, use of showers and prohibition of eating, drinking, smoking, and chewing (gum and tobacco) in the work area. Potential exposures, such as family exposure shall also be included.

(6) Additional safety hazards that may be encountered during asbestos abatement activities and how to deal with them, including electrical hazards, heat stress, air contaminants other than asbestos, fire and explosion hazards, scaffold and ladder hazards, slips, trips, and falls, confined space entry requirements, and noise hazards.

(7) Medical monitoring procedures and requirements, including the provisions of (~~WAC 296-62-071 through 296-62-07121 and 296-62-07725~~) chapter 296-842 WAC, any additional recommended procedures and tests, benefits of medical monitoring and recordkeeping requirements.

(8) Air monitoring procedures and requirements specified in WAC 296-62-07709, including a description of equipment, sampling methods and strategies, reasons for air monitoring, types of samples, including area, personal and clearance samples, a description of aggressive sampling, current standards with proposed changes if any, employee observation and notification, recordkeeping, interpretation of air monitoring results, specifically from analyses performed by polarized light, phase contrast, and electron microscopy.

(9) The requirements, procedures, and standards established by:

(a) The Environmental Protection Agency, 40 CFR Part 61, Subparts A and M, and 40 CFR Part 763.

(b) The Washington state department of ecology.

(c) Local air pollution control agencies.

(d) Washington state department of labor and industries, division of industrial safety and health, chapter 49.17 RCW

(Washington Industrial Safety and Health Act), chapter 49.26 RCW (Health and safety—Asbestos), and ensuing regulations.

(10) Actual worksite considerations.

(11) Insurance and liability issues including contractor issues, industrial insurance coverage and exclusions, third party liabilities and defenses, private insurance coverage and exclusions, recordkeeping recommended for legal and insurance purposes.

(12) Supervisory techniques for asbestos abatement projects including supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices.

(13) Contract specifications including a discussion of the key elements to be included in contract specifications.

(14) A minimum of fourteen hours of hands-on training for the following:

(a) Calibration of air-sampling equipment;

(b) Routine maintenance of air-purifying and air-supplied respirators;

(c) Setup of a decontamination unit including calculating the number of negative air machines needed as well as proper placement of the machines within the enclosure; and

(d) Quantitative and qualitative fit-testing protocols.

(15) Course review, a review of the key aspects of the training course.

(16) In recognition that asbestos abatement is an evolving industry, the department reserves the right to require additional subjects to be taught and to specify the amount of time which shall be allotted to adequately cover required subjects. To assure adequate coverage of required material, each sponsor shall be provided and required to incorporate into their training course, a detailed outline of subject matter developed by the department.

AMENDATORY SECTION (Amending WSR 99-17-026, filed 8/10/99, effective 11/10/99)

WAC 296-65-010 Asbestos worker certification. (1)

For the purposes of this section "individual" means any natural person.

(2) To qualify for an asbestos worker certificate, an individual must do the following:

(a) Successfully complete an approved asbestos worker training course;

(b) Achieve a score of at least seventy percent on a one hundred question multiple choice closed book examination approved by the department but administered by the training course sponsor. If an individual does not pass the examination, then another examination (meeting the above criteria) may be given after a sufficient period of study. The new examination must not duplicate more than fifty percent of the questions used on prior examinations;

(c) Submit to the department a timely application validated by an approved training course sponsor. To be considered timely, an application must be received by the department no later than sixty days after the completion of the course. In the event that an application is not timely, the individual will be required to pass, with a score of at least seventy percent, an examination administered by the department. A

nonrefundable fifty-dollar fee will be assessed when the application is submitted to the department; and

(d) Pay the fee prescribed in WAC 296-65-025.

(3) Individuals must not perform any asbestos project work prior to issuance of the certificate.

(4) Certificates will be issued and mailed to the individual applicants and will be valid for one year from the date of issuance.

(5) Certified asbestos workers shall attend an eight-hour worker refresher course prior to certificate renewal.

(a) The course shall, at a minimum, adequately review the subjects required by WAC 296-65-005, update information on state-of-the-art procedures and equipment, and review regulatory changes and interpretations. The department may require specific subjects.

(b) An application for renewal of the certificate must be validated by the refresher training course instructor.

(c) The refresher course must be taken prior to expiration of the certificate.

(d) The department must receive the certificate renewal application no later than the expiration date of the current certificate. Applicants missing this renewal deadline will be required to pass, with a score of seventy percent, an examination administered by the department. A nonrefundable fifty-dollar fee will be charged to take this examination.

(e) Individuals whose certificates have been expired for more than six months will be required to retake the entire basic worker course.

(6) The initial TSCA Title II worker accreditation certificate and the current worker certificate must be available for inspection at all times at the location of the asbestos project.

(7) The department may suspend or revoke a certificate as provided in WAC 296-65-050 and chapter ~~(296-350)~~ 296-900 WAC.

AMENDATORY SECTION (Amending WSR 99-17-026, filed 8/10/99, effective 11/10/99)

WAC 296-65-012 Asbestos supervisor certification.

(1) For the purposes of this section, "individual" means any natural person.

(2) To qualify for an asbestos supervisor certificate, an individual must meet the following criteria:

(a) Have at least 1600 hours of experience in one or more of the following disciplines:

(i) Asbestos abatement;

(ii) Asbestos project design;

(iii) Consultation on asbestos abatement projects;

(iv) Operations and maintenance program supervision;

(v) Construction project supervision;

(b) Successfully complete an approved asbestos supervisor training course;

(c) Achieve a score of at least seventy percent on a one hundred question multiple choice closed book examination approved by the department but administered by the training course sponsor. If an individual does not pass the examination, then another examination (meeting the above criteria) may be given after a sufficient period of study. The new examination must not duplicate more than fifty percent of the questions used on prior examinations;

(d) Submit to the department a timely application validated by an approved training course sponsor. To be considered timely, an application must be received by the department no later than sixty days after the completion of the course. In the event that an application is not timely, the individual will be required to pass, with a score of at least seventy percent, an examination administered by the department. A nonrefundable fifty-dollar fee will be assessed when the application is submitted to the department; and

(e) Pay the fee prescribed in WAC 296-65-025.

(3) An individual must not supervise any asbestos project prior to issuance of the certificate.

(4) Certificates will be issued and mailed to the individual applicants and will be valid for one year from the date of issuance.

(5) A certified asbestos supervisor must attend an eight-hour supervisor refresher course prior to certificate renewal. It is not necessary to also take a worker refresher course.

(a) The course must, at a minimum, adequately review the subjects required by WAC 296-65-007, update information on state-of-the-art procedures and equipment, and review regulatory changes and interpretations. The department may require specific subjects.

(b) An application for renewal of the certificate must be validated by the refresher training course instructor.

(c) The refresher course must be taken prior to expiration of the certificate.

(d) The department must receive the certificate renewal application no later than the expiration date of the current certificate. Applicants missing this renewal deadline will be required to pass, with a score of seventy percent, an examination administered by the department. A nonrefundable fifty-dollar fee will be charged to take this examination.

(e) Individuals whose certificates have been expired for more than six months will be required to retake the entire basic supervisor course.

(6) The initial TSCA Title II supervisor accreditation certificate and the current supervisor certificate must be available for inspection at all times at the location of the asbestos project.

(7) The department may suspend or revoke a certificate as provided in WAC 296-65-050 and chapter ~~((296-350))~~ 296-900 WAC.

AMENDATORY SECTION (Amending Order 89-10, filed 10/10/89, effective 11/24/89)

WAC 296-65-017 Contractor certification. (1) In order to obtain certification, an asbestos contractor must submit an application to the department. The application shall provide the following information:

(a) A list of asbestos projects conducted by the contractor during the previous twelve months. Such list shall include for each project:

(i) Project name;

(ii) Location;

(iii) Brief description;

(iv) Identity of any citations or enforcement actions issued for violations of asbestos regulations by any local,

state, or federal jurisdiction relative to each individual project; and

(v) Name of the on-site project manager or supervisor.

(b) A list of asbestos supervisors (include certification number) working for the company.

(c) A statement certifying that the contractor has read and understands all applicable Washington state rules and regulations regarding asbestos abatement and will comply with them.

(d) A statement certifying that the applicant contractor's asbestos license or accreditation issued by any other state or jurisdiction has not been revoked, suspended, or denied by that state or jurisdiction.

(2) Upon approval, the department will issue the contractor a certificate. Denial of approval shall be in writing.

(3) Certificates shall be valid for a period of twelve months. Certificates may be extended during department review of a renewal application.

Note: In circumstances where it is necessary to coordinate an expiration date with the date of expiration of a contractor registration issued under chapter 18.27 RCW, certificates may be valid for less than one year. In such circumstances, the certificate fee prescribed in WAC 296-65-025 shall be prorated accordingly for the initial application only.

(4) The application for certificate renewal shall contain the information specified in subsection (1) of this section.

(5) Applications for renewal must be received by the department not less than sixty days before the certificate expires.

(6) The department may suspend or revoke the certificate as provided in WAC 296-65-050 and chapter ~~((296-350))~~ 296-900 WAC.

AMENDATORY SECTION (Amending Order 92-06, filed 8/10/92, effective 9/10/92)

WAC 296-67-001 Process safety management of highly hazardous chemicals. (1) Purpose. This section contains requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals. These releases may result in toxic, fire, or explosion hazards.

(2) Application.

(a) This part applies to the following:

(i) A process which involves a chemical at or above the specified threshold quantities listed in WAC 296-67-285, Appendix A;

(ii) A process which involves a flammable liquid or gas (as defined in WAC ~~((296-62-05405 [WAC 296-800-170]))~~ 296-800-170) on site in one location, in a quantity of 10,000 pounds (4535.9 kg) or more except for:

(A) Hydrocarbon fuels used solely for workplace consumption as a fuel (e.g., propane used for comfort heating, gasoline for vehicle refueling), if such fuels are not a part of a process containing another highly hazardous chemical covered by this standard;

(B) Flammable liquids stored in atmospheric tanks or transferred which are kept below their normal boiling point without benefit of chilling or refrigeration.

(b) This part does not apply to:

(i) Retail facilities;

- (ii) Oil or gas well drilling or servicing operations; or
- (iii) Normally unoccupied remote facilities.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-78-500 Foreword. (1) General requirements. The chapter 296-78 WAC shall apply to and include safety requirements for all installations where the primary manufacturing of wood building products takes place. The installations may be a permanent fixed establishment or a portable operation. These operations shall include but are not limited to log and lumber handling, sawing, trimming and planing, plywood or veneer manufacturing, canting operations, waste or residual handling, operation of dry kilns, finishing, shipping, storage, yard and yard equipment, and for power tools and affiliated equipment used in connection with such operation. WAC 296-78-450 shall apply to shake and shingle manufacturing. The provisions of WAC 296-78-500 through 296-78-84011 are also applicable in shake and shingle manufacturing except in instances of conflict with the requirements of WAC 296-78-705. (Rev. 1-28-76.)

(2) This standard shall augment the Washington state general safety and health standards, general occupational health standards, electrical workers safety rules, and any other standards which are applicable to all industries governed by chapter 80, Laws of 1973, Washington Industrial Safety and Health Act. In the event of any conflict between any portion of this chapter and any portion of any of the general application standards, the provisions of this chapter 296-78 WAC, shall apply.

(3) In exceptional cases where compliance with specific provisions of this chapter can only be accomplished to the serious detriment and disadvantage of an operation, variance from the requirement may be permitted by the director of the department of labor and industries after receipt of application for variance which meets the requirements of chapter ~~((296-350))~~ 296-900 WAC.

(4) No safety program will run itself. To be successful, the wholehearted interest of the employees' group (labor unions) and management must not only be behind the program, but the fact must also be readily apparent to all.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

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))~~ Z12.20 - 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 296-842 WAC, Respirators.

(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 296-78-730 Electrical service and equipment.

(1) Electrical service and equipment shall be constructed, maintained, inspected and operated according to chapter 296-24 WAC, General safety and health standards, Part L, and WAC 296-800-280 of the safety and health core rules.

(2) Repairs. Electrical repairs shall be made only by authorized and qualified personnel.

(3) Identification. Marks of identification on electrical equipment shall be clearly visible.

(4) Protective equipment. Rubber protective equipment shall be provided as required by WAC ~~((296-24-092(1)))~~ 296-800-160 of the ~~((general))~~ safety and health ~~((standard))~~ core rules.

(5) Open switches. Before working on electrical equipment, switches shall be open and shall be locked out.

(6) Concealed conductors. Where electrical conductors are known to be concealed, no work shall be performed until such conductors are located.

(7) Overload relays. Overload relays shall be reset by authorized qualified personnel only.

(8) Passageways to panels. Passageways to switch centers or panels shall at all times be kept free from obstruction. Not less than three feet of clear space shall be maintained in front of switch centers or panels at all times.

(9) Bridging fuses. Fuses shall not be doubled or bridged.

AMENDATORY SECTION (Amending WSR 06-05-027, filed 2/7/06, effective 4/1/06)

WAC 296-78-835 Vehicles. (1) Vehicles.

(a) Scope. Vehicles shall include all mobile equipment normally used in sawmill, planing mill, storage, shipping, and yard operations, including log sorting yards.

(b) Lift trucks. Lift truck shall be designed, constructed, maintained and operated in accordance with the requirements of WAC 296-24-230 through 296-24-23035 of the general safety and health standards.

(c) Carriers. Drive chains on lumber carriers shall be adequately guarded to prevent contact at the pinch points.

(d)(i) Lumber carriers shall be so designed and constructed that the operator's field of vision shall not be unnecessarily restricted.

(ii) Carriers shall be provided with ladders or equivalent means of access to the operator's platform or cab.

(e) Lumber hauling trucks.

(i) On trucks where the normal operating position is ahead of the load in the direction of travel, the cab shall be protected by a barrier at least as high as the cab. The barrier shall be capable of stopping the weight of the load capacity of the vehicle if the vehicle were to be stopped suddenly while traveling at its normal operating speed. The barrier shall be constructed in such a manner that individual pieces of a normal load will not go through openings in the barrier.

(ii) Stakes, stake pockets, racks, tighteners, and binders shall provide a positive means to secure the load against any movement during transit.

(iii) Where rollers are used, at least two shall be equipped with locks which shall be locked when supporting loads during transit.

(2) Warning signals and spark arrestors. All vehicles shall be equipped with audible warning signals and where practicable shall have spark arrestors.

(3) Flywheels, gears, sprockets and chains and other exposed parts that constitute a hazard to workers shall be enclosed in standard guards.

(4) All vehicles operated after dark or in any area of reduced visibility shall be equipped with head lights and backup lights which adequately illuminate the direction of travel for the normal operating speed of the vehicle. The vehicle shall also be equipped with tail lights which are visible enough to give sufficient warning to surrounding traffic at the normal traffic operating speed.

(5) All vehicles operated in areas where overhead hazards exist shall be equipped with an overhead guard for the protection of the operator.

(6) Where vehicles are so constructed and operated that there is a possibility of the operator being injured by backing into objects, a platform guard shall be provided and so arranged as not to hinder the exit of the driver.

(7) Trucks, lift trucks and carriers shall not be operated at excessive rates of speed. When operating on tramways or docks more than six feet above the ground or lower level they shall be limited to a speed of not more than twelve miles per hour. When approaching blind corners they shall be limited to four miles per hour.

(8) Vehicles shall not be routed across principal thoroughfares while employees are going to or from work unless pedestrian lanes are provided.

(a) Railroad tracks and other hazardous crossings shall be plainly posted.

(b) Restricted overhead clearance. All areas of restricted side or overhead clearance shall be plainly marked.

(c) Pickup and unloading points. Pickup and unloading points and paths for lumber packages on conveyors and transfers and other areas where accurate spotting is required, shall be plainly marked and wheel stops provided where necessary.

(d) Aisles, passageways, and roadways. Aisles, passageways, and roadways shall be sufficiently wide to provide safe side clearance. One-way aisles may be used for two-way traffic if suitable turnouts are provided.

(9) Where an operator's vision is impaired by the vehicle or load it is carrying, he shall move only on signal from someone so stationed as to have a clear view in the direction the vehicle is to travel.

(10) ~~((Lift trucks shall be equipped, maintained and operated in compliance with the requirements of the general safety and health standard, WAC 296-24-230 through 296-24-23035.))~~ Reserved.

(11) Load limits. No vehicle shall be operated with loads exceeding its safe load capacity.

(12) Vehicles with internal combustion engines shall not be operated in enclosed buildings or buildings with ceilings less than sixteen feet high unless the buildings have ventilation adequate to maintain air quality as required by the general occupational health standard, chapter 296-62 WAC.

(13) Vehicles shall not be refueled while motor is running. Smoking or open flames shall not be allowed in the refueling area.

(14) No employee other than trained operators or mechanics shall start the motor of, or operate any log or lumber handling vehicle.

(15) All vehicles shall be equipped with brakes capable of holding and controlling the vehicle and capacity load upon any grade or incline over which they may operate.

(16) Unloading equipment and facilities.

(a) Machines used for hoisting, unloading, or lowering logs shall be equipped with brakes capable of controlling or holding the maximum load in midair.

(b) The lifting cylinders of all hydraulically operated log handling machines, or where the load is lifted by wire rope, shall be equipped with a positive device for preventing the uncontrolled lowering of the load or forks in case of a failure in the hydraulic system.

(c) A limit switch shall be installed on powered log handling machines to prevent the lift arms from traveling too far in the event the control switch is not released in time.

(d) When forklift-type machines are used to load trailers, a means of securing the loading attachment to the fork shall be installed and used.

(e) A-frames and similar log unloading devices shall have adequate height to provide safe clearance for swinging loads and to provide for adequate crotch lines and spreader bar devices.

(f) Log handling machines used to stack logs or lift loads above operator's head shall be equipped with overhead protection.

(g) Unloading devices shall be equipped with a horn or other plainly audible signaling device.

(h) Movement of unloading equipment shall be coordinated by audible or hand signals when operator's vision is impaired or operating in the vicinity of other employees.

Lift trucks regularly used for transporting peeler blocks or cores shall have tusks or a similar type hold down device to prevent the blocks or cores from rolling off the forks.

(17) Where spinners are used on steering wheels, they shall be of the automatic retracting type or shall be built into the wheel in such a manner as not to extend above the plane surface of the wheel. Vehicles equipped with positive anti-kickback steering are exempted from this requirement.

(18) Mechanical stackers and unstackers shall have all gears, sprockets and chains exposed to the contact of workers, fully enclosed by guards as required by WAC 296-78-710 of this chapter.

(19) Manually operated control switches shall be properly identified and so located as to be readily accessible to the operator. Main control switches shall be so designed that they can be locked in the open position.

(20) Employees shall not stand or walk under loads being lifted or moved. Means shall be provided to positively block the hoisting platform when employees must go beneath the stacker or unstacker hoist.

(21) No person shall ride any lift truck or lumber carrier unless a suitable seat is provided, except for training purposes.

(22) Unstacking machines shall be provided with a stopping device which shall at all times be accessible to at least one employee working on the machine.

(23) Floor of unstacker shall be kept free of broken stickers and other debris. A bin or frame shall be provided to allow for an orderly storage of stickers.

(24) Drags or other approved devices shall be provided to prevent lumber from running down on graders.

(25) Liquefied petroleum gas storage and handling. Storage and handling of liquefied petroleum gas shall be in accordance with the requirements of WAC 296-24-475 through 296-24-47517 of the general safety and health standards.

(26) Flammable liquids. Flammable liquids shall be stored and handled in accordance with WAC 296-24-330 through 296-24-33019 of the general safety and health standards.

(27) Guarding side openings. The hoistway side openings at the top level of the stacker and unstacker shall be protected by enclosures of standard railings.

(28) Guarding hoistway openings. When the hoist platform or top of the load is below the working platform, the hoistway openings shall be guarded.

(29) Guarding lower landing area. The lower landing area of stackers and unstackers shall be guarded by enclosures that prevent entrance to the area or pit below the hoist platform. Entrances should be protected by electrically interlocked gates which, when open, will disconnect the power and set the hoist brakes. When the interlock is not installed, other positive means of protecting the entrance shall be provided.

(30) Lumber lifting devices. Lumber lifting devices on all stackers shall be designed and arranged so as to minimize the possibility of lumber falling from such devices.

(31) Inspection. At the start of each work shift, equipment operators shall inspect the equipment they will use for evidence of failure or incipient failure. Equipment found to have defects which might affect the operating safety shall not be used until the defects are corrected.

(32) Cleaning pits. Safe means of entrance and exit shall be provided to permit cleaning of pits.

(33) Preventing entry to hazardous area. Where the return of trucks from unstacker to stacker is by mechanical power or gravity, adequate signs, warning devices, or barriers shall be erected to prevent entry into the hazardous area.

AMENDATORY SECTION (Amending WSR 97-22-065, filed 11/3/97, effective 1/1/98)

WAC 296-99-030 What training must an employer provide for employees? (1) The employer must train employees:

(a) Annually; and
(b) Whenever a new job assignment exposes an employee to a new hazard.

(2) The employer must ensure that employees are trained in the following:

(a) General safety precautions against fires and explosions, including how to recognize and prevent the hazards of excess dust accumulation and ignition sources.

(b) Specific procedures and safety practices for job tasks including, but not limited to:

- Cleaning grinding equipment;
- Clearing choked legs;
- Housekeeping;
- Hot work; and
- Preventive maintenance.

(3) The employer must provide additional training for employees who are assigned special tasks, including but not limited to:

(a) Procedures for grain storage entry according to ~~((WAC 296-62-145))~~ chapter 296-809 WAC, Confined spaces ~~((entry))~~, and how to:

- Control hazardous energy (lockout/tagout) according to ~~((WAC 296-24-110))~~ chapter 296-803 WAC, Lockout/tagout (control of hazardous energy);
- Avoid getting buried by moving grain (engulfment);
- Avoid falling from heights; and
- Prevent mechanical hazards.

(b) How to handle flammable or toxic substances.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-99-040 What practices must an employer follow for entry into grain storage structures? This section applies to employee entry into all grain storage structures.

(1) The employer must ensure that the practice of walking down grain is prohibited. "Walking down grain" means an employee walks on grain to make it flow within or out from a grain storage structure, or an employee is on moving grain.

(2) The employer must ensure that during the entry and occupation of a storage structure the employee uses:

- A body harness with a lifeline; or
- A boatswain's chair that meets the requirements of Part J-2 of chapter 296-24 WAC whenever:

(a) The employee is exposed to a fall hazard such as when entering from the top or above the level of the stored grain; or

(b) The employee is exposed to an engulfment hazard such as when entering at the level of the stored grain, or while walking or standing on the grain. The lifeline must be rigged so that its position and length will prevent the employee from sinking below waist level.

(3) The employer must ensure that during the occupation of storage structures, including walking or standing on grain, employees are protected from hazards related to:

- Mechanical;
- Electrical;
- Hydraulic; and
- Pneumatic equipment.

By using safeguards, lockout-tagout, or other equally effective means. All provisions for the control of hazardous energy (lockout/tagout) from ~~((WAC 296-24-110))~~ chapter 296-803 WAC apply to this chapter.

(4) The employer must ensure that employees are prohibited from entering any storage structure where a build-up of grain overhead (bridging) or on the sides could fall and bury them.

(5) The employer must ensure, as minimum precautions, that employee entry and occupation of all grain storage structures including flat storage structures is done according to all applicable requirements of ~~((WAC 296-62-145))~~ chapter 296-809 WAC, Confined spaces, when the storage structure:

- Has limited or restricted means of entry and exit; and
- Is not designed for continuous employee occupancy.

(6) The employer may allow an employee to perform confined space entry work in grain storage structures without a permit if the employer's representative personally monitors the work to prevent employee exposure to illness or injury from atmospheric hazards during the entire operation.

AMENDATORY SECTION (Amending WSR 97-22-065, filed 11/3/97, effective 1/1/98)

WAC 296-99-065 What preventive maintenance program must an employer implement? (1) The employer must implement a written program that covers the requirements of ~~((WAC 296-24-110, The))~~ chapter 296-803 WAC, Lockout/tagout (control of hazardous energy ~~((lockout/tagout)))~~.

(2) The employer must implement preventive maintenance procedures that include the following:

(a) Conducting regularly scheduled inspections for specified machinery.

(b) Preparing written inspection reports kept on file that include:

- The date of each inspection;
- The name of the inspector; and
- The serial number, or other identification of the machinery as described next in (c) of this subsection.

(c) Conducting regularly scheduled inspections and completing immediate repairs of the mechanical equipment and safety controls of the following machinery:

- Grain dryers;
- Grain stream processing equipment;
- Dust collection systems including their filter collectors that malfunction or operate below designed efficiency;
- Overheated bearings; and
- Slipping or misaligned belt drives for inside bucket elevators.

When immediate repairs are not feasible, then the affected machine must be taken out of service.

(d) Performing lubrication and other maintenance according to manufacturers' recommendations or more often when needed, such as when operating records indicate that a more stringent schedule is necessary.

AMENDATORY SECTION (Amending WSR 00-23-100, filed 11/21/00, effective 1/1/01)

WAC 296-115-015 Definitions applicable to all sections of this chapter.

Note: Meaning of words. Unless the context indicates otherwise, words used in this chapter will have the meaning given in this section.

Approved means approved by the director; however, if a provision of this chapter requires approval by an agency or organization other than the department such as nationally recognized testing laboratories or the United States Coast Guard is required, then approval by the specified authority will be accepted.

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.

Bare boat charter means the unconditional lease, rental, or charter of a boat by the owner, or his or her agent, to a person who by written agreement, or contract, assumes all responsibility and liability for the operation, navigation, and provisioning of the boat during the term of the agreement or contract, except when a captain or crew is required or provided by the owner or owner's agents to be hired by the charterer to operate the vessel.

Carrying passengers or cargo means the transporting of any person or persons or cargo on a vessel for a fee or other consideration.

CFR means Code of Federal Regulations.

Charter boat means a vessel or barge operating on waters of the state of Washington which is not inspected or licensed by the United States Coast Guard and over which the United States Coast Guard does not exercise jurisdiction and which is rented, leased, or chartered to carry more than six persons or cargo.

Commercial means any activity from which the operator, or the person chartering, renting, or leasing a vessel derives a profit, and/or which qualifies as a legitimate business expense under the Internal Revenue Statutes.

Competent person means someone who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt action to eliminate them.

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.

Defect means any characteristic or condition that tends to weaken or reduce the strength of the tool, object, or structure of which it is a part.

Department means the department of labor and industries.

Director means the director of the department of labor and industries, or his/her designated representative.

Employer means any person, firm, corporation, partnership, business trust, legal representative, or other business entity that operates a passenger vessel for hire in this state and employs one or more employees or contracts with one or more persons, the essence of which is the personal labor of such persons. Any person, partnership, or business entity that has no employees, and is covered by the Industrial Insurance Act shall be considered both an employer and an employee.

Enclosed space means any space, other than a confined space, which is enclosed by bulkheads and overhead. It includes cargo holds, tanks, quarters, and machinery and boiler spaces.

Equipment means a system, part, or component of a vessel as originally manufactured, or a system, part, or component manufactured or sold for replacement, repair, or

improvement of a system, part, or component of a vessel; an accessory or equipment for, or appurtenance to a vessel; or a marine safety article, accessory, or equipment, including radio equipment, intended for use by a person on board a vessel.

Hazard means a condition, potential or inherent, that is likely to cause injury, death, or occupational disease.

Hazardous substance means a substance that, because it is explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful, is likely to cause death or injury, including all substances listed on the USCG hazardous materials list.

Inspection means the examination of vessels by the director or an authorized representative of the director.

Maritime specialist in P&TS means a technical and operations specialist in maritime issues located in the department of labor and industries' policy and technical services section.

Passenger means any person or persons, carried on board a vessel in consideration of the payment of a fee or other consideration.

Port means left hand side of a vessel as one faces the bow.

Starboard means right hand side of a vessel as one faces the bow.

Power driven vessel means any vessel propelled by machinery.

Qualified means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve problems relating to the subject matter, the work, or the project.

Safety and health standard means a standard that requires the adoption or use of one or more practices, means, methods, operations, or processes reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

Should means recommended.

Substantial means constructed of such strength, of such material, and of such workmanship, that the object referred to will withstand all normal wear, shock, and usage.

Standard safeguard means a device intended to remove a hazard incidental to the machine, appliance, tool, or equipment to which the device is attached.

Standard safeguards shall be constructed of either metal, wood, other suitable material, or a combination of these. The final determination of the sufficiency of any safeguard rests with the director.

Suitable means that which fits, or has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

Under way means a vessel is not at anchor, or made fast to the shore, or aground.

USCG means the United States Coast Guard.

United States Coast Guard Navigation means rules International/Inland, Commandants Instruction M16672.29C as now adopted, or hereafter legally amended by the United States Coast Guard.

Vessel means every description of motorized watercraft, other than a bare boat charter boat, seaplane, or sailboat, used

or capable of being used to transport more than six passengers or cargo on water for rent, lease, or hire.

Working day means a calendar day, except Saturdays, Sundays, and legal holidays as set forth in RCW 1.16.050, as now or hereafter amended. The time within which an act is to be done under the provisions of this chapter shall be computed by excluding the first working day and including the last working day.

Worker, personnel, man, person, employee, and other terms of like meaning, unless the context indicates otherwise means an employee of an employer who is employed in the business of his/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 his/her personal labor for an employer whether by manual labor or otherwise.

AMENDATORY SECTION (Amending WSR 00-23-100, filed 11/21/00, effective 1/1/01)

WAC 296-115-035 Specific inspection requirements.
(1) Drydocking or hauling out.

Each passenger vessel subject to the provisions in this section must be drydocked or hauled out at intervals not to exceed sixty months and the underwater hull and appendages, propellers, shafting, stern bearings, rudders, through-hull fittings, sea valves and strainers must be examined to determine that these items are in satisfactory condition.

(2) At the annual inspection the inspector must view the vessel afloat and conduct the following tests and inspections of the hull:

(a) Hull exterior and interior, bulkheads, and weather deck.

(b) Examine and test by operation all watertight closures in the hull, decks, and bulkheads.

(c) Inspect all railings and bulwarks and their attachment to the hull.

(d) Inspect weathertight closures above the weather deck and drainage or water from exposed decks and superstructure.

(3) At the annual inspection the inspector will examine and test the following items:

(a) Main propulsion machinery.

(b) Engine starting system.

(c) Engine control mechanisms.

(d) Auxiliary machinery.

(e) Fuel systems.

(f) Sea valves and bulkhead closure valves.

(g) Bilge and drainage systems.

(h) Electrical system, including circuit protection.

(4) Lifesaving and fire extinguishing equipment. At each annual inspection the inspector must inspect the life saving and fire extinguishing equipment for serviceability.

(5) Miscellaneous systems and equipment. At each annual inspection the marine dock inspector must inspect and test the vessel's steering apparatus, ground tackle, navigation lights, sanitary facilities, pressure vessels, and any other equipment aboard the vessel for serviceability and safety.

AMENDATORY SECTION (Amending WSR 04-14-028, filed 6/29/04, effective 1/1/05)

WAC 296-115-050 General requirements. (1) Application.

(a) The following rules are applicable to all vessels operated within the scope of this chapter.

(b) Where an existing vessel does not comply with a particular requirement of this section, the director may grant a temporary variance to allow time for modifications to be made.

(c) Where an existing vessel does not comply with a specific requirement contained herein but the degree of protection afforded is judged to be adequate for the service in which the vessel is used, the director may grant a permanent variance.

(2) Lifesaving equipment. Where equipment required by this section is required to be of an approved type, the equipment is required to be approved by the USCG.

(3) Lifesaving equipment required.

(a) All vessels carrying passengers must carry life floats or buoyant apparatus for all persons on board.

(b) All life floats or buoyant apparatus must be international orange in color.

(c) In the case of vessels operating not more than one mile from land, the director may permit operation with reduced amounts of life floats or buoyant apparatus, when, in his opinion, it is safe to do so.

(d) Lifeboats, life rafts, dinghies, dories, skiffs, or similar type craft may be substituted for the required life floats or buoyant apparatus if the substitution is approved by the director.

(e) Life floats, buoyant apparatus, or any authorized substitute must have the following equipment:

(i) A life line around the sides at least equivalent to 3/8-inch manila, festooned in bights of at least three feet, with a seine float in the center of each bight.

(ii) Two paddles or oars not less than four feet in length.

(iii) A painter of at least thirty feet in length and of at least two-inch manila or the equivalent.

(f) All vessels must have an approved adult type life preserver for each person carried, with at least ten percent additional of a type suitable for children.

(g) Life preservers must be stowed in readily accessible places in the upper part of the vessel, and each life preserver shall be marked with the vessel's name.

(h) All vessels must carry at least one life ring buoy of an approved type with sixty feet of line attached.

(i) The life ring buoy must be carried in a readily accessible location and must be capable of being cast loose at any time.

(4) Fire protection.

(a) The general construction of a vessel must minimize fire hazards.

(b) Internal combustion engine exhausts, boiler and galley uptakes, and similar sources of ignition must be kept clear of and suitably insulated from woodwork or other combustible material.

(c) Lamp, paint, and oil lockers and similar storage areas for flammable or combustible liquids must be constructed of metal or lined with metal.

(5) Fire protection equipment. Equipment required by this section, when required to be of an approved type, must be of a type approved by the USCG or other agency acceptable to the director.

(6) Fire pumps.

(a) All vessels carrying more than forty-nine passengers must carry an approved power fire pump, and all other vessels must carry an approved hand fire pump. These pumps must be provided with a suitable suction and discharge hose. These pumps may also serve as bilge pumps.

(b) Vessels required to have a power fire pump must also have a fire main system, including fire main, hydrants, hose, and nozzles. The fire hose may be a good commercial grade garden hose of not less than 5/8 inch size.

(7) Fixed fire extinguishing system.

(a) All vessels powered by internal combustion engines using gasoline or other fuel having a flashpoint of 110°F or lower, must have a fixed fire extinguishing system to protect the machinery and fuel tank spaces.

(b) This system must be an approved type using carbon dioxide and have a capacity sufficient to protect the space.

(c) Controls for the fixed system must be installed in an accessible location outside the space protected.

(8) Fire axe. All vessels must have one fire axe located in or near the pilothouse.

(9) Portable fire extinguishers.

(a) All vessels must have a minimum number of portable fire extinguishers of an approved type. The number required will be determined by the director.

(b) Portable fire extinguishers must be inspected at least once a month. Extinguishers found defective must be serviced or replaced.

(c) Portable fire extinguishers must be serviced at least once a year. The required service must consist of discharging and recharging foam and dry chemical extinguishers and weighing and inspecting carbon dioxide extinguishers.

(d) Portable fire extinguishers must be hydrostatically tested at intervals not to exceed those specified in (~~WAC 296-24-59211(2) and Table I (after August 31, 2001, see)~~ WAC 296-800-300((~~h~~))) in the safety and health core rules.

(e) Portable fire extinguishers of the vaporizing liquid type such as carbon tetrachloride and other toxic vaporizing liquids are prohibited and must not be carried on any vessel.

(f) Portable fire extinguishers must be mounted in brackets or hangers near the space protected. The location must be marked in a manner satisfactory to the director.

(10) Means of escape.

(a) Except as otherwise provided in this section, all vessels must be provided with not less than two avenues of escape from all general areas accessible to the passengers or where the crew may be quartered or normally employed. The avenues must be located so that if one is not available the other may be. At least one of the avenues should be independent of watertight doors.

(b) Where the length of the compartment is less than twelve feet, one vertical means of escape will be acceptable under the following conditions:

(i) There is no source of fire in the space, such as a galley stove or heater and the vertical escape is remote from the engine and fuel tank space; or

(ii) The arrangement is such that the installation of two means of escape does not materially improve the safety of the vessel or those aboard.

(11) Ventilation.

(a) All enclosed spaces within the vessel must be properly vented or ventilated. Where such openings would endanger the vessel under adverse weather conditions, means must be provided to close them.

(b) All crew and passenger space must be adequately ventilated in a manner suitable to the purpose of the space.

(12) Crew and passenger accommodations.

(a) Vessels with crew members living aboard must have suitable accommodations.

(b) Vessels carrying passengers must have fixed seating for the maximum number of passengers permitted to be carried.

(c) Fixed seating must be installed with spacing to provide for ready escape in case of fire or other casualty.

(d) Fixed seating must be installed as follows, except that special consideration may be given by the director if escape over the side can be readily accomplished through windows or other openings in the way of the seats:

(i) Aisles not over fifteen feet long must be not less than twenty-four inches wide.

(ii) Aisles over fifteen feet long must be not less than thirty inches wide.

(iii) Where seats are in rows the distance from seat front to seat front must be not less than thirty inches.

(e) Portable or temporary seating may be installed but must be arranged in general as provided for fixed seating.

(13) Toilet facilities and drinking water.

(a) Vessels must be provided with toilets and wash basins as specified in WAC 296-800-230, except that in the case of vessels used exclusively on short runs of approximately thirty minutes or less, the director may approve other arrangements.

(b) All toilets and wash basins must be fitted with adequate plumbing. Facilities for men and women must be in separate compartments, except in the case of vessels carrying forty-nine passengers and less, the director may approve other arrangements.

(c) Potable drinking water must be provided for all passengers and crew. The provisions of WAC 296-800-230 apply.

(d) Covered trash containers must be provided in passenger areas.

(14) Rails and guards.

(a) Except as otherwise provided in this section, rails or equivalent protection must be installed near the periphery of all weather decks accessible to passengers and crews. Where space limitations make deck rails impractical, such as at narrow catwalks in the way of deckhouse sides, hand grabs may be substituted.

(b) Rails must consist of evenly spaced courses. The spacing must not be greater than twelve inches except as provided in WAC 296-115-050 (14)(f). The lower rail courses may not be required where all or part of the space below the upper rail course is fitted with a bulwark, chain link fencing, wire mesh or the equivalent.

(c) On passenger decks of vessels engaged in ferry or excursion type operation, rails must be at least forty-two inches high. The top rail must be pipe, wire, chain, or wood and must withstand at least two hundred pounds of side loading. The space below the top rail must be fitted with bulwarks, chain link fencing, wire mesh, or the equivalent.

(d) On vessels in other than passenger service, the rails must be not less than thirty-six inches high, except that where vessels are used in special service, the director may approve other arrangements, but in no case less than thirty inches.

(e) Suitable storm rails or hand grabs must be installed where necessary in all passageways, at deckhouse sides, and at ladders and hatches where passengers or crew might have normal access.

(f) Suitable covers, guards, or rails must be installed in the way of all exposed and hazardous places such as gears or machinery. (See chapter 296-806 WAC, Machine safety for detailed requirements.)

(15) Machinery installation.

(a) Propulsion machinery.

(i) Propulsion machinery must be suitable in type and design for the propulsion requirements of the hull in which it is installed. Installations meeting the requirements of the USCG or other classification society will be considered acceptable to the director.

(ii) Installations using gasoline as a fuel must meet the requirements of applicable USCG standards.

(iii) Installations using diesel fuel must meet the requirements of applicable USCG standards.

(b) Auxiliary machinery and bilge systems.

(i) All vessels must be provided with a suitable bilge pump, piping and valves for removing water from the vessel.

(ii) Vessels carrying more than forty-nine passengers must have a power operated bilge pump. The source of power must be independent of the propulsion machinery. Other vessels must have a hand operated bilge pump, but may have a power operated pump if it is operated by an independent power source.

(c) Steering apparatus and miscellaneous systems.

(i) All vessels must be provided with a suitable steering apparatus.

(ii) All vessels must be provided with navigation lights and shapes, whistles, fog horns, and fog bells as required by the USCG rules of navigation.

(iii) All vessels must be equipped with a suitable number of portable battery lights for emergency purposes.

(d) Electrical installations. The electrical installations of all vessels must be at least equal to applicable USCG standards, or as approved by the director.

AMENDATORY SECTION (Amending WSR 00-23-100, filed 11/21/00, effective 1/1/01)

WAC 296-115-070 Rules of navigation. The operation and navigation of all vessels subject to this chapter must be in strict accordance with the United States Coast Guard Navigation Rules International/Inland, Commandants Instruction M16672.29C as now adopted, or hereafter legally amended by the United States Coast Guard.

(1) A copy of the United States Coast Guard Navigation Rules International/Inland, Commandants Instruction M16672.29C, must be on board all vessels subject to this chapter at all times when the vessel is under way.

(2) At least annually, where applicable, the operator of each vessel must "swing the vessel" to determine the actual compass readings in relation to true compass headings, and must maintain a record on board the vessel.

AMENDATORY SECTION (Amending WSR 06-08-087, filed 4/4/06, effective 9/1/06)

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))~~ chapter 296-841 WAC 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 chapter 296-856 WAC shall apply.

AMENDATORY SECTION (Amending WSR 06-05-027, filed 2/7/06, effective 4/1/06)

WAC 296-155-305 Signaling and flaggers.

Definition:

Flagger means a person who provides temporary traffic control.

For the purposes of this chapter, *MUTCD* means the Federal Highway Administration's Manual on Uniform Traffic Control as currently modified and adopted by the Washington state department of transportation.

Link: For the current version of the MUTCD, see the department of transportation's web site at <http://www.wsdot.wa.gov/biz/trafficoperations/mutcd.htm>.

(1) General requirements for signaling and flaggers.

(a) Employers must first apply the requirements in this section. Then you must set up and use temporary traffic controls according to the guidelines and recommendations in Part VI of the MUTCD.

(b) Job site workers with specific traffic control responsibilities must be trained in traffic control techniques, device usage, and placement.

Note:

- You may purchase copies of the MUTCD by writing:

U.S. Government Printing Office
Superintendent of Documents
Mail Stop: SSOP,
Washington D.C. 20402-9328

• You may view and print a copy of the MUTCD at the following web site <http://www.wsdot.wa.gov/biz/trafficoperations/mutcd.htm>.

(2) When to use flaggers.

(a) Flaggers are to be used only when other reasonable traffic control methods will not adequately control traffic in the work zone.

(b) If signs, signals, and barricades do not provide necessary protection from traffic at work zones and construction sites on or adjacent to a highway or street, then you must use flaggers or other appropriate traffic controls.

(3) Flagger signaling.

(a) Flagger signaling must be with sign paddles approved by WSDOT and conform to guidelines and recommendations of MUTCD.

(b) Sign paddles must comply with the requirements of the MUTCD.

(c) When flagging is done during periods of darkness, sign paddles must be retroreflective or illuminated in the same manner as signs.

(d) During emergency situations, red flags, meeting the specifications of the MUTCD, may be used to draw a driver's attention to particularly hazardous conditions. In non-emergency situations, a red flag may be held in a flagger's free hand to supplement the use of a sign paddle.

(4) Adequate warning of approaching vehicles. Employers must:

- Position work zone flaggers so they are not exposed to traffic or equipment approaching them from behind.
 - If this is not possible, then the employer, responsible contractor, and/or project owner must develop and use a method to ensure that flaggers have adequate visual warning of traffic and equipment approaching from behind.

Note:

- The following are some optional examples of methods that may be used to adequately warn or protect flaggers:
 - Mount a mirror on the flagger's hard hat.
 - Use an observer.
 - Use "jersey" barriers.

- The department recognizes the importance of adequately trained flaggers and supports industry efforts to improve the quality of flagger training. However, training alone is not sufficient to comply with the statutory requirement of revising flagger safety standards to improve options available that ensure flagger safety and that flaggers have adequate visual warning of objects approaching from behind them.

(5) High-visibility garments for flaggers.

(a) While flagging during daylight hours, a flagger must at least wear, as an outer garment:

- A high-visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, American National Standard for High-Visibility Safety Apparel.

- Consisting of at least 775 square inches of background material that are fluorescent yellow-green, fluorescent orange-red or fluorescent red in color;

AND

- 201 square inches of retroreflective material that encircles the torso and is placed to provide 360 degrees visibility around the flagger.

- A high visibility hard hat that is white, yellow, yellow-green, orange or red in color.

Note: A high-visibility garment meets Class 2 specifications if the garment:

- Meets the requirements above;

OR

- Has an ANSI "Class 2" label.

Definition:

For the purpose of this rule, **hours of darkness** means one-half hour before sunset to one-half hour after sunrise.

(b) While flagging during hours of darkness, a flagger must at least wear, as an outer garment:

- A high-visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999.

- Consisting of at least 775 square inches of background material that are fluorescent yellow-green, fluorescent orange-red or fluorescent red in color;

AND

- 201 square inches of retroreflective material that encircles the torso and is placed to provide 360 degrees visibility around the flagger.

- White coveralls, or other coveralls or trousers that have retroreflective banding on the legs designed according to ANSI/ISEA 107-1999 standards.

- When snow or fog limit visibility, pants, coveralls, or rain gear, meeting these additional requirements must be worn:

- In a highly visible color;
- With retroreflective banding on the legs;
- Designed according to ANSI/ISEA 107-1999.

- A high-visibility hard hat:

- Marked with at least 12 square inches of retroreflective material applied to provide 360 degrees of visibility.

Note: ANSI/ISEA 107-1999 is available by:

- Purchasing copies of ANSI/ISEA 107-1999 by writing:
 - American National Standards Institute

11 West 42nd Street
New York, NY 10036

OR

- Contacting the ANSI web site at <http://web.ansi.org/>.

OR

- Reading a copy of ANSI/ISEA 107-1999 at any Washington state library.

(6) Flagger training. Employers must make sure that:

(a) Each flagger has in their possession:

- A valid Washington traffic control flagger card; or
- A valid flagger card from a state such as:

- Oregon;

- Idaho;
- Montana;

OR

- Other states having a flagger training reciprocity agreement with Washington.

(b) The flagger card shows the following:

- Verification that the flagger training required is completed;
- Date the flagger received their flagger training;
- Name of the instructor providing the flagger training;
- Name of the state that issued the flagger card;
- The card's expiration date, not to exceed three years from the date of issuance;

AND

- The flagger's picture or a statement that says "valid with photo ID."

(c) Flagger training is based upon the MUTCD.

Exemption: Personnel that have not completed a flagger-training course may be assigned duties as flaggers only during emergencies. Emergency assignments are temporary and last only until a certified flagger can be put into the position.

Definition:

For the purpose of this rule, **emergency** means an unforeseen occurrence endangering life, limb, or property.

(7) Flagger orientation and traffic control plan.

(a) The employer, responsible contractor or project owner must conduct an orientation that familiarizes the flagger with the job site. This requirement applies each time the flagger is assigned to a new project or when job site conditions change significantly.

The orientation must include, but is not limited to:

- The flagger's role and location on the job site;
- Motor vehicle and equipment in operation at the site;
- Job site traffic patterns;
- Communications and signals to be used between flaggers and equipment operators;

- On-foot escape route;

AND

- Other hazards specific to the job site.

(b) If flaggers are used on a job that will last more than one day, then the employer, responsible contractor and/or project owner must keep on-site, a current site specific traffic control plan. The purpose of this plan is to help move traffic through or around the construction zone in a way that protects the safety of the traveling public, pedestrians and workers.

The plan must include, but is not limited to, the following items when they are appropriate:

- Sign use and placement;
- Application and removal of pavement markings;
- Construction;
- Scheduling;
- Methods and devices for delineation and channelization;
- Placement and maintenance of devices;
- Placement of flaggers;
- Roadway lighting;
- Traffic regulations;

AND

- Surveillance and inspection.

(8) Advance warning signs.

(a) Employers must provide the following on all flagging operations:

- A three sign advance warning sequence on all roadways with a speed limit below 45 mph.
- A four sign advance warning sequence on all roadways with a 45 mph or higher speed limit.

(b) Warning signs must reflect the actual condition of the work zone. When not in use, warning signs must either be taken down or covered.

(c) Employers must make sure to follow Table 1 for spacing of advance warning sign placement.

Table 1. Advanced Warning Sign Spacing

Road Type	Speed	Distances Between Advance Warning Signs*			
		A**	B**	C**	D**
Freeways & Expressways	70 55	1,500 ft.+/- or per the MUTCD.	1,500 ft.+/- or per the MUTCD.	1,500 ft.+/- or per the MUTCD.	1,500 ft.+/- or per the MUTCD.
Rural Highways	65 60	((1,000)) 800 ft.+/-	((1,000)) 800 ft.+/-	((1,000)) 800 ft.+/-	((1,000)) 800 ft.+/-
Rural Roads	55 45	500 ft.+/-	500 ft.+/-	500 ft.+/-	500 ft.+/-
Rural Roads and Urban Arterials	40 35	350 ft.+/-	350 ft.+/-	350 ft.+/-	N/A
Rural Roads, Urban Streets, Residential Business Districts	30 25	200 ft.***	200 ft.***	200 ft.***	N/A
Urban Streets	25 or less	100 ft.***	100 ft.***	100 ft.***	N/A

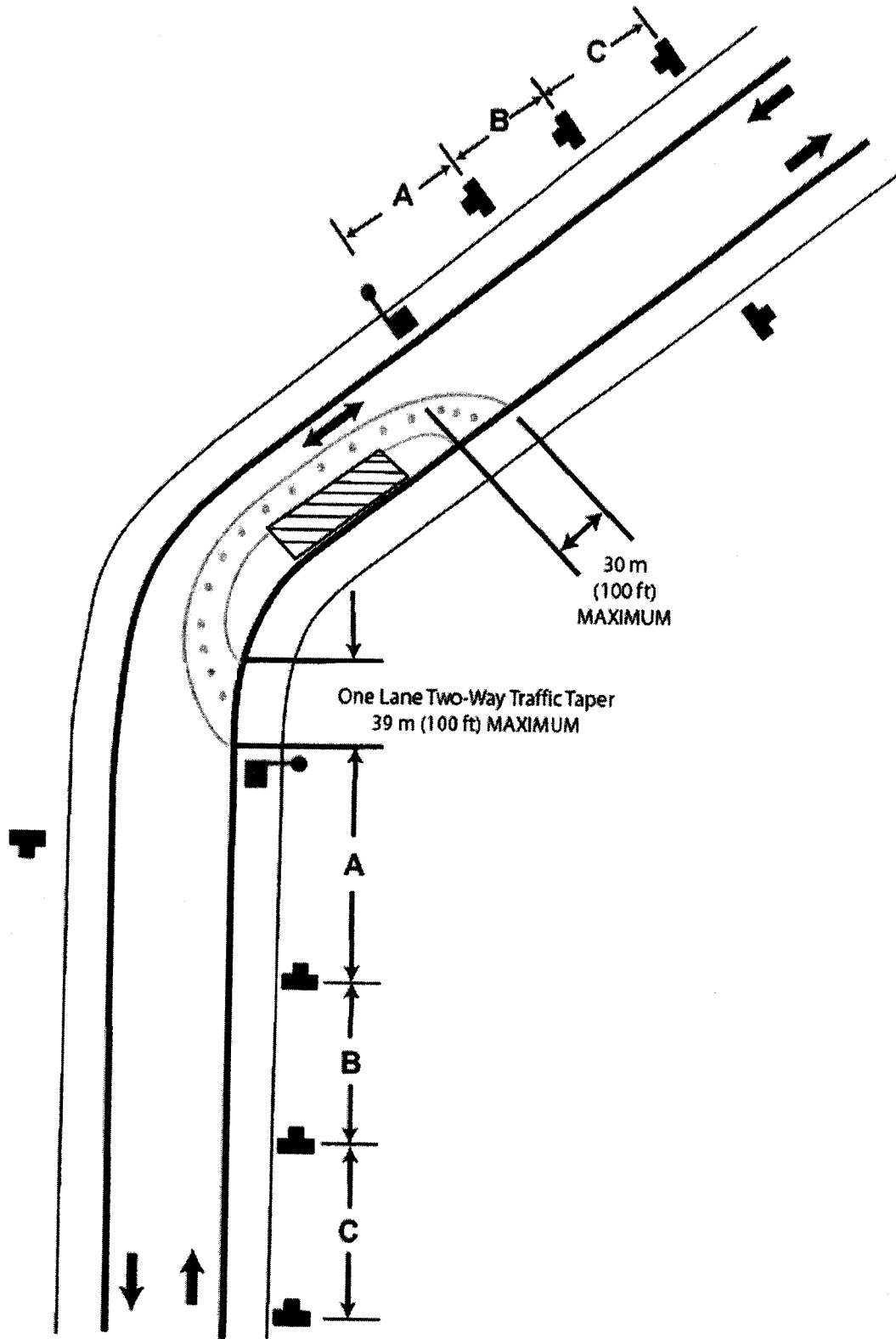
*All spacing may be adjusted to accommodate interchange ramps, at-grade intersections, and driveways.

**This refers to the distance between advance warning signs. See Figure 1, Typical Lane Closure on Two-Lane Road. This situation is typical for roadways with speed limits less than 45 mph.

***This spacing may be reduced in urban areas to fit roadway conditions.

- Exemption:** In a mobile flagging operation, as defined by the MUTCD when the flagger is moving with the operation, the "flagger ahead (symbol or text)" sign must be:
- Within 1,500 feet of the flagger;
- AND**
- The flagger station must be seen from the sign.

If terrain does not allow a motorist to see the flagger from the "flagger ahead" sign, the distance between the flagger and the sign must be shortened to allow visual contact, but in no case can the distance be less than the distance specified in Table 1, Advanced Warning Sign Spacing.



(9) Providing a safe job site for flaggers. Employers, responsible contractors and/or project owners must make sure that:

(a) Flagger stations are located far enough in advance of the work space so that the approaching road users will have sufficient distance to stop before entering the work space. Follow Table 2 for the distance of the flagger workstation in advance of the work space.

Table 2. Distance of Flagger Station in Advance of the Work Space

Speed* (mph)	Distance (ft)**
20	35
25	55
30	85
35	120
40	170
45	220
50	280
55	335
60	415
65	485

* Posted speed, off-peak 85th-percentile speed prior to work starting or the anticipated operating speed.

** This spacing may be reduced to fit roadway and worksite conditions. Distances greater than those listed in the table are acceptable.

(b) Flaggers stand either on the shoulder adjacent to the road user being controlled or in the closed lane prior to stopping road users. A flagger must only stand in the lane being used by moving road users after road users have stopped.

Definition:

Road user means a vehicle operator, bicyclist, or pedestrian within a public roadway, including workers in temporary traffic control zones.

(c) Flagger workstations are illuminated during hours of darkness by floodlights that do not create glare that poses a hazard for drivers.

Note: To identify potential glare, observe the lighted area from various directions and angles on the main roadway after initial floodlight setup.

Exemption: Emergency situations are exempt from these illumination requirements. For the purpose of this rule, **emergency** means an unforeseen occurrence endangering life, limb, or property.

(d) Flaggers are not assigned other duties while engaged in flagging activities.

(e) Flaggers do not use devices that may distract the flagger's vision, hearing, or attention.

- Examples of these devices include cell phones, pagers, radios, and headphones.

- Devices such as two-way radios used for communications between flaggers to direct traffic or ensure flagger safety are acceptable.

(f) Flaggers receive a rest period of at least ten minutes, on the employer's time, for each four hours of working time.

- Rest periods must be scheduled as near as possible to the midpoint of the work period.

- A flagger must not be allowed to work more than three hours without a rest period.

Exemption: Scheduled rest periods are not required where the nature of the work allows a flagger to take intermittent rest periods equivalent to ten minutes for each four hours worked.

AMENDATORY SECTION (Amending Order 88-04, filed 5/11/88)

WAC 296-155-456 Hazardous (classified) locations.

(1) Scope. This section sets forth requirements for electric equipment and wiring in locations which are classified depending on the properties of the flammable vapors, liquids or gases, or combustible dusts or fibers which may be present therein and the likelihood that a flammable or combustible concentration or quantity is present. Each room, section or area shall be considered individually in determining its classification. These hazardous (classified) locations are assigned six designations as follows: Class I, Division 1; Class I, Division 2; Class II, Division 1; Class II, Division 2; Class III, Division 1; Class III, Division 2. For definitions of these locations see WAC ((~~296-155-428~~) 296-155-462. All applicable requirements in this part apply to all hazardous (classified) locations, unless modified by provisions of this section.

(a) All components and utilization equipment used in a hazardous location shall be chosen from among those listed by a nationally recognized testing laboratory, such as Underwriters' Laboratories, Inc., or Factory Mutual Engineering Corp., except custom-made components and utilization equipment.

(b) Equipment approved for a specific hazardous location shall not be installed or intermixed with equipment approved for another specific hazardous location.

(2) Electrical installations. Equipment, wiring methods, and installations of equipment in hazardous (classified) locations shall be approved as intrinsically safe or approved for the hazardous (classified) location or safe for the hazardous (classified) location. Requirements for each of these options are as follows:

(a) Intrinsically safe. Equipment and associated wiring approved as intrinsically safe is permitted in any hazardous (classified) location included in its listing or labeling.

(b) Approved for the hazardous (classified) location.

(i) General. Equipment shall be approved not only for the class of location but also for the ignitable or combustible properties of the specific gas, vapor, dust, or fiber that will be present.

Note: NFPA 70, the National Electrical Code, lists or defines hazardous gases, vapors, and dusts by "groups" characterized by their ignitable or combustible properties.

(ii) Marking. Equipment shall not be used unless it is marked to show the class, group, and operating temperature or temperature range, based on operation in a 40°C ambient, for which it is approved. The temperature marking shall not exceed the ignition temperature of the specific gas, vapor, or dust to be encountered. However, the following provisions modify this marking requirement for specific equipment:

(A) Equipment of the nonheat-producing type (such as junction boxes, conduit, and fitting) and equipment of the heat-producing type having a maximum temperature of not more than 100°C (212°F) need not have a marked operating temperature or temperature range.

(B) Fixed lighting fixtures marked for use only in Class I, Division 2 locations need not be marked to indicate the group.

(C) Fixed general-purpose equipment in Class I locations, other than lighting fixtures, which is acceptable for use in Class I, Division 2 locations need not be marked with the class, group, division, or operating temperature.

(D) Fixed dust-tight equipment, other than lighting fixtures, which is acceptable for use in Class II, Division 2 and Class III locations need not be marked with the class, group, division, or operating temperature.

(c) Safe for the hazardous (classified) location. Equipment which is safe for the location shall be of a type and design which the employer demonstrates will provide protection from the hazards arising from the combustibility and flammability of vapors, liquids, gases, dusts, or fibers.

Note: The National Electrical Code, NFPA 70, contains guidelines for determining the type and design of equipment and installations which will meet this requirement. The guidelines of this document address electric wiring, equipment, and systems installed in hazardous (classified) locations and contain specific provisions for the following: Wiring methods, wiring connections, conductor insulation, flexible cords, sealing and drainage, transformers, capacitors, switches, circuit breakers, fuses, motor controllers, receptacles, attachment plugs, meters, relays, instruments, resistors, generators, motors, lighting fixtures, storage battery charging equipment, electric cranes, electric hoists and similar equipment, utilization equipment, signaling systems, alarm systems, remote control systems, local loud speaker and communication systems, ventilation piping, live parts, lightning surge protection, and grounding. Compliance with these guidelines will constitute one means, but not the only means, of compliance with this subsection.

(3) Conduits. All conduits shall be threaded and shall be made wrench-tight. Where it is impractical to make a threaded joint tight, a bonding jumper shall be utilized.

AMENDATORY SECTION (Amending WSR 98-05-046, filed 2/13/98, effective 4/15/98)

WAC 296-155-605 Equipment. (1) General requirements.

(a) All equipment left unattended at night, adjacent to a highway in normal use, or adjacent to construction areas where work is in progress, shall have appropriate lights or reflectors, or barricades equipped with appropriate lights or reflectors, to identify the location of the equipment.

(b) All tire servicing of multipiece and single-piece rim wheels are subject to the requirements of (~~WAC 296-155-61701 through 296-155-61713~~) chapter 296-864 WAC.

(c)(i) Heavy machinery, equipment, or parts thereof, which are suspended or held aloft by use of slings, hoists, or jacks shall be substantially blocked or cribbed to prevent falling or shifting before employees are permitted to work under or between them. Bulldozer and scraper blades, end-loader buckets, dump bodies, and similar equipment, shall be either fully lowered or blocked when being repaired or when not in

use. All controls shall be in a neutral position, with the motors stopped and brakes set, unless work being performed required otherwise.

(ii) Whenever the equipment is parked, the parking brake shall be set. Equipment parked on inclines shall have the wheels chocked and the parking brake set.

(d) The use, care and charging of all batteries shall conform to the requirements of part I of this chapter.

(e) All cab glass shall be safety glass, or equivalent, that introduces no visible distortion affecting the safe operation of any machine covered by this part.

(f) All equipment covered by this part shall comply with the requirements of WAC 296-155-525 (3)(a) when working or being moved in the vicinity of power lines or energized transmitters.

(g) Where traffic is diverted onto dusty surfaces, good visibility shall be maintained by the suppression of dust, through the periodic application of oil or water to the grade surface, as required.

(h) No equipment, vehicle, tool, or individual shall operate within 10 feet of any power line or electrical distribution equipment except in conformity with the requirements of WAC 296-155-525 (3)(a).

(2) Specific requirements. (Reserved.)

AMENDATORY SECTION (Amending WSR 04-24-089, filed 12/1/04, effective 1/1/05)

WAC 296-155-615 Material handling equipment. (1)

General requirements for earthmoving equipment.

(a) Scope.

These rules apply to the earthmoving equipment. Some examples of earthmoving equipment are:

- Scrapers;
- Loaders;
- Crawler or wheel tractors;
- Bulldozers;
- Off-highway trucks;
- Graders;
- Agricultural and industrial tractors;

AND

- Similar equipment.

(b) Seat belts.

• Seat belts must be provided and used by all operators and passengers on all equipment covered by this section.

• Seat belts must meet the requirements of the Society of Automotive Engineers, J386-1969, Seat Belts for Construction Equipment.

• Seat belts for agricultural and light industrial tractors must meet the seat belt requirements of Society of Automotive Engineers J333a-1970, Operator Protection for Agricultural and Light Industrial Tractors.

Exemption: Seat belts are not required for equipment designed only for standup operation.

• Seat belts must not be used on equipment that does not have rollover protective structure (ROPS) or adequate canopy protection in place.

Exemption: Mechanics and persons in training may ride on the equipment without a seatbelt if one is not provided.

(c) Access roadways and grades.

• Equipment must not be operated on access roadway or grades unless they are constructed and/or maintained to allow for the safe operation of the equipment.

• Every emergency access ramp and berm used by an employer must be constructed to restrain and control run-away vehicles.

(d) Brakes.

Earthmoving equipment must have brakes capable of stopping and holding the equipment fully loaded.

• Equipment mentioned in (a) of this subsection, General requirements for earthmoving equipment, must have brakes meeting the specifications in Society of Automotive Engineers SAE-J237, Loader Dozer-1971, J236, Graders-1971, and J319b, Scrapers-1971.

• Brake systems for self-propelled rubber-tired off-highway equipment manufactured after January 1, 1972, must meet the applicable minimum performance criteria set forth in the following Society of Automotive Engineers Recommended Practices:

Self-propelled scrapers	SAE J319b-1971
Self-propelled graders	SAE J236-1971
Truck and wagons	SAE J166-1971
Front-end loaders and dozers	SAE J237-1971

(e) Fenders.

• If pneumatic-tired earthmoving haulage equipment has a maximum speed that exceeds fifteen miles per hour, then the equipment must be equipped with fenders on all wheels to meet the requirements of Society of Automotive Engineers SAE J321a-1970, Fenders for Pneumatic-Tired Earthmoving Haulage Equipment.

• An employer may, at any time, seek to show under WAC 296-155-010, Variance and procedure, that the uncovered wheels present no hazard to personnel from flying materials.

Note: Examples of pneumatic-tired earthmoving haulage equipment may include:

- Trucks;
 - Scrapers;
 - Tractors;
- AND**
- Trailing units.

(f) Rollover protective structures (ROPS).

For requirements pertaining to rollover protective structures and overhead protection, see WAC 296-155-950 through 296-155-965.

(g) Audible alarms.

• All bidirectional machines must be equipped with a horn, distinguishable from the surrounding noise level. This horn must be:

– Operated as needed when the machine is moving in either direction;

AND

– Maintained in an operative condition.

Note: Examples of bidirectional machines include:

- Rollers;
- Compactors;
- Front-end loaders;

- Bulldozers;
- AND**
- Similar equipment.

• Employers must make sure that earthmoving or compacting equipment with an obstructed view to the rear in reverse is not operated unless:

– A reverse signal alarm distinguishable from the surrounding noise level is used;

OR

– An observer signals that it is safe to back up.

• If the surrounding noise level is of such amplitude that reverse signal alarms are not effective, then amber strobe lights must be used.

(h) Operators must look in the direction of travel.

The driver must look in the direction of, and keep a clear view of the path of travel, when operating equipment in reverse.

Exemption: See (g)(ii) of this subsection, Audible alarms, for requirements pertaining to equipment that has an obstructed view to the rear.

(i) Scissor points.

Scissor points on all front-end loaders, which constitute a hazard to the operator during normal operation, must be guarded.

(j) Tractors.

• Tractor motors must be cranked only by operators or other experienced persons.

• Waterproof and comfortable seat cushions must be provided on tractors at all times when working.

• Operator must not leave controls of tractor with master clutch engaged.

(k) Winch lines.

Winch lines must be maintained in good condition and provided with spliced eye, knob or hook in working end, except under conditions where unspliced end is required.

(l) Bulldozers and carry-all gates.

• Repairs on blade or dozer equipment must not be initiated unless the motor has been stopped and dozer blade is resting on the ground or securely blocked. The same applies to carry-all gates.

• Bulldozer blades and carry-all gates must rest on the ground or on blocking when machines are not in operation.

(m) Moving equipment.

Personnel must not get on or off machine while machine is in motion.

(n) Hazardous conditions.

Where excessive dust conditions are created, such areas must be sprinkled with water or an environmentally safe solution to keep dust at a minimum.

Reference: When dust presents a hazard, see chapter 296-841 WAC, Respiratory hazards for additional requirements.

(2) Excavating and other equipment.

(a) Tractors covered in subsection (1) of this section must have seat belts as required for the operators when seated in the normal seating arrangement for tractor operation.

(b) For the purposes of this part and of Part L of this chapter, the names and descriptions for measurement of dimensions of machinery and attachments must be as

described in Society of Automotive Engineers 1970 Handbook, pages 1088 through 1103.

(c) The safety requirements, ratios, or limitations applicable to machines or attachment usage covered in Power Crane and Shovel Association's Standards No. 1 and No. 2 of 1968, and No. 3 of 1969, must be complied with, and must apply to cranes, machines, and attachments under this part.

(3) Lifting and hauling equipment (other than equipment covered under Part L of this chapter). Industrial trucks (including forklifts) shall meet the requirements of ~~(WAC 296-24-230)~~ chapter 296-863 WAC, WAC 296-155-605 and the following:

(a) Lift trucks, stackers, etc., shall have the rated capacity clearly posted on the vehicle so as to be clearly visible to the operator. When auxiliary removable counter-weights are provided by the manufacturer, corresponding alternate rated capacities also shall be clearly shown on the vehicle. These ratings shall not be exceeded.

(b) No modifications or additions which affect the capacity or safe operation of the equipment shall be made without the manufacturer's or professional 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.

(c) If a load is lifted by two or more trucks working in unison, the proportion of the total load carried by any one truck shall not exceed its capacity.

(d) Steering or spinner knobs shall not be attached to the steering wheel unless the steering mechanism is of a type that prevents road reactions from causing the steering handwheel to spin. The steering knob shall be mounted within the periphery of the wheel.

(e) All high lift rider industrial trucks shall be equipped with overhead guards which meet the configuration and structural requirements as defined in paragraph 502 of American National Standards Institute B56.1-1975, Safety Standards for Powered Industrial Trucks.

(f) All industrial trucks in use shall meet the applicable requirements of design, construction, stability, inspection, testing, maintenance, and operation, as defined in American National Standards Institute B56.1-1975, Safety Standards for Powered Industrial Trucks.

(g) Unauthorized personnel shall not be permitted to ride on powered industrial trucks. A safe place to ride shall be provided where riding of trucks is authorized.

(h) When a forklift truck is used for elevating workers a platform shall be specifically built for that purpose and shall comply with the following requirements:

(i) The platform shall be securely attached to the forks and shall have standard guardrails and toeboards on all open sides.

(ii) The hydraulic system of the forklift shall be so designed that the lift mechanism will not drop faster than one hundred thirty-five feet per minute in the event of a failure in any part of the system. Forklifts used for elevating platforms shall be identified that they are so designed.

(iii) A safety strap shall be installed or the control lever shall be locked to prevent the boom from tilting.

(iv) An operator shall be at the controls of the forklift equipment while persons are on the platform.

(v) The operator shall be in the normal operating position while raising or lowering the platform.

(vi) The vehicle shall not travel from point to point while workers are on the platform except that inching or maneuvering at very slow speed is permissible.

(vii) The area between workers on the platform and the mast shall be adequately guarded to prevent contact with chains or other shear points.

(viii) All platforms shall be visually inspected daily or before each use by the person in charge of the work being performed, and shall be tested as frequently as is necessary to maintain minimum safety factors.

(ix) Whenever a truck, except for high lift order picker trucks, is equipped with vertical hoisting controls elevatable with the lifting carriage or forks, the following precautions shall be taken for the protection of personnel being elevated.

(A) Provide a platform secured to the lifting carriage and/or forks.

(B) Provide means whereby personnel on the platform can shut off power to the truck.

(C) Provide such protection from falling objects as indicated necessary by the operating conditions.

AMENDATORY SECTION (Amending WSR 02-13-115, filed 6/19/02, effective 9/1/02)

WAC 296-155-706 Structural steel assembly. (1) Structural stability must be maintained at all times during the erection process.

• Make sure that multistory structures have the following:

– Permanent floors installed as the erection of structural members progress;

– No more than eight stories between the erection floor and the upper-most permanent floor; and

– No more than four floors or forty-eight feet (14.6 m), whichever is less, of unfinished bolting or welding above the foundation or uppermost permanent secured floor.

Exception: The above applies except where the structural integrity is maintained as a result of design.

(2) **Walking/working surfaces.**

(a) Shear connectors and other similar devices.

(i) Shear connectors, reinforcing bars, deformed anchors or threaded studs must not be attached to the top flanges of beams, joists or beam attachments so they project vertically from or horizontally across the top flange of the member until after the metal decking, or other walking/working surface has been installed. This becomes a tripping hazard. Examples of shear connectors are headed steel studs, steel bars or steel lugs.

(ii) Installation of shear connectors on composite floors. When shear connectors are used in construction of composite floors, roofs and bridge decks, employees must lay out and install the shear connectors after the metal decking has been installed, using the metal decking as a working platform.

(b) Slip resistance of metal decking. (Reserved.)

(c) ~~((Workers must not be permitted to walk the top surface of any structural steel member installed after July 18,~~

2006, that has been coated with paint or similar material. Except when documentation or certification is provided that the coating has achieved a minimum average slip resistance of .50 when measured with an English XL tribometer or equivalent tester on a wetted surface at a testing laboratory is provided. Such documentation or certification must be based on the appropriate ASTM standard test method conducted by a laboratory capable of performing the test. The results must be available at the site and to the steel erector. (Appendix B to this part references appropriate ASTM standard test methods that may be used to comply with this requirement.)
Reserved.

(d) Safe access must be provided to the working level. Employees must not slide down ropes, columns, or ladders.

(3) Plumbing-up.

(a) When deemed necessary by a competent person, plumbing-up equipment must be installed in conjunction with the steel erection process to ensure the stability of the structure.

(b) When used, plumbing-up equipment must be in place and properly installed before the structure is loaded with construction material such as loads of joists, bundles of decking or bundles of bridging.

(c) Plumbing-up equipment must be removed only with the approval of a competent person.

(4) Metal decking.

(a) Hoisting, landing and placing of metal decking bundles.

(i) Bundle packaging and strapping must not be used for hoisting unless specifically designed for that purpose.

(ii) If loose items such as dunnage, flashing, or other materials are placed on the top of metal decking bundles to be hoisted, such items must be secured to the bundles.

(iii) Bundles of metal decking on joists must be landed in accordance with WAC 296-155-709 (5)(d).

(iv) Metal decking bundles must be landed on framing members so that enough support is provided to allow the bundles to be unbanded without dislodging the bundles from the supports.

(v) At the end of the shift or when environmental or job site conditions require, metal decking must be secured against displacement.

(b) Roof and floor holes and openings. Metal decking at roof and floor holes and openings must be installed as follows:

(i) Framed metal deck openings must have structural members turned down to allow continuous deck installation except where not allowed by structural design constraints or constructibility.

(ii) Roof and floor holes and openings must be decked over. Where large size, configuration or other structural design does not allow openings to be decked over (such as elevator shafts, stair wells, etc.) employees must be protected in accordance with chapter 296-155 WAC, Part C-1 or Part K.

(iii) Metal decking holes and openings must not be cut until immediately prior to being permanently filled with the equipment or structure needed or intended to fulfill its specific use and which meets the strength requirements of (c) of this subsection, or must be immediately covered.

(c) **Covering roof and floor openings.** Smoke dome or skylight fixtures that have been installed are not considered covers for the purpose of this section unless they meet the strength requirements of WAC 296-155-505 (4)(g) (Part K).

(d) **Decking gaps around columns.** Wire mesh, exterior plywood, or equivalent, must be installed around columns where planks or metal decking do not fit tightly. The materials used must be of sufficient strength to provide fall protection for personnel and prevent objects from falling through.

(e) Installation of metal decking.

(i) Metal decking must be laid tightly and immediately secured upon placement to prevent accidental movement or displacement.

(ii) During initial placement, metal decking panels must be placed to ensure full support by structural members.

(f) Derrick floors.

(i) A derrick floor must be fully decked and or planked and the steel member connections completed to support the intended floor loading.

(ii) Temporary loads placed on a derrick floor must be distributed over the underlying support members so as to prevent local overloading of the deck material.

AMENDATORY SECTION (Amending Order 74-19, filed 5/6/74)

WAC 296-301-130 Extractors. (1) Centrifugal extractor.

(a) Cover. Each extractor shall be equipped with a metal cover.

(b) Interlocking device. Each extractor shall be equipped with an interlocking device that will prevent the cover from being opened while the basket is in motion, and also prevent the power operation of the basket while the cover is open.

(c) Brakes. Each extractor shall be equipped with a mechanically or electrically operated brake to quickly stop the basket when the power driving the basket is shut off.

(d) Maximum allowable speed. Each centrifugal extractor shall be effectively secured in position on the floor or foundation so as to eliminate unnecessary vibration, and shall not be operated at a speed greater than the manufacturer's rating, which shall be stamped where easily visible in letters not less than one-quarter inch in height. The maximum allowable speed shall be given in revolutions per minute (rpm).

(2) Engine drum extractor—Over-speed governor. Each engine individually driving an extractor shall be provided with an approved engine stop (~~approved as specified in WAC 296-24-006, of the general safety and health standards,~~) and a speed limit governor.

(3) Squeezer or wringer extractor—Nip guards. All nip guards shall comply with the requirements of WAC 296-301-04503(4).

AMENDATORY SECTION (Amending Order 74-19, filed 5/6/74)

WAC 296-301-225 Workroom ventilation. In all workrooms in which potentially toxic substances are used, the maximum allowable concentrations listed in (~~WAC 296-62-075 through 296-62-07515, of the general occupational~~

~~health standards~~) chapter 296-841 WAC, airborne contaminants, shall be maintained. Open surface tanks shall conform to the requirements of WAC 296-62-11021.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-303-01001 General industrial safety standards. (1) General. These standards shall be augmented by the Washington state general safety and health standards, and any other regulations of general application which are or will be made applicable to all industries.

(2) Additional requirements. The employer shall comply with the provisions of the standards referenced in this section. In the event of any conflict between this section and WAC 296-303-015 through 296-303-040, the requirements of WAC 296-303-015 through 296-303-040 shall apply. The provisions of this chapter shall prevail in the event of conflict with, or duplication of, provisions contained in chapters 296-24, 296-62, and 296-800 WAC.

(a) Industrial lighting. American National Standard Practice for Industrial Lighting, ANSI A11.1-1965 (R-1970).

(b) Floor and wall openings, railings, and toeboards. American National Standard Safety Requirements for Floor and Wall Openings, Railings, and Toeboards, ANSI ((A13)) 12.1-1956.

(c) Identification of piping systems. American National Standard ((~~Safety Standard for Mechanical Power Transmission Apparatus~~)) Scheme for the Identification of Piping Systems, ANSI A13.1-1956.

(d) Mechanical power transmission apparatus. American National Standard Safety Standard for Mechanical Power Transmission Apparatus, ANSI B15.1-1971.

(e) Pressure piping—Power piping. American National Standard Code for Pressure Piping—Power Piping, ANSI B31.1.0-1967. Addenda to the American National Standard Code for Pressure Piping—Power Piping, ANSI B31.1.0a-1969.

(f) Sanitation. American National Standard Requirements for Sanitation in Places of Employment, ANSI Z4.1-1968.

(g) Local exhaust systems. American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2-1960.

(h) Gas appliances and gas piping. American National Standard for the Installation of Gas Appliances and Gas Piping, ANSI Z21.30-1964.

(3) WAC 296-24-012 and 296-800-360 shall apply where applicable to this industry.

AMENDATORY SECTION (Amending Order 74-18, filed 5/6/74)

WAC 296-303-02001 Washroom machines. (1) Marking machine. Each power marking machine shall be equipped with a spring-compression device of such design as to prevent injury to fingers, should they be caught between the marking plunger and platen; or the marking machine shall be equipped with a control mechanism that will require the simultaneous action of both hands to operate the machine; or there shall be a guard that will act as a barrier in front of, and

which will prevent the operator's fingers from coming into contact with the marking plunger.

(2) Washing machine.

(a) Each washing machine shall be equipped with an interlocking device that will prevent the inside cylinder from moving under power when the outer door on the case or shell is open, and will also prevent the door from being opened while the inside cylinder is in motion. This device should not prevent the movement of the inner cylinder under the action of a hand-operated mechanism or under the operation of an "inching device."

(b) Each washing machine shall be provided with means for holding open the doors or covers of inner and outer cylinders or shells while being loaded or unloaded. Spring loaded devices are an acceptable means.

(3) Extractor.

(a) Each extractor shall be equipped with a metal cover.

(b) Each extractor shall be equipped with an interlocking device that will prevent the cover from being opened while the basket is in motion, and will also prevent the power operation of the basket while the cover is not fully closed and secured. This device should not prevent the movement of the basket by hand to ensure an even loading.

(c) Each extractor shall also be effectively secured in position on the floor or foundation so as to eliminate unnecessary vibrations, and shall not be operated at a speed greater than that given in the manufacturer's rating, which shall be stamped on the inside of the basket where it is easily visible, in letters not less than one-fourth inch in height. The maximum permissible speed shall be given in revolutions per minute.

(d) Each engine individually driving an extractor shall be provided with an approved engine stop (~~(approved as specified in WAC 296-24-006, of the general safety and health standards,))~~ and a speed-limit governor. It is suggested that where an extractor is driven by a direct-current motor a "no field" release be installed to prevent overspeed, which may result from an open or broken field.

(4) Power wringer. Each power wringer shall be equipped with a safety bar or other guard across the entire front of the feed or first pressure rolls, so arranged that the striking of the bar or guard by the hand of the operator or other person will stop the machine.

AMENDATORY SECTION (Amending WSR 05-19-086, filed 9/20/05, effective 12/1/05)

WAC 296-304-01001 Definitions. "Alarm" - A signal or message from a person or device that indicates that there is a fire, medical emergency, or other situation that requires emergency response or evacuation. At some shipyards, this may be called an "incident" or a "call for service."

"Alarm system" - A system that warns employees at the worksite of danger.

"Anchorage" - A secure point to attach lifelines, lanyards, or deceleration devices.

"Body belt" - A strap with means to both secure it around the waist and to attach it to a lanyard, lifeline, or deceleration device. Body belts may be used only in fall restraint or positioning device systems and may not be used

for fall arrest. Body belts must be at least one and five-eighths inches (4.13 cm) wide.

"Body harness" - Straps to secure around an employee so that fall arrest forces are distributed over at least the thighs, shoulders, chest and pelvis with means to attach it to other components of a personal fall arrest system.

"Class II standpipe system" - A one and one-half inch (3.8 cm) hose system which provides a means for the control or extinguishment of incipient stage fires.

"Cold work" - Work that does not involve riveting, welding, burning, or other fire-producing or spark-producing operations.

"Contract employer" - An employer, such as a painter, joiner, carpenter, or scaffolding subcontractor, who performs work under contract to the host employer or to another employer under contract to the host employer at the host employer's worksite. This excludes employers who provide incidental services that do not influence shipyard employment (such as mail delivery or office supply services).

"Competent person" - A person who can recognize and evaluate employee exposure to hazardous substances or to other unsafe conditions and can specify the necessary protection and precautions necessary to ensure the safety of employees as required by these standards.

"Confined space" - A small compartment with limited access such as a double bottom tank, cofferdam, or other small, confined space that can readily create or aggravate a hazardous exposure.

"Connector" - A device used to connect parts of a personal fall arrest system or parts of a positioning device system together. It may be:

- An independent component of the system (such as a carabiner); or
- An integral component of part of the system (such as a buckle or D-ring sewn into a body belt or body harness or a snaphook spliced or sewn to a lanyard or self-retracting lanyard).

"Dangerous atmosphere" - An atmosphere that may expose employees to the risk of death, incapacitation, injury, acute illness, or impairment of ability to self-rescue (i.e., escape unaided from a confined or enclosed space).

"Deceleration device" - A mechanism, such as a rope grab, rip stitch lanyard, specially woven lanyard, tearing or deforming lanyard, or automatic self-retracting lifeline/lanyard, that serves to dissipate a substantial amount of energy during a fall arrest, or to limit the energy imposed on an employee during fall arrest.

"Deceleration distance" - The additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured from the location of an employee's body belt or body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, to the location of that attachment point after the employee comes to a full stop.

"Designated area" - An area established for hot work after an inspection that is free of fire hazards.

"Director" - The director of the department of labor and industries or a designated representative.

"Drop test" - A method utilizing gauges to ensure the integrity of an oxygen fuel gas burning system. The method requires that the burning torch is installed to one end of the oxygen and fuel gas lines and then the gauges are attached to the other end of the hoses. The manifold or cylinder supply valve is opened and the system is pressurized. The manifold or cylinder supply valve is then closed and the gauges are watched for at least sixty seconds. Any drop in pressure indicates a leak.

"Emergency operations" - Activities performed by fire response organizations that are related to: Rescue, fire suppression, emergency medical care, and special operations or activities that include responding to the scene of an incident and all activities performed at that scene.

"Employee" - Any person engaged in ship repairing, ship building, or ship breaking or related employment as defined in these standards.

"Employer" - An employer with employees who are employed, in whole or in part, in ship repair, ship building and ship breaking, or related employment as defined in these standards.

"Enclosed space" - A space, other than a confined space, that is enclosed by bulkheads and overhead. It includes cargo holds, tanks, quarters, and machinery and boiler spaces.

"Equivalent" - Alternative designs, materials, or methods to protect against a hazard which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

"Fire hazard" - A condition or material that may start or contribute to the spread of fire.

"Fire protection" - Methods of providing fire prevention, response, detection, control, extinguishment, and engineering.

"Fire response" - The activity taken by the employer at the time of an emergency incident involving a fire at the worksite, including fire suppression activities carried out by internal or external resources or a combination of both, or total or partial employee evacuation of the area exposed to the fire.

"Fire response employee" - A shipyard employee who carries out the duties and responsibilities of shipyard fire fighting in accordance with the fire safety plan.

"Fire response organization" - An organized group knowledgeable, trained, and skilled in shipyard fire fighting operations that responds to shipyard fire emergencies, including: Fire brigades, shipyard fire departments, private or contractual fire departments, and municipal fire departments.

"Fire suppression" - The activities involved in controlling and extinguishing fires.

"Fire watch" - The activity of observing and responding to the fire hazards associated with hot work in shipyard employment and the employees designated to do so.

"Fixed extinguishing system" - A permanently installed fire protection system that either extinguishes or controls fire occurring in the space it protects.

"Flammable liquid" - Any liquid having a flashpoint 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 ninety-nine percent or more of the total volume of the mixture.

"Free fall" - To fall before a personal fall arrest system begins to apply force to arrest the fall.

"Free fall distance" - The vertical displacement of the fall arrest attachment point on the employee's body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before the device operates and fall arrest forces occur.

"Gangway" - A ramp-like or stair-like means to board or leave a vessel including accommodation ladders, gang-planks and brows.

"Hazardous substance" - A substance likely to cause injury because it is explosive, flammable, poisonous, corrosive, oxidizing, irritant, or otherwise harmful.

"Hose systems" - Fire protection systems consisting of a water supply, approved fire hose, and a means to control the flow of water at the output end of the hose.

"Host employer" - An employer who is in charge of coordinating work or who hires other employers to perform work at a multiemployer workplace.

"Hot work" - Riveting, welding, burning or other fire or spark producing operations.

"Incident management system" - A system that defines the roles and responsibilities to be assumed by personnel and the operating procedures to be used in the management and direction of emergency operations; the system is also referred to as an "incident command system (ICS)."

"Incipient stage fire" - A fire, in the initial or beginning stage, which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

"Inerting" - The displacement of the atmosphere in a permit space by noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible. This procedure produces an IDLH oxygen-deficient atmosphere.

"Interior structural fire fighting operations" - The physical activity of fire response, rescue, or both involving a fire beyond the incipient stage inside of buildings, enclosed structures, vessels, and vessel sections.

"Lanyard" - A flexible line of rope, wire rope, or strap which generally has a connector at each end for connecting the body belt or body harness to a deceleration device, lifeline, or anchorage.

"Lifeline" - A component consisting of a flexible line to connect to an anchorage at one end to hang vertically (vertical lifeline), or to connect to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

"Lower levels" - Those areas or surfaces to which an employee can fall. Such areas or surfaces include but are not limited to ground levels, floors, ramps, tanks, materials, water, excavations, pits, vessels, structures, or portions thereof.

"Multiemployer workplace" - A workplace where there is a host employer and at least one contract employer.

"Personal alert safety system (PASS)" - A device that sounds a loud signal if the wearer becomes immobilized or is motionless for thirty seconds or more.

"Personal fall arrest system" - A system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, body harness and may include a lanyard, a deceleration device, a lifeline, or a suitable combination.

"Physical isolation" - The elimination of a fire hazard by removing the hazard from the work area (at least thirty-five feet for combustibles), by covering or shielding the hazard with a fire-resistant material, or physically preventing the hazard from entering the work area.

"Physically isolated" - Positive isolation of the supply from the distribution piping of a fixed extinguishing system. Examples of ways to physically isolate include: Removing a spool piece and installing a blank flange; providing a double block and bleed valve system; or completely disconnecting valves and piping from all cylinders or other pressure vessels containing extinguishing agents.

"Portable unfired pressure vessel" - A pressure container or vessel used aboard ship, other than the ship's equipment, containing liquids or gases under pressure. This does not include pressure vessels built to Department of Transportation regulations under 49 CFR Part ((78)) 178, Subparts C and H.

"Positioning device system" - A body belt or body harness system rigged to allow an employee to be supported at an elevated vertical surface, such as a wall or window, and to be able to work with both hands free while leaning.

"Powder actuated fastening tool" - A tool or machine that drives a stud, pin, or fastener by means of an explosive charge.

"Protected space" - Any space into which a fixed extinguishing system can discharge.

"Proximity fire fighting" - Specialized fire fighting operations that require specialized thermal protection and may include the activities of rescue, fire suppression, and property conservation at incidents involving fires producing very high levels of conductive, convective, and radiant heat such as aircraft fires, bulk flammable gas fires, and bulk flammable liquid fires. Proximity fire fighting operations usually are exterior operations but may be combined with structural fire fighting operations. Proximity fire fighting is not entry fire fighting.

"Qualified instructor" - A person with specific knowledge, training, and experience in fire response or fire watch activities to cover the material found in WAC 296-304-01019 (2) or (3).

"Qualified person" - A person who has successfully demonstrated the ability to solve or resolve problems related to the subject matter and work by possessing a recognized degree or certificate of professional standing or by extensive knowledge, training, and experience.

"Related employment" - Any employment related to or performed in conjunction with ship repairing, ship building or ship breaking work, including, but not limited to, inspecting, testing, and serving as a watchman.

"Rescue" - Locating endangered persons at an emergency incident, removing those persons from danger, treating the injured, and transporting the injured to an appropriate health care facility.

"Restraint (tether) line" - A line from an anchorage, or between anchorages, to which the employee is secured so as to prevent the employee from walking or falling off an elevated work surface.

Note: A restraint line is not necessarily designed to withstand forces resulting from a fall.

"Rope grab" - A deceleration device that travels on a lifeline and automatically, by friction, engages the lifeline and locks to arrest the fall of an employee. A rope grab usually uses the principle of inertial locking, cam/level locking or both.

"Shall" or "must" - Mandatory.

"Ship breaking" - Breaking down a vessel's structure to scrap the vessel, including the removal of gear, equipment or any component part of a vessel.

"Ship building" - Construction of a vessel, including the installation of machinery and equipment.

"Ship repairing" - Repair of a vessel including, but not limited to, alterations, conversions, installations, cleaning, painting, and maintenance.

"Shipyard fire fighting" - The activity of rescue, fire suppression, and property conservation involving buildings, enclosed structures, vehicles, vessels, aircraft, or similar properties involved in a fire or emergency situation.

"Small hose system" - A system of hoses ranging in diameter from 5/8" (1.6 cm) up to 1 1/2" (3.8 cm) which is for the use of employees and which provides a means for the control and extinguishment of incipient stage fires.

"Standpipe" - A fixed fire protection system consisting of piping and hose connections used to supply water to approved hose lines or sprinkler systems. The hose may or may not be connected to the system.

"Vessel" - Every watercraft for use as a means of transportation on water, including special purpose floating structures not primarily designed for or used as a means of transportation on water.

AMENDATORY SECTION (Amending WSR 05-19-086, filed 9/20/05, effective 12/1/05)

WAC 296-304-01007 Fire safety plan. (1) **Employer responsibilities.** The employer must develop and implement a written fire safety plan that covers all the actions that employers and employees must take to ensure employee safety in the event of a fire. (See Appendix ((A)) 1 to this section for a model fire safety plan.)

(2) **Plan elements.** The employer must include the following information in the fire safety plan:

- (a) Identification of the significant fire hazards;
- (b) Procedures for recognizing and reporting unsafe conditions;
- (c) Alarm procedures;
- (d) Procedures for notifying employees of a fire emergency;
- (e) Procedures for notifying fire response organizations of a fire emergency;

- (f) Procedures for evacuation;
- (g) Procedures to account for all employees after an evacuation; and
- (h) Names, job titles, or departments for individuals who can be contacted for further information about the plan.

(3) **Reviewing the plan with employees.** The employer must review the plan with each employee at the following times:

(a) By March 1, 2006, for employees who are currently working;

(b) Upon initial assignment for new employees; and

(c) When the actions the employee must take under the plan change because of a change in duties or a change in the plan.

(4) **Additional employer requirements.** The employer also must:

(a) Keep the plan accessible to employees, employee representatives, and WISHA;

(b) Review and update the plan whenever necessary, but at least annually;

(c) Document that affected employees have been informed about the plan as required by this subsection; and

(d) Ensure any outside fire response organization that the employer expects to respond to fires at the employer's work-site has been given a copy of the current plan.

(5) **Contract employers.** Contract employers in shipyard employment must have a fire safety plan for their employees, and this plan must comply with the host employer's fire safety plan.

Appendix 1 to WAC 296-304-01007—Model Fire Safety Plan (Nonmandatory)

Model Fire Safety Plan

Note: This appendix is nonmandatory and provides guidance to assist employers in establishing a fire safety plan as required in WAC 296-304-01007.

Table of Contents

1. Purpose.
2. Worksite fire hazards and how to properly control them.
3. Alarm systems and how to report fires.
4. How to evacuate in different emergency situations.
5. Employee awareness.

1. Purpose

The purpose of this fire safety plan is to inform our employees of how we will control and reduce the possibility of fire in the workplace and to specify what equipment employees may use in case of fire.

2. Work site fire hazards and how to properly control them

- (a) Measures to contain fires.
- (b) Teaching selected employees how to use fire protection equipment.
- (c) What to do if you discover a fire.
- (d) Potential ignition sources for fires and how to control them.
- (e) Types of fire protection equipment and systems that can control a fire.
- (f) The level of fire fighting capability present in the facility, vessel, or vessel section.

(g) Description of the personnel responsible for maintaining equipment, alarms, and systems that are installed to prevent or control fire ignition sources, and to control fuel source hazards.

3. Alarm systems and how to report fires

(a) A demonstration of alarm procedures, if more than one type exists.

(b) The worksite emergency alarm system.

(c) Procedures for reporting fires.

4. How to evacuate in different emergency situations

(a) Emergency escape procedures and route assignments.

(b) Procedures to account for all employees after completing an emergency evacuation.

(c) What type of evacuation is needed and what the employee's role is in carrying out the plan.

(d) Helping physically impaired employees.

5. Employee awareness

Names, job titles, or departments of individuals who can be contacted for further information about this plan.

AMENDATORY SECTION (Amending WSR 95-04-006, filed 1/18/95, effective 3/10/95)

WAC 296-304-04005 Welding, cutting and heating in way of preservative coatings. (1) Before welding, cutting or heating is commenced on any surface covered by a preservative coating whose flammability is not known, a test shall be made by a competent person to determine its flammability. Preservative coatings shall be considered to be highly flammable when scrapings burn with extreme rapidity.

(2) Precautions shall be taken to prevent ignition of highly flammable hardened preservative coatings. When coatings are determined to be highly flammable they shall be stripped from the area to be heated to prevent ignition. A 1 1/2-inch or larger fire hose with fog nozzle, which has been uncoiled and placed under pressure, shall be immediately available for instant use in the immediate vicinity, consistent with avoiding freezing of the hose.

(3) Protection against toxic preservative coatings.

(a) In enclosed spaces all surfaces covered with toxic preservatives shall be stripped of all toxic coatings for a distance of at least 4 inches from the area of heat application or the employees shall be protected by air line respirators meeting the requirements of chapter ((296-62)) 296-842 WAC, ((Part E)) Respirators.

(b) In the open air employees shall be protected by a filter type respirator in accordance with the requirements of chapter ((296-62)) 296-842 WAC, ((Part E)) Respirators.

(4) Before welding, cutting or heating is commenced in enclosed spaces on metals covered by soft and greasy preservatives, the following precautions shall be taken:

(a) A competent person shall test the atmosphere in the space to ensure that it does not contain explosive vapors, since there is a possibility that some soft and greasy preservatives may have flash points below temperatures which may be expected to occur naturally. If such vapors are determined to be present, no hot work shall be commenced until such pre-

cautions have been taken as will ensure that the welding, cutting or heating can be performed in safety.

(b) The preservative coatings shall be removed for a sufficient distance from the area to be heated to ensure that the temperature of the unstripped metal will not be appreciably raised. Artificial cooling of the metal surrounding the heated area may be used to limit the size of the area required to be cleaned. The prohibition contained in WAC 296-304-03005 (2)(b) shall apply.

(5) Immediately after welding, cutting or heating is commenced in enclosed spaces on metal covered by soft and greasy preservatives, and at frequent intervals thereafter, a competent person shall make tests to ensure that no flammable vapors are being produced by the coatings. If such vapors are determined to be present, the operation shall be stopped immediately and shall not be resumed until such additional precautions have been taken as are necessary to ensure that the operation can be resumed safely.

AMENDATORY SECTION (Amending WSR 03-04-099, filed 2/4/03, effective 8/1/03)

WAC 296-304-05003 Ladders. (1) General requirements.

(a) The use of ladders with broken or missing rungs or steps, broken or split side rails, or other faulty or defective construction is prohibited. When ladders with such defects are discovered, they shall be immediately withdrawn from service. Inspection of metal ladders shall include checking for corrosion of interiors of open end, hollow rungs.

(b) When sections of ladders are spliced, the ends shall be abutted, and not fewer than 2 cleats shall be securely nailed or bolted to each rail. The combined cross sectional area of the cleats shall be not less than the cross sectional area of the side rail. The dimensions of side rails for their total length shall be those specified in (2) or (3) of this section.

(c) Portable ladders shall be lashed, blocked or otherwise secured to prevent their being displaced. The side rails of ladders used for access to any level shall extend not less than 36 inches above that level. When this is not practical, grab rails which will provide a secure grip for an employee moving to or from the point of access shall be installed.

(d) Portable metal ladders shall be of strength equivalent to that of wood ladders. Manufactured portable metal ladders provided by the employer shall be in accordance with the provisions of the United States of America Standard Safety Code for Portable Metal Ladders, A14.2-1972.

(e) Portable metal ladders shall not be used near electrical conductors nor for electric arc welding operations.

(f) Manufactured portable wood ladders provided by the employer shall be in accordance with the provisions of the United States of America Standard Safety Code for Portable Wood Ladders, A-14.1-1968.

(2) Construction of portable wood cleated ladders up to 30 feet in length.

(a) Wood side rails shall be made from west coast hemlock, eastern spruce, Sitka spruce, or wood of equivalent strength. Material shall be seasoned, straight-grained wood, and free from shakes, checks, decay or other defects which

will impair its strength. The use of low density woods is prohibited.

(b) Side rails shall be dressed on all sides, and kept free of splinters.

(c) All knots shall be sound and hard. The use of material containing loose knots is prohibited. Knots shall not appear on the narrow face of the rail and, when in the side face, shall be not more than 1/2 inch in diameter or within 1/2 inch of the edge of the rail or nearer than 3 inches to a tread or rung.

(d) Pitch pockets not exceeding 1/8 inch in width, 2 inches in length and 1/2 inch in depth are permissible in wood side rails, provided that not more than one such pocket appears in each 4 feet of length.

(e) The width between side rails at the base shall be not less than 11 1/2 inches for ladders 10 feet or less in length. For longer ladders this width shall be increased at least 1/4 inch for each additional 2 feet in length.

(f) Side rails shall be at least 1 5/8 x 3 5/8 inches in cross section.

(g) Cleats (meaning rungs rectangular in cross section with the wide dimension parallel to the rails) shall be of the material used for side rails, straight-grained and free from knots. Cleats shall be mortised into the edges of the side rails 1/2 inch, or filler blocks shall be used on the rails between the cleats. The cleats shall be secured to each rail with three 10d common wire nails or fastened with through bolts or other fasteners of equivalent strength. Cleats shall be uniformly spaced not more than 12 inches apart.

(h) Cleats 20 inches or less in length shall be at least 25/32 x 3 inches in cross section. Cleats over 20 inches but not more than 30 inches in length shall be at least 25/32 x 3 3/4 inches in cross section.

(3) Construction of portable wood cleated ladders from 30 to 60 feet in length.

(a) Ladders from 30 to 60 feet in length shall be in accordance with the specifications of (2) of this section with the following exceptions:

(i) Rails shall be of not less than 2 x 6 inch lumber.

(ii) Cleats shall be of not less than 1 x 4 inch lumber.

(iii) Cleats shall be nailed to each rail with five 10d common wire nails or fastened with through bolts or other fasteners of equivalent strength.

AMENDATORY SECTION (Amending WSR 03-04-099, filed 2/4/03, effective 8/1/03)

WAC 296-304-05005 Guarding of deck openings and edges. (1) When employees are working in the vicinity of flush manholes and other small openings of comparable size in the deck and other working surfaces, such openings shall be suitably covered or guarded to a height of not less than 30 inches, except where the use of such guards is made impracticable by the work actually in progress.

(2) When employees are working around open hatches not protected by coamings to a height of 24 inches or around other large openings, the edge of the opening shall be guarded in the working area to a height of 36 to 42 inches, except where the use of such guards is made impracticable by the work actually in progress.

(3) When employees are exposed to unguarded edges of decks, platforms, flats, and similar flat surfaces, more than 5 feet above a solid surface, the edges shall be guarded by adequate guardrails meeting the requirements of WAC 296-304-05001 ((+)) (9)(a) and (b), unless the nature of the work in progress or the physical conditions prohibit the use or installation of such guardrails.

(4) When employees are working near the unguarded edges of decks of vessels afloat, they shall be protected by buoyant personal flotation devices, meeting the requirements of WAC 296-304-09017(1).

(5) Sections of bilges from which floor plates or gratings have been removed shall be guarded by guardrails except where they would interfere with work in progress. If these open sections are in a walkway at least two 10-inch planks placed side by side, or equivalent, shall be laid across the opening to provide a safe walking surface.

(6) Gratings, walkways, and catwalks, from which sections or ladders have been removed, shall be barricaded with adequate guardrails.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-304-06013 Health and sanitation. "Hazardous material" - A material with one or more of the following characteristics:

- Has a flash point below 140°F, closed cup, or is subject to spontaneous heating;
- Has a threshold limit value below 500 p.p.m. in the case of a gas or vapor, below 500 mg./m.³ for fumes, and below 25 m.p.p.c.f. in case of a dust;
- Has a single dose oral LD50 below 500 mg./kg.;
- Is subject to polymerization with the release of large amounts of energy;
- Is a strong oxidizing or reducing agent;
- Causes first degree burns to skin in short time exposure, or is systematically toxic by skin contact; or
- In the course of normal operations, may produce dusts, gases, fumes, vapors, mists, or smokes that have one or more of the above characteristics.

(1) No chemical product, such as a solvent or preservative; no structural material, such as cadmium or zinc coated steel, or plastic material; and no process material, such as welding filler metal; which is a hazardous material may be used until the employer has ascertained the potential fire, toxic, or reactivity hazards which are likely to be encountered in the handling, application, or utilization of such a material.

(2) In order to ascertain the hazards, as required by subsection (1) of this section, the employer shall obtain the following items of information which are applicable to a specific product or material to be used:

(a) The name, address, and telephone number of the source of the information specified in this section preferably those of the manufacturer of the product or material.

(b) The trade name and synonyms for a mixture of chemicals, a basic structural material, or for a process material; and the chemical name and synonyms, chemical family, and formula for a single chemical.

(c) Chemical names of hazardous ingredients, including, but not limited to, those in mixtures, such as those in: (i) Paints, preservatives, and solvents; (ii) alloys, metallic coatings, filler metals and their coatings or core fluxes; and (iii) other liquids, solids, or gases (e.g., abrasive materials).

(d) An indication of the percentage, by weight or volume, which each ingredient of a mixture bears to the whole mixture, and of the threshold limit value of each ingredient, in appropriate units.

(e) Physical data about a single chemical or a mixture of chemicals, including boiling point, in degrees Fahrenheit; vapor pressure, in millimeters of mercury; vapor density of gas or vapor (air=1); solubility in water, in percent by weight; specific gravity of material (water=1); percentage volatile, by volume, at 70°F.; evaporation rate for liquids (either butyl acetate or ether may be taken as 1); and appearance and odor.

(f) Fire and explosion hazard data about a single chemical or a mixture of chemicals, including flashpoint, in degrees Fahrenheit; flammable limits, in percent by volume in air; suitable extinguishing media or agents; special fire fighting procedures; and unusual fire and explosion hazard information.

(g) Health hazard data, including threshold limit value, in appropriate units, for a single hazardous chemical or for the individual hazardous ingredients of a mixture as appropriate, effects of overexposure; and emergency and first-aid procedures.

(h) Reactivity data, including stability, incompatibility, hazardous decomposition products, and hazardous polymerization.

(i) Procedures to be followed and precautions to be taken in cleaning up and disposing of materials leaked or spilled.

(j) Special protection information, including use of personal protective equipment, such as respirators, eye protection, and protective clothing, and of ventilation, such as local exhaust, general, special, or other types.

(k) Special precautionary information about handling and storing.

(l) Any other general precautionary information.

(3) The pertinent information required by subsection (2) of this section shall be recorded either on United States Department of Labor Form LSB 00S-4, Material Safety Data Sheet, or on an essentially similar form which has been approved by the department of labor and industries. Copies of Form LSB 00S-4 may be obtained at any of the following regional offices of the occupational safety and health administration:

(a) Pacific region. (Arizona, California, Hawaii, and Nevada.)

10353 Federal Building, 450 Golden Gate Avenue, Box 36017, San Francisco, Calif. 94102.

(b) Region X, OSHA, (Alaska, Washington, Idaho, and Oregon), ((Federal Office Building, 909 First Avenue)) 1111 3rd Ave. Suite 715, Seattle, Washington ((98174)) 98101.

A completed MSDS form shall be preserved and available for inspection for each hazardous chemical on the work-site.

(4) The employer shall instruct employees who will be exposed to the hazardous materials as to the nature of the hazards and the means of avoiding them.

(5) The employer shall provide all necessary controls, and the employees shall be protected by suitable personal protective equipment against the hazards identified under subsection (1) of this section and those hazards for which specific precautions are required in WAC 296-304-020 through 296-304-04013.

(6) The employer shall provide adequate washing facilities for employees engaged in the application of paints or coatings or in other operations where contaminants can, by ingestion or absorption, be detrimental to the health of the employees. The employer shall encourage good personal hygiene practices by informing the employees of the need for removing surface contaminants by thorough washing of hands and face prior to eating or smoking.

(7) The employer shall not permit eating or smoking in areas undergoing surface preparation or preservation or where shiprepairing, shipbuilding, or shipbreaking operations produce atmospheric contamination.

(8) The employer shall not permit employees to work in the immediate vicinity of uncovered garbage and shall ensure that employees working beneath or on the outboard side of a vessel are not subject to contamination by drainage or waste from overboard discharges.

(9) Requirements of WAC 296-800-170, Chemical hazard communication program, will apply to shiprepairing, shipbuilding, and shipbreaking when potential hazards of chemicals and communicating information concerning hazards and appropriate protective equipment is applicable to an operation.

AMENDATORY SECTION (Amending WSR 03-11-060, filed 5/19/03, effective 8/1/03)

WAC 296-304-08009 Powder-actuated fastening tools. (1) The employer must ensure powder-actuated fastening tools are used, designed, constructed, and maintained according to the requirements of WAC ((296-24-663, Safety requirements for powder-actuated fastening systems)) 296-807-150, Powder actuated fastening systems.

(2) The employer must ensure that employees using powder-actuated fastening tools are protected by personal protective equipment that meets the requirements of WAC 296-304-09005 (1) and (2). The employer must also meet the requirements of chapter 296-817 WAC, Hearing loss prevention (noise).

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

WAC 296-304-11003 Drums and containers. (1) Shipping drums and containers shall not be pressurized to remove their contents.

(2) A temporarily assembled pressurized piping system conveying hazardous liquids or gases shall be provided with a relief valve and by-pass to prevent rupture of the system and the escape of such hazardous liquids or gases.

(3) Pressure vessels, drums and containers containing toxic or flammable liquids or gases shall not be stored or used where they are subject to open flame, hot metal, or other sources of artificial heat.

(4) Unless pressure vessels, drums and containers of 30 gallon capacity or over containing flammable or toxic liquids or gases are placed in an out-of-the-way area where they will not be subject to physical injury from an outside source, barriers or guards shall be erected to protect them from such physical injury.

(5) Containers of 55 gallons or more capacity containing flammable or toxic liquid shall be surrounded by dikes or pans which enclose a volume equal to at least ~~((25))~~ 35 percent of the total volume of the containers.

(6) Fire extinguishers adequate in number and suitable for the hazard shall be provided. These extinguishers shall be located in the immediate area where pressure vessels, drums and containers containing flammable liquids or gases are stored or in use. Such extinguishers shall be ready for use at all times.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

WAC 296-304-14007 Criteria governing accreditation to certificate vessels' cargo gear. (1) A person applying for accreditation to issue registers and pertinent certificates, to maintain registers and appropriate records, and to conduct initial, annual and quadrennial surveys, shall not be accredited unless he is engaged in one or more of the following activities:

- (a) Classification of vessels;
- (b) Certification of vessels' cargo gear;
- (c) Shipbuilding or ship repairing, or both insofar as related to work on vessels' cargo handling gear;
- (d) Unit and loose gear testing of vessels' cargo handling gear.

(2) Applicants for accreditation under WAC 296-304-14007(1) for operations in coastal or Great Lakes ports who come within WAC 296-304-14007 (1)(b) or (d) shall not be accredited unless they conduct at least 1,500 hours of cargo gear certification work per year.

(3) A person applying for accreditation to carry out tests of loose gear or wire rope, or both, or to carry out heat treatments, and to issue the related certificates, shall be engaged in one or both of the following activities:

- (a) Testing of loose gear or wire rope, or both;
- (b) Heat treatment of chains and loose cargo gear.

(4) A person applying for accreditation shall be staffed by individuals technically qualified to conduct the inspections and examinations and to conduct or supervise tests and heat treatments prescribed in this part. Any representatives, agents or surveyors acting on behalf of a person applying for accreditation in ports in which such operations are conducted shall be similarly qualified.

(a) Accreditation to conduct such nondestructive examination as may be a part of any certification activity may be granted to applicants found competent and equipped to carry out this activity.

(5) Except as noted in WAC ~~((296-304-13501(3)))~~ 296-304-13001 (2)(a), and unless exemptions are granted under WAC 296-304-15001(8), a person applying for accreditation as specified in WAC 296-304-14007(1) shall be prepared to carry out all of the requirements of WAC 296-304-150

through 296-304-15005, 296-304-160 through 296-304-16025, and 296-304-170 through 296-304-17023 except that loose gear and wire rope tests and heat treatments may be carried out by the manufacturer of the gear concerned or by another person accredited specifically for this purpose.

(6) A person applying for accreditation shall have a satisfactory record of performance.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

WAC 296-304-15001 General duties—Exemptions.

(1) Except as noted in WAC ~~((296-304-13501))~~ 296-304-13001 and 296-304-15001(8), the requirements set forth in WAC 296-304-160 through 296-304-16025 and 296-304-170 through 296-304-17023 shall be strictly adhered to in all testing, examinations, inspections and heat treatments.

(2) Supervision of all testing, examinations, inspections, and heat treatments shall be carried out only by such persons as are listed in the application for accreditation or subsequent supplements thereto, submitted pursuant to this section.

(3) The certificates issued by an accredited person shall be signed and all register entries made only by an authorized agent of such accredited person. No certification shall be issued until any deficiencies considered by the accredited person to constitute a currently unsatisfactory condition have been corrected. Replacement parts shall be of equal or better quality as original equipment and suitable for the purpose. In the event deficiencies remain uncorrected and no certification may therefore be issued, the accredited person shall inform the nearest district office of the department of labor and industries of the circumstances.

(4) Dynamometers or other recording test equipment owned by an accredited person shall have been tested for accuracy within the six months next preceding application for accreditation or renewal of same. Such test shall be performed with calibrating equipment which has been checked in turn so that indications are traceable to the U.S. Bureau of Standards. A copy of test reports shall accompany the application. Where test equipment is not the property of the accredited person, that person shall not issue any certificate based upon the use of such equipment unless its owner has made available a certificate of accuracy based on the requirements of this section, obtained within 1 year prior to such use, and stating the errors of the equipment. Reasonable standards of accuracy shall be met and proof loads adjusted as necessary.

(5) An accredited person shall, upon request, provide the nearest local office of the department of labor and industries with advance information as to scheduled testing or of such other functions as are performed and facilitate the department of labor and industries observation of any such activities as it may desire to witness: Provided, however, That tests need not be delayed, except when specifically requested by the department of labor and industries under unusual circumstances.

(6) All cargo gear registers or certificates issued by an accredited person shall be made on forms prescribed or approved by the department of labor and industries.

(7) Unless otherwise instructed by the director in specific instances, any person accredited under WAC 296-304-14007(1) shall accept certificates relating to loose gear or wire rope tests or to heat treatments which are issued by the manufacturer of the gear concerned, by another person accredited specifically by the director for this purpose, or by any other person whose certificates are acceptable to the department of labor and industries. Such certificates shall either be attached as a part of the vessel's certification or shall be used as the basis for the issuance of the accredited person's own loose gear, wire rope, or heat treatment certificates. In the latter case, the original certificates shall be kept on file by the accredited person as part of the permanent record of the vessel concerned.

(8) In case of practical difficulties or unnecessary hardships, the director in his discretion may grant exemptions from any provision of WAC 296-304-150 through 296-304-15005, 296-304-160 through 296-304-16025 and 296-304-170 through 296-304-17023.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

WAC 296-304-16001 General. (1) Except as noted in WAC ((~~296-304-13501~~)) 296-304-13001 and as provided in exemptions under WAC 296-304-15001(9), certification performed by accredited persons shall conform to the requirements contained in this section.

(2) Safe working loads assigned to assembled units of gear shall be based on applicable design criteria acceptable to the accredited person. Where no design data on which to base a rating is obtainable, the safe working load ratings assigned shall be based on the owner's information and warranty that those so assigned are correct. Unit test certificates shall state the basis for any such safe working load assignment.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

WAC 296-304-17011 Proof tests—Loose gear. (1) Chains, rings, shackles and other loose gear (whether accessory to a machine or not) shall be tested with a proof load equal to that shown against the article in the following table:

Article of gear	Proof load
Chain, ring, hook, shackle or swivel	100 percent in excess of the safe working load.
Blocks:	
Single sheave block	300 percent in excess of the safe working load. ¹
Multiple sheave block with safe working load up to and including 20 tons	100 percent in excess of the safe working load.

Multiple sheave block with safe working load over 20 tons up to and including 40 tons 20 tons in excess of the safe working load.

Multiple sheave block with safe working load over 40 tons 50 percent in excess of the safe working load.

Pitched chains used with hand-operated blocks and rings, hooks, shackles or swivels permanently attached thereto. 50 percent in excess of the safe working load.

Hand-operated blocks used with pitched chains and rings, hooks, shackles or swivels permanently attached thereto 50 percent in excess of the safe working load.

¹The proof load applied to the block is equivalent to twice the maximum resultant load on the eye or pin of the block when lifting the nominal safe working load defined in WAC 296-304-17011 (1)(a) below. The proof load is, therefore, equal to four times the safe working load as defined in WAC 296-304-17011 (1)(a) below or twice the safe working load as defined in WAC 296-304-17011 (1)(b) below.

(a) The nominal safe working load of a single-sheave block should be the maximum load which can be safely lifted by the block when the load is attached to a rope which passes around the sheave of the block.

(b) In the case of a single-sheave block where the load is attached directly to the block instead of to a rope passing around the sheave, it is permissible to lift a load equal to twice the nominal safe working load of the block as defined in WAC 296-304-17011 (1)(a) above.

(c) In the case of a lead block so situated that an acute angle cannot be formed by the two parts of the rope passing over it (i.e., the angle is always 90° or more), the block need not have a greater nominal safe working load than one-half the maximum resultant load which can be placed upon it.

(2) In cases where persons accredited to carry out loose gear tests may be retained to conduct tests of special stevedoring gear as described in WAC ((~~296-56-45001(2))~~) 296-56-60098 (8)(e), which does not form part of a vessel's equipment, such tests shall adhere to the requirements set forth in WAC ((~~296-56-45001 (2)(a), (b) and (c))~~) 296-56-60098 (8)(e).

(3) After being tested as required by WAC 296-304-17011(1), and before being taken into use, all chains, rings, hooks, shackles, blocks or other loose gear, except as noted in WAC 296-304-17013, shall be thoroughly examined, the sheaves and pins of the blocks being removed for this purpose, to determine whether any part has been injured or permanently deformed by the test. Shell bolt nuts shall be securely locked upon reassembly. Defective loose gear components shall be replaced before the certificate is issued.

(4) Any certificate relating to shackles, swivels or strength members of single-sheave blocks which have been restored to original dimensions by welding shall state this fact.

AMENDATORY SECTION (Amending Order 74-25, filed 5/7/74)

WAC 296-304-20001 General provisions. (1) Certification of shore-based material handling devices shall conform to the requirements contained in this section, except in cases for which exemptions or variations have been granted by the director as provided in WAC 296-304-18001(4) and ((296-304-19001(1))) 296-304-190.

(2) Any replacements or repairs deemed necessary by the accredited person shall be carried out before application of a proof test.

(3) "Ton" in this section means a ton of 2,000 pounds.

(4) When applied to shore-based material handling devices, ratings may be stated in pounds rather than tons. When stated in tons of 2,000 pounds, this fact shall be indicated.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

WAC 296-305-01009 Appeals. Any party authorized to appeal from an action of the department as set forth in RCW 49.17.140(3), may do so by filing a notice of appeal in writing. The appeal must contain the recommended subject matter, as noted below, by serving a copy of such notice of appeal either in person or by mail upon the assistant director of the Consultation and Compliance Services Division, (7273 Linderson Way, Tumwater, Washington) P.O. Box 44600, Olympia, Washington 98504-4600. The appeal must be sent to the department within fifteen working days of the communication of the notice.

The notice of appeal should contain:

(1) The name and address of the appealing party and his/her representative if any;

(2) The place where the alleged safety violation occurred;

(3) A statement identifying the order, decision or citation appealed from, by report number and date of issuance;

(4) The grounds upon which the appealing party considers such order, decision, or citation to be unjust or unlawful;

(5) A statement of facts in support of each grounds stated;

(6) The relief sought, including the specific nature and extent;

(7) A statement that the person signing the notice of appeal has read it and to the best of his/her knowledge, information and belief there is good ground to support it. A notice of appeal may be signed by the party or by his/her authorized representative.

((References:

~~WAC 296-800-350, Inspections, citations and appeals—Contents RCW 49.17.140(3)-)~~)

AMENDATORY SECTION (Amending WSR 04-14-028, filed 6/29/04, effective 1/1/05)

WAC 296-806-405 Summary.

• In addition to the requirements in this section, you need to refer to the following sections of this chapter in order to fully protect your employees from machine hazards.

• Requirements for all machines, WAC 296-806-200 and 296-806-300.

• You need to refer to Portable power tools, chapter 296-807 WAC for requirements relating to hand-held abrasive wheel tools.

This section applies to machines that are not hand held and that use an abrasive wheel.

Exemption: This rule does not apply to natural sandstone wheels and metal, wooden, cloth or paper discs having a layer of abrasive on the surface.

Definition:

An *abrasive wheel* is a grinding tool consisting of bonded abrasive grains. This includes diamond and reinforced wheels.

Your responsibility:

To make sure abrasive wheel machines and wheels are safe to use.

You must:

GENERAL REQUIREMENTS FOR ABRASIVE WHEELS

Make sure abrasive wheels and machines are properly designed and constructed

WAC 296-806-40502.

Make sure machines have safety guards

WAC 296-806-40504.

Make sure safety guards meet specific requirements

WAC 296-806-40506.

Provide a tongue guard on bench, pedestal, floorstand, and cylindrical grinders

WAC 296-806-40508.

Use a work rest for off-hand grinding

WAC 296-806-40510.

MOUNTING ABRASIVE WHEELS

Make sure abrasive wheels are safe to use

WAC 296-806-40512.

Mount wheels properly

WAC 296-806-40514.

Use proper flanges

WAC 296-806-40516.

Make sure flanges are in good condition

WAC 296-806-40518.

Use specific flanges for Type 1 cutting-off wheels

WAC 296-806-40520.

Use specific flanges for Type 27A cutting-off wheels

WAC 296-806-40522.

Use blotters when required

WAC 296-806-40524.

Meet specific blotter requirements when using modified Types 6 and 11 wheels (terrazzo)

WAC 296-806-40526.

AMENDATORY SECTION (Amending WSR 04-14-028, filed 6/29/04, effective 1/1/05)

WAC 296-806-42516 Safeguard storage bins.

Exemption: This requirement does not apply to under-the-counter ingredient bins found in retail stores.

You must:

(1) Provide locks or latches to keep storage bin covers closed, and gaskets or other equivalent devices, to make sure covers are dust tight.

(2) Make sure employees lock covers in the open position when entering bins.

- Covers for bins that employees may enter must have a metal fastener (hasp) and lock that can be locked in the "open" position.

(3) Provide a standard stationary safety ladder on the inside and outside of storage bins with sides more than five feet deep.

- The ends of ladders must be kept away from moving screw conveyors.

- Outside ladders must reach from floor level to the top of the bin.

- Inside ladders must reach from the top of the bin to the bottom of the bin.

(4) Provide an electric interlock on the main entrance cover of large storage bins near the interior exit ladder.

- The interlock needs to prevent feed and unloading screw motors from operating while the cover is open.

Reference: You may need to follow other requirements found in ~~((Confined spaces;))~~ chapter ~~((296-811))~~ 296-809 WAC, Confined spaces.

AMENDATORY SECTION (Amending WSR 04-14-028, filed 6/29/04, effective 1/1/05)

WAC 296-806-45004 Safeguard work-holding devices (chucks).

You must:

- Provide a fixed or movable guard, device, awareness barrier, or peripheral cover over areas exposed to the operator on work-holding devices or chucks when:

- ~~((It is))~~ They are in the clamped mode and ~~((has))~~ have parts that extend beyond the outside diameter of the holding device.

- ~~((It has))~~ They have an irregular shape to the periphery of ~~((its))~~ their body.

AMENDATORY SECTION (Amending WSR 03-09-009, filed 4/4/03, effective 8/1/03)

WAC 296-807-100 Scope. This chapter applies to the tools and equipment shown in Table 1, Scope of this chapter.

**Table 1
Scope of this Chapter**

Section:	Applies to:
110 Switches (controls)	Hand-held portable power tools.
120 Portable circular saws	Hand-held portable circular saws.
130 Portable belt sanding machines	Hand-held portable belt sanding machines.

**Table 1
Scope of this Chapter**

Section:	Applies to:
140 Compressed air tools((, hose, and pipe)))	Hand-held portable compressed air powered tools. It also applies to airhose and plastic pipe used to supply compressed air to these tools.
150 Powder actuating fastening systems	Powder actuated fastening systems designed to use the expanding gases from a powder load to propel a stud, pin, fastener, or other object into hard structural material.
160 Power lawnmowers	Consumer and commercial power lawnmowers.
170 Jacks	Portable hand- or power-operated: <ul style="list-style-type: none"> • Hydraulic jacks • Mechanical ratchet jacks • Mechanical screw jacks.
180 Portable tools using abrasive wheels	Portable tools using abrasive wheels.

AMENDATORY SECTION (Amending WSR 03-09-009, filed 4/4/03, effective 8/1/03)

WAC 296-807-14035 Use air tools safely.

Exemption:

This section does not apply to:

- Tools specifically for medical or dental use
- Tools specifically for use in the food processing industry
- Tools mounted in stationary installations
- Air hoists
- Construction and mining tools such as paving breakers, diggers, tampers, and rock drills.

You must:

(1) Relieve the pressure in the air line before disconnecting a compressed air tool from the line or disconnecting a hose joint unless there is automatic valve closing protection at the joint being separated.

(2) Disconnect the tool from the compressed air supply before repairs are done.

(3) Make sure that eye protection is worn at all times by:

- The person operating the tool
- Other persons in the area where tools are being used.

~~((References: ■ — Use the PPE hazard assessment to determine which employees other than the tool operator need to wear eye protection and the type of eye protection they need to wear. See WAC 296-800-160 in the safety and health core rules.~~

~~■ — Chapter 296-62 WAC, Part K, Hearing conservation, may require the use of hearing protection.)~~

AMENDATORY SECTION (Amending WSR 03-09-009, filed 4/4/03, effective 8/1/03)

WAC 296-807-15010 Make sure employees are aware tools are in use and wear appropriate personal protective equipment (PPE).

You must:

- (1) Make sure eye or face protection is worn by:
 - Tool operators
 - Assistants
 - Persons close to where the tool is being used.

~~((Reference: ■ Use the PPE hazard assessment to determine which employees other than the tool operator need to wear eye protection and the type of eye protection they need to wear. See WAC 296-800-160 in the safety and health core rules. ■ Chapter 296-62 WAC, Part K, Hearing conservation may require the use of hearing protection.))~~

You must:

- (2) Post signs where tools are being used and in adjacent areas where tool use could pose a hazard. Signs must:
 - Be easily seen
 - Be at least 8 x 10 inches (20 x 25 cm)
 - Use letters in boldface type at least one inch (2.5 cm) high
 - Read "POWDER ACTUATED TOOL IN USE" or similar wording.

Note: Tool use could create a hazard in adjacent areas by allowing a fastener to penetrate one or more of the following:

- Wall
- Floor
- Other working surface.

AMENDATORY SECTION (Amending WSR 03-09-009, filed 4/4/03, effective 8/1/03)

WAC 296-807-17020 Visually inspect jacks and keep them in good working order.

Note: There are two types of inspection, frequent or periodic, depending on how often they are done.

You must:

- (1) Inspect jacks at appropriate intervals:
 - Make sure frequent inspections are done by the operator or other designated person as follows:
 - Before a jack is first placed in service.
 - Monthly for a jack used in normal service.
 - Daily or before each use for a jack used for other than normal service.
 - Before using a jack that has been altered, modified, or repaired.
 - Before using a jack that has not been used in one year or more.
 - Make sure a periodic inspection of the jack is done once a year.
 - Inspect the jack using Table 4, Jack Inspection Requirements, during any frequent or periodic inspection.
- (2) Make sure a jack that is out of order is:
 - Tagged
 - Not used until repaired.
- (3) Make sure a jack is properly lubricated at regular intervals.

Note: The jack should be lubricated following the manufacturer's instructions.

**Table 4
Jack Inspection Requirements**

Inspection Item	Frequent Inspection	Periodic Inspection
Check all of the following items that apply to the jack:		
Improper pawl engagement	X	X
Excessive pawl wear	X	X
Chipped, cracked, or worn rack teeth	X	X
<u>Cracked or damaged housing</u>	X	X
Damaged, bent, or worn threads	X	X
Leaking hydraulic fluid	X	X
Scored or damaged plunger	X	X
Improper functioning	X	X
Free movement of swivel, heads, and caps	X	X
Loose bolts or rivets	X	X
Damaged or improperly assembled accessory equipment	X	X
Rack wear or bending	X	X
Other items as specified in the manufacturer's instructions	X	X
Watch the jack during operation	X	X
More detailed inspection required if a designated person determines any condition discovered is a hazard	X	
Clean and check internal parts for wear or damage if inspection indicates an internal problem		X

AMENDATORY SECTION (Amending WSR 03-09-009, filed 4/4/03, effective 8/1/03)

WAC 296-807-18050 Use proper flanges.

You must:

- Mount all abrasive wheels between flanges that have a diameter at least one-third the diameter of the wheel.

Exemption: This requirement does not apply to the following types of wheels:

- Mounted wheels
- Cup, cone or plug wheels with threaded inserts or projecting studs

- Abrasive disc wheels (inserted nut, inserted washer and projecting stud type)
- Plate mounted wheels
- Cylinder, cup, or segmental wheels mounted in chucks
- Types 27, 28 and 29 wheels
- Internal wheels less than two inches in diameter
- Modified Type 6 and 11 wheels (terrazzo)
- Types 1 and 27A cutting-off wheels.

You must:

- Make sure flanges are:
 - Dimensionally accurate
 - Properly balanced
 - Flat
 - Free of rough surfaces or sharp edges.
- Make sure, if a wheel is mounted between two flanges, that both flanges:
 - Are the same diameter
 - Have equal bearing surfaces.

Exemption:

The following wheels do not require same diameter, equal bearing surface flanges:

- Types 27, 28, and 29 wheels with adaptors
- Modified Types 6 and 11 wheels with tapered K dimension
- Internal wheels less than two inches in diameter.

You must:

- Make sure the driving flange is:
 - Part of the spindle

OR

- Securely fastened to the spindle.

AMENDATORY SECTION (Amending WSR 04-03-081, filed 1/20/04, effective 5/1/04)

WAC 296-809-70002 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 296-24-110)) chapter 296-803 WAC, to determine if using it fully eliminates the hazard.
 - You are allowed to use alternate entry procedures covered in WAC 296-809-600, 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.

AMENDATORY SECTION (Amending WSR 04-12-070, filed 6/1/04, effective 9/1/04)

WAC 296-823-18015 Make sure these practices for contaminated material and waste are followed.

You must:

- Incinerate or decontaminate all regulated waste by a method known to effectively destroy bloodborne pathogens, such as autoclaving
- Make sure to place materials to be decontaminated away from the work area in a container that is:
 - Durable
 - Leakproof
 - Appropriately labeled, or color-coded
 - Closed before being removed from the work area.

Reference: You can find additional requirements for appropriate labels and color-coding in WAC 296-823-14025.

You must:

- Incinerate or decontaminate ALL waste from work areas and from animal rooms before disposal
- Make sure an autoclave is available for decontamination of regulated waste. ((The autoclave must be available within or as near as possible to the work area.))

AMENDATORY SECTION (Amending WSR 04-12-070, filed 6/1/04, effective 9/1/04)

WAC 296-823-18055 Make sure these additional criteria are followed for HIV and HBV production facilities.

You must:

- Separate the HIV and HBV work areas from areas that are open to unrestricted traffic flow within the building
- Use two sets of doors to separate HIV and HBV work areas from access corridors or other contiguous areas.

Note: You may provide a physical separation of the high-containment work area from access corridors or other areas or activities by providing:

- A double-doored clothes-change room (showers may be included)
- Airlock

OR

- Other access facilities that require passing through two sets of doors before entering the work area.

- Make sure the surfaces of doors, walls, floors, and ceilings in the work area are water resistant so they can be easily cleaned. These surfaces must be sealed or capable of being sealed to facilitate decontamination
 - Make sure access doors to the work area or containment module are self-closing
 - Provide a ducted exhaust-air ventilation system. This system must create directional airflow that draws air into the

work area through the entry area and you must verify this air-flow. The exhaust air must:

- NOT be recirculated to any other area of the building
- Be discharged to the outside
- Be dispersed away from occupied areas and air intakes.

• Make sure an autoclave for decontamination of regulated waste is available within or as near as possible to the work area.

AMENDATORY SECTION (Amending WSR 02-20-034, filed 9/24/02, effective 10/1/02)

WAC 296-824-100 Scope. This chapter states the minimum requirements that help you protect the safety and health of your employees during a response to a *hazardous substance releases* in your *workplace* or any other location.

This chapter applies if your employees are, or could become, involved in responding to uncontrolled releases of hazardous substances in your workplace or any other loca-

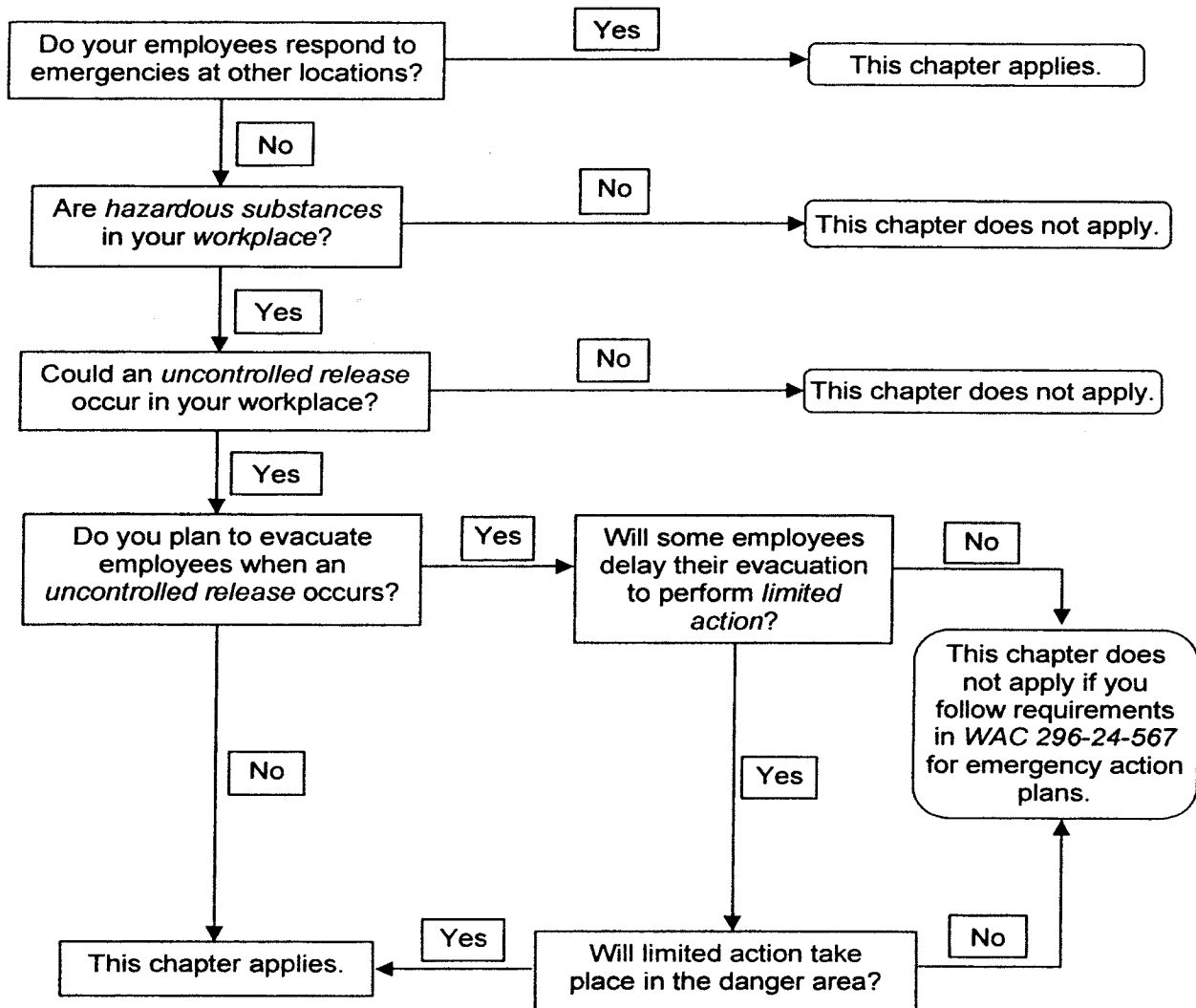
tion. Use the scope flow chart, and definitions that follow, to determine if this chapter applies to your workplace(s). Defined words are italicized in the flow chart.

EXEMPTION: • This chapter does not apply to you if your workplace is a hazardous waste site. If you are not sure about your site classification, see chapter ((296-62)) 296-843 WAC, ((Part P:)) Hazardous waste operations ((and treatment, storage, and disposal facilities)).

• If your workplace is a treatment, storage, and disposal site this chapter may apply.

Note: Requirements in other chapters may also apply to your workplace. You will find some safety and health requirements (for example, personal protective equipment) are addressed on a general level in the WISHA Safety and Health Core Rules, chapter 296-800 WAC, while being addressed for a specific application in this rule. 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.



Definitions applicable to the flow chart. (See WAC 296-824-800 for additional definitions used in the chapter):

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 296-824-800 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
- 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.

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

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)) 296-843 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 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 296-842 WAC, 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 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

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"> - 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

AMENDATORY SECTION (Amending WSR 05-03-093, filed 1/18/05, effective 3/1/05)

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)) 296-843 WAC, ((Part P,)) Hazardous waste operations ((and treatment, storage and disposal facilities)) .
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 296-24-567(1), Employee emergency action plans • Chapter 296-842 WAC, Respirators • WAC 296-800-170, 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.

AMENDATORY SECTION (Amending WSR 06-02-060, filed 1/3/06, effective 4/1/06)

WAC 296-828-20010 Exposure evaluation.

IMPORTANT:

For any of the specific substances listed in Table 2 of the scope of this chapter, you need to follow the exposure evaluation procedures found in the chapters regulating those substances if employee exposure routinely exceeds the AL or PEL. For all other employee exposures follow this section to determine exposure evaluation procedures.

You must:

- Determine if you could have a respiratory hazard as described in chapter 296-841 WAC, Respiratory hazards.

Reference: For additional requirements relating to respiratory hazards, see:

- Chapter 296-841 WAC, Respiratory hazards.
- Chapter 296-842 WAC, Respirators.
- The specific rule for your chemical.

You must:

- Provide written notification of exposure monitoring results to employees represented by your exposure evaluation, within five business days after the results become known to you.

Note:

- You can notify employees either individually or by posting the notification in areas readily accessible to all affected employees.
- Posted notifications may need information that allows affected employees to determine which monitoring results apply to them.
- Notification may be:
 - In any written form, such as hand-written or e-mail.
 - Limited to the required information, such as exposure monitoring results.

Reference: For additional requirements relating to employee exposure records, go to ~~((Access to records,))~~ chapter 296-802 WAC, Employee medical and exposure records.

AMENDATORY SECTION (Amending WSR 06-02-060, filed 1/3/06, effective 4/1/06)

WAC 296-828-20015 Training.

You must:

- Inform employees about the presence of hazardous chemicals at the following times:
 - At the time of initial assignment to a work area where hazardous chemicals are present.
 - Prior to situations involving a new exposure to hazardous chemicals.
- Train employees on all of the following:
 - Methods and observations for detecting the presence or release of hazardous substances. 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.
 - The physical and health hazards of chemicals in the work area.
 - The procedures and measures employees can use to protect themselves from hazardous substances. Examples of these include:
 - Appropriate work practices.
 - Emergency procedures.
 - Personal protective equipment.
 - Provide refresher training to fit your needs.
 - Provide information to employees on all of the following:
 - The contents of this chapter and where to find a copy.
 - Permissible exposure limits found in chapter 296-841 WAC, Respiratory hazards.
 - Any recommended exposure levels for compounds without an exposure limit in the WISHA rules. Examples include:
 - The ~~((RELs))~~ PELs found in the National Institute for Occupational Safety and Health (NIOSH) NIOSH Pocket Guide to Chemical Hazards 2004; or

■ The American Conference of Governmental Industrial Hygienists (ACGIH®) Documentation of the Threshold Limit Values (TLVs) and Biological Exposure Indices (BEIs), 7th Ed.

– Signs and symptoms associated with exposures to hazardous chemicals used in the laboratory.

– Where to find a copy of:

■ Your chemical hygiene plan.

■ Material safety data sheets (MSDSs), including those received from the chemical suppliers.

■ Reference material on the hazards, safe handling, storage, and disposal of hazardous chemicals found in the laboratory.

AMENDATORY SECTION (Amending WSR 06-02-060, filed 1/3/06, effective 4/1/06)

WAC 296-828-20030 Medical evaluations.

IMPORTANT:

For any of the specific substances listed in Table 2 of the scope of this chapter, you need to follow the medical evaluation procedures found in the chapters regulating those substances if employee exposure routinely exceeds the AL or PEL. For all other employee exposures follow this section to determine medical evaluation procedures.

You must:

(1) Make medical evaluations available when:

- An employee develops signs or symptoms associated with a hazardous substance from laboratory exposure.
- Any emergency situation that could cause a hazardous exposure, such as a spill, leak, or explosion, occurs.
- A medical provider recommends a follow-up evaluation.

• Exposure monitoring for any of the substances found in Table 2 reveals exposures routinely over the action level (AL) or in the absence of an AL the permissible exposure level (PEL).

(2) Make sure medical evaluations are provided at reasonable times and places, and at no cost to employees.

Note: This includes travel costs and wages associated with any time spent obtaining the medical evaluation.

You must:

• Provide the LHCP the following information before the medical evaluation is performed:

– The name of the hazardous chemicals the employee may have been exposed to.

– Any signs or symptoms of exposure the employee has.

– A description of the conditions under which the exposure occurred.

– The exposure monitoring results for the conditions, if available.

• Obtain the LHCP's written opinion for each medical evaluation that includes the following:

– Recommendations for medical follow-up.

– Any medical conditions found that would increase the employee's risk for impairment from exposure to a hazardous chemical.

– A statement that the employee has been informed of exposure-related medical results and conditions that require further examination or treatment.

– A written opinion that does not contain any medical information unrelated to the employee's occupational exposures.

■ If the written opinion contains any medical information unrelated to occupational exposures, return it to the LHCP and obtain a revised version without the additional medical information.

Reference: • For additional requirements relating to employee medical records, go to ((Access to records;)) chapter 296-802 WAC, Employee medical and exposure records.

AMENDATORY SECTION (Amending WSR 06-02-060, filed 1/3/06, effective 4/1/06)

WAC 296-828-300 Definitions.

Action level

An airborne concentration of a hazardous substance that is calculated as an 8-hour time-weighted average, and initiates certain requirements to be followed such as exposure monitoring or medical surveillance.

Carcinogens see "select carcinogen"

Chemical hygiene officer

An employee designated by the employer who is qualified by training or experience to provide technical guidance in the development and implementation of the chemical hygiene plan. This definition is not intended to place limitations on the designated employee's position description or job classification within the employer's organization.

Chemical hygiene plan

A written program developed and implemented by the employer that establishes procedures, equipment, personal protective equipment, and work practices to protect employees from the health hazards of the chemicals used in the laboratory.

Container

Any container, except for pipes or piping systems that contains a hazardous substance. For example it can be any of the following:

- Barrel.
- Bottle.
- Can.
- Cylinder.
- Drum.
- Reaction vessel.
- Storage tank.

Day

Any part of a calendar day.

Designated representative

Any one of the following:

- Any individual or organization to which an employee gives written authorization.
- A recognized or certified collective bargaining agent without regard to written employee authorization.
- The legal representative of a deceased or legally incapacitated employee.

Emergency

Any event that could or does result in the unexpected, significant release of a hazardous substance. Examples of emergencies include equipment failure, container rupture, or control equipment failure.

Exposure

The contact an employee has with a hazardous substance, 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.

Hazardous chemical

A chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic systems, and agents which damage the lungs, skin, eyes, or mucous membranes.

Laboratory

A facility where the "laboratory use of hazardous substances" takes place. A workplace where relatively small amounts of hazardous substances are used on a nonproduction basis.

Laboratory-type hood

A device located in a laboratory, enclosure on five sides with a moveable sash or fixed partial enclosed on the remaining side; constructed and maintained to draw air from the laboratory and to prevent or minimize the escape of air contaminants into the laboratory; and allows chemical manipulations to be conducted in the enclosure without insertion of any portion of the employee's body other than hands and arms.

Note: Walk-in hoods with adjustable sashes meet the above definition provided that the sashes are adjusted during use so that the airflow and the exhaust of air contaminants are not compromised and employees do not work inside the enclosure during the release of airborne hazardous substances.

Laboratory scale

Work with substances in which the containers used for reactions, transfers and other handling of the substances are designed to be easily and safely manipulated by one person. "Laboratory scale" **does not** include workplaces producing commercial quantities of materials.

Laboratory use

The handling or use of hazardous substances that includes **all** the following:

- Chemical manipulations conducted on a "laboratory scale."
- Multiple chemical procedures or chemicals are used.
- The procedures are not part of a production process, nor in any way simulate a production process.
- "Protective laboratory practices and equipment" are available and are commonly used to minimize the potential for employee exposures to hazardous substances.

Licensed healthcare professional (LHCP)

An individual whose legally permitted scope of practice allows him or her to provide some or all of the healthcare services required for medical evaluations.

Material safety data sheet (MSDS)

Written, printed, or electronic information (on paper, microfiche, or on-screen) that informs manufacturers, distributors, employers or employees about a hazardous substance,

its hazards, and protective measures as required by material safety data sheet and label preparation, chapter 296-839 WAC.

Permissible exposure limits (PELs)

PELs are employee exposures to toxic substances or harmful physical agents that must not be exceeded. PELs are also specified in WISHA rules found in other chapters.

Physical hazard

As used in Employer chemical hazard communication, WAC 296-800-170 means a chemical that has scientifically valid evidence to show it is one of the following:

- Combustible liquid.
- Compressed gas.
- Explosive.
- Flammable.
- Organic peroxide.
- Oxidizer.
- Pyrophoric.
- Unstable (reactive).
- Water reactive.

Protective laboratory practices and equipment

Laboratory procedures, practices, and equipment accepted by laboratory health and safety experts as effective, that can be shown to be effective, in minimizing the potential for employee exposure to hazardous substances.

Reproductive toxin

Chemicals that affect reproductive capabilities including chromosomal damage (mutations) and effects on fetuses (teratogenesis).

Select carcinogen

Any substance meeting one of the following criteria:

- Regulated by WISHA as a carcinogen.
- Listed in the "~~(know)~~ known to be carcinogens" category in the latest edition of the Annual Report on Carcinogens by the National Toxicity Program (NTP).
- Listed in Group I (carcinogenic to humans) in the latest editions of the International Agency for Research on Cancer (IARC) Monographs.
- Listed in either group 2A or 2B by IARC **or** in the category "reasonably anticipated to be carcinogens" by the NTP, and causes statistically significant tumor incidence in experimental animals in accordance with any of the following criteria:

- After an inhalation exposure of six to seven hours a day; five days a week; for a significant portion of a lifetime to dosages of less than 10 mg/m³; **or**

- After repeated skin application of less than 300 mg/kg of body weight per week; **or**

- After oral dosages of less than 50 mg/kg of body weight per day.

Time-weighted average (TWA₈)

An exposure limit averaged over an 8-hour period that must not be exceeded during an employee's workday.

AMENDATORY SECTION (Amending WSR 02-15-102, filed 7/17/02, effective 10/1/02)

WAC 296-835-11035 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 296-62-141 and safety procedures, chapter 296-24 WAC, Part A-4~~)) chapter 296-809 WAC, Confined spaces.

AMENDATORY SECTION (Amending WSR 02-15-102, filed 7/17/02, effective 10/1/02)

WAC 296-835-12015 Provide bottom drains.

Exemption: A bottom drain is not required if:

- The viscosity of the liquid makes it impractical to empty the tank by gravity or pumping

OR

- The dip tank has an automatic closing cover that meets the requirements of WAC ((~~296-835-12030~~)) 296-835-12025.

You must:

- Provide a bottom drain on all dip tanks that hold more than five hundred gallons of liquid.
- Make sure the bottom drain:
 - Is properly trapped
 - Will empty the dip tank during a fire
 - Has pipes large enough to empty the tank within five minutes

- Uses automatic pumps if gravity draining is not practical

- Is capable of both manual and automatic operation

- Discharges to a safe location.

Note: Discharges to a safe location could be a:

- Safe location outside the building

OR

- Closed, properly vented salvage tank or tanks that can hold more than the dip tank.

You must:

- Make sure manual operation of the bottom drain is performed from a safe and easily accessible location.

AMENDATORY SECTION (Amending WSR 02-15-102, filed 7/17/02, effective 10/1/02)

WAC 296-835-12025 Provide additional fire protection for large dip tanks.

You must:

- Provide at least one automatic fire extinguishing system or an automatic dip tank cover if the tank:

- Holds one hundred fifty gallons or more of liquid

OR

- Has four square feet or more of liquid surface area.

- Make sure automatic fire extinguishing systems or automatic dip tank covers meet the requirements of Table 1.

Exemption: An automatic fire extinguishing system or an automatic dip tank cover is **not** required for a hardening or tempering tank that:

- Holds less than five hundred gallons

OR

- Has less than twenty-five square feet of liquid surface area.

Table 1: Automatic Fire Protection System Requirements

IF YOU PROVIDE:	THEN YOU MUST:
An automatic fire extinguishing system	<ul style="list-style-type: none"> • Use extinguishing materials suitable for a fire fueled by the liquid in the tank • Make sure the system protects the: <ul style="list-style-type: none"> - Tanks - Drain boards - Stock over drain boards.
A dip tank cover	<ul style="list-style-type: none"> • Make sure the cover is: <ul style="list-style-type: none"> - Closed by approved automatic devices in the event of fire - Able to be manually activated - Kept closed when the tank is not being used - Made of noncombustible material or ((metal)) <u>tin</u>-clad material with locked metal joints.

Reference: Automatic fire extinguishing systems have specific requirements. See:

- WAC 296-24-622 for automatic dry chemical extinguishing system requirements

- WAC 296-24-623 for automatic carbon dioxide extinguishing system requirements

- WAC 296-24-627 for automatic water spray extinguishing system and automatic foam extinguishing system requirements.

AMENDATORY SECTION (Amending WSR 04-02-053, filed 1/5/04, effective 5/1/04)

WAC 296-843-12005 Develop and maintain a written site-specific health and safety plan (HASP).

Reference: If your overall program required under WAC 296-800-140, Accident prevention program (APP), meets requirements of this chapter, you do not need to duplicate those portions of your APP in the site-specific health and safety plan (HASP).

You must:

- Develop a written HASP for each hazardous waste site, **BEFORE** beginning hazardous waste operations, that includes at least the following:

Hazard analysis:

- Identification and evaluation of on-site safety and health hazards.

- A safety and health risk (hazard) analysis for each site task and operation that is identified in the comprehensive work plan.

Organization chart:

– An organizational structure that reflects current site operations, including the following:

- Establish and identify the chain of command.
- Identify the site safety and health supervisor and other personnel responsible for employee safety and health.
- Specify the overall responsibilities of supervisors and employees.
- Include the name and title of the person with responsibility and authority to direct all hazardous waste operations.
- Include a site safety and health supervisor responsible for developing and implementing the HASP and verifying compliance.
- Identify the functions and responsibilities of all personnel needed for hazardous waste operations and emergency response.
- Identify site specific lines of authority, responsibility, and communication.

Comprehensive work plan:

– A written comprehensive work plan of tasks, objectives, logistics, and resources for site operations, including the following:

- Addresses anticipated clean-up activities and normal operating procedures unless that information is already available in another document.
- Defines work tasks and objectives.
- Describes how the work tasks and objectives will be accomplished.
- Establishes the personnel requirements to implement the work plan.
- Provides for implementation of training, briefings, and information as required by WAC 296-843-200.

Site control plan:

– An up-to-date site control plan before clean-up operations begin to minimize employee exposure to hazardous substances and including the following (unless it's available in another document):

- A site map.
- Establish site work zones.
- How the "buddy system" is used.
- The site communications plan, including how employees are alerted during emergencies.
- The site's standard operating procedures (SOPs) or safe work practices.
- Identification of the nearest medical assistance.

Personal protective equipment:

- A PPE plan that addresses all of the following:
- Site hazards and activities.
 - Methods to evaluate the effectiveness of the PPE plan.
 - Criteria for selecting and fitting PPE, including work duration, use limitations of particular PPE, and medical considerations such as temperature extremes and heat stress.
 - Training on PPE use.
 - Procedures for putting on and taking off PPE.
 - PPE inspection procedures prior to, during, and after use.
 - Decontamination and disposal of PPE.
 - Maintenance and storage of PPE.

Additional elements:

- A sampling and monitoring plan (see WAC 296-843-130) that includes sampling of drums and containers.
- Site control measures (see WAC 296-843-140).
- Decontamination procedures (see WAC 296-843-150).
- Spill containment plans (see WAC 296-843-180, Drum and container handling).
- Standard operating procedures for sampling, managing, and handling drums and containers (see WAC 296-843-180).
- Entry procedures for tanks or vaults (see ((WAC 296-62-144)) chapter 296-809 WAC, Confined spaces).
- A training, briefings, and information plan (see WAC 296-843-200).
- A medical surveillance plan (see WAC 296-843-210), that includes site-specific medical surveillance requirements.
- Sanitation (see WAC 296-155-140).
- Lighting (see WAC 296-800-210).
- Excavations (see chapter 296-155 WAC, Part N, Excavation, trenching and shoring).
- Any relationship or interaction between other programs and the site-specific program.

Note: The emergency response plan required by WAC 296-843-160, Emergency response for hazardous waste sites, is also included as a separate section in the HASP.

You must:

- Keep a copy of your HASP on site.

Reference: For more information, see WAC 296-843-220, Recordkeeping and information access.

AMENDATORY SECTION (Amending WSR 05-13-152, filed 6/21/05, effective 8/1/05)

WAC 296-849-100 Scope. This chapter applies to all occupational exposure to benzene.

Definition:

Exposure is the contact an employee has with benzene, 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.

- Exemptions:** This chapter does not apply to any of the following:
- Liquids, vapors, mixtures in containers or pipelines, and gas in natural gas processing plants when benzene content is 0.1% or less.
 - Gasoline and other fuels containing benzene once they leave the final bulk wholesale facility and are being:
 - Transported;
 - Sold;
 - Distributed;
 - Stored;
 - Dispensed either:
 - Outdoors;
 - OR**
 - Indoors four hours or less a day.
 - Used as a fuel.
 - Oil and gas drilling, production, and servicing operations.
 - Solid materials that contain only trace amounts of benzene.
 - Coke ovens.

All requirements in this chapter will not apply to every workplace with an occupational exposure. The following will show you which requirements apply to your workplace.

Step 1: If any of your work tasks are listed in Table 1, follow Table 1.

- Go to Step 2a if you have additional work tasks or other exposures that are not covered in Table 1.

Table 1
Requirements that Apply to Specific Tasks

If employees do any of the following:	Then the only requirements in this chapter that apply to those tasks are:
Load and unload benzene at bulk storage facilities that use vapor control systems for all loading and unloading operations.	<ul style="list-style-type: none"> • The labeling requirement found in Preventive practices, WAC 296-849-11010.
Perform tasks around sealed transport pipelines carrying gasoline, crude oil, or other liquids containing more than 0.1% benzene.	<ul style="list-style-type: none"> • This requirement found in Training, WAC 296-849-11050: <ul style="list-style-type: none"> – Make sure training and information includes specific information on benzene for each hazard communication training topic. For the list of hazard communication training topics, go to the Safety and health core rules, chapter 296-800 WAC, and find Inform and train your employees about hazardous chemicals in your workplace, WAC 296-800-17030.
Work with, or around, sealed containers of liquids containing more than 0.1% benzene.	<ul style="list-style-type: none"> • Emergency requirements found in Medical evaluations, WAC 296-849-12030. • Requirements found in Medical records, WAC 296-849-12080. • Respirator requirements found in Respirators, WAC 296-849-13045.

Step 2a: Follow requirements in the basic rules sections, WAC 296-849-11010 through 296-849-11090, for tasks **not** listed in Table 1.

- This includes completing an exposure evaluation, as specified in Exposure evaluations, WAC 296-849-11030, to:
 - Obtain employee fifteen-minute and eight-hour exposure monitoring results of airborne benzene;

AND

– Determine if employee exposure monitoring results are above, at, or below these values:

- Eight-hour time-weighted average (TWA₈) 1 parts per million (ppm).
- Fifteen-minute short-term exposure limit (STEL) 5 ppm.
- Eight-hour action level (AL) 0.5 ppm.

Step 2b: Use employee exposure monitoring results from Step 2a and follow Table 2 to find out which additional sections of this chapter apply to your workplace.

Table 2
Section Application

If employee exposure monitoring results are:	Then continue to follow the basic rules, and these additional requirements:
<ul style="list-style-type: none"> • Above the TWA₈ or STEL 	<ul style="list-style-type: none"> • Exposure and medical monitoring, WAC ((296-849-12005) 296-849-12010 through 296-849-12080; AND • Exposure control areas, WAC 296-849-13005 through 296-849-13045.
<ul style="list-style-type: none"> • At or below the TWA₈ or STEL; AND • At or above AL 	<ul style="list-style-type: none"> • Exposure and medical monitoring, WAC 296-849-12005 through 296-849-12080.
<ul style="list-style-type: none"> • Below the AL and STEL 	<ul style="list-style-type: none"> • No additional requirements apply.

AMENDATORY SECTION (Amending WSR 02-17-106, filed 8/21/02, effective 10/1/02)

WAC 296-860-100 Scope.

IMPORTANT:

This chapter applies to all railroad clearances and walkways in rail yards and plants including logging railroad yards such as mill yards, maintenance yards and sorting yards.

If you are uncertain about which WISHA requirements to follow, you must comply with those that best protect employees' safety and health. Contact your local L&I office if you need assistance in making this decision.

Exemptions:

• These exemptions apply to chapter 296-860 WAC, Railroad clearances and walkways in private rail yards and plants, and do not require a department variance:

– You may move the following equipment, using less than the minimum standard clearances, if the situation is unavoidable and you have taken all reasonable steps to protect your employees:

- Track construction or maintenance materials
- Special work equipment used for railroad construction, maintenance or operations
- Any railroad equipment during emergencies.

– You may have overhead or side clearances less than the minimum standard clearances required in this chapter if they were legally created before April 3, 1961.

Note: If a building, structure, or facility constructed before April 3, 1961, is relocated or reconstructed, the clearance requirements in this chapter apply unless the department grants a variance.

– Tracks built before April 3, 1961:

■ May be extended according to the legal track clearance requirements in effect when they were originally constructed

■ Are exempt from the track clearance requirements in WAC ((296-860-10050)) 296-860-20060, Table 5.

– Chapter 296-54 WAC, Safety standards—Logging operations, regulates all logging railroads or any rail operations related to logging, except for yard clearances.

Other rules that may apply to your workplace

The *WISHA Safety & Health Core Rules* book, chapter 296-800 WAC, contains the basic requirements that apply to employers in Washington. It also contains:

- An introduction that lists important information you should know, including a section on building, fire and electrical codes

- A resource section that includes a complete list of all WISHA rules

Other WISHA rules may apply to you, depending upon the activities and operations of your workplace. Contact your local L&I office if you are uncertain about which WISHA requirements pertain to you.

- To access the *Safety & Health Core Rules* book online: <http://www.lni.wa.gov/wisha/corerules/default.htm>

- For a CD or paper copy contact us:

Labor and Industries

P.O. Box 44620

Olympia, WA 98504-4620

Telephone: 1-800-4be-safe (1-800-423-7233)

AMENDATORY SECTION (Amending WSR 02-17-106, filed 8/21/02, effective 10/1/02)

WAC 296-860-20020 Construct and maintain rail yard walkways for employee safety.

Important:

- You have two years from October 01, 2002, (the effective date of this rule), to comply with the construction requirements of this section, unless the department determines during an inspection that your walkways create a serious safety hazard.

- If you are not sure a serious safety hazard exists in your workplace, you can request a free consultation from the department by calling your local L&I office.

Construction of walkways

You must:

- Build walkways in rail yard areas where employees regularly work on the ground.

- Construct rail yard walkways that can be maintained in a safe condition:

- With reasonably smooth walking surfaces

- That will not interfere with track drainage

- Use any of the following materials when constructing your walkway:

- Crushed material that does not exceed 1 1/2 inches in size. For this rule, "1 1/2 inches in size" means one of the following (percentages refer to weight measurement and sieve size standard in the industry):

Percentage of material passing through a sieve opening	Sieve opening size
100	1 1/2 inch square
90 - 100	1 inch square
40 - 80	3/4 inch square
15 - 60	1/2 inch square
0 - 30	3/8 inch square
0 - 10	#4
0 - 5	#8
0 - 0.5	#200

Smaller crushed material is preferred and should be used where drainage and durability is not an issue. Crushed material that is 3/4 inch or less in size is recommended for switching leads in yards.

- Asphalt, concrete, planking, grating, or other similar material.

- Natural materials such as gravel or dirt.

You must:

- Construct walkways wide enough for employees to safely perform their duties

- Construct walkways with a grade or slope in any direction with not more than one inch of elevation for each eight inches of horizontal length, unless it is geographically impractical.

Maintenance of walkways

You must:

- Keep all walkways clear of vegetation, debris, mud, or other obstructions that create a potential hazard for employees.

- Remove all standing water from all walkways as soon as reasonably possible.

- Reopen walkways temporarily closed for a construction project within thirty days after the project is completed.

You must:

- Repair walkways that have been damaged and temporarily closed because of an emergency within thirty days after the emergency ends.

Definition:

Emergency: Any unforeseen occurrence endangering life, limb, or property.

- Obtain a department variance before permanently removing any bridge or trestle walkway from use after October 1, 2002 (the effective date of this rule).

Note: The requirements for filing a variance are located in the Safety and health core rules((:)) and chapter ((296-350)) 296-900 WAC, ((and WISHA appeals, penalties, and other procedural)) Administrative rules.

AMENDATORY SECTION (Amending WSR 02-17-106, filed 8/21/02, effective 10/1/02)

WAC 296-860-20040 Maintain overhead clearances.

Exemption:

Engine houses and car shops are exempt from the overhead clearance requirements of this section.

You must:

- Make sure overhead railroad clearances are at least twenty-two feet six inches unless a clearance requirement found in Table 1 applies.

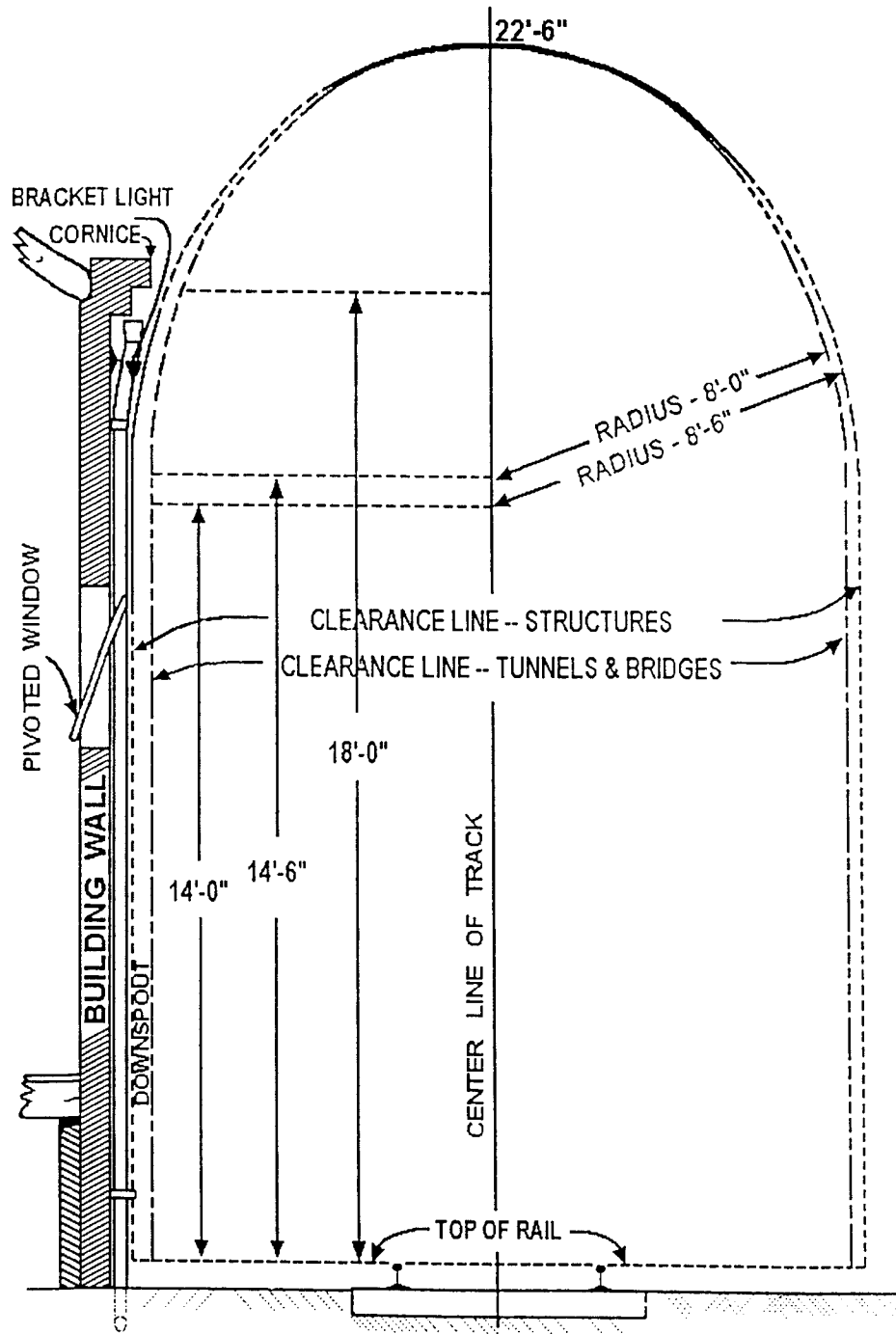
Note:

- Clearance requirements are based on the assumption that generally used rail equipment in private yards and plants is no more than ten feet ten inches wide by fifteen feet six inches high.
- WAC ((~~296-860-10060~~) 296-860-20070) regulates the use of any rail equipment that exceeds the above dimensions.
- Minimum vertical clearances for all overhead wires are specified in Parts 1, 2, and 3 of the National Electrical Safety Code (NESC) as referenced in WAC 296-45-045, electrical workers safety rules, NESC applicable. See NESC 231 and 232.

Table 1 - Minimum Overhead Clearances for Buildings, Structures, Tunnels, and Bridges

If your overhead clearance involves:	Then the minimum overhead clearance requirements are:
An entirely enclosed building	18 feet when tracks end inside an entirely enclosed building. Also: <ul style="list-style-type: none"> • The department must approve any reduction from 22 feet 6 inches before the reduction takes place. • If an overhead clearance is less than 22 feet 6 inches, all cars, locomotives or other equipment must come to a full stop before entering the building. • See Illustration 1.
All other structures	Defined by the half-circumference of a circle whose: <ul style="list-style-type: none"> • Radius is 8 feet 6 inches AND • Center is located on a line perpendicular to the track's centerline and 14 feet above the top of the highest rail. • See Illustration 1.
Tunnels, over-crossings, and bridges	Defined by the half-circumference of a circle whose: <ul style="list-style-type: none"> • Radius is 8 feet AND • Center is located on a line perpendicular to the track's centerline and 14 feet 6 inches above the top of the highest rail. • See Illustration 1.

Illustration 1 - Minimum Overhead Clearances for Buildings, Structures, Tunnels, and Bridges



AMENDATORY SECTION (Amending WSR 02-17-106, filed 8/21/02, effective 10/1/02)

WAC 296-860-20050 Maintain side clearances.

You must:

- Make sure side clearances are at least eight feet six inches from the track centerline unless clearance requirements found in Tables 2, 3, or 4 apply.

Note: All side clearances in Tables 2, 3, and 4 that reference "the track centerline" are based on the assumption that private rail operations generally use track that is standard gauge width (4 feet 8 1/2 inches).

Table 2 - Minimum Side Clearance for Platforms

If Your Platform Type is:	Then the Minimum Clearance Requirements Between the Track Centerline and a Platform Edge are:
Type 1 Platforms with heights of 8 inches or less above the top of the rail.	4 feet 8 inches See Illustration 2.
Type 2 Platforms with heights of 4 feet or less above the top of the rail.	7 feet 3 inches See Illustration 2.
Type 3 Platforms with heights of 4 feet 6 inches or less above the top of the rail and the platforms are used primarily for loading and/or unloading refrigerator cars.	8 feet See Illustration 2.
Type 4 Icing platforms and supports.	7 feet 3 inches See Illustration 2.
Type 5 Retractable platforms attached to permanent structures.	When not in use, use the clearance requirements for a platform of its height.
Type 6 Platforms that are a combination of Types 1 through 3. (Only Types 1 through 3 platforms can be combined.)	Platforms may be combined if the Type 1 platform has a level surface no more than 4 feet 8 inches from the track centerline to the face of the platform wall with which it is combined.

Illustration 2 - Minimum Side Clearances for Platforms

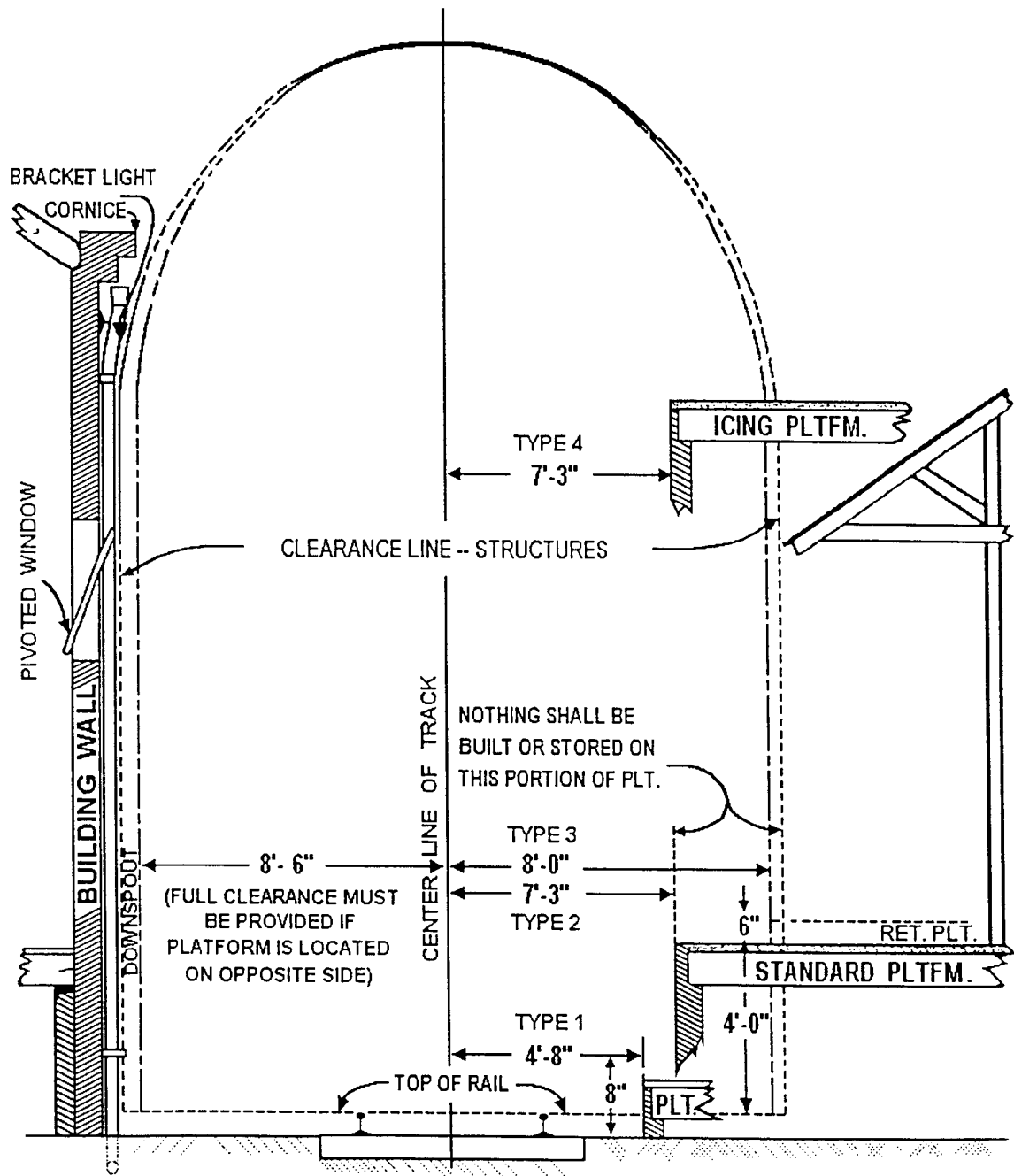


Table 3 - Minimum Side Clearances for Bridges, Tunnels and Related Structures

- Exemption:** • Except for handrail and water barrel clearances, the clearance requirements in Table 3 do not apply to bridge decks where railroad employees couple or uncouple cars on a switching lead unless the department approves them.
- Note:** • The requirements for filing a variance are located in the Safety and health core rules(§) and chapter ((296-350)) 296-900 WAC, ((and WISHA appeals, penalties and other procedural)) Administrative rules.

If your side clearance requirement involves:	Then the minimum side clearance requirements between the track centerline and the bridge, tunnel or related structure are:
Bridge and tunnel sides - lower section	8 feet
Bridge and tunnel sides - upper section	Defined by the half-circumference of a circle whose: <ul style="list-style-type: none"> • Radius is 8 feet <li style="text-align: center;">AND • Center is located on a line perpendicular to the track's centerline and 14 feet 6 inches above the top of the highest rail. • See Illustration 3.
Related structures on bridges and in tunnels - lower section structures (or portions of them) that are no more than 4 feet above the top of the rail. For example: <ul style="list-style-type: none"> • Refuge platforms on bridges and trestles. • Water columns, oil columns, and block signals. • Cattle chutes. 	Defined by lines extending: <ul style="list-style-type: none"> • 5 feet laterally from the track centerline to a point level with the top of the rail and then diagonally upward to another point 4 feet above the top of the rail <li style="text-align: center;">AND • 8 feet laterally from the track centerline to a point 4 feet above the top of the rail. • See Illustration 3A. The shaded portion of the illustration designates the area that must be free of refuge platforms, water columns, oil columns, block signals and cattle chutes.
Hand rails and water barrels	7 feet 6 inches
Fences of cattle guards	6 feet 9 inches

Illustration 3 - Minimum Side Clearances for Bridges, Tunnels and Related structures

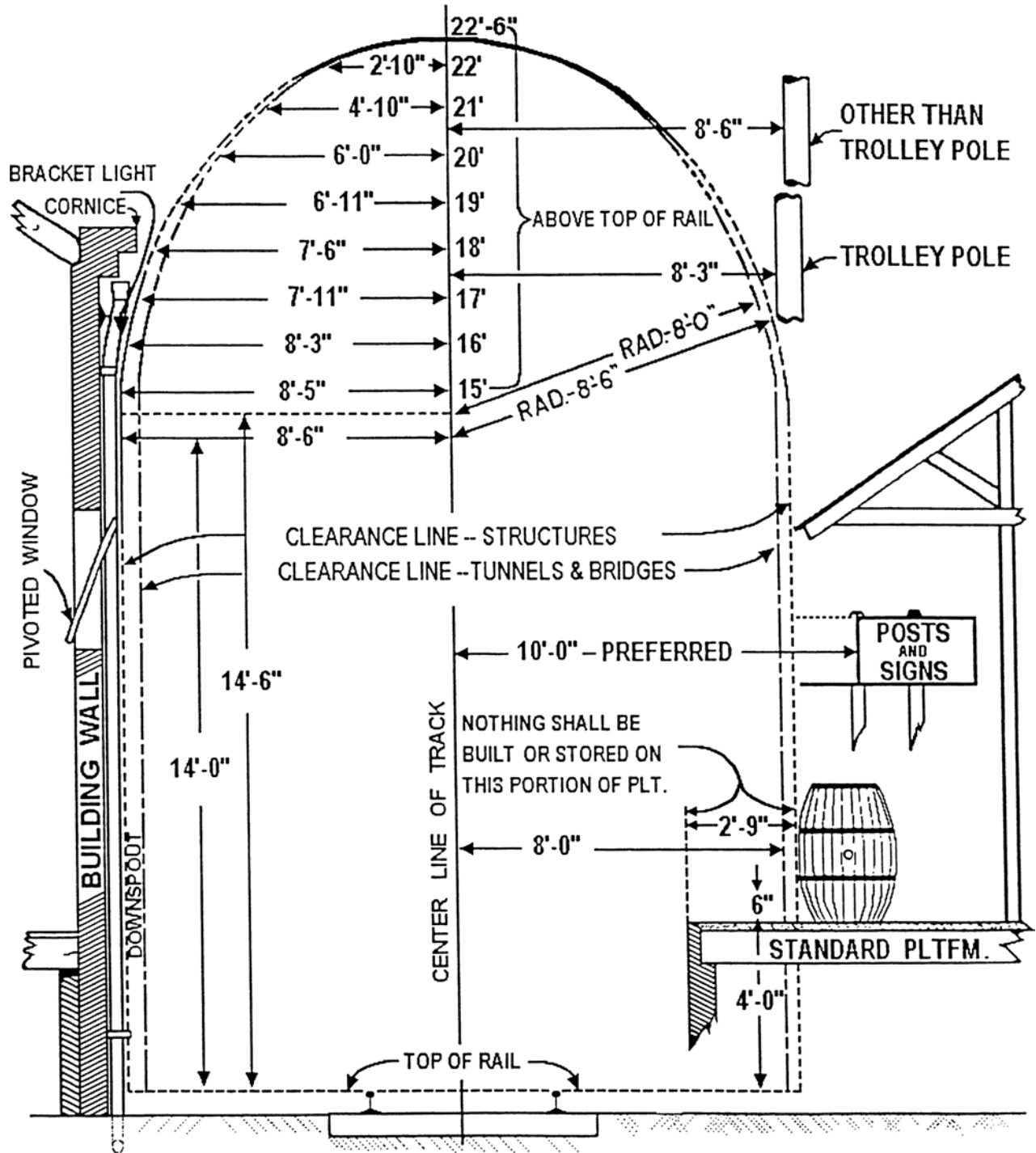


Illustration 3A - Minimum Side Clearance for Certain Structures in or on the Lower Sections of Bridges and Tunnels

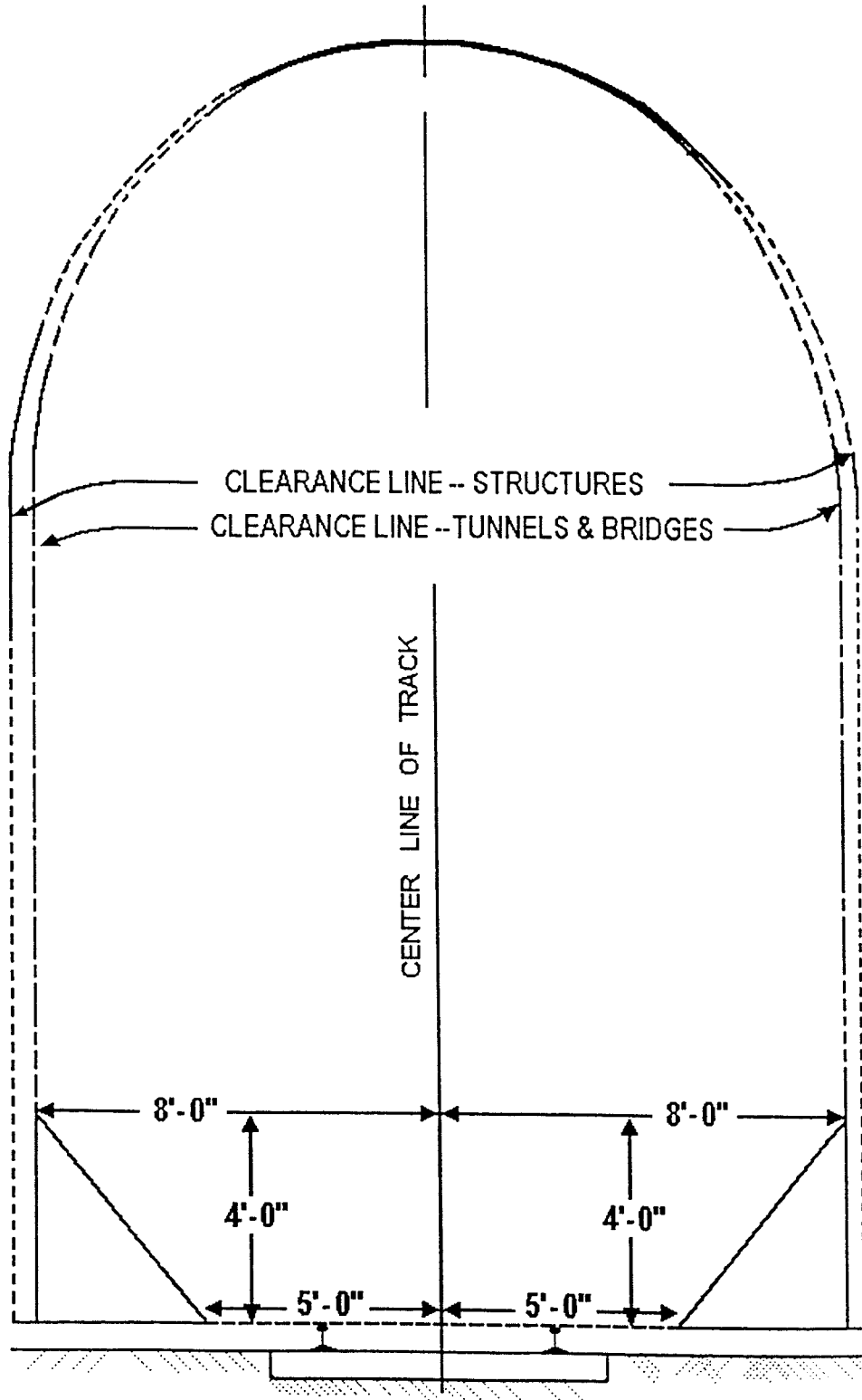


Table 4 - Other Minimum Side Clearance Requirements*

Note:

- The department must approve all minimum clearances for car pulling units and related structures.
- The requirements for filing a variance are located in the Safety and health core rules ((:)) and chapter ((296-350)) 296-900 WAC, ((and the WISHA appeals, penalties and other procedural)) Administrative rules.

If your side clearance requirement involves:	Then the minimum side clearance requirements from the track centerline are:
Type A Engine house and car repair shop doors.	7 feet 6 inches
Type B Interlocking mechanism, switch boxes, and other similar devices projecting no more than 4 feet above the top of the rail.	3 feet
Type C Poles supporting trolley contact.	8 feet 3 inches
Type D Signals and switch stands no more than 3 feet high and located between tracks where it is not possible to allow other clearances required in this chapter.	6 feet
Type E Signals and switch stands other than those described in Type B and Type D.	8 feet
Type F Material, merchandise, inventory, storage bins or equipment stacked or stored on ground or platforms adjacent to tracks.	8 feet 6 inches Note: This requirement does not apply to: <ul style="list-style-type: none"> • Railroad maintenance operations • Emergency situations • Local conditions that make compliance impossible.
Type G Space adjacent to curved track.	Increased to equal tangent track clearances. As a general rule, side clearances on curved track should be increased 1-1/2" for each degree of curvature.

*Table 4 does not have an accompanying illustration.

AMENDATORY SECTION (Amending WSR 04-19-051, filed 9/14/04, effective 2/1/05)

WAC 296-863-20025 Provide fall protection on order pickers.

You must:

- Make sure order pickers have either:
 - Standard guardrails on all open sides;

OR

– A safety harness and lanyard that are connected to a tie off point that has been approved by the PIT manufacturer.

- Make sure personal fall arrest equipment meets the requirements of WAC ((296-24-87035)) 296-24-88050, Appendix C—Personal fall arrest systems.

AMENDATORY SECTION (Amending WSR 04-19-051, filed 9/14/04, effective 2/1/05)

WAC 296-863-30020 Maintain your PITs properly.

You must:

- Maintain PITs according to this chapter and the ((man- ufacture's)) manufacturer's instructions.

- Keep PITs:

- Clean.

- Free of excess lint, oil, and grease.

- Take appropriate precautions to protect employees from the hazards associated with the cleaning agents or solvents used.

- Precautions could include methods such as ventilation.

- Make sure solvents used for cleaning PITs have a flash point of 100° Fahrenheit or more.

AMENDATORY SECTION (Amending WSR 04-19-051, filed 9/14/04, effective 2/1/05)

WAC 296-863-50005 Use the appropriate PITs in hazardous (classified) locations.

You must:

- Make sure PITS are used in hazardous (classified) locations as follows:
 - PITS authorized to be used in Class 1 locations are shown in Table 1, Approved PIT Use in Class 1 Locations.
 - PITS authorized to be used in Class 2 locations are shown in Table 2, Approved PIT Use in Class 2 Locations.
 - PITS authorized to be used in Class 3 locations are shown in Table 3, Approved PIT Use in Class 3 Locations.
- PITS authorized to be used in unclassified locations are:
 - Approved PITS designated as Type D, E, G, or LP;

AND

 - PITS that meet the requirements of a Type D, E, G, or LP PIT.

Definitions:

- An unclassified location is an area that is not designated as a Class 1, 2, or 3 location.
- Designations means a code used to show the different types of hazardous (classified) locations where PITs can be safely used:
 - **D** refers to trucks that are diesel engine powered that have minimum safeguards against inherent fire hazards.
 - **DS** refers to diesel powered trucks that, in addition to meeting all the requirements for type D trucks, are provided with additional safeguards to the exhaust, fuel and electrical systems.
 - **DY** refers to diesel powered trucks that have all the safeguards of the DS trucks and, in addition, any electrical equipment is completely enclosed. They are equipped with temperature limitation features.
 - **E** refers to electrically powered trucks that have minimum acceptable safeguards against inherent fire hazards.

- **ES** refers to electrically powered trucks that, in addition to all of the requirements for the E trucks, have additional safeguards to the electrical system to prevent emission of hazardous sparks and to limit surface temperatures.
- **EE** refers to electrically powered trucks that have, in addition to all of the requirements for the E and ES type trucks, have their electric motors and all other electrical equipment completely enclosed.
- **EX** refers to electrically powered trucks that differ from E, ES, or EE type trucks in that the electrical fittings and equipment are designed, constructed and assembled to be used in atmospheres containing flammable vapors or dusts.
- **G** refers to gasoline powered trucks that have minimum acceptable safeguards against inherent fire hazards.
- **GS** refers to gasoline powered trucks that are provided with additional exhaust, fuel, and electrical systems safeguards.
- **LP** refers to liquefied petroleum gas-powered trucks that, in addition to meeting all the requirements for type G trucks, have minimum acceptable safeguards against inherent fire hazards.
- **LPS** refers to liquefied petroleum gas-powered trucks that in addition to meeting the requirements for LP type trucks, have additional exhaust, fuel, and electrical systems safeguards.

Note:

- Tables 1, 2, and 3 show the type of approved PITs that can be used in the appropriate divisions and groups.
- PITS cannot be used in divisions and groups that do not have a PIT designation listed.
- Approved PITs will be marked or labeled with the designation of the PIT. See WAC 296-863-20010, Make sure PITs are properly labeled.

Table 1
Approved PIT Use in Class 1 Locations

Class 1							
Locations in which flammable gases or vapors are, or may be, present in the air in quantities sufficient to produce explosive or ignitable mixtures.							
Division 1				Division 2			
Conditions exist continuously, intermittently, or periodically under normal operating conditions.				Conditions may occur (due to) accidentally, for example, due to a puncture of a storage drum.			
<u>Group A</u>	<u>Group B</u>	<u>Group C</u>	<u>Group D</u>	<u>Group A</u>	<u>Group B</u>	<u>Group C</u>	<u>Group D</u>
Acetylene	Hydrogen	Ethyl ether	Acetone Alcohols Benzene Gasoline Lacquer solvent	Acetylene	Hydrogen	Ethyl ether	Acetone Alcohols Benzene Gasoline Lacquer solvent
No PIT type can be used	No PIT type can be used	No PIT type can be used	Use this PIT type: EX	No PIT type can be used	No PIT type can be used	No PIT type can be used	Use this PIT type: DS DY ES EE EX GS LPS

Table 2
Approved PIT Use in Class 2 Locations

Class 2 Locations which are hazardous because of the presence of combustibile dust.					
Division 1 Explosive mixture may be present under normal operating conditions, or where failure of equipment may cause the condition to exist simultaneously with arcing or sparking of electrical equipment, or where dusts of an electrically conducting nature may be present.			Division 2 Explosive mixture not normally present, but where deposits of dust may cause heat rise in electrical equipment, or where such deposits may be ignited by arcs or sparks from electrical equipment.		
Group E Metal dust	Group F Carbon black Coal dust Coke dust	Group G Grain dust Flour dust Starch dust Organic dust	Group E Metal dust	Group F Carbon black Coal dust Coke dust	Group G Grain dust Flour dust Starch dust Organic dust
No PIT type can be used	Use this PIT type: EX	Use this PIT type: EX	No PIT type can be used	Use this PIT type: EX DY EE	Use this PIT type: DS DY ES EE EX GS LPS

Table 3
Approved PIT Use in Class 3 Locations

Class 3 Locations where easily ignitable fibers or flyings are present but not likely to be in suspension in quantities sufficient to produce ignitable mixtures.	
Division 1 Locations in which easily ignitable fibers or materials producing combustibile flyings are handled, manufactured, or used.	Division 2 Locations in which easily ignitable fibers are stored or handled (except in the process of manufacture).
Use this PIT type: DY EE EX	Use this PIT type: DS DY E ES EE EX GS LPS

Authorized person (training) means a person approved or assigned by the employer to perform training for powered industrial truck operators.

Approved means listed or approved by a nationally recognized testing laboratory or a federal agency that issues approvals for equipment such as the Mine Safety and Health Administration (MSHA); the National Institute for Occupational Safety and Health (NIOSH); Department of Transportation; or U.S. Coast Guard, which issue approvals for such equipment.

Bridge plate (dockboard) means a device used to span the distance between rail cars or highway vehicles and loading platforms.

Classified location or hazardous location means areas that could be hazardous because of explosive or flammable atmospheres. These locations are broken down into the following categories:

- Class I locations are areas where flammable gases or vapors are or may be present in the air in quantities sufficient to produce explosive or ignitable mixtures.
- Class II locations are areas where the presence of combustibile dust could be sufficient to produce explosions.
- Class III locations are areas where the presence of easily ignitable fibers are suspended in the air but are not in large enough quantities to produce ignitable mixtures.

Counterweight means a weight used to counteract or the load being carried by the truck, or to increase the load carrying capacity of a truck.

Designations means a code used to show the different types of hazardous (classified) locations where PITs can be safely used:

- **D** refers to trucks that are diesel engine powered that have minimum safeguards against inherent fire hazards.

AMENDATORY SECTION (Amending WSR 04-19-051, filed 9/14/04, effective 2/1/05)

WAC 296-863-700 Definitions.

ANSI is an acronym for the American National Standards Institute.

Authorized person (maintenance) means a person who has been designated to perform maintenance on a PIT.

- **DS** refers to diesel powered trucks that, in addition to meeting all the requirements for type D trucks, are provided with additional safeguards to the exhaust, fuel and electrical systems.

- **DY** refers to diesel powered trucks that have all the safeguards of the DS trucks and, in addition, any electrical equipment is completely enclosed. They are equipped with temperature limitation features.

- **E** refers to electrically powered trucks that have minimum acceptable safeguards against inherent fire hazards.

- **ES** refers to electrically powered trucks that, in addition to all of the requirements for the E trucks, have additional safeguards to the electrical system to prevent emission of hazardous sparks and to limit surface temperatures.

- **EE** refers to electrically powered trucks that have, in addition to all of the requirements for the E and ES type trucks, have their electric motors and all other electrical equipment completely enclosed.

- **EX** refers to electrically powered trucks that differ from E, ES, or EE type trucks in that the electrical fittings and equipment are designed, constructed and assembled to be used in atmospheres containing flammable vapors or dusts.

- **G** refers to gasoline powered trucks that have minimum acceptable safeguards against inherent fire hazards.

- **GS** refers to gasoline powered trucks that are provided with additional exhaust, fuel, and electrical systems safeguards.

- **LP** refers to liquefied petroleum gas-powered trucks that, in addition to meeting all the requirements for type G trucks, have minimum acceptable safeguards against inherent fire hazards.

- **LPS** refers to liquefied petroleum gas powered trucks that in addition to meeting the requirements for LP type trucks, have additional exhaust, fuel, and electrical systems safeguards.

Electrolyte means a chemical, usually acid, that is mixed with water to produce electricity.

Flammable liquid means any liquid having a flashpoint 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.

Flashpoint means the minimum temperature at which a liquid gives off enough vapor to ignite.

Front-end attachment means a device that is attached to the forks or lifting device of the truck.

Lanyard means a flexible line of webbing, rope, or cable used to secure a harness to an anchor point.

Listed by report means a (~~reporting~~) report listing the field assembly, installation procedures, or both, for a UL listed product that does not have generally recognized installation requirements.

Liquefied petroleum gas means any gas that is composed predominantly of the following hydrocarbons, or mixtures of them; propane, propylene, butanes (normal butane or iso-butane), and butylenes.

Load engaging means a device attached to a powered industrial truck and used to manipulate or carry a load.

Motorized hand truck means a powered truck with wheeled forks designed to go under or between pallets and is controlled by a walking or riding operator.

Nationally recognized testing laboratory means an organization recognized by the Occupational Safety and Health Administration that conducts safety tests on equipment and materials.

Order picker means a truck controlled by an operator who is stationed on a platform that moves with the load engaging means.

Powered industrial truck (PIT) means a mobile, power-driven vehicle used to carry, push, pull, lift, stack, or tier material.

Rough terrain forklift truck means a truck intended to be used on unimproved natural terrain and at construction sites.

Safety harness (full body harness) means a configuration of connected straps to distribute a fall arresting force over at least the thighs, shoulders and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration devices.

Tie-off point (anchorage) means a secure point to attach a lanyard that meets the requirements of WAC 296-24-87035, Appendix—C Personal fall arrest systems.

Vertical load backrest extension means a device that extends vertically from the fork carriage frame.

NEW SECTION

The following section of the Washington Administrative Code is decodified as follows:

Old WAC Number	New WAC Number
296-863-10005	296-863-100

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

WAC 296-874-20052 Provide fall protection for employees on scaffolds.

You must:

- Protect each employee on a scaffold more than ten feet (3.1 m) above a lower level, from falling to the lower level, by providing either:

- A personal fall (~~arrest~~) restraint system;

OR

- Guardrails.

REFERENCE		
Fall protection requirements for employees:	Are located in the following chapters:	In the following sections:
On walkways within scaffolds	Chapter 296-874 WAC, Scaffolds	WAC 296-874-20056
Erecting or dismantling supported scaffolds	Chapter 296-874 WAC, Scaffolds	WAC 296-874-40010
Erecting or dismantling suspended scaffolds in general industry	Chapter 296-24 WAC, General safety and health standards	Part J-1 Working surfaces, guarding floors and wall openings, ladders AND Part J-3 Powered platforms

REFERENCE		
Fall protection requirements for employees:	Are located in the following chapters:	In the following sections:
Erecting or dismantling suspended scaffolds in construction work	Chapter 296-155 WAC, Safety standards for construction work	Part C-1 Fall restraint and fall arrest AND Part K Floor openings, wall openings, and stairways

- Guying;
- Tying;
- Bracing;
- Outriggers;
- Other equivalent means.

You must:

- Make sure employees erecting the scaffold install the guardrail system, if required, before the scaffold is used by any other employees.

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

WAC 296-874-40004 Prevent supported scaffolds from tipping.

You must:

- Make sure supported scaffolds with a height to least base dimension ratio of greater than four to one are prevented from tipping by one or more of the following:
 - Guying;
 - Tying;
 - Bracing;
 - Other equivalent means.

Note: The least base dimension includes outriggers, if used.

You must:

- Install guys, ties, and braces where horizontal members support both the inner and outer legs of the scaffold.
- Install guys, ties, and braces:
 - According to the scaffold manufacturer's recommendations;

OR

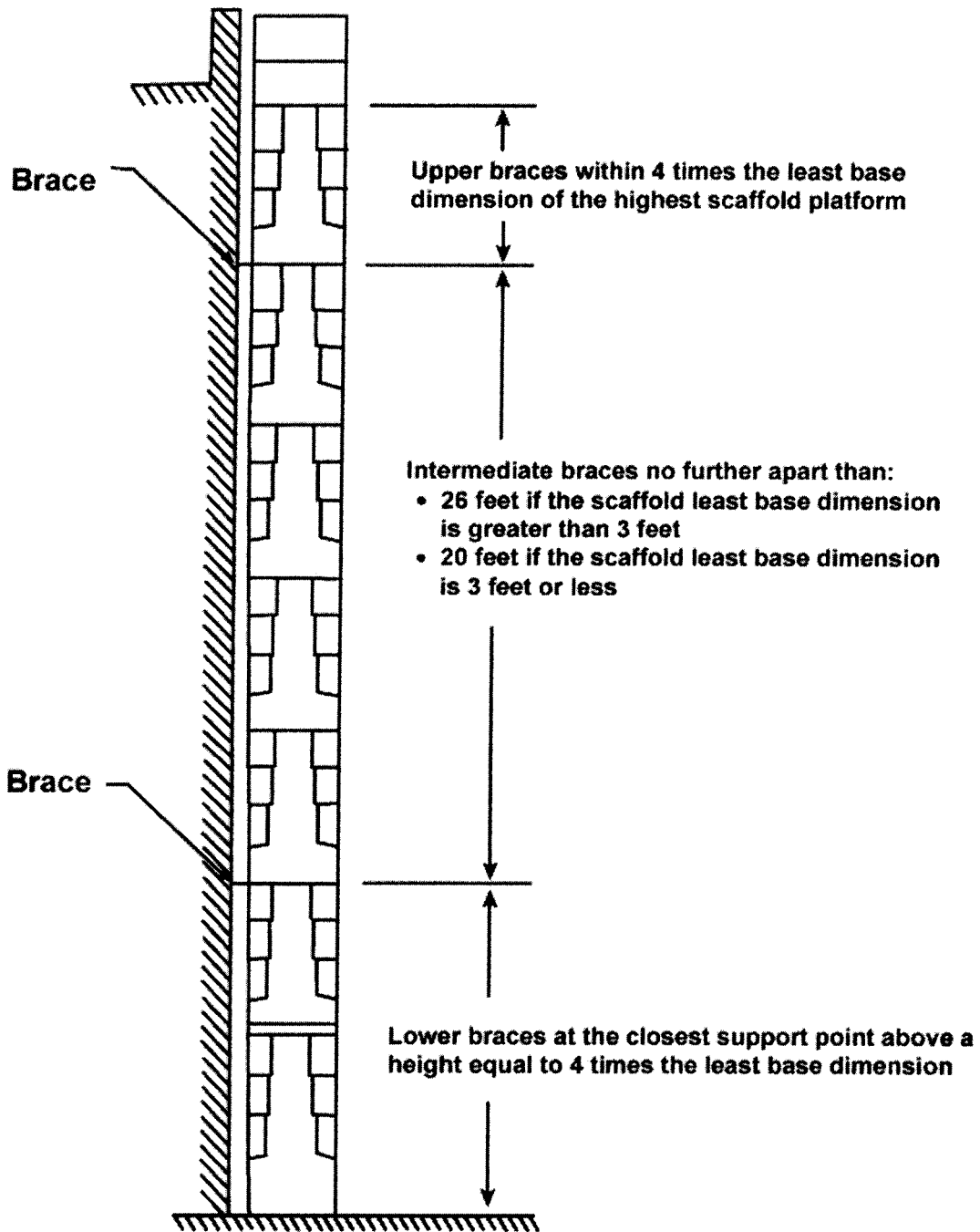
- At all points where the following horizontal and vertical planes meet:
 - First vertical level at a height equal to four times the least base dimension;
 - Subsequent vertical levels every:
 - ◆ Twenty feet (6.1 m) or less for scaffolds having a width of three feet (0.91 m) or less;
 - ◆ Twenty six feet (7.9 m) or less for scaffolds more than three feet (0.91 m) wide;
 - Horizontally at:
 - ◆ Each end of the scaffold;
- AND**
- ◆ Intervals of thirty feet (9.1 m) or less.

Note: The thirty-foot horizontal intervals are measured from one end of the scaffold to the other.

You must:

- Make sure the highest level of guys, ties, or braces is no further from the top of the scaffold than a distance equal to four times the least base dimension.
- Make sure scaffolds that have an eccentric load applied or transmitted to them, such as a cantilevered work platform, are prevented from tipping by one or more of the following:

Bracing – Tube and Coupler Scaffold



AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

WAC 296-874-40006 Make sure supported scaffolds are properly supported.

You must:

- Make sure supported scaffold poles, legs, posts, frames, and uprights are:

- Plumb;

AND

- Braced to prevent swaying or displacement.

- Make sure supported scaffold poles, legs, posts, frames, and uprights, bear on base plates that rest on:

- Mudsills;

OR

- Other firm foundations such as concrete or dry, compacted soil.

- Make sure foundations are all of the following:

- Level;

- Sound;

- Rigid;

- Capable of supporting the loaded scaffold without settling or displacement.

Note: The condition of the foundation may change due to weather or other factors. If changes occur, the foundation needs to be evaluated by a competent person to make sure it will safely support the scaffold.

- Make sure unstable objects are not used:

- To support scaffolds or platform units;

OR

- As working platforms.

- Make sure mobile scaffolds meet these additional requirements:

- Wheel and caster stems are pinned or otherwise secured in the scaffold legs or adjustment screws;

- Wheels and casters are locked, or equivalent means are used, to prevent movement when the scaffold is being used;

- Screw jacks or other equivalent means are used if it's necessary to level the work platform.

- Make sure front-end loaders and similar equipment used to support scaffold platforms have been specifically designed for such use by the manufacturer.

~~((Reference: For requirements about powered industrial trucks, including forklifts that are used to support scaffold platforms, go to Powered industrial trucks, chapter 296-863-WAC.))~~

AMENDATORY SECTION (Amending WSR 02-22-027, filed 10/28/02, effective 1/1/03)

WAC 296-878-10005 Summary.

Your responsibility:

Make sure workers clean windows safely, and properly use and maintain their window-cleaning equipment.

IMPORTANT:

Window-cleaning equipment includes window-cleaner's belts, boatswains' chairs, rope descent systems, ladders, supported scaffolds and the support equipment used to suspend employees cleaning windows.

You must:

Training

Train workers to use window-cleaning equipment

WAC 296-878-11005

Building surfaces and fixtures

Make sure building surfaces and fixtures are safe to use

WAC 296-878-12005

Inspection procedures

Inspect the area to be cleaned

WAC 296-878-13005

Inspect window-cleaning equipment before use

WAC 296-878-13010

Develop site-specific service and emergency plans

Develop a site-specific service and emergency recovery plan for window-cleaning operations

WAC 296-878-14005

Equipment

Select and use appropriate equipment

WAC 296-878-15005

~~((Other window-cleaning equipment~~

~~WAC 296-878-15010.))~~

Select appropriate rope for suspended equipment

WAC 296-878-15015

Select appropriate carabiners

WAC 296-878-15020

Use fall protection equipment

WAC 296-878-15025

Warning signs and barricades

Provide warning signs and barricades when suspended equipment is used

WAC 296-878-16005

Power line clearances

Maintain clearance between window cleaners and power lines

WAC 296-878-17005

Window-cleaners' belts and anchors

Select appropriate window-cleaners' belts and anchors

WAC 296-878-18005

Inspect the anchors you plan to use for window cleaning

WAC 296-878-18010

Use window-cleaners' belts safely

WAC 296-878-18015

Move safely on the outside of buildings

WAC 296-878-18020

Boatswains' chairs

Select appropriate boatswains' chairs

WAC 296-878-19005

Safely use boatswains' chairs rigged with a block and tackle

WAC 296-878-19010

Rope descent systems

Select appropriate rope descent systems

WAC 296-878-20005

Safely use rope descent systems

WAC 296-878-20010

Safely use rope descent devices

WAC 296-878-20015

Equipment prohibited

Prohibit equipment from use

WAC 296-878-21005

Definitions

WAC 296-878-220.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-62-051 Ergonomics.

AMENDATORY SECTION (Amending WSR 06-06-020, filed 2/21/06, effective 6/1/06)

WAC 296-900-130 Citation and notice.

Summary:

Employer responsibility:

To notify employees when a citation and notice is received:

Citation and notice

WAC 296-900-13005.

Copies of ~~((inspection results))~~ future citations and notices

WAC 296-900-13010.

Posting citation and notices

WAC 296-900-13015.

AMENDATORY SECTION (Amending WSR 06-06-020, filed 2/21/06, effective 6/1/06)

WAC 296-900-14020 Increases to adjusted base penalties.

• WISHA may increase an adjusted base penalty in certain circumstances. Table 6, Increases to Adjusted Base Penalties, describes circumstances where an increase may be applied to an adjusted base penalty.

**Table 6
Increases to Adjusted Base Penalties**

For this circumstance:	The adjusted base penalty may be increased as follows:
Repeat violation When the employer has been previously cited for a substantially similar hazard, with a final order for the previous violation dated no more than 3 years prior to the employer committing the violation being cited.	<ul style="list-style-type: none"> Multiplied by the total number of citations with violations involving similar hazards, including the current inspection. <p>Note: The maximum penalty can't exceed seventy thousand dollars for each violation.</p>
Willful violation An act committed with the intentional, knowing, or voluntary disregard for the WISHA requirements or with plain indifference to employee safety.	<ul style="list-style-type: none"> Multiplied by ten with at least the statutory minimum penalty of five thousand dollars <p>Note: The maximum penalty can't exceed \$70,000 for each violation.</p>

**Table 6
Increases to Adjusted Base Penalties**

For this circumstance:	The adjusted base penalty may be increased as follows:
<p>Egregious violation If the violation was willful and at least one of the following:</p> <ul style="list-style-type: none"> The violations resulted in worker fatalities, a work-site catastrophe, or a large number of injuries or illnesses. The violations resulted in persistently high rates of worker injuries or illnesses. The employer has an extensive history of prior violations. The employer has intentionally disregarded its safety and health responsibilities. The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties. The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place. 	<ul style="list-style-type: none"> With a separate penalty issued for each instance the employer fails to follow a specific requirement.
<p>Failure to abate (FTA) Failure to correct a cited WISHA violation on time.</p> <p>Reference: For how to certify corrected violations, go to Certifying violation corrections, WAC ((296-900-60005)) <u>296-900-15005</u> through ((296-900-60035)) <u>296-900-15030</u>.</p>	<ul style="list-style-type: none"> Based on the facts at the time of reinspection, will be multiplied by: <ul style="list-style-type: none"> At least five, but up to ten, based on the employer's effort to comply. The number of calendar days past the correction date, with a minimum of five days.

Table 6
Increases to Adjusted Base Penalties

For this circumstance:	The adjusted base penalty may be increased as follows:
	Note: The maximum penalty can't exceed seven thousand dollars per day for every day the violation is not corrected.

AMENDATORY SECTION (Amending WSR 06-06-020, filed 2/21/06, effective 6/1/06)

WAC 296-900-150 Certifying violation corrections.

Summary:

Employer responsibility:

- To certify that violations to safety and health requirements have been corrected.
- To submit, if required:
 - Additional information.
 - Correction action plans.
 - Progress reports.
- To comply with correction due dates.
- To tag cited moveable equipment to warn employees of a hazard.
- To inform affected employees that each violation was corrected.

~~((Certify))~~ Certifying violation correction

WAC 296-900-15005.

Violation correction action plans

WAC 296-900-15010.

Progress reports

WAC 296-900-15015.

Timeliness of violation correction documents

WAC 296-900-15020.

Inform employees about violation correction

WAC 296-900-15025.

Tag moveable equipment

WAC 296-900-15030.

WSR 07-03-177

PERMANENT RULES

DEPARTMENT OF HEALTH

(Medical Quality Assurance Commission)

[Filed January 24, 2007, 11:23 a.m., effective March 1, 2007]

Effective Date of Rule: March 1, 2007.

Purpose: WAC 246-919-605 and 246-918-125 defines the use of laser, light, radiofrequency and plasma (LLRP) devices by physicians (MD) and physician assistants (PA), specifies who can operate a device, specifies who the MD or PA can delegate the use of a device to and outlines the degree of supervision required after delegation. The proposed new sections will protect the public from being harmed by unsupervised and untrained persons using LLRP.

Statutory Authority for Adoption: RCW 18.71.017 and 18.71A.020.

Other Authority: RCW 18.130.050(12).

Adopted under notice filed as WSR 06-15-130 on July 19, 2006.

Changes Other than Editing from Proposed to Adopted Version: The adopted rule is not different from the text of the proposed rule. However, in response to the feedback from the public and constituents, the commission has elected to delay the effective date until March 1, 2007. For those that are currently not in compliance this will give them time to do so.

A final cost-benefit analysis is available by contacting Beverly A. Thomas, P.O. Box 47866, Olympia, WA 98504, phone (360) 236-4788, fax (360) 236-4768, e-mail beverly.thomas@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 2, 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: August 25, 2006.

Blake T. Maresh
Executive Director

NEW SECTION

WAC 246-918-125 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this rule, laser, light, radiofrequency, and plasma devices (hereafter LLRP devices) are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and

(b) Are classified by the federal Food and Drug Administration as prescription devices.

(2) Because an LLRP device penetrates and alters human tissue, the use of an LLRP device is the practice of medicine under RCW 18.71.011. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than the purpose set forth in subsection (1) of this section constitutes surgery and is outside the scope of this section.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) A physician assistant must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(5) A physician assistant may use an LLRP device so long as it is with the consent of the sponsoring or supervising physician, it is in compliance with the practice arrangement plan approved by the commission, and it is in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, a physician assistant must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that a non-physician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

PHYSICIAN ASSISTANT DELEGATION OF LLRP TREATMENT

(7) A physician assistant who meets the above requirements may delegate an LLRP device procedure to a properly trained and licensed professional, whose licensure and scope of practice allow the use of an LLRP device provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) Such delegated use falls within the supervised professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye; and

(d) The supervised professional has appropriate training in, at a minimum, application techniques of each LLRP device, cutaneous medicine, indications and contraindications for such procedures, preprocedural and postprocedural care, potential complications and infectious disease control involved with each treatment.

(e) The delegating physician assistant has written office protocol for the supervised professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual physician assistant authorized to use the device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised professional must follow when performing procedures delegated pursuant to this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician assistant concerning specific decisions made. Documentation shall be recorded after each procedure, and may be performed on the patient's record or medical chart.

(f) The physician assistant is responsible for ensuring that the supervised professional uses the LLRP device only in accordance with the written office protocol, and does not

exercise independent medical judgment when using the device.

(g) The physician assistant shall be on the immediate premises during any use of an LLRP device and be able to treat complications, provide consultation, or resolve problems, if indicated.

NEW SECTION

WAC 246-919-605 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this rule, laser, light, radiofrequency, and plasma devices (hereafter LLRP devices) are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and

(b) Are classified by the federal Food and Drug Administration as prescription devices.

(2) Because an LLRP device penetrates and alters human tissue, the use of an LLRP device is the practice of medicine under RCW 18.71.011. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than the purpose set forth in subsection (1) of this section constitutes surgery and is outside the scope of this section.

PHYSICIAN RESPONSIBILITIES

(4) A physician must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(5) A physician must use an LLRP device in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, a physician must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that a nonphysician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

(7) Regardless of who performs LLRP device treatment, the physician is ultimately responsible for the safety of the patient.

(8) Regardless of who performs LLRP device treatment, the physician is responsible for assuring that each treatment is documented in the patient's medical record.

(9) The physician must ensure that there is a quality assurance program for the facility at which LLRP device procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program shall include the following:

(a) A mechanism to identify complications and untoward effects of treatment and to determine their cause;

(b) A mechanism to review the adherence of supervised professionals to written protocols;

(c) A mechanism to monitor the quality of treatments;

(d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection (10)(d) of this section and physician supervising practices; and

(e) Ongoing training to maintain and improve the quality of treatment and performance of treating professionals.

PHYSICIAN DELEGATION OF LLRP TREATMENT

(10) A physician who meets the above requirements may delegate an LLRP device procedure to a properly trained and licensed professional, whose licensure and scope of practice allow the use of an LLRP device, provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) Such delegated use falls within the supervised professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye;

(d) A physician has a written office protocol for the supervised professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual physician authorized to use the device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised professional must follow when performing procedures delegated pursuant to this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made;

(e) The supervised professional has appropriate training in, at a minimum, application techniques of each LLRP device, cutaneous medicine, indications and contraindications for such procedures, preprocedural and postprocedural care, potential complications and infectious disease control involved with each treatment;

(f) The delegating physician ensures that the supervised professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device;

(g) The delegating physician shall be on the immediate premises during the patient's initial treatment and be able to treat complications, provide consultation, or resolve problems, if indicated. The supervised professional may complete the initial treatment if the physician is called away to attend to an emergency;

(h) Existing patients with an established treatment plan may continue to receive care during temporary absences of the delegating physician provided that there is a local back-

up physician who satisfies the requirements of subsection (4) of this section. The local back-up physician must agree in writing to treat complications, provide consultation or resolve problems if medically indicated. The local back-up physician shall be reachable by phone and able to see the patient within sixty minutes.

(11) The use of, or the delegation of the use of, an LLRP device by a physician assistant is covered by WAC 246-918-125.