

WSR 07-10-058
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed April 27, 2007, 9:49 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-163 Insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies and Washington state health insurance pool, explains the exemptions and deductions allowed "Insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies and Washington state health insurance pool." It also states that insurance companies are subject to the retail sales or use taxes on their purchases of tangible personal property and certain services, and that they must collect sales tax on sales of tangible personal property, including salvaged property.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-5543, e-mail GayleC@dor.wa.gov, AND RECEIVED BY July 2, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing the following changes:

- The addition of an introductory subsection (1) to explain the subject matter of the rule;
- Language is added to explain that RCW 82.04.322 provides a B&O tax exemption for any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201; and
- The explanation of the B&O tax deduction provided by RCW 82.04.4329 for assessments paid by a member to the Washington state health insurance pool has been revised to recognize that the deduction was repealed by chapter 443, Laws of 2005, effective July 1, 2006.

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

Statute Being Implemented: RCW 82.04.320, 82.04322 [82.04.322], 82.04.370, and 82.04.4329.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olym-

pia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

April 26, 2007

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 91-05-040, filed 2/13/91, effective 3/16/91)

WAC 458-20-163 Insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies and Washington state health insurance pool. (1) Introduction. Income earned by insurance companies, including surety companies, fraternal benefit societies, fraternal fire insurance associations, beneficiary corporations or societies, and the Washington state health insurance pool is generally subject to the service and other activities business and occupation (B&O) tax, unless the law provides an exemption or deduction. This section identifies exemptions and deductions available to these businesses. It also explains the reporting responsibilities for retail sales and use taxes for retail purchases and retail services.

(2) Exemptions. ((The business and occupation tax does not apply to:)) The law provides the following B&O tax exemptions. These amounts do not need to be reported on the excise tax returns filed with the department of revenue.

(a) RCW 82.04.320 provides an exemption to any person with respect to insurance business upon which a tax based on gross premiums is paid to the state of Washington. ((RCW 82.04.320.)) It should be noted, however, that the law provides expressly that this exemption does not extend to "any person engaging in the business of representing any insurance company, whether as general or local agent, or acting as broker for such companies" or to "any bonding company . . . with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor." The exemption also does not apply to any business engaged in by an insurance company other than its insurance business. Thus an insurance company is subject to the retailing or wholesaling ((business and occupation)) B&O tax on sales of salvaged property unless the sales are casual or isolated sales as described in WAC 458-20-106 (Casual or isolated sales—Business reorganizations). Also see WAC 458-20-102 (Resale certificates) for resale certificate requirements for wholesale sales.

(b) RCW 82.04.322 provides an exemption to any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201.

(c) RCW 82.04.370 provides an exemption to fraternal benefit societies or fraternal fire insurance associations organized or licensed pursuant to Title 48 RCW and as defined in RCW 48.36A.010.

((=)) The statute also exempts beneficiary corporations or societies organized under and existing by virtue of Title 24

RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits.

~~((This))~~ The exemption provided by RCW 82.04.370, however, is limited to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such persons. It is not intended that all the varied, regular business activities (e.g., sales of food, liquor, admissions, and amusement devices receipts) of these societies or organizations be ~~((exempted from the business and occupation))~~ exempt from B&O tax. Only that portion of income which can be demonstrated as directly attributable to charges made for insurance or providing death benefits is exempt.

~~((2))~~ (3) Deductions. ~~((Effective May 18, 1987))~~ For periods prior to July 1, 2006, a B&O tax deduction was provided by RCW 82.04.4329 to a member of the Washington state health insurance pool ~~((may take a deduction from the measure of the business and occupation tax))~~ for assessments paid by that member to the pool. ~~((See RCW 82.04.4329.) The deduction amount should be shown in the deduction column of the business and occupation tax section on the combined excise tax return, where it will be subtracted from the gross amounts, to arrive at a net taxable amount upon which the actual business and occupation tax is computed. If the deduction cannot be fully used because the assessment total exceeds the gross receipts reported in the business and occupation tax section of the tax return, the member may carry forward the unused portion of the deduction to future reporting periods until the deduction is fully taken. The explanation of the deduction should be "Amount paid to Washington state health insurance pool, per RCW 82.04.4329 and WAC 458-20-163.")~~ This deduction ~~((does))~~ did not apply to a member who ~~((has))~~ had deducted such assessments from the insurance premiums tax, RCW 48.14.020.

~~((3))~~ (4) Retail sales and use tax responsibilities. Insurance companies are subject to the retail sales tax or use tax upon retail purchases, certain retail services, or articles acquired for their own use.

When insurance companies make sales to consumers of salvaged property (e.g., from automobile collisions, fire loss, burglary, or theft recoveries) or any other tangible personal property, they must collect and report retail sales tax on those sales.

WSR 07-10-059
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed April 27, 2007, 9:51 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-270 Telephone program excise tax rates, this rule provides the rates for the taxes imposed on switched access lines pursuant to RCW 43.20A.725 and 80.36.430.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS

ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-5543, e-mail GayleC@dor.wa.gov, AND RECEIVED BY July 2, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing an amendment to WAC 458-20-270 to provide the telecommunications relay services (TRS) and Washington telephone assistance program (WTAP) tax rates for the July 1, 2007-June 30, 2008, fiscal year. The TRS rate increases from nine cents to twelve cents per switched access line for the upcoming fiscal year. There is no change to the WTAP rate. A copy of the proposed rule is available for viewing and printing on our web site at <http://dor.wa.gov/content/laws/RuleMaking/default.aspx>.

Reasons Supporting Proposal: Under RCW 43.20A.725 and 80.36.430, the department is required to annually determine the tax rates imposed on switched access lines to fund the TRS program and the WTAP. Each tax rate is determined by dividing the respective program budgets by the number of switched access lines reported to the department in the prior calendar year. The department retains no discretion in the determination of these tax rates, the amount of which is explicitly dictated by the statutory formulas and inputs provided to the department.

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

Statute Being Implemented: RCW 43.20A.725 and 80.36.430.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

April 26, 2007

Alan R. Lynn

Rules Coordinator

Interpretations and

Technical Advice Division

AMENDATORY SECTION (Amending WSR 06-16-137, filed 8/2/06, effective 9/2/06)

WAC 458-20-270 Telephone program excise tax rates. RCW 82.72.020 requires the department of revenue (department) to collect certain telephone program excise taxes. Those taxes include the tax on switched access lines imposed by RCW 43.20A.725 (telephone relay service—TRS) and 80.36.430 (Washington telephone assistance program—WTAP). Pursuant to those statutes, the department

must annually determine the rate of each respective tax according to the statutory formulas.

((For the period July 1, 2006, through June 30, 2007, the monthly telephone program excise tax rates are as follows:

FRS 9 cents per switched access line
 WTAP 14 cents per switched access line))

The monthly telephone program excise tax rates per switched access line are as follows:

<u>Period</u>	<u>TRS Rate</u>	<u>WTAP Rate</u>
<u>7/1/2005 - 6/30/2006</u>	<u>10 cents</u>	<u>14 cents</u>
<u>7/1/2006 - 6/30/2007</u>	<u>9 cents</u>	<u>14 cents</u>
<u>7/1/2007 - 6/30/2008</u>	<u>12 cents</u>	<u>14 cents</u>

WSR 07-10-070
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 1, 2007, 8:26 a.m.]

Title of Rule and Other Identifying Information: Chapter 296-874 WAC, Scaffolds.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, Department of Labor and Industries, P.O. Box 4400, Olympia, WA 98504-4001, AND RECEIVED BY July 2, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On January 23, 2007, the department adopted changes to chapter 296-874 WAC, Scaffolds. The purpose of this rule making is to correct errors and to make housekeeping changes to keep this rule as-effective-as the federal equivalent.

For example: In WAC 296-874-20052, the word "arrest" was removed from the existing rule and replaced with the word "restraint." We are correcting that error by adding the word "arrest" back into the rule, which keeps us as-effective-as the federal equivalent.

In addition, we will be repealing the crawling board requirements in WAC 296-874-40016, and one crawling board requirement in WAC 296-874-20056, because they do not meet the requirements for the scaffolds rule, and already exist in the construction rule, chapter 296-155 WAC.

WAC 296-874-100 Scope.

- Correcting a referenced WAC number.

WAC 296-874-20030 Make sure ramps and walkways used to access scaffolds meet these requirements.

- Correcting a title to: "Working surfaces, guarding floors and wall openings."

WAC 296-874-20052 Provide fall protection for employees on scaffolds.

- Adding the word "arrest" and removing the word "restraint."

WAC 296-874-20056 Provide specific fall protection for specific types of scaffolds.

- Removing a requirement that does not belong in the rule.

WAC 296-874-40004 Prevent supported scaffolds from tipping.

- Correcting the title of the illustration to match the actual requirement.

WAC 296-874-40006 Make sure supported scaffolds are properly supported.

- Adding a reference.

WAC 296-874-40040 Meet these requirements when using tube and coupler scaffolds.

- Removing an illustration that does not belong in this section of the rule.

WAC 296-874-500 Definitions.

- Removing a definition (crawling board) that does not belong in the rule.

WAC 296-874-40016 Meet these requirements when using crawling boards (chicken ladders).

- Repealing crawling board requirements from this chapter because they do not meet the requirements for the scaffolds rule, and already exist in the construction rule, chapter 296-155 WAC.

Reasons Supporting Proposal: The department is expediting the rule making to correct errors and to make housekeeping changes to keep this rule as effective as the federal equivalent.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.050, 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of labor and industries, division of occupational safety and health (DOSH), governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

May 1, 2007

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

WAC 296-874-100 Scope. This chapter applies to suspended and supported scaffolds, including their supporting structure and anchorage points.

- Exemption:** This chapter does not apply to:
- Manually propelled elevating work platforms;
 - Self-propelled elevating work platforms;
 - Boom-supported elevating work platforms;
 - Aerial lifts;
 - Crane or derrick suspended personnel platforms;
 - Personnel platforms supported by powered industrial trucks (PITs).

- Reference:** Additional requirements for the following types of platforms are found in the general safety and health standards, chapter 296-24 WAC. Go to the following sections:
- For elevating work platforms and aerial lifts, go to elevating work platforms, WAC 296-24-875;
 - For crane or derrick suspended personnel platforms, go to WAC 296-24-23533;
 - For personnel platforms supported by powered industrial trucks (PITs), go to ~~((WAC 296-24-230))~~ chapter 296-863 WAC.

Definition:

A **scaffold** is a temporary elevated platform, including its supporting structure and anchorage points, used for supporting employees or materials.

A **suspended scaffold** is one or more platforms suspended from an overhead structure by ropes or other nonrigid means.

A **supported scaffold** is one or more platforms supported by rigid means such as outrigger beams, brackets, poles, legs, uprights, posts, or frames.

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

WAC 296-874-20030 Make sure ramps and walkways used to access scaffolds meet these requirements.

You must:

- Make sure ramps and walkways are not inclined at a slope steeper than one vertical in three horizontal (1:3 or twenty degrees from the horizontal).
 - Make sure ramps and walkways that are inclined at a slope steeper than one vertical in eight horizontal (1:8) have cleats to provide footing which are:
 - Securely fastened to the planks;
- AND**
- Spaced not more than fourteen inches (35 cm) apart.

- Reference:** Ramps and walkways that are four feet (1.2 m) or more above a lower level need to have a guardrail system. Those requirements are found in other chapters.
- For general industry activities, go to:
 - Working surfaces, guarding floors and wall openings, ~~((ladders,))~~ Part J-1, in the general safety and health standards, chapter 296-24 WAC;
 - For construction activities, go to:
 - Floor openings, wall openings, and stairways, Part K, in the safety standards for construction work, chapter 296-155 WAC.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

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 ~~((restraint))~~ arrest 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
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

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 296-874-20056 Provide specific fall protection for specific types of scaffolds.

You must:

- Use a personal fall arrest system to protect employees on the following scaffolds:
 - Boatswain's chair;
 - Catenary scaffold;
 - Float scaffold;
 - Ladder jack scaffold;
 - Needle beam scaffold.
 - Use a personal fall arrest system **and** a guardrail system to protect employees on:
 - Single-point adjustable suspension scaffolds;
- AND**
- Two-point adjustable suspension scaffolds.
- ~~((Protect employees working on a crawling board (chicken ladder) by using at least one of the following:))~~
- A personal fall arrest system;

~~— A guardrail system with a minimum two hundred pound toprail capacity;~~

~~— A three quarter inch (1.9 cm) diameter grabline or equivalent handhold securely fastened beside each crawling board.))~~

- Protect employees working on a self-contained adjustable scaffold that has the platform:

- Supported by the frame structure, using a guardrail system with a minimum two hundred pound toprail capacity.

- Suspended by ropes, using:

- ■ A guardrail system with a minimum two hundred pound toprail capacity;

AND

- ■ A personal fall arrest system.

- Protect employees on walkways located within a scaffold by using a guardrail system that meets all of the following:

- Has a minimum two hundred pound toprail capacity;
- Is installed within nine and one-half inches (24.1 cm) of the walkway;

- Is installed along at least one side of the walkway.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

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:

- Guying;

- Tying;

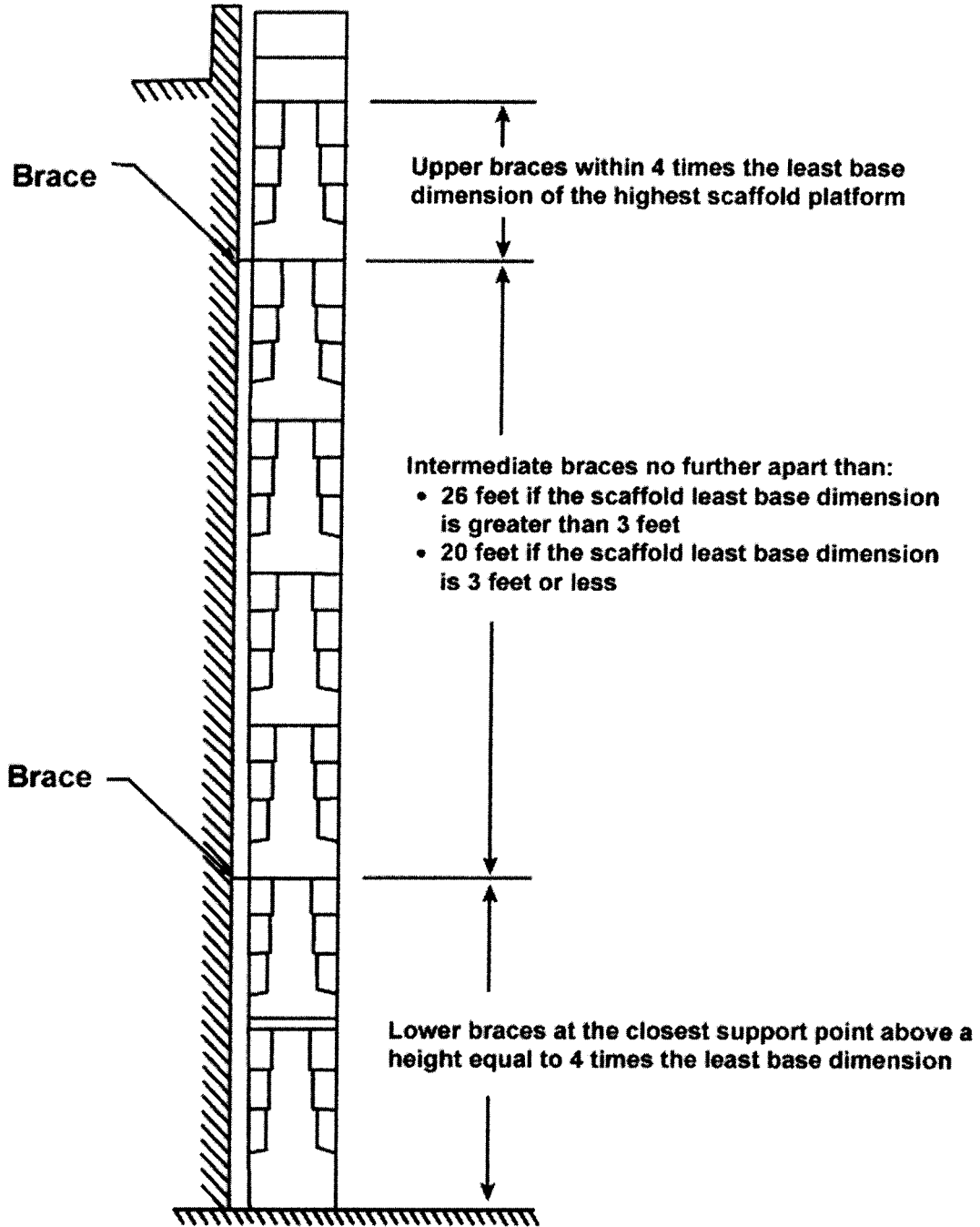
- Bracing;

- Outriggers;

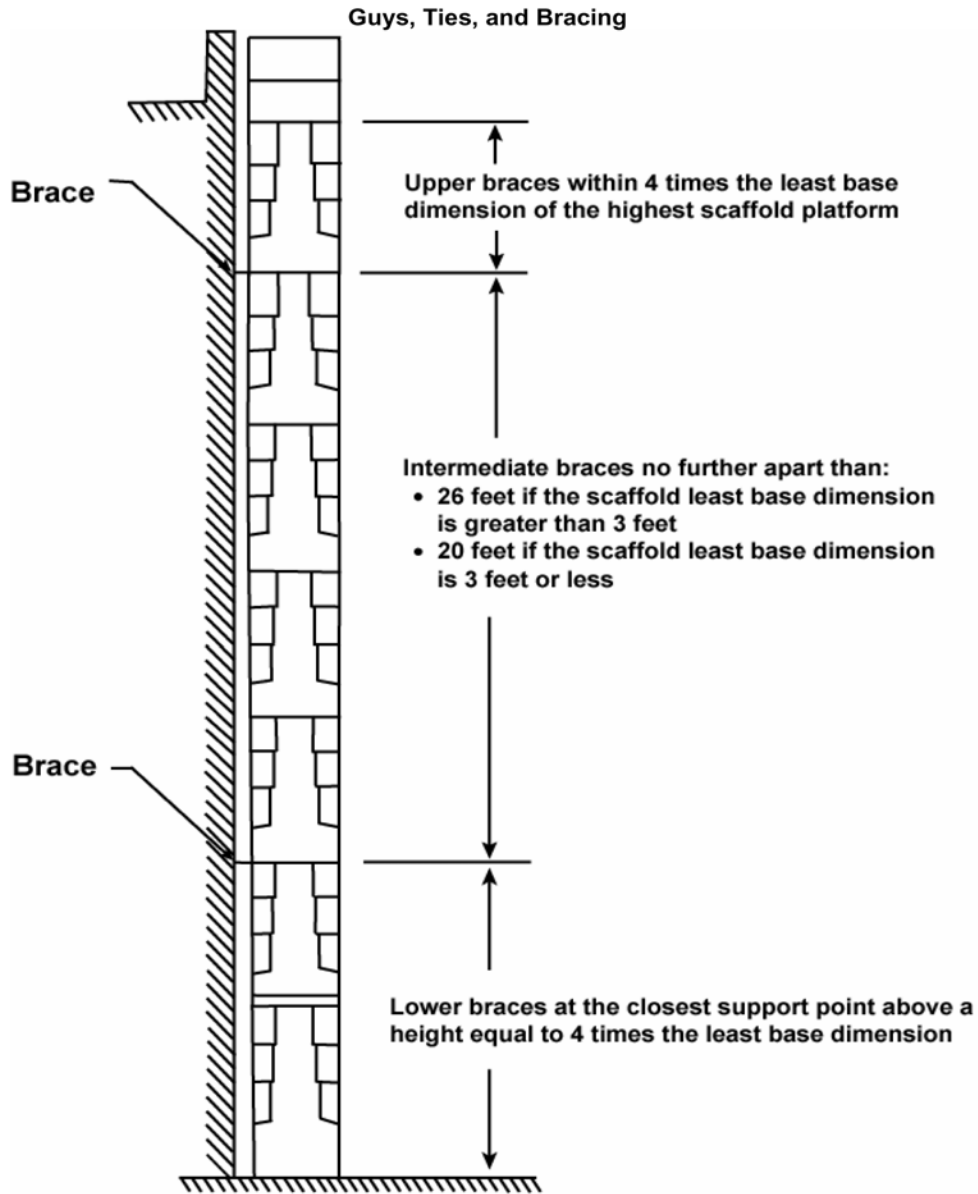
- Other equivalent means.

~~((STRICKEN GRAPHIC~~

Bracing – Tube and Coupler Scaffold



~~STRICKEN GRAPHIC))~~



AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

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: When forklifts or other powered industrial trucks are used for personnel lifting on support scaffold platforms, follow the requirements found in Forklifts and other powered industrial trucks, chapter 296-868 WAC.

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

WAC 296-874-40040 Meet these requirements when using tube and coupler scaffolds.

You must:

- Make sure tube and coupler scaffolds over one hundred twenty-five feet high are:

- Designed by a registered professional engineer;

AND

- Constructed and loaded as specified in the design.

- Leave existing platforms undisturbed until new bearers have been set in place and braced before moving the platforms to the new level.

- Install crossbracing across the width of the scaffold that meets all of the following:

- Bracing is installed at:

- Each end of the scaffold;

AND

- At least at every third set of posts horizontally and every fourth runner vertically.

- Bracing extends diagonally from the:

- Outer posts or runners upwards to the next inner posts or runners;

AND

- Inner posts or runners upwards to the next outer posts or runners.

- Install building ties:

- At the bearer levels between the crossbracing;

AND

- At locations specified in WAC 296-874-40004.

- Install longitudinal bracing on straight run scaffolds as follows:

- Diagonally in both directions across the inner and outer rows of posts;

- From the base of the end posts upward to the top of the scaffold at approximately a forty-five degree angle;

- As close as possible to the intersection of the bearer and post or runner and post;

- If the scaffold is longer than it is tall, repeat the bracing beginning at every fifth post;

- If the scaffold is taller than its length, install the bracing:

- From the base of the end posts upward to the opposite end posts;

AND

- In alternating directions until reaching the top of the scaffold.

- Attach bracing to the runners as close to the post as possible, if bracing can't be attached to the post.

- Make sure bearers meet all of the following:

- Are installed transversely between posts;

- If the bearer is coupled to the post, have the inboard coupler bear directly on the runner coupler;

- If the bearer is coupled to the runners, have the couplers as close to the posts as possible;

- Extend bearers beyond the posts and runners;

- Provide full contact with the coupler;

- The bottom bearers are located as close to the base as possible.

- Make sure runners meet all of the following:

- Are installed along the length of the scaffold;

- Are located on both the inside and outside posts at the same height;

- Are interlocked on straight runs to form continuous lengths and are coupled to each post;

- The bottom runners are located as close to the base as possible.

Note: Tube and coupler guardrails and midrails installed on outside posts can be used in lieu of outside runners.

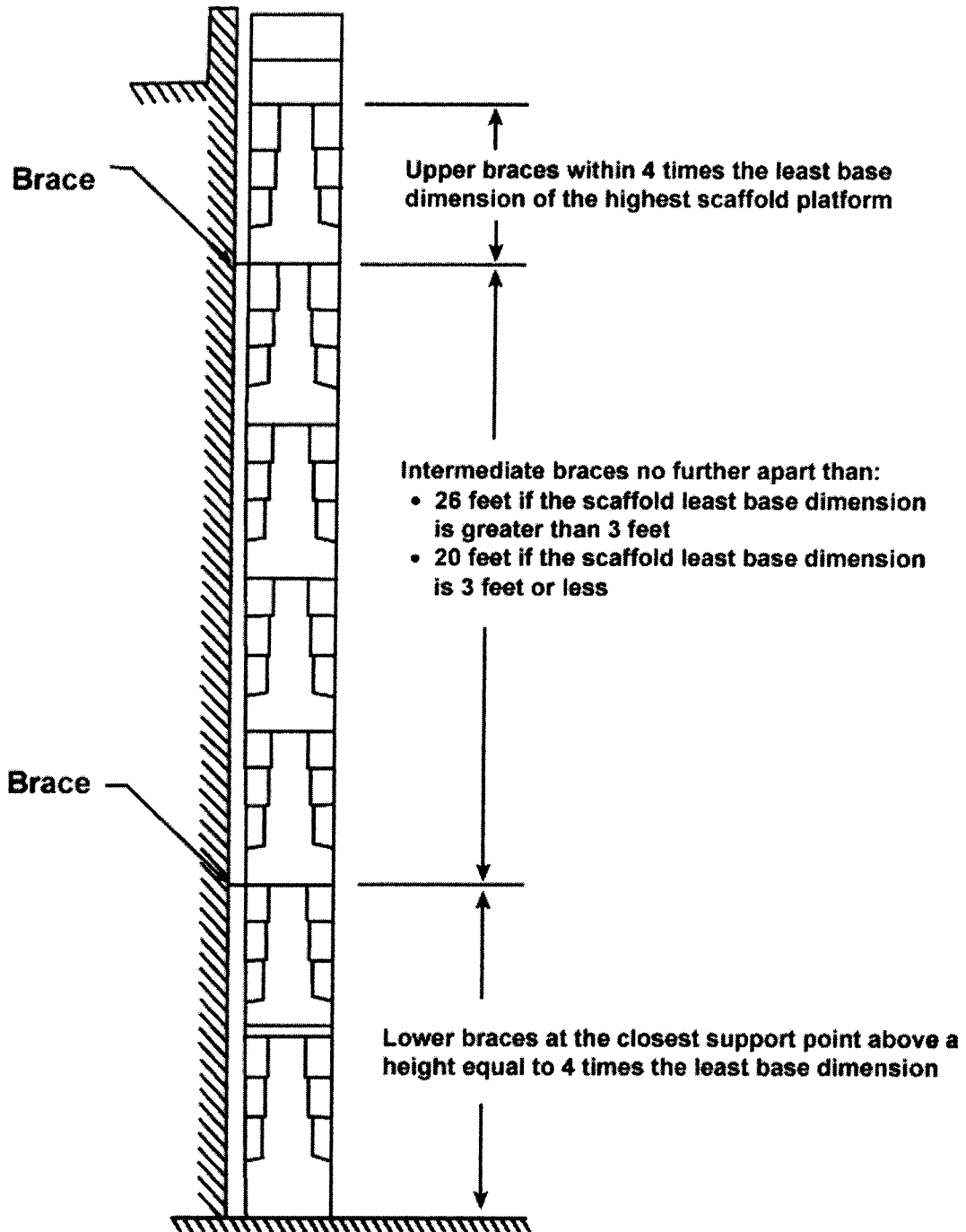
You must:

- Make sure couplers are made of a structural metal, such as drop-forged steel, malleable iron, or structural grade aluminum.

- Prohibit using couplers made of gray cast iron.

~~((STRICKEN GRAPHIC~~

Bracing – Tube and Coupler Scaffold



~~STRICKEN GRAPHIC))~~

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

WAC 296-874-500 Definitions.

Adjustable suspension scaffold a suspended scaffold equipped with one or more hoists that can be operated by employees on the scaffold.

Bearer a horizontal scaffold member (which may be supported by ledgers or runners) upon which the scaffold platform rests and which joins scaffold uprights, posts, poles, and similar members.

Boatswain's chair a single-point adjustable suspended scaffold consisting of a seat or sling designed to support one employee in a sitting position.

Brace a rigid connection that holds one scaffold member in a fixed position with respect to another member, or to a building or structure.

Bricklayers' square scaffold a supported scaffold composed of framed squares which support a platform.

Carpenters' bracket scaffold a supported scaffold consisting of a platform supported by brackets attached to building or structural walls.

Catenary scaffold a suspended scaffold consisting of a platform supported by two essentially horizontal and parallel ropes attached to structural members of a building or other structure. Additional support may be provided by vertical pickups.

Cleat a structural block used at the end of a platform to prevent the platform from slipping off its supports. Cleats are also used to provide footing on sloped surfaces such as access ramps.

Competent person someone who:

- Is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees;

AND

- Has the authority to take prompt corrective measures to eliminate them.

Coupler a device for locking together the tubes of a tube and coupler scaffold.

~~((Crawling board (chicken ladder) a supported scaffold consisting of a plank with cleats spaced and secured to provide footing, for use on sloped surfaces such as roofs.))~~

Double-pole (independent pole) scaffold a supported scaffold consisting of one or more platforms resting on cross beams (bearers) supported by ledgers and a double row of uprights independent of support (except ties, guys, braces) from any structure.

Equivalent alternative design, material or method to protect against a hazard. You have to demonstrate it provides an equal or greater degree of safety for employees than the method, material or design specified in the rule.

Exposed power lines electrical power lines which are accessible to and may be contacted by employees. Such lines do not include extension cords or power tool cords.

Eye or eye splice a loop at the end of a wire rope.

Fabricated frame scaffold (tubular welded frame scaffold) a scaffold consisting of platforms supported on fabricated frames with integral posts, horizontal bearers, and intermediate members.

Failure load refusal, breaking, or separation of component parts. Load refusal is the point where the ultimate strength is exceeded.

Float (ship) scaffold a suspended scaffold consisting of a braced platform resting on two parallel bearers and hung from overhead supports by ropes of fixed length.

Form scaffold a supported scaffold consisting of a platform supported by brackets attached to formwork.

Guardrail system a vertical barrier, consisting of, but not limited to, top rails, midrails, and posts, erected to prevent employees from falling off a scaffold platform or walkway.

Handrails (ladder stands) a rail connected to a ladder stand running parallel to the slope and/or top step.

Hoist a manual or power-operated mechanical device to raise or lower a suspended scaffold.

Horse scaffold a supported scaffold consisting of a platform supported by construction horses (saw horses). Horse scaffolds constructed of metal are sometimes known as trestle scaffolds.

Independent pole scaffold (see double pole scaffold).

Interior hung scaffold a suspended scaffold consisting of a platform suspended from the ceiling or roof structure by fixed length supports.

Ladder jack scaffold a supported scaffold consisting of a platform resting on brackets attached to ladders.

Ladder stand a mobile, fixed-size, self-supporting ladder consisting of a wide flat tread ladder in the form of stairs.

Landing a platform at the end of a flight of stairs.

Large area scaffold a pole scaffold, tube and coupler scaffold, system scaffold, or fabricated frame scaffold erected over substantially the entire work area. For example: A scaffold erected over the entire floor area of a room.

Lean-to scaffold a supported scaffold which is kept erect by tilting it toward and resting it against a building or structure.

Ledger (see runner).

Lifeline a component consisting of a flexible line that connects to an anchorage at one end to hang vertically (vertical lifeline), or that connects to anchorages at both ends to stretch horizontally (horizontal lifeline). It serves as a means for connecting other components of a personal fall arrest system to the anchorage.

Lower levels areas below the level where the employee is located and to which an employee can fall. Such areas include, but are not limited to, ground levels, floors, roofs, ramps, runways, excavations, pits, tanks, materials, water, and equipment.

Masons' adjustable supported scaffold (see self-contained adjustable scaffold).

Masons' multipoint adjustable suspension scaffold a continuous run suspended scaffold designed and used for masonry operations.

Maximum intended load the total load of all persons, equipment, tools, materials, transmitted loads, and other loads reasonably anticipated to be applied to a scaffold or scaffold component at any one time.

Midrail a rail, approximately midway between the toprail of a guardrail system and the platform, and secured to the uprights erected along the exposed sides and ends of a platform.

Mobile scaffold supported scaffold mounted on casters or wheels.

Multilevel suspended scaffold a two-point or multi-point adjustable suspension scaffold with a series of platforms at various levels resting on common stirrups.

Multipoint adjustable suspension scaffold a suspended scaffold consisting of a platform(s) which is suspended by more than two ropes from overhead supports and equipped with means to raise and lower the platform to desired work levels.

Needle beam scaffold a suspended scaffold which has a platform supported by two bearers (needle beams) suspended from overhead supports.

Outrigger a structural member of a supported scaffold which increases the base width of a scaffold. This provides support for and increases the stability of the scaffold.

Outrigger beam (suspended and supported) the structural member of a suspended scaffold or outrigger scaffold which provides support for the scaffold by extending the scaffold point of attachment to a point out and away from the structure or building.

Outrigger scaffold a supported scaffold consisting of a platform resting on outrigger beams which projects beyond the wall or face of the building or structure. The inboard ends of the outrigger beams are secured inside the building or structure.

Overhand bricklaying the process of laying bricks and masonry so that the surface of the wall is on the opposite side of the wall from the mason, requiring the mason to lean over the wall to complete the work. It includes mason tending and electrical installation incorporated into the brick wall during the overhand bricklaying process.

Personal fall arrest system a system used to arrest an employee's fall. It consists of an anchorage, connectors, and body harness and may also include a lanyard, deceleration device, lifeline, or combinations of these.

Platform a work surface used in scaffolds, elevated above lower levels. Platforms can be constructed using individual wood planks, fabricated planks, fabricated decks, and fabricated platforms.

Pole scaffold (see single-pole scaffold and double (independent) pole scaffold).

Pump jack scaffold a supported scaffold consisting of a platform supported by vertical poles and movable support brackets.

Qualified person a person who has successfully demonstrated the ability to solve problems relating to the subject matter, work, or project, either by:

- Possession of a recognized degree, certificate, or professional standing;

OR

- Extensive knowledge, training and experience.

Rated load the manufacturer's specified maximum load to be lifted by a hoist or to be applied to a scaffold or scaffold component.

Repair bracket scaffold a supported scaffold consisting of a platform supported by brackets. The brackets are secured in place around the circumference or perimeter of a chimney, stack, tank or other supporting structure by one or more wire ropes placed around the supporting structure.

Roof bracket scaffold a supported scaffold used on a sloped roof. It consists of a platform resting on angular-shaped supports so that the scaffold platform is level.

Runner (ledger) the lengthwise horizontal spacing or bracing member which may support the bearers.

Scaffold a temporary elevated platform, including its supporting structure and anchorage points, used for supporting employees or materials.

Self-contained adjustable scaffold a combination supported and suspended scaffold consisting of an adjustable platform mounted on an independent supporting frame, not a part of the object being worked on, which is equipped with a means to raise and lower the platform. Such systems include rolling roof rigs, rolling outrigger systems, and some masons' adjustable supported scaffolds.

Shore scaffold a supported scaffold which is placed against a building or structure and held in place with props.

Single-point adjustable suspension scaffold a suspended scaffold consisting of a platform suspended by one rope from an overhead support and equipped with means to permit the movement of the platform to desired work levels.

Single-pole scaffold a supported scaffold consisting of platforms resting on bearers, the outside ends of which are supported on runners secured to a single row of posts or uprights, and the inner ends of which are supported on or in a structure or building wall.

Stair tower (scaffold stairway/tower) a tower comprised of scaffold components which contains internal stairway units and rest platforms. These towers are used to provide access to scaffold platforms and other elevated points such as floors and roofs.

Stall load the load at which the prime mover of a power-operated hoist stalls or the power to the prime mover is automatically disconnected.

Step, platform, and trestle ladder scaffold a platform resting directly on the rungs of a step, platform, or trestle ladder.

Stilts a pair of poles or similar supports with raised footrests, used to permit walking above the ground or working surface.

Stonesetters' multipoint adjustable suspension scaffold a continuous run suspended scaffold designed and used for stonesetters' operations.

Supported scaffold one or more platforms supported by rigid means such as outrigger beams, brackets, poles, legs, uprights, posts, or frames.

Suspended scaffold one or more platforms suspended from an overhead structure by ropes or other nonrigid means.

System scaffold a scaffold consisting of posts with fixed connection points that accept runners, bearers, and diagonals that can be interconnected at predetermined levels.

Toeboard (scaffold) a barrier erected along the exposed sides and ends of a scaffold platform at platform level to prevent material, tools, and other loose objects from falling from the platform.

Top plate bracket scaffold a scaffold supported by brackets that hook over or are attached to the top of a wall. This type of scaffold is similar to carpenters' bracket scaffolds and form scaffolds.

Tube and coupler scaffold a scaffold consisting of platforms supported by tubing, erected with coupling devices connecting uprights, braces, bearers, and runners.

Tubular welded frame scaffold (see fabricated frame scaffold).

Tubular welded sectional folding scaffold a sectional, folding metal scaffold either of ladder frame or inside stairway design. It is substantially built of prefabricated welded sections, which consist of end frames, platform frame, inside inclined stairway frame and braces, or hinged connected diagonal and horizontal braces. It can be folded into a flat package when the scaffold is not in use.

Two-point suspension scaffold (swing stage) a suspended scaffold consisting of a platform supported by hangers (stirrups), suspended by two ropes from overhead supports, and equipped with a means to permit the raising and lowering of the platform to desired work levels.

Unstable objects items whose strength, configuration, or lack of stability may allow them to become dislocated and shift and therefore may not properly support the loads imposed on them. Unstable objects do not constitute a safe base support for scaffolds, platforms, or employees. Examples include, but are not limited to, barrels, boxes, loose brick, and concrete blocks.

Vertical pickup a rope used to support the horizontal rope in a catenary scaffold.

Walkway (scaffold) part of a scaffold used only for access and not as a working level.

Window jack scaffold a platform resting on a bracket or jack that projects through a window opening.

Work level the elevated platform, used for supporting workers and their materials.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-874-40016 Meet these requirements when using crawling boards (chicken ladders).

**WSR 07-10-076
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**
[Filed May 1, 2007, 9:57 a.m.]

Title of Rule and Other Identifying Information: Chapter 296-304 WAC, Safety standards for ship repairing, shipbuilding and shipbreaking.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT

LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Rules Coordinator, Department of Labor and Industries, P.O. Box 44001, Olympia, WA 98504-4001, AND RECEIVED BY July 2, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Occupational Safety and Health Administration (OSHA) promulgated a new fire protection rule for shipyard employment that incorporated by reference, National Fire Protection Association (NFPA) standards. In this proposal, we are replacing the references to those NFPA standards by adding the most recent versions.

These proposed amendments will enhance DOSH's fire protection in our shipyard standard by adding the most current NFPA consensus standards to our chapter. These changes will benefit the safety of employees by requiring employers to comply with the newer standards, which may be even more protective than the older standards.

In addition, we are also making some minor housekeeping changes. For example, we are proposing to move a non-mandatory appendix relating to a model fire safety plan into its own section.

These proposed changes will not result in additional compliance costs.

WAC 296-304-01007 Fire safety plan.

- In subsection (1), propose to replace "Appendix 1" with "Appendix A."
- Move the Appendix 1, model fire safety plan, into its own WAC section and call it "Appendix A."

WAC 296-304-01023 Model fire safety plan.

- Create this new section and move the nonmandatory Appendix 1 to this section.

WAC 296-304-01013 Fire response.

- In subsection (3)(b), propose to replace "WAC 296-304-09007" with "chapter 296-842 WAC, Respirators."
- In subsection (5)(c)(v), propose to replace "NFPA 1981-1997" with "NFPA 1981-2002."

WAC 296-304-01017 Land-side fire protection systems.

- In subsection (2)(a), propose to replace "NFPA 10-1998" with "NFPA 10-2002."
- In subsection (2)(b), propose to replace "NFPA 10-1998" with "NFPA 10-2002" and "NFPA 14-2000" with "NFPA 14-2003."
- In subsection (3)(f), propose to replace "NFPA 72-1999" with "NFPA 72-2002."
- In subsection (4)(a), propose to replace "NFPA 14-2000" with "NFPA 14-2003."
- In subsection (4)(b), propose to replace "NFPA 13-1999" with "NFPA 13-2002" and "NFPA 750-2000" with "NFPA 750-2003."
- In subsection (4)(c), propose to replace "NFPA 11-1998 Standard for Low-Expansion Foam" with "NFPA 11-2005 Standard for Low, Medium, and High Expansion Foam Systems."

- In subsection (4)(e), propose to replace "NFPA 12-2000" with "NFPA 12-2005," "NFPA 12A-1997" with "NFPA 12A-2004," and "NFPA 2001-2000" with "NFPA 2001-2004."

WAC 296-304-020 Confined and enclosed spaces and other dangerous atmospheres in shipyard employment.

- In the definition of "Coast Guard authorized person" propose to replace "Appendix B" with "Appendix C."

WAC 296-304-02005 Cleaning and other cold work.

- In the note after subsection (2)(d), propose to replace "Appendix A" with "Appendix B."

WAC 296-304-02007 Hot work.

- In the note at the end of this section, propose to replace "Appendix A" with "Appendix B."

WAC 296-304-02013 Appendix A—Compliance assistance guidelines for confined and enclosed spaces and other dangerous atmospheres.

- Propose to change this Appendix to "Appendix B."

WAC 296-304-02015 Appendix B—Confined and enclosed spaces and other dangerous atmospheres in shipyard employment.

- Propose to change this Appendix to "Appendix C."

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

May 1, 2007
Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

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 ((4)) A to this section for a model fire safety plan.)

(2) **Plan elements.** The employer must include the following information in the fire safety plan:

- Identification of the significant fire hazards;
- Procedures for recognizing and reporting unsafe conditions;
- Alarm procedures;
- Procedures for notifying employees of a fire emergency;
- Procedures for notifying fire response organizations of a fire emergency;
- 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 worksite 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

- ~~Purpose.~~
- ~~Worksite fire hazards and how to properly control them.~~
- ~~Alarm systems and how to report fires.~~
- ~~How to evacuate in different emergency situations.~~
- ~~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

- ~~Measures to contain fires.~~
- ~~Teaching selected employees how to use fire protection equipment.~~
- ~~What to do if you discover a fire.~~
- ~~Potential ignition sources for fires and how to control them.~~
- ~~Types of fire protection equipment and systems that can control a fire.~~
- ~~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 05-19-086, filed 9/20/05, effective 12/1/05)

WAC 296-304-01013 Fire response. (1) **Employer responsibilities.** The employer must:

(a) Decide what type of response will be provided and who will provide it; and

(b) Create, maintain, and update a written policy that:

(i) Describes the internal and outside fire response organizations that the employer will use; and

(ii) Defines what evacuation procedures employees must follow, if the employer chooses to require a total or partial evacuation of the worksite at the time of a fire.

(2) **Required written policy information.**

(a) **Internal fire response.** If an internal fire response is to be used, the employer must include the following information in the employer's written policy:

(i) The basic structure of the fire response organization;

(ii) The number of trained fire response employees;

(iii) The fire response functions that may need to be carried out;

(iv) The minimum number of fire response employees necessary, the number and types of apparatuses, and a description of the fire suppression operations established by written standard operating procedures for each type of fire response at the employer's facility;

(v) The type, amount, and frequency of training that must be given to fire response employees; and

(vi) The procedures for using protective clothing and equipment.

(b) **Outside fire response.** If an outside fire response organization is used, the employer must include the following information in the written policy:

(i) The types of fire suppression incidents to which the fire response organization is expected to respond at the employer's facility or worksite;

(ii) The liaisons between the employer and the outside fire response organizations; and

(iii) A plan for fire response functions that:

(A) Addresses procedures for obtaining assistance from the outside fire response organization;

(B) Familiarizes the outside fire response organization with the layout of the employer's facility or worksite, including access routes to controlled areas, and site-specific operations, occupancies, vessels or vessel sections, and hazards; and

(C) Sets forth how hose and coupling connection threads are to be made compatible and includes where the adapter couplings are kept; or

(D) States that the employer will not allow the use of incompatible hose connections.

(c) **A combination of internal and outside fire response.** If a combination of internal and outside fire response is to be used, the employer must include the following information, in addition to the requirements in (a) and (b) of this subsection, in the written policy:

(i) The basic organizational structure of the combined fire response;

(ii) The number of combined trained fire responders;

(iii) The fire response functions that may need to be carried out;

(iv) The minimum number of fire response employees necessary, the number and types of apparatuses, and a description of the fire suppression operations established by written standard operating procedures for each particular type of fire response at the worksite; and

(v) The type, amount, and frequency of joint training with outside fire response organizations if given to fire response employees.

(d) **Employee evacuation.** The employer must include the following information in the employer's written policy:

(i) Emergency escape procedures;

(ii) Procedures to be followed by employees who may remain longer at the worksite to perform critical shipyard employment operations during the evacuation;

(iii) Procedures to account for all employees after emergency evacuation is completed;

(iv) The preferred means of reporting fires and other emergencies; and

(v) Names or job titles of the employees or departments to be contacted for further information or explanation of duties.

(e) **Rescue and emergency response.** The employer must include the following information in the employer's written policy:

(i) A description of the emergency rescue procedures; and

(ii) Names or job titles of the employees who are assigned to perform them.

(3) **Medical requirements for shipyard fire response employees.** The employer must ensure that:

(a) All fire response employees receive medical examinations to assure that they are physically and medically fit for the duties they are expected to perform;

(b) Fire response employees, who are required to wear respirators in performing their duties, meet the medical requirements of ((WAC 296-304-09007)) chapter 296-842 WAC, Respirators;

(c) Each fire response employee has an annual medical examination; and

(d) The medical records of fire response employees are kept in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(4) **Organization of internal fire response functions.** The employer must:

(a) Organize fire response functions to ensure enough resources to conduct emergency operations safely;

(b) Establish lines of authority and assign responsibilities to ensure that the components of the internal fire response are accomplished;

(c) Set up an incident management system to coordinate and direct fire response functions, including:

(i) Specific fire emergency responsibilities;

(ii) Accountability for all fire response employees participating in an emergency operation; and

(iii) Resources offered by outside organizations; and

(d) Provide the information required in this subsection to the outside fire response organization to be used.

(5) **Personal protective clothing and equipment for fire response employees.**

(a) **General requirements.** The employer must:

(i) Supply to all fire response employees, at no cost, the appropriate personal protective clothing and equipment they may need to perform expected duties; and

(ii) Ensure that fire response employees wear the appropriate personal protective clothing and use the equipment, when necessary, to protect them from hazardous exposures.

(b) **Thermal stability and flame resistance.** The employer must:

(i) Ensure that each fire response employee exposed to the hazards of flame does not wear clothing that could increase the extent of injury that could be sustained; and

(ii) Prohibit wearing clothing made from acetate, nylon, or polyester, either alone or in blends, unless it can be shown that:

(A) The fabric will withstand the flammability hazard that may be encountered; or

(B) The clothing will be worn in such a way to eliminate the flammability hazard that may be encountered.

(c) **Respiratory protection.** The employer must:

(i) Provide self-contained breathing apparatus (SCBA) to all fire response employees involved in an emergency operation in an atmosphere that is immediately dangerous to life or health (IDLH), potentially IDLH, or unknown;

(ii) Provide SCBA to fire response employees performing emergency operations during hazardous chemical emergencies that will expose them to known hazardous chemicals in vapor form or to unknown chemicals;

(iii) Provide fire response employees who perform or support emergency operations that will expose them to hazardous chemicals in liquid form either:

(A) SCBA; or

(B) Respiratory protective devices certified by the National Institute for Occupational Safety and Health (NIOSH) under 42 CFR Part 84 as suitable for the specific chemical environment;

(iv) Ensure that additional outside air supplies used in conjunction with SCBA result in positive pressure systems that are certified by NIOSH under 42 CFR Part 84;

(v) Provide only SCBA that meet the requirements of NFPA 1981-((1997)) 2002 Standard on Open-Circuit Self-Contained Breathing Apparatus for the Fire Service (incorporated by reference, see WAC 296-304-01003); and

(vi) Ensure that the respiratory protection program and all respiratory protection equipment comply with chapter 296-842 WAC, Respiratory protection.

(d) **Interior structural firefighting operations.** The employer must:

(i) Supply at no cost to all fire response employees exposed to the hazards of shipyard fire response, a helmet, gloves, footwear, and protective hoods, and either a protective coat and trousers or a protective coverall; and

(ii) Ensure that this equipment meets the applicable recommendations in NFPA 1971-2000 Standard on Protective Ensemble for Structural Fire Fighting (incorporated by reference, see WAC 296-304-01003).

(e) **Proximity fire fighting operations.** The employer must provide, at no cost, to all fire response employees who are exposed to the hazards of proximity fire fighting, appropriate protective proximity clothing that meets the applicable recommendations in NFPA 1976-2000 Standard on Protective Ensemble for Proximity Fire Fighting (incorporated by reference, see WAC 296-304-01003).

(f) **Personal alert safety system (PASS) devices.** The employer must:

(i) Provide each fire response employee involved in fire fighting operations with a PASS device; and

(ii) Ensure that each PASS device meets the recommendations in NFPA 1982-1998 Standard on Personal Alert Safety Systems (PASS) (incorporated by reference, see WAC 296-304-01003).

(g) **Life safety ropes, body harnesses, and hardware.** The employer must ensure that:

(i) All life safety ropes, body harnesses, and hardware used by fire response employees for emergency operations meet the applicable recommendations in NFPA 1983-2001, Standard on Fire Service Life Safety Rope and System Components (incorporated by reference, see WAC 296-304-01003);

(ii) Fire response employees use only Class I body harnesses to attach to ladders and aerial devices; and

(iii) Fire response employees use only Class II and Class III body harnesses for fall arrest and rappelling operations.

(6) **Equipment maintenance.**

(a) **Personal protective equipment.** The employer must inspect and maintain personal protective equipment used to protect fire response employees to ensure that it provides the intended protection.

(b) **Fire response equipment.** The employer must:

(i) Keep fire response equipment in a state of readiness;

(ii) Standardize all fire hose coupling and connection threads throughout the facility and on vessels and vessel sections by providing the same type of hose coupling and connection threads for hoses of the same or similar diameter; and

(iii) Ensure that either all fire hoses and coupling connection threads are the same within a facility or vessel or ves-

sel section as those used by the outside fire response organization, or supply suitable adapter couplings if such an organization is expected to use the fire response equipment within a facility or vessel or vessel section.

AMENDATORY SECTION (Amending WSR 05-19-086, filed 9/20/05, effective 12/1/05)

WAC 296-304-01017 Land-side fire protection systems. (1) **Employer responsibilities.** The employer must ensure all fixed and portable fire protection systems needed to meet WISHA standards for employee safety or employee protection from fire hazards in land-side facilities, including, but not limited to, buildings, structures, and equipment, meet the requirements of this section.

(2) **Portable fire extinguishers and hose systems.**

(a) The employer must select, install, inspect, maintain, and test all portable fire extinguishers according to NFPA 10-((1998)) 2002 Standard for Portable Fire Extinguishers (incorporated by reference, see WAC 296-304-01003).

(b) The employer is permitted to use Class II or Class III hose systems, in accordance with NFPA 10-((1998)) 2002, as portable fire extinguishers if the employer selects, installs, inspects, maintains, and tests those systems according to the specific recommendations in NFPA 14-((2000)) 2003 Standard for the Installation of Standpipe, Private Hydrant, and Hose Systems (incorporated by reference, see WAC 296-304-01003).

(3) **General requirements for fixed extinguishing systems.** The employer must:

(a) Ensure that any fixed extinguishing system component or extinguishing agent is approved by an OSHA nationally recognized testing laboratory for use on the specific hazards the employer expects it to control or extinguish;

(b) Notify employees and take the necessary precautions to ensure employees are safe from fire if for any reason a fire extinguishing system stops working, until the system is working again;

(c) Ensure all repairs to fire extinguishing systems and equipment are done by a qualified technician or mechanic;

(d) Provide and ensure employees use proper personal protective equipment when entering discharge areas in which the atmosphere remains hazardous to employee safety or health, or provide safeguards to prevent employees from entering those areas. See WAC 296-304-02003 for additional requirements applicable to safe entry into spaces containing dangerous atmospheres;

(e) Post hazard warning or caution signs at both the entrance to and inside of areas protected by fixed extinguishing systems that use extinguishing agents in concentrations known to be hazardous to employee safety or health; and

(f) Select, install, inspect, maintain, and test all automatic fire detection systems and emergency alarms according to NFPA 72-((1999)) 2002 National Fire Alarm Code (incorporated by reference, see WAC 296-304-01003).

(4) **Fixed extinguishing systems.** The employer must select, install, maintain, inspect, and test all fixed systems required by WISHA as follows:

(a) Standpipe and hose systems according to NFPA 14-((2000)) 2003 Standard for the Installation of Standpipe, Pri-

ivate Hydrant, and Hose Systems (incorporated by reference, see WAC 296-304-01003);

(b) Automatic sprinkler systems according to NFPA 25-2002 Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems, and either NFPA 13-((1999)) 2002 Standard for the Installation of Sprinkler Systems or NFPA 750-((2000)) 2003 Standard on Water Mist Fire Protection Systems (incorporated by reference, see WAC 296-304-01003);

(c) Fixed extinguishing systems that use water or foam as the extinguishing agent according to NFPA 15-2001 Standard for Water Spray Fixed Systems for Fire Protection; NFPA 11-((1998)) 2005 Standard for Low, Medium, and High-Expansion Foam Systems; ((and NFPA 11A-1999 Standard for Medium and High-Expansion Foam Systems)) (incorporated by reference, see WAC 296-304-01003);

(d) Fixed extinguishing systems using dry chemical as the extinguishing agent according to NFPA 17-2002 Standard for Dry Chemical Extinguishing Systems (incorporated by reference, see WAC 296-304-01003); and

(e) Fixed extinguishing systems using gas as the extinguishing agent according to NFPA 12-((2000)) 2005 Standard on Carbon Dioxide Extinguishing Systems; NFPA 12A-((1997)) 2004 Standard on Halon 1301 Fire Extinguishing Systems; and NFPA 2001-((2000)) 2004 Standard on Clean Agent Fire Extinguishing Systems (incorporated by reference, see WAC 296-304-01003).

NEW SECTION

WAC 296-304-01023 Appendix A—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 296-304-020 Confined and enclosed spaces and other dangerous atmospheres in shipyard employment. Scope, application and definitions applicable to this subsection:

(1) Scope and application. This section applies to work in confined and enclosed spaces and other dangerous atmospheres in shipyard employment, including vessels, vessel sections, and on land-side operations regardless of geographic location.

(2) Definitions applicable to this section:

Adjacent spaces means those spaces bordering a subject space in all directions, including all points of contact, corners, diagonals, decks, tank tops, and bulkheads.

Certified industrial hygienist (CIH) means an industrial hygienist who is certified by the American Board of Industrial Hygiene.

Coast Guard authorized person means an individual who meets the requirement of WAC 296-304-02015, Appendix ((B)) C, for tank vessels, for passenger vessels, and for cargo and miscellaneous vessels.

Dangerous atmosphere means an atmosphere that may expose employees to the risk of death, incapacitation, impairment of ability to self-rescue (i.e., escape unaided from a confined or enclosed space), injury, or acute illness.

Director means the director of the department of labor and industries or his/her designated representative.

Enter with restrictions denotes a space where entry for work is permitted only if engineering controls, personal protective equipment, clothing, and time limitations are as specified by the marine chemist, certified industrial hygienist, or the shipyard competent person.

Entry means the action by which a person passes through an opening into a space. Entry includes ensuing work activities in that space and is considered to have occurred as

soon as any part of the entrant's body breaks the plane of an opening into the space.

Hot work means any activity involving riveting, welding, burning, the use of powder-actuated tools or similar fire-producing operations. Grinding, drilling, abrasive blasting, or similar spark-producing operations are also considered hot work except when such operations are isolated physically from any atmosphere containing more than 10 percent of the lower explosive limit of a flammable or combustible substance.

Immediately dangerous to life or health (IDLH) means an atmosphere that poses an immediate threat to life or that is likely to result in acute or immediate severe health effects.

Inert or inerted atmosphere means an atmospheric condition where:

(a) The oxygen content of the atmosphere in the space is maintained at a level equal to or less than 8.0 percent by volume or at a level at or below 50 percent of the amount required to support combustion, whichever is less; or

(b) The space is flooded with water and the vapor concentration of flammable or combustible materials in the free space atmosphere above the water line is less than 10 percent of the lower explosive limit for the flammable or combustible material.

Labeled means identified with a sign, placard, or other form of written communication, including pictograms, that provides information on the status or condition of the work space to which it is attached.

Lower explosive limit (LEL) means the minimum concentration of vapor in air below which propagation of a flame does not occur in the presence of an ignition source.

Marine chemist means an individual who possesses a current marine chemist certificate issued by the National Fire Protection Association (NFPA).

NFPA means National Fire Protection Association.

Nationally Recognized Testing Laboratory (NRTL) means an organization recognized by OSHA, in accordance with Appendix A of 29 CFR 1910.7, which tests for safety and lists or labels or accepts equipment and materials that meet all the criteria found in Section 1910.7 (b)(1) through (b)(4)(ii).

Not safe for hot work denotes a space where hot work may not be performed because the conditions do not meet the criteria for "safe for hot work."

Not safe for workers denotes a space where an employee may not enter because the conditions do not meet the criteria for "safe for workers."

Oxygen-deficient atmosphere means an atmosphere having an oxygen concentration of less than 19.5 percent by volume.

Oxygen-enriched atmosphere means an atmosphere that contains 22.0 percent or more oxygen by volume.

Safe for hot work denotes a space that meets all of the following criteria:

(a) The oxygen content of the atmosphere does not exceed 22.0 percent by volume;

(b) The concentration of flammable vapors in the atmosphere is less than 10 percent of the lower explosive limit;

(c) The residues or materials in the space are not capable of producing a higher concentration than permitted in (a) or (b) of the above, under existing atmospheric conditions in the presence of hot work and while maintained as directed by the marine chemist or competent person; and

(d) All adjacent spaces have been cleaned, or inerted, or treated sufficiently to prevent the spread of fire.

Safe for workers denotes a space that meets the following criteria:

(a) The oxygen content of the atmosphere is at least 19.5 percent and below 22.0 percent by volume;

(b) The concentration of flammable vapors is below 10 percent of the lower explosive limit (LEL);

(c) Any toxic materials in the atmosphere associated with cargo, fuel, tank coatings, or inerting media are within permissible concentrations at the time of the inspection; and

(d) Any residues or materials associated with the work authorized by the marine chemist, certified industrial hygienist, or competent person will not produce uncontrolled release of toxic materials under existing atmospheric conditions while maintained as directed.

Space means an area on a vessel or vessel section or within a shipyard such as, but not limited to: Cargo tanks or holds; pump or engine rooms; storage lockers; tanks containing flammable or combustible liquids, gases, or solids; rooms within buildings; crawl spaces; tunnels; or accessways. The atmosphere within a space is the entire area within its bounds.

Upper explosive limit (UEL) means the maximum concentration of flammable vapor in air above which propagation of flame does not occur on contact with a source of ignition.

Vessel section means a subassembly, module, or other component of a vessel being built, repaired, or broken.

Visual inspection means the physical survey of the space, its surroundings and contents to identify hazards such as, but not limited to, restricted accessibility, residues, unguarded machinery, and piping or electrical systems.

AMENDATORY SECTION (Amending WSR 95-04-006, filed 1/18/95, effective 3/10/95)

WAC 296-304-02005 Cleaning and other cold work.

(1) Locations covered by this section. The employer shall ensure that manual cleaning and other cold work are not performed in the following spaces unless the conditions of subsection (2) of this section have been met:

(a) Spaces containing or having last contained bulk quantities of combustible or flammable liquids or gases; and

(b) Spaces containing or having last contained bulk quantities of liquids, gases or solids that are toxic, corrosive or irritating.

(2) Requirements for performing cleaning or cold work.

(a) Liquid residues of hazardous materials shall be removed from work spaces as thoroughly as practicable before employees start cleaning operations or cold work in a space. Special care shall be taken to prevent the spilling or the draining of these materials into the water surrounding the vessel, or for shore-side operations, onto the surrounding work area.

(b) Testing shall be conducted by a competent person to determine the concentration of flammable, combustible, toxic, corrosive, or irritant vapors within the space prior to the beginning of cleaning or cold work.

(c) Continuous ventilation shall be provided at volumes and flow rates sufficient to ensure that the concentration(s) of:

(i) Flammable vapor is maintained below 10 percent of the lower explosive limit; and

Note to (2)(c)(i): Spaces containing highly volatile residues may require additional ventilation to keep the concentration of flammable vapors below 10 percent of the lower explosive limit and within the permissible exposure limit.

(ii) Toxic, corrosive, or irritant vapors are maintained within the permissible exposure limits and below IDLH levels.

(d) Testing shall be conducted by the competent person as often as necessary during cleaning or cold work to assure that air concentrations are below 10 percent of the lower explosive limit and within the PELs and below IDLH levels. Factors such as, but not limited to, temperature, volatility of the residues and other existing conditions in and about the spaces are to be considered in determining the frequency of testing necessary to assure a safe atmosphere.

Note to (2)(d): See WAC 296-304-02013—Appendix ((A)) B, for additional information on frequency of testing.

(e) Spills or other releases of flammable, combustible, toxic, corrosive, and irritant materials shall be cleaned up as work progresses.

(f) An employee may not enter a confined or enclosed space or other dangerous atmosphere if the concentration of flammable or combustible vapors in work spaces exceeds 10 percent of the lower explosive limit.

Exception: An employee may enter for emergency rescue or for a short duration for installation of ventilation equipment provided:

(i) No ignition sources are present;

(ii) The atmosphere in the space is monitored continuously;

(iii) The atmosphere in the space is maintained above the upper explosive limit; and

(iv) Respiratory protection, personal protective equipment, and clothing are provided in accordance with WAC 206-304-090 through 296-304-09007.

Note to (2)(f): Other provisions for work in IDLH and other dangerous atmospheres are located in WAC 296-304-090 through 296-304-09007.

(g) A competent person shall test ventilation discharge areas and other areas where discharged vapors may collect to determine if vapors discharged from the spaces being ventilated are accumulating in concentrations hazardous to employees.

(h) If the tests required in (g) of this subsection indicate that concentrations of exhaust vapors that are hazardous to employees are accumulating, all work in the contaminated area shall be stopped until the vapors have dissipated or been removed.

(i) Only explosion-proof, self-contained portable lamps, or other electric equipment approved by a National Recog-

nized Testing Laboratory (NRTL) for the hazardous location shall be used in spaces described in subsection (1) of this section, until such spaces have been certified as "safe for workers."

Note to (2)(i): Battery-fed, portable lamps or other electric equipment bearing the approval of a NRTL for the class, and division of the location in which they are used are deemed to meet the requirements of (i) of this subsection.

(j) The employer shall prominently post signs that prohibit sources of ignition within or near a space that has contained flammable or combustible liquids or gases in bulk quantities:

- (i) At the entrance to those spaces;
- (ii) In adjacent spaces; and
- (iii) In the open area adjacent to those spaces.

(k) All air moving equipment and its component parts, including duct work, capable of generating a static electric discharge of sufficient energy to create a source of ignition, shall be bonded electrically to the structure of a vessel or vessel section or, in the case of land-side spaces, grounded to prevent an electric discharge in the space.

(l) Fans shall have nonsparking blades, and portable air ducts shall be of nonsparking materials.

Note to (2): See WAC 296-304-02003(3) and applicable requirements of chapter 296-62 WAC, general occupational health standards, for other provisions affecting cleaning and cold work.

AMENDATORY SECTION (Amending WSR 03-04-099, filed 2/4/03, effective 8/1/03)

WAC 296-304-02007 Hot work. (1) Hot work requiring testing by a marine chemist or Coast Guard authorized person.

(a) The employer shall ensure that hot work is not performed in or on any of the following confined and enclosed spaces and other dangerous atmospheres, boundaries of spaces or pipelines until the work area has been tested and certified by a marine chemist or a U.S. Coast Guard authorized person as "safe for hot work":

(i) Within, on, or immediately adjacent to spaces that contain or have contained combustible or flammable liquids or gases.

(ii) Within, on, or immediately adjacent to fuel tanks that contain or have last contained fuel; and

(iii) On pipelines, heating coils, pump fittings or other accessories connected to spaces that contain or have last contained fuel.

(iv) Exception: On dry cargo, miscellaneous and passenger vessels and in the landside operations within spaces which meet the standards for oxygen, flammability and toxicity in WAC 296-304-02003, but are adjacent to spaces containing flammable gases or liquids, as long as the gases or liquids with a flash point below 150 deg. F (65.6 deg. C) when the distance between such spaces and the work is 25 feet (7.62 m) or greater.

Note: For flammable liquids with flash points above 150 deg. F (65.6 deg. C), see subsection (2) of this section.

Note to (1)(a): The criteria for "safe for hot work" is located in the definition section, WAC 296-304-020(2).

(b) The certificate issued by the marine chemist or Coast Guard authorized person shall be posted in the immediate vicinity of the affected operations while they are in progress and kept on file for a period of at least three months from the date of the completion of the operation for which the certificate was generated.

(2) Hot work requiring testing by a competent person.

(a) Hot work is not permitted in or on the following spaces or adjacent spaces or other dangerous atmospheres until they have been tested by a competent person and determined to contain no concentrations of flammable vapors equal to or greater than 10 percent of the lower explosive limit:

- (i) Dry cargo holds;
- (ii) The bilges;
- (iii) The engine room and boiler spaces for which a marine chemist or a Coast Guard authorized person certificate is not required under subsection (1)(a)(i) of this section; and

(iv) Vessels and vessel sections for which a marine chemist or Coast Guard authorized person certificate is not required under subsection (1)(a)(i) of this section; and

(v) Land-side confined and enclosed spaces or other dangerous atmospheres not covered by subsection (1)(a) of this section.

(b) If the concentration of flammable vapors or gases is equal to or greater than 10 percent of the lower explosive limit in the space or an adjacent space where the hot work is to be done, then the space shall be labeled "not safe for hot work" and ventilation shall be provided at volumes and flow rates sufficient to ensure that the concentration of flammable vapors or gases is below 10 percent by volume of the lower explosive limit. The warning label may be removed when the concentration of flammable vapors and gases are below 10 percent of the lower explosive limit.

Note to WAC 296-304-02007: See WAC 296-304-02013—Appendix ((A)) B, for additional information relevant to performing hot work safely.

AMENDATORY SECTION (Amending WSR 95-04-006, filed 1/18/95, effective 3/10/95)

WAC 296-304-02013 Appendix ((A)) B—Compliance assistance guidelines for confined and enclosed spaces and other dangerous atmospheres. This appendix is a nonmandatory set of guidelines provided to assist employers in complying with the requirements of WAC 296-304-020 through 296-304-02011. This appendix neither creates additional obligations nor detracts from obligations otherwise contained in this chapter. It is intended to provide explanatory information and educational material to employers and employees to foster understanding of, and compliance with, this chapter.

WAC 296-304-020 through 296-304-02011. These standards are minimum safety standards for entering and working safely in vessel tanks and compartments.

WAC 296-304-020(2) Definition of "Hot work." There are several instances in which circumstances do not necessitate that grinding, drilling, abrasive blasting be regarded as hot work. Some examples are:

(1) Abrasive blasting of the hull for paint preparation does not necessitate pumping and cleaning the tanks of a vessel.

(2) Prior to hot work on any hollow structure, the void space should be tested and appropriate precautions taken.

WAC 296-304-020(2) Definition of "Lower explosive limit." The terms lower flammable limit (LFL) and lower explosive limit (LEL) are used interchangeably in fire science literature.

WAC 296-304-020(2) Definition of "Upper explosive limit." The terms upper flammable limit (UFL) and upper explosive limit (UEL) are used interchangeably in fire science literature.

WAC 296-304-02003(1) After a tank has been properly washed and ventilated, the tank should contain 20.8 percent oxygen by volume. This is the same amount found in our normal atmosphere at sea level. However, it is possible that the oxygen content will be lower. When this is the case, the reasons for this deficiency should be determined and corrective action taken.

An oxygen content of 19.5 percent can support life and is adequate for entry. However, any oxygen level less than 20.8 percent and greater than 19.5 percent level should also alert the competent person to look for the causes of the oxygen deficiency and to correct them prior to entry.

WAC 296-304-02003(2) Flammable atmospheres. Atmospheres with a concentration of flammable vapors at or above 10 percent of the lower explosive limit (LEL) are considered hazardous when located in confined spaces. However, atmospheres with flammable vapors below 10 percent of the LEL are not necessarily safe.

Such atmospheres are too lean to burn. Nevertheless, when a space contains or produces measurable flammable vapors below the 10 percent LEL, it might indicate that flammable vapors are being released or introduced into the space and could present a hazard in time. Therefore, the cause of the vapors should be investigated and, if possible, eliminated prior to entry.

Some situations that have produced measurable concentrations of flammable vapors that could exceed 10 percent of the LEL in time are:

(1) Pipelines that should have been blanked or disconnected have opened, allowing product into the space.

(2) The vessel may have shifted, allowing product not previously cleaned and removed during washing to move into other areas of the vessel.

(3) Residues may be producing the atmosphere by releasing flammable vapor.

WAC 296-304-02003(2) Flammable atmospheres that are toxic. An atmosphere with a measurable concentration of a flammable substance below 10 percent of the LEL may be above the WISHA permissible exposure limit for that substance. In that case, refer to WAC 296-304-02003 (3)(b), (c), and (d).

WAC 296-304-02005 (2)(d), 296-304-02009(3), and 296-304-02009(5). The frequency with which a tank is monitored to determine if atmospheric conditions are being maintained is a function of several factors that are discussed below:

(1) Temperature. Higher temperatures will cause a combustible or flammable liquid to vaporize at a faster rate than lower temperatures. This is important since hotter days may cause tank residues to produce more vapors and that may result in the vapors exceeding 10 percent of the LEL or an overexposure to toxic contaminants.

(2) Work in the tank. Any activity in the tank could change the atmospheric conditions in that tank. Oxygen from a leaking oxyfuel hose or torch could result in an oxygen-enriched atmosphere that would more easily propagate a flame. Some welding operations use inert gas, and leaks can result in an oxygen-deficient atmosphere. Manual tank cleaning with high pressure spray devices can stir up residues and result in exposures to toxic contaminants. Simple cleaning or mucking out, where employees walk through and shovel residues and sludge, can create a change in atmospheric conditions.

(3) Period of time elapsed. If a period of time has elapsed since a marine chemist or Coast Guard authorized person has certified a tank as safe, the atmospheric condition should be rechecked by the competent person prior to entry and starting work.

(4) Unattended tanks or spaces. When a tank or space has been tested and declared safe, then subsequently left unattended for a period of time, it should be retested prior to entry and starting work. For example, when barges are left unattended at night, unidentified products from another barge are sometimes dumped into their empty tanks. Since this would result in a changed atmosphere, the tanks should be retested prior to entry and starting work.

(5) Work break. When workers take a break or leave at the end of the shift, equipment sometimes is inadvertently left in the tanks. At lunch or work breaks and at the end of the shift are the times when it is most likely someone will leave a burning or cutting torch in the tank, perhaps turned on and leaking oxygen or an inert gas. Since the former can produce an oxygen-enriched atmosphere, and the latter an oxygen-deficient atmosphere, tanks should be checked for equipment left behind, and atmosphere, monitored if necessary prior to reentering and resuming work. In an oxygen-enriched atmosphere, the flammable range is severely broadened. This means that an oxygen-enriched atmosphere can promote very rapid burning.

(6) Ballasting or trimming. Changing the position of the ballast, or trimming or in any way moving the vessel so as to expose cargo that had been previously trapped, can produce a change in the atmosphere of the tank. The atmosphere should be retested after any such move and prior to entry or work.

WAC 296-304-02007 (1) and (2) hot work. This is a reminder that other sections of the WISHA shipyard safety and health standards in chapter 296-304 WAC should be reviewed prior to starting any hot work. Most notably, WAC 296-304-040 through 296-304-04013, welding, cutting and heating, places additional restrictions on hot work: The requirements of WAC 296-304-04001 and 296-304-04005 must be met before hot work is begun on any metal that is toxic or is covered by a preservative coating respectively; the requirements of WAC 296-304-04007 must be met before welding, cutting, or heating is begun on any structural voids.

WAC 296-304-02003 (1)(b). During hot work, more than 20.8 percent oxygen by volume can be unsafe since it extends the normal flammable range. The standard permits the oxygen level to reach 22.0 percent by volume in order to account for instrument error. However, the cause of excess oxygen should be investigated and the source removed.

WAC 296-304-02011(2). If the entire vessel has been found to be in the same condition, then employers shall be considered to be in compliance with this requirement when signs using appropriate warning language in accordance with WAC 296-304-02011(1) are posted at the gangway and at all other means of access to the vessel.

AMENDATORY SECTION (Amending WSR 95-04-006, filed 1/18/95, effective 3/10/95)

WAC 296-304-02015 Appendix ((B)) C—Confined and enclosed spaces and other dangerous atmospheres in shipyard employment. This appendix provides a complete reprint of U.S. Coast Guard regulations as of October 1, 1993 referenced in WAC 296-304-020 for purposes of determining who is a Coast Guard authorized person.

(1) Title 46 CFR 35.01-1 (a) through (c) covering hot work on tank vessels reads as follows:

(a) The provisions of "Standard for the Control of Gas Hazards on Vessels to be Repaired," NFPA No. 306, published by National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, shall be used as a guide in conducting the inspections and issuance of certificates required by this chapter.

(b) Until an inspection has been made to determine that such operation can be undertaken with safety, no alterations, repairs, or other such operations involving riveting, welding, burning, or like fire-producing actions shall be made:

(i) Within or on the boundaries of cargo tanks that have been used to carry flammable or combustible liquid or chemicals in bulk, or within spaces adjacent to such cargo tanks; or

(ii) Within or on the boundaries of fuel tanks; or

(iii) To pipe lines, heating coils, pumps, fittings, or other appurtenances connected to such cargo or fuel tanks.

(c) Such inspections shall be made and evidenced as follows:

(i) In ports or places in the United States or its territories and possessions, the inspection shall be made by a marine chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemists are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his/her contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection.

(ii) If the inspection indicates that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started.

(iii) Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified,

throughout the operation and shall include such additional tests and certifications as considered required.

(iv) Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

(2) Title 46 CFR 71.60 (c)(1) covering hot work on passenger vessels reads as follows:

(a) The provisions of "Standard for the Control of Gas Hazards on Vessels to be Repaired," NFPA No. 306, published by National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, shall be used as a guide in conducting the inspections and issuance of certificates required by this chapter.

(b) Until an inspection has been made to determine that such operation can be undertaken with safety, no alterations, repairs, or other such operations involving riveting, welding, burning, or like fire-producing actions shall be made:

(i) Within or on the boundaries of cargo tanks which have been used to carry flammable or combustible liquid or chemicals in bulk, or within spaces adjacent to such cargo tanks; or

(ii) Within or on the boundaries of fuel tanks; or

(iii) To pipe lines, heating coils, pumps, fittings, or other appurtenances connected to such cargo or fuel tanks.

(c) Such inspections shall be made and evidenced as follows:

(i) In ports or places in the United States or its territories and possessions the inspection shall be made by a marine chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his/her contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection.

(ii) If the inspection indicated that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started.

(iii) Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified throughout the operation and shall include such additional tests and certifications as considered required.

(iv) Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

(3) Title 46 CFR 91.50-1 (c)(1) covering hot work on cargo and miscellaneous vessels as follows:

(a) The provisions of "Standard for the Control of Gas Hazards on Vessels to be Repaired," NFPA No. 306, published by National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, shall be used as a guide in conducting the inspections and issuance of certificates required by this chapter.

(b) Until an inspection has been made to determine that such operation can be undertaken with safety, no alterations,

repairs, or other such operations involving riveting, welding, burning, or like fire-producing actions shall be made:

(i) Within or on the boundaries of cargo tanks which have been used to carry flammable or combustible liquid or chemicals in bulk, or within spaces adjacent to such cargo tanks; or,

(ii) Within or on the boundaries of fuel tanks; or,

(iii) To pipe lines, heating coils, pumps, fittings, or other appurtenances connected to such cargo or fuel tanks.

(c) Such inspections shall be made and evidenced as follows:

(i) In ports or places in the United States or its territories and possessions the inspection shall be made by a marine chemist certificated by the National Fire Protection Association; however, if the services of such certified marine chemist are not reasonably available, the Officer in Charge, Marine Inspection, upon the recommendation of the vessel owner and his/her contractor or their representative, shall select a person who, in the case of an individual vessel, shall be authorized to make such inspection.

(ii) If the inspection indicated that such operations can be undertaken with safety, a certificate setting forth the fact in writing and qualified as may be required, shall be issued by the certified marine chemist or the authorized person before the work is started.

(iii) Such qualifications shall include any requirements as may be deemed necessary to maintain, insofar as can reasonably be done, the safe conditions in the spaces certified throughout the operation and shall include such additional tests and certifications as considered required.

(iv) Such qualifications and requirements shall include precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

WSR 07-10-089

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed May 1, 2007, 2:30 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-197 When tax liability arises, this rule provides a general discussion of when tax liability arises for accrual and cash receipts basis taxpayers. It also provides specific guidance to construction contractors and persons operating warehouses.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-

7453, fax (360) 586-5543, e-mail GayleC@dor.wa.gov, AND RECEIVED BY July 2, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing the following changes:

- Adding language (subsection (5)(c)) to explain that persons operating grain warehouses licensed under chapter 22.09 RCW may elect to report the value proceeding or accruing from grain warehouse operations on either a cash receipts or accrual basis. RCW 82.04.090.
- An updating of the date year in example in subsection (4)(b)(ii).

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

Statute Being Implemented: To the extent the following apply to the taxpayers identified in this rule: RCW 82.04.090, 82.08.020, 82.08.100, 82.14.030, and 82.16.020.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

April 30, 2007

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-10-082, filed 5/2/90, effective 6/2/90)

WAC 458-20-197 When tax liability arises. (1) Gross proceeds of sales and gross income shall be included in the excise tax return for the period in which the value proceeds or accrues to the taxpayer. For the purpose of determining tax liability of persons making sales of tangible personal property, a sale takes place when the goods sold are delivered to the buyer in this state. With respect to leases or rentals of tangible personal property, liability for retail sales tax arises as of the time the rental payments fall due (see WAC 458-20-211).

(2) Accrual basis.

(a) When excise tax returns are made upon the accrual basis, value accrues to a taxpayer at the time:

(i) The taxpayer becomes legally entitled to receive the consideration, or,

(ii) In accord with the system of accounting regularly employed, enters as a charge against the purchaser, customer, or client the amount of the consideration agreed upon, whether payable immediately or at a definitely determined future time.

(b) Amounts actually received do not constitute value accruing to the taxpayer in the period in which received if the value accrues to the taxpayer during another period. It is immaterial if the act or service for which the consideration accrues is performed or rendered, in whole or in part, during

a period other than the one for which excise tax return is made. The controlling factor is the time when the taxpayer is entitled to receive, or takes credit for, the consideration.

(3) Cash receipts basis.

(a) When returns are made upon cash receipts and disbursements basis, value proceeds to a taxpayer at the time the taxpayer receives the payment, either actually or constructively. It is immaterial that the contract is performed, in whole or in part, during a period other than the one in which payment is received.

(b) See: WAC 458-20-199 for limitation as to persons who may report on the cash receipts basis.

(4) Special application, contractors.

Value accrues for a building or construction contractor who maintains his accounting records on the accrual basis, as of the time the contractor becomes entitled to compensation under the contract.

(a) If by the terms of the contract the taxpayer becomes entitled to compensation upon estimates as the work progresses, value, to the extent of such estimates, accrues as of the time that each estimate is made and the balance at the time of the completion of the work or of the final estimate.

(b) If by the terms of the contract the taxpayer becomes entitled to compensation only upon the completion of the work, value accrues as of the earlier of the completion of the work, or, any use of the facilities being constructed, or, 60 days after the facility is substantially complete.

(i) Example: A contractor agrees to build two buildings for a buyer. Under the terms of the contract, payment is to be made only upon completion of both buildings. One building is substantially completed and occupied on April 15, 1991, the other building is substantially completed on May 15, 1991 and occupied on July 1, 1991. The work on both buildings is completed under the contract on June 15, 1991. Value accrues for the first building on April 15, 1991, the date it was used. Value accrues for the remainder of the contract on June 15, 1991, the date the work was completed.

(ii) Example: A contractor agrees to build a building for a buyer. Under the terms of the contract, the buyer is to make payment for the building only upon completion of the building. The building is completed, except for minor alterations, and available for planned occupancy on August 15, 1990. However, because of a contract dispute between the buyer and his tenant for the building, the buyer is unable to pay the contractor until February 25, 1991 when the building is finally occupied. The building is completed under the contract on November 15, 1990. Value accrues on the building for sales tax and B&O tax purposes on October 14, 1990, 60 days after August 15, ~~((1991))~~ 1990, the date the building was substantially complete.

(5) ~~((Warehousemen))~~ Warehouse operators. In the case of ~~((warehousemen))~~ warehouse operators value proceeds or accrues to the taxpayer as follows:

(a) When the taxpayer is reporting upon the accrual basis, value accrues at the time the charge is entered against the owner of the goods stored in accordance with the terms of the contract between the parties and the regular system of accounting employed by the taxpayer.

(i) Value accrues when the charge is entered whether the consideration for storage is at a fixed rate per unit per month

or other period, or, at a flat charge regardless of the length of time, or, whether payable periodically or at the time of withdrawal.

(ii) Thus, where a ~~((warehouseman))~~ warehouse operator, keeping books on accrual basis, customarily enters as a charge to the owner of the goods and a credit to storage income the full amount of a flat storage charge as of the time the goods are received, even though the time for payment is deferred until withdrawal of the goods, value accrues as of the time the goods are received. However, if the ~~((warehouseman))~~ warehouse operator customarily does not enter such charge until the time of withdrawal, value accrues as of such later date.

(b) When the taxpayer is reporting upon a cash receipts basis, value proceeds at the time the payment for storage is received.

(c) Exception for grain warehouse operators. Persons operating grain warehouses, licensed under chapter 22.09 RCW, may report the value proceeding or accruing from their grain warehouse operations on either a cash receipts or accrual basis. RCW 82.04.090.

For effect of rate changes, see WAC 458-20-235 (Effect of rate changes on prior contracts and sales agreements).