

**WSR 18-09-069**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Children's Administration)  
 [Filed April 16, 2018, 3:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-072.

Title of Rule and Other Identifying Information: The department is proposing to amend and repeal existing WAC sections and create new WAC sections in chapter 388-27 WAC, Child welfare services—Adoption services and adoption support.

Hearing Location(s): On June 5, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than June 6, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., June 5, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by May 22, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 388-27 WAC to reflect recent changes in state legislation regarding the adoption support subsidy. Other changes are being made to clarify language and update the statutory authority.

Reasons Supporting Proposal: The proposed changes are necessary to align with statute.

Statutory Authority for Adoption: RCW 74.13A.020, 74.13A.025, 74.13A.030, 74.13.031, 74.13A.040, 74.13A.-045, 74.13A.047, 74.13A.060, 74.13A.075, 74.13.080, 74.13A.085, 74.13A.100, 74.13A.120, 74.13A.125, 74.15.-020, 42 U.S.C. § 671-675, 45 C.F.R. Sec. 1356.40.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Melanie Meyer, P.O. Box 45710, Olympia, WA 98504, 360-902-7567.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name

changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

April 12, 2018  
 Katherine I. Vasquez  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

**WAC 388-27-0120 What is the legal basis of the department's adoption support program?** The legal authorities for the program are:

- (1) (~~Revised Code of Washington (RCW) 74.13.100 through 74.13.159~~) Chapter 74.13A RCW;
- (2) (~~Chapter~~) 42 (~~United States Code (U.S.C.)~~) U.S.C. Sec. 671-675; (~~and~~)
- (3) 45 C.F.R. Sec. 1356; and
- (4) The U.S. department of health and human services (DHHS) policy guidelines for states to use in determining a child's eligibility for Title IV-E adoption assistance benefits (contained in DHHS Child Welfare Policy Manual).

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

**WAC 388-27-0130 What definitions apply to the adoption support program?** The following definitions apply to this chapter:

"**Adoption**" means the granting of an adoption decree consistent with chapter 26.33 RCW.

"**Adoption support agreement**" means a written contract between the adoptive parent(s) and the department that identifies the specific (~~support~~) benefits available to the adoptive parent(s) and other terms and conditions of the agreement.

"**Adoption support cash payment**" means negotiated monthly cash payments paid pursuant to an adoption support agreement between the adoptive parent(s) and the department (~~after the child's adoption~~).

"**Applicant**" means a person or couple applying for adoption support on behalf of a child the person or couple plans to adopt.

"**Child placing agency**" means a private nonprofit agency licensed by the department under chapter 74.15 RCW to place children for adoption or foster care.

"**Department**" means the department of social and health services.

"**Extenuating circumstances**" means a finding by an administrative law judge or a review judge that one or more (~~certain~~) qualifying conditions or events occurred that erroneously prevented an otherwise eligible child from being placed on the adoption support program prior to adoption.

"**Medical services**" means services covered by medicaid (~~and~~) administered by the (~~medical assistance administration~~) unless defined differently in the adoption support agreement) health care authority.

"**Negotiation**" means the process of working toward an agreement between the department and the adoptive parent on the terms of the adoption support agreement (~~(including any amount of monthly cash payment)~~).

"**Nonrecurring costs**" means reasonable, necessary, and ~~((directly))~~ direct expenses related to the cost of finalizing the adoption ~~((fees, court costs, attorney fees, and other expenses the adoptive parent incurs when finalizing the adoption))~~ of a special needs child. ~~((Total reimbursement from the department may not exceed one thousand five hundred dollars.))~~

"**Placing agency**" means the public or private nonprofit agency that has the legal authority to place the child for adoption. ~~((This may be the department or a private nonprofit child placing agency.))~~

"**Program**" means the department's adoption support program.

"**Reconsideration**" means the limited state-funded support that may be available to an eligible child whose adoption was finalized without a valid adoption support agreement in place.

"**Resident state**" (for purposes of the child's medicaid eligibility) means the state in which the child physically resides. In some cases this may be different from the state of the parent's legal residence.

~~((**"Special needs"** means the specific factors or conditions that apply to the child and that may prevent the child from being adopted unless the department provides adoption support services. See WAC 388-27-0140 for a detailed description of the factors or conditions.))~~

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

**WAC 388-27-0135 What are the eligibility criteria for the adoption support program?** For a child to be eligible for participation in the adoption support program, ~~((the department must first determine that adoption is the most appropriate plan for the child. If the department determines that adoption is in the child's best interest,))~~ the child must:

(1) Be less than eighteen years old when the department and the adoptive parents sign the adoption support agreement and at the time the adoption is finalized;

(2) Be legally free for adoption or eligible for a customary adoption;

(3) ~~((Have))~~ Be placed with a family with an approved preplacement report or home study (see RCW 26.33.190);

(4) Be a child with "special needs" ((factor or condition according to the definition in this rule (see)) as defined in WAC 388-27-0140); and

~~((4))~~ (5) Meet at least one of the following criteria:

(a) Is residing in ((state-funded)) a foster ((care)) home or child caring institution or was determined by the department to be eligible for and likely to be so placed (For a child to be considered "eligible for and likely to be placed in foster care" the department must have opened a case and determined that removal from the home was in the child's best interest((-)); or

(b) Is eligible for federally funded adoption assistance as defined in Title IV-E of the Social Security Act, the ~~((Code of~~

~~Federal Regulations))~~ C.F.R., and the U.S. ~~((Department of Health and Human Services establishing))~~ DHHS guidelines for states to use in determining a child's eligibility for Title IV-E adoption assistance.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0140 What constitutes a "special needs"?** To be considered a child with special needs the following three statements must be true:

(1) One or more of the following factors or conditions must exist, the child is:

(a) ~~((The child is))~~ Of a minority ethnic background and the child's ethnicity is creating a barrier to the child's adoption;

(b) ~~((The child is))~~ Six years of age or older at the time of application for adoption support;

(c) ~~((The child is))~~ A member of a sibling group of three or more or of a sibling group in which one or more siblings meets the definition of special needs, as defined in this section;

(d) ~~((The child is))~~ Diagnosed with a physical, mental, developmental, cognitive or emotional disability; or

(e) ~~((The child is))~~ At risk for a diagnosis of a physical, mental, developmental, cognitive or emotional disability due to prenatal exposure to toxins, a history of serious abuse or neglect, or genetic history.

(2) The state has determined that the child cannot or should not be returned to the home of the ~~((biological))~~ legal parent; and

(3) The department, other public or private non-profit child welfare agency, or child placing agency that placed the child for adoption ~~((must document))~~ has documented that except where it would be against the best interests of the child, the ~~((department or child))~~ placing agency ~~((had))~~ made a reasonable but unsuccessful effort to place the child for adoption without adoption support.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0145 What constitutes a reasonable effort to place a child for adoption without adoption support?** Reasonable effort to place a child without adoption support includes a child:

(1) ~~((A child))~~ Registered for three months with the Washington adoption resource exchange (WARE) without finding an adoptive family; ((or))

(2) ~~((A child))~~ For whom a documented, ((formal)) agency search was conducted by the placing agency for three months, without finding a family who would adopt the child without adoption support services; or

(3) ~~((A child))~~ For whom the placing agency's selected prospective adoptive family is unable to adopt the child without assistance from the adoption support program.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0150 Under what circumstances would it be against the best interest of the child to search for a family that could adopt the child without adoption support?** ~~((Searching for a family that could adopt the child without adoption support is against the best interest of the child when:))~~

(1) When a foster parent desires to adopt a child who:

(a) Has been in the foster parent's home for ~~((six))~~ three months or more before that child becomes legally free for adoption; ~~((and))~~

(b) The child has close emotional ties to the current foster parent which, if severed, may cause emotional damage to the child; and

(c) The foster parent has an approved adoptive home study, and is identified as the adoptive parent of choice by the department or placing agency staff ~~((having responsibility for the child))~~ (RCW 26.33.190 ~~((and 74.13.109(4)))~~); or

(2) The adoptive parent is a relative of ~~((specified degree))~~ the child as defined in RCW ~~((74.15.020(4)(a)))~~ 74.15.020 (2)(a) and has an approved adoptive home study ~~((per))~~ that meets the requirements of RCW ~~((26.33.109 and 74.13.109(4)))~~ 26.33.190.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

**WAC 388-27-0155 Are there other factors affecting a child's eligibility for adoption support?** (1) A child is not eligible for adoption support program services and payments if the adopting parent is the birth parent or current stepparent of the child.

(2) The department must not use the adoptive parents' income as a basis for determining the child's eligibility for the adoption support program, however, the department must consider income and other financial circumstances of the adopting family as one factor in determining the amount of any adoption support cash payments to be made. ~~((See WAC 388-27-0230.))~~

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

**WAC 388-27-0160 How does a prospective adoptive parent apply for adoption support ~~((services))~~?** ~~((There are two ways a prospective adoptive parent (applicant) may apply for adoption support services:))~~

(1) An applicant may apply through the public or private agency social worker of the child to be adopted, if the child is in the custody of the department. The social worker ~~((must))~~ will:

(a) Register the child with the adoption support program; and

(b) Submit the applicant's completed program application along with a completed worksheet used to assist the family and the department in ~~((determining services and))~~ negotiating the amount of any monthly cash payment ~~((, if needed, based on the needs of the child and family circumstances)).~~

(2) An applicant may also apply directly to the adoption support program for adoption support ~~((services))~~ if ~~((: (a)))~~ the child does not have an assigned social worker ~~((: or~~

~~((b) The applicant and the social worker have a dispute regarding the content of the program application)).~~

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

**WAC 388-27-0165 What requirements apply to an application for ongoing adoption support?** (1) The application must include a copy of the child's medical and family background report signed by the adoptive parent(s) (DSHS 13-041 ~~((minus the attachments)))~~. It must also include copies of department records or medical ~~((and/or))~~ or therapist reports that document the child's physical, mental, developmental, cognitive or emotional disability, or risk of any such disability.

(2) The applicant must include a copy of a preplacement report or home study completed by the department, an agency, or an individual approved by the court (see RCW 26.33.190(1)).

(3) If the applicant is requesting a monthly cash payment, the applicant and the department must mutually ~~((determine both the type and))~~ agree to the amount of the payment according to the requirements of WAC ~~((388-27-0230))~~ 388-27-0220.

~~((3))~~ (4) If the applicant is requesting reimbursement of nonrecurring costs, the applicant must include this request in the application. (See WAC 388-27-0380 and 388-27-0385 for the type and amount of expenses the department may reimburse.)

~~((4))~~ (5) The applicant must furnish a copy of the applicant's most recently filed federal income tax return. If the applicant is not required to file a federal income tax return, the applicant must submit a financial statement with the applicant's adoption support application.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

**WAC 388-27-0175 What must be included in an adoption support agreement?** The adoption support agreement must:

(1) State the amount of any cash payments ~~((if any))~~ the department must make to the adoptive parent(s) on behalf of the child;

(2) ~~((Include an itemized list of the additional services (including Title XIX))~~ State that the child is eligible for medical assistance through medicaid ~~((and Title XX social services) for which the child is eligible));~~

(3) ~~((Contain statements that:~~

~~((a) Assure))~~ State that participation in the adoption support program ~~((must))~~ will continue, as long as the child is eligible, regardless of where the adoptive family resides;

~~((b) Inform the adoptive parent(s) of specific))~~ (4) State that a change in the adoptive family's circumstances ~~((that))~~ or the child's needs may warrant further renegotiation and adjustment of the payment as mutually agreed to by the adoptive parents and the department;

~~((e) Inform the adoptive parent(s) that the agreement must be reviewed every five years. Terms of) (5) State the basis for termination or suspension of benefits under the agreement ((may be modified according to WAC 388-27-0200)); and~~

~~((d) Inform the adoptive parent(s) that the department may suspend a child from the program within thirty days of any changes in circumstances (of the child or family) that affect the child's eligibility for program payments if the adoptive parent has failed to notify the department of the changes; and~~

~~(e) Define the circumstances under which the agreement may be terminated.~~

~~(4) Be signed by all relevant parties before the final adoption decree is issued (45 C.F.R. Sec. 1356.40)) (6) Include information that a youth adopted after age fourteen may have continued eligibility in the college bound scholarship program.~~

#### NEW SECTION

**WAC 388-27-0178 When must the adoption support agreement be signed?** The adoption support agreement must be signed by all parties before the final adoption decree is issued.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0180 If the adoptive family resides in or moves to another state, how is the child's participation in the adoption support ((services)) program affected?** If the adoptive family resides in or moves to another state the child's participation in the adoption support program is affected as follows:

(1) ~~((Social services (Title XX) become the responsibility of the new state of residence)) Washington state remains responsible for any monthly cash payments made to the adoptive parent(s) on behalf of the child or any non-medicaid counseling that has been preauthorized by the adoption support program.~~

(2) ~~If the child is not eligible for the Title IV-E adoption support program, medical benefits (Title XIX medicaid) remain the responsibility of Washington state ((if) until the child ((is not)) becomes eligible for ((federal Title IV-E adoption assistance. However, Washington state is no longer responsible if the child becomes eligible for)) the resident state's Title XIX program ((through the Interstate Compact on Adoption and medical assistance or other eligibility factors)).~~

(3) ~~If the child is eligible for Title IV-E adoption support, medical benefits (Title XIX medicaid benefits) become the responsibility of the resident state ((if the child receives Title IV-E adoption assistance)).~~

(4) ~~Medicaid benefits included in Washington state's medicaid plan, but not included in the resident state's plan, ((must)) remain the responsibility of Washington state and subject to Washington state's plan limits and requirements.~~

~~((5) Washington state remains responsible for any cash payments made to the adoptive parent(s) on behalf of the child or any nonmedicaid counseling that has been preautho-~~

~~rized by the adoption support program per WAC 388-27-0245-))~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0185 When does the adoption support agreement become effective?** ~~((1) Unless otherwise stated in the adoption support agreement, an)) The adoption support agreement takes effect on the ~~((first))~~ day ~~((of the month following the month in which))~~ the ~~((court finalizes the adop-~~~~

~~tion.~~

(2) ~~If the child to be adopted needs support benefits prior to finalization, the assigned regional adoption support program manager may arrange an early effective date. To be eligible for an early effective date, the applicant must:~~

~~(a) Have an adoption support agreement signed by all parties;~~

~~(b) Sign the child's medical and family background report (DSHS 13-041) and a statement of the applicant's intention to adopt; and~~

~~(c) Have the department's designee sign "an exception to policy" statement)) adoption is finalized unless an agreement for earlier implementation of the agreement has been agreed to by all parties.~~

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

**WAC 388-27-0190 ((If the department implements adoption support services prior to the adoption, may the adoptive parent(s) continue to receive department-funded foster care payments while also receiving adoption support)) When will department-funded foster care and foster day care payments end?** (1) ~~((The adoptive parent(s) may not continue to receive department-funded)) Foster care payments ((for a child while also receiving adoption support payments for the same child)) are paid after the month of service. Adoption support payments are paid prior to the month.~~

(2) ~~If the adoptive parent(s) receives department-funded foster care and foster care child care for the child to be adopted, the department's social worker assigned to the child ((must)) will terminate that coverage on the ((last)) day ((of the month preceding the month in which the adoption support becomes effective)) prior to the date the early implementation adoption support agreement was signed, or the day prior to the finalization of the adoption.~~

(3) ~~((Foster care payments are paid after the month of service. Adoption support payments are paid prior to the month.~~

(4) ~~The adoptive parent(s) may not receive foster care payments and adoption support cash payments for the same child for the same month.~~

~~((5)) If the adoptive parent is adopting a relative child and has been receiving ((a nonneedy relative grant)) funding through TANF the adoptive parent must notify the community services office financial services specialist that payment has been initiated through the adoption ((has been finalized)) support program. The adoptive parent may not receive both~~

the TANF grant and adoption support payments for the same month for the same child.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

**WAC 388-27-0200** ~~When may ((the department modify)) the terms of the adoption support agreement be modified?~~ The ~~((department's adoption support program may modify the))~~ terms of an adoption support agreement may be changed or modified only if both the adoptive parent(s) and the department agree to the modification. The department will consider a modification when:

(1) ~~((At the request of))~~ Requested by the adoptive parent(s);

(2) ~~((When))~~ In the view of the department, it appears that specific circumstances warrant renegotiation and adjustment of monthly cash payment ((as agreed to by the adoptive parents and the department));

(3) ~~((When the department loses contact with the adoptive parent(s);~~

(4) ~~When))~~ The child is placed outside of the adoptive parents' home at department expense; or

~~((5) If))~~ (4) The adoptive parent ((is no longer providing for the child's daily care and living expenses; or

(6) If the adoptive parent fails to notify the department's adoption support program within thirty days of a change of circumstance which affects the adopted child's continuing eligibility for adoption support program cash payments or services)) has agreed to an automatic reduction clause in the agreement and the clause states that, based on the anticipated reduction in the needs of the child (for child care for example), the amount will be reduced on a specific date.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0205** **Does the adoptive parent need to let the department know if the family's circumstances change?** The adoptive parent must inform the department's adoption support program of circumstances that might ~~((make))~~ affect the ((parent and the adoptive child either ineligible for)) child's eligibility for adoption assistance ~~((payments or))~~ benefits ((or eligible for adoption assistance payments or benefits in different amounts)), might result in an overpayment or missed payment, or might lead to modification of the agreement. Such changes include but are not limited to a:

(1) ~~((A))~~ Significant change in the child's condition;

(2) ~~((A))~~ Change in the marital status of the adoptive parent(s);

(3) ~~((A))~~ Change in the legal or physical custody of the child; or

(4) ~~((A))~~ Change in the adoptive family's mailing address.

NEW SECTION

**WAC 388-27-0208** **Under what circumstances are benefits under the adoption support agreement sus-**

**pending?** (1) The monthly cash payment may be suspended if:

(a) The department cannot establish that the:

(i) Parents are legally responsible for the support of the child; or

(ii) Child is receiving any support from the parents; and

(b) Department has provided notice to the parents of the department's determination under subsection (1)(a)(i) or (ii) of this section, and of its intent to suspend the monthly cash payment in thirty days, if the parent does not provide documentation within that time to refute the department's determination; and

(c) Parents fail to provide satisfactory documentation.

(2) If the parents provide satisfactory documentation of continued legal responsibility and financial support for the child, the payment may not be suspended. If the parents fail to provide satisfactory documentation, the department must send a notice stating the payment will be suspended. The parents have a right to request a hearing to challenge the suspension and must be provided notice of that right.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

**WAC 388-27-0210** **Under what circumstances would the adoption support agreement be terminated?** The adoption support agreement is terminated according to the terms of the agreement or if any one of the following events occurs:

(1) The child reaches eighteen years of age ~~((; if a)), unless:~~

(a) The child ((is at least eighteen but less than twenty-one years old)) was adopted at age sixteen or older and meets the requirements of an eligible category for the extended foster care program as described in RCW 74.13.031(11). In such cases, the department may extend the terms of the adoption support agreement so long as the child continues to fall within an eligible category and the adoptive parent continues to provide ongoing financial support or the youth turns twenty-one, whichever occurs first. Under no circumstances may the department extend the agreement beyond the child's twenty-first birthday.

(b) The child was adopted prior to age sixteen and is ((a)) attending high school full((-))time in a curriculum leading to a high school ((student or working full time toward the completion of)) diploma or is attending an instructional program leading to a GED ((t)) or high school equivalency((t)) certificate (HSEC) and continues to receive financial support from the adoptive parent(s), the department may extend the terms of the adoption support agreement until the child completes high school or achieves a ((GED)) HSEC. Under no circumstances may the department extend the agreement beyond the child's twenty first birthday.((t))

(c) Adoption support benefits will automatically stop on the child's eighteenth birthday unless the parent(s) requests continuation per this rule and have provided documentation of the child's continuation in school or other qualifying program. To prevent disruption in services the parent should contact the adoption support program at least ninety days

prior to the child's eighteenth birthday if continued services are to be requested.

(2) ~~((The adoptive parents no longer have legal responsibility for))~~ Upon the child's death;

(3) ~~The ((adoptive)) child is under eighteen years and the department determines the parents are no longer ((providing financial)) financially or legally responsible for the support ((for)) of the child;~~

(4) ~~The child ((dies)) is under eighteen years old and the department determines the child is no longer receiving any support from the parents; or~~

(5) The adoptive parents die. (A child who met federal Title IV-E eligibility criteria for adoption assistance will be eligible for adoption assistance in a subsequent adoption.)

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

**WAC 388-27-0215** ~~What benefits ((may the)) are available to adoptive ((parent or child receive from)) parents through the adoption support program?~~ The adoption support program ~~((may provide one or more of the following benefits))~~ provides:

(1) Reimbursement for nonrecurring adoption finalization costs;

(2) Monthly cash payments, as negotiated by the parties;

(3) Payment for counseling services as preauthorized which are not available from the state's medicaid mental health services (see WAC 388-27-0255 for conditions and terms); ~~((or))~~ and

(4) Medical ((services)) assistance through the department's medicaid program.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

**WAC 388-27-0220** ~~What factors affect the amount of the monthly adoption support ((benefits a child)) payments an adoptive parent receives? ((The department bases the amount of support it provides on the child's needs and the family's circumstances, but limits the cash payment to an amount that does not exceed the foster care maintenance rate the child would receive if the child was in a foster family home. Specific circumstances as agreed to by the adoptive parent and the department in the agreement, may warrant future renegotiation and adjustment of the payment determined in an assessment of the child.))~~ (1) The amount of the adoption support monthly cash payment is determined through the discussion and negotiation process between the adoptive parents and representatives of the department based upon the needs of the child and the circumstances of the family. The payment that is agreed upon should combine with the parents' resources to cover the ordinary and special needs of the child projected over an extended period of time. Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment.

(2) Family circumstances to be considered include:

(a) Size, including the adopted child;

(b) Normal living expenses, including education and childcare expenses;

(c) Exceptional circumstances of any family member;

(d) Income;

(e) Resources and savings plans;

(f) Medical care and hospitalization needs;

(g) Ability to purchase or otherwise obtain medical care;  
and

(h) Additional miscellaneous expenses related to the adopted child.

(3) The department and the adoptive parents will jointly determine the level of adoption support cash payments needed to meet the basic needs of the child without creating a hardship on the family. However, under no circumstances may the amount of the adoption support monthly cash payment the department pays for the child exceed the statutory cap for the adoption support maintenance payment, under RCW 74.13.A.047.

(4) Where warranted, and where specifically set forth in the agreement, the adoptive parents and department may agree that specific circumstances require a particular payment for a limited period of time and, as set forth in the agreement, the payment will be automatically adjusted or renegotiated at the expiration of the time period.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0250** ~~What specific department requirements apply to medical services? ((+))~~ While an adoption support agreement remains in effect, medical assistance for the child is provided through the department's ((medical)) medicaid program ((rules)) and the medicaid program requirements apply ((to the adopted child)).

~~((2))~~ The department must make all medical payments according to established department procedures and directly to the child's physician(s) or service provider(s).)

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0255** ~~What specific department requirements apply to outpatient counseling ((and/or)) or mental health services not covered by medicaid? ((When))~~ (1) The department's adoption support program directly pays for a child's counseling ((and/or)) or mental health services, when the following conditions apply:

~~((+))~~ (a) The adoptive parent must obtain written authorization from the department's adoption support program before the service is rendered;

(b) The adoptive parent must explain why these services are not available through the medicaid provider network or through private insurance;

~~((2))~~ (c) The adoptive parents' primary health care coverage must be billed prior to billing the department's adoption support program;

~~((3))~~ (d) The department will pay the adoption support program's ((authorized)) preauthorized rate minus any payment made by the primary (and other) insurer;

~~((4))~~ (e) The department may grant verbal authorization for no more than three counseling sessions prior to providing the required written authorization; and

~~((5))~~ (f) The child's therapist or other treatment provider must submit a written treatment plan prior to authorization for continued treatment~~((;))~~.

~~((6))~~ (2) The department may authorize counseling as follows:

(a) Up to six hours of outpatient counseling per month for up to twelve months; ~~((;))~~

(b) Up to a total of twenty hours per quarter when critical need warrants;

(c) For only one provider at a time unless a second provider is required for a different service; or

(d) Evidence based programs contracted by the department to help stabilize the child in the adoptive home if those programs are pertinent to the needs of the child and family.

~~((7))~~ (3) The department may extend the authorization for counseling (beyond the initial time period authorized) upon receipt of an updated treatment plan and documentation supporting the need for additional treatment from the treatment provider and a parent's request for continuing counseling ~~((DSHS 10-214;))~~

~~(8) The department may authorize this service for only one provider at a time unless a second provider is required for a different service).~~

~~(9) The department encourages adoptive parents to seek an annual assessment of the functioning of the adoptive child within the family to determine if there are mental health services needed to help maintain and/or strengthen the adoptive placement))~~ (4) The provider must provide services to the client face-to-face, i.e., in the same room except where face-to-face services are not reasonably accessible to the child.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0260** If the adoptive parent requests residential placement services for ~~((the parent's))~~ their adopted child, what department requirements apply? (1) The adoption support program ~~((must))~~ is not able to pay for residential treatment placements of children who are not in department custody. See RCW 74.13.080 and WAC 388-25-0025.

(2) If the adoptive parent ~~((requests))~~ is in need of residential treatment services for a child, the department will make the following referrals:

(a) For treatment of a mental illness, the department ~~((must))~~ will refer the family to the local ~~((regional support network (RSN)))~~ mental health treatment provider;

(b) If the child has been diagnosed with a ~~((diagnosis of))~~ physical, mental, developmental, cognitive or emotional disability ~~((is present)),~~ the department ~~((staff must))~~ will refer the ~~((child))~~ family to the ~~((division of))~~ developmental disabilities ~~((DDD))~~ administration (DDA) to determine ~~((eligibility of))~~ whether the child is eligible for services ~~((for which the child might be eligible)); or~~

(c) For reasons other than treatment of mental illness or developmental disabilities, the department ~~((staff must))~~ will refer the adoptive parent to ~~((the))~~ child welfare services

~~((intake))~~ at the local children's administration office ~~((of the division of children and family services (DCFS)).~~

~~(3) The adoption support program manager may assist the adoptive parent in arranging residential service for the child but must not be responsible for the child's placement or for the payment of the residential service).~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0265** What are the consequences of ~~((the department placing the))~~ an adopted child being placed in foster care ~~((, group care, or residential treatment))~~? (1) If a child is on active status with Washington state's adoption support program and the department places the child in foster care ~~((, group care, or residential treatment)),~~ the department ~~((may report))~~ is required to refer the case to the division of child support and the program may report that good cause exists for not pursuing collection of support payments.

(2) The department ~~((must))~~ may review the adoption support agreement and ~~((must discontinue))~~ may renegotiate the amount of any cash payments to the adoptive parent during the child's out-of-home placement ~~((unless the adoptive parent(s) documents continuing expenses directly related to the child's needs)).~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0295** What ~~((requirements apply))~~ process applies to ~~((the review))~~ a request for modification of a support agreement? (1) The adoptive parent ~~((and the department must))~~ may request an opportunity to negotiate ~~((any changes in the agreement that result from a review;))~~ a modification of the adoption support agreement's monthly cash payment provision if there is a change in the needs of the child or in the circumstances of the family. The request must be in writing.

(2) ~~((Changes in the terms of))~~ The adoption support program must initiate a review of the adoption support agreement ~~((may be retroactive to the date the department received the written request; and))~~ no later than thirty days after receiving the adoptive parent's request for modification of the agreement.

(3) ~~((If the department modifies the terms of the agreement, the adoptive parent and the department must sign a new agreement))~~ The adoptive parent must provide supporting documentation when requested by the department.

(4) The department may request a copy of the adoptive parents' most recently filed federal tax return. If not required to file a federal tax return the adoptive parent(s) must submit a financial statement when requested by the department.

(5) The adoptive parent may request that the child's medical provider complete an early periodic screening, diagnosis, and treatment (EPSDT) examination and submit a report of the results to the adoption support program.

(6) The adoptive parent and the department will negotiate in an attempt to reach agreement on the request for modification.

(7) If the parties modify the terms of the agreement, the adoptive parent and the department must sign a new agreement.

(8) If the agreement is modified, the changes in the terms of the agreement will be retroactive to the first day of the month in which the department received the written request.

(9) If an agreement cannot be reached, the department will deny the request for modification and must provide the adoptive parent with written notice of the denial and of the right to appeal.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0305 May an adoptive parent apply for adoption support services after the adoption has been finalized?** Federal ~~((and state))~~ laws and rules require that a prospective adoptive parent must apply for adoption assistance prior to adopting a special needs child and that the prospective adoptive parent must have a valid adoption support agreement, signed by all parties, before the adoption is finalized.

However, ~~((both state and))~~ the federal government~~((s have recognized))~~ recognizes that in some situations there may have been extenuating circumstances that prevented the eligible child from being placed on the adoption support program prior to adoption. ~~((For these situations separate remedies have been created depending on which eligibility criteria are met by the child.))~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0310 If a child met federal Title IV-E eligibility for adoption assistance before the adoption, but was not placed on the ~~((adoptive))~~ adoption support program, what may the adoptive parent do after adoption finalization to obtain adoption support services for the adopted child?** For a child who met the Title IV-E eligibility criteria for adoption assistance prior to adoption, federal rules allow for a possible finding of extenuating circumstances through an administrative hearing process. In these situations, the adoptive parent must apply for adoption support. The department will deny the application and the adoptive parent may then request a review by an administrative law judge or a review judge to ~~((obtain an order authorizing the department to enter into a))~~ determine if extenuating circumstances exist that justify the department's post-adoption agreement to provide adoption support services to a special needs child.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0320 What is the effective date of an adoption support agreement that results from a finding of extenuating circumstances?** ~~((The effective date of an adoption))~~ A support agreement ~~((the department and the adoptive parent have))~~ entered into as a result of a finding of extenuating circumstances may not be effective before the date the department received the written request for participa-

tion in the adoption support program from the adoptive parent ~~((for participation in the adoption support program))~~. Under no circumstances may the department back date an adoption support agreement more than two years from the date of an order of an administrative law judge or review judge authorizing the department to enter an adoption support agreement after finalization of the adoption.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0325 If a child did not meet federal Title IV-E eligibility for adoption assistance before the adoption, ~~((what may the adoptive parent do after))~~ may the child qualify for adoption ~~((finalization to obtain adoption))~~ support ~~((services for the adopted child))~~ after adoption finalization?** For children ineligible for federal Title IV-E Adoption Assistance, the department may provide limited support through the state-funded adoption support reconsideration program, when the program is funded by the legislature.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0330 What is the adoption support reconsideration program?** (1) When funded by the legislature, the adoption support reconsideration program allows the department to register an eligible adopted child for limited state-funded support (see RCW 74.13.150).

(2) The reconsideration program provides for payment of medical and counseling services to address the physical, mental, developmental, cognitive, or emotional disability of the child that resulted in the child's eligibility for the program. Payments are made directly to the provider, not to the adoptive parents.

(3) The adoptive parents' basic health insurance must provide primary coverage and must be used before billing the reconsideration program. The adoption support reconsideration program must be the secondary insurer.

(4) There is a twenty thousand dollar per child lifetime cap on this program.

~~((4))~~ (5) The program requires the adoptive parent and the department to sign an adoption support reconsideration agreement specifying the terms, conditions, and length of time the child will receive limited support.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0335 How does a child qualify for the adoption support reconsideration program?** To be eligible for the adoption support reconsideration program, a child must:

(1) Have resided, immediately prior to adoption finalization, in a department funded pre-adoptive placement or in department funded foster care;

(2) Have a physical or mental ~~((handicap))~~ disability or emotional disturbance that existed and was documented before adoption or was at high risk for future physical or mental ~~((handicap))~~ disability or emotional disturbance due



to conditions (~~(to which)~~) the child was exposed to before adoption;

(3) Reside in Washington state with an adoptive parent who lacks the financial resources to care for the child's special needs; and

(4) Be covered by a primary basic health insurance program.

**AMENDATORY SECTION** (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0340 How does an adoptive parent apply for the adoption support reconsideration program?** (~~(To apply,)~~) The adoptive parent must complete an application for adoption support reconsideration and attach:

(1) A written cost estimate of the child's proposed corrective-rehabilitative services;

(2) A current medical evaluation of the child including the cause(s) of the condition requiring corrective-rehabilitative services;

(3) A written statement explaining the child's current medical and counseling needs;

(4) A written statement giving the department permission to request and review pre-adoption information held by the adoption agency facilitating the child's adoption; and

(5) A copy of the adoptive parents' most recently filed (~~(IRS 1040)~~) federal income tax (~~(form)~~) return.

**AMENDATORY SECTION** (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0365 Does an adoptive parent have the right to appeal department decisions regarding adoption support issues?** (1) An adoptive parent has the right to an administrative hearing to contest the following department actions:

(a) Denial of a child's initial eligibility for the adoption support program or the adoption support reconsideration program;

(b) Failure to respond with reasonable promptness to a written application or request for services;

(c) Denial of a written request to modify the level of payment or service in the agreement;

(d) (~~(A decision to increase or decrease the level of the child's adoption support payments without the concurrence of the adoptive parent(s))~~) Delay of more than thirty days when responding to a written request for modification of the agreement;

(e) Denial of a request for nonrecurring adoption expenses; (~~(or)~~)

(f) Suspension of adoption support benefits; or

(g) Termination from the program.

(2) To initiate the appeal, the adoptive parent must submit a request for an administrative hearing to the office of administrative hearings within ninety days of receipt of the department's decision to deny a request, to suspend or terminate adoption support, or failure to respond to a request.

(3) The office of administrative hearings must apply the rules in WAC 388-27-0120 through 388-27-0390 as they pertain to the issues being contested.

**AMENDATORY SECTION** (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0370 What information about adoption support agreements may be used in an administrative hearing?** Adoption and adoption support files are confidential, and information contained in those files may not be disclosed without the consent of the person who is the subject of the file. By requesting an administrative hearing to challenge a department decision relating to adoption support the adoptive parent is agreeing that the department may release factual information about the case during the course of the proceedings. Actions taken by the department and decisions by administrative law judges or review judges in adoption support cases which do not directly involve the case being heard may not be cited or relied (~~(upon)~~) on in any administrative proceeding (RCW 26.33.340 and 74.04.060).

**AMENDATORY SECTION** (Amending WSR 03-02-059, filed 12/27/02, effective 1/27/03)

**WAC 388-27-0375 Will the department reimburse an adoptive parent for nonrecurring adoption expenses?** The department (~~(will)~~) has authority to agree to reimburse some or all of an adoptive parent's nonrecurring adoption expenses if:

(1) The child has a qualifying factor or condition identified in WAC 388-27-0140(1);

(2) Washington state has determined that the child cannot or should not be returned to the home of the child's biological parent; (~~(and)~~)

(3) Except where it would be against the best interest of the child, the department or a public or private nonprofit child placing agency has made a reasonable but unsuccessful effort to place the child with appropriate adoptive parents without the benefit of adoption assistance; and

(4) The child has been placed for adoption according to applicable state (~~(and local laws)~~) or tribal laws.

**AMENDATORY SECTION** (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0380 What types of nonrecurring adoption expenses will the department reimburse?** The department may reimburse:

(1) Court costs directly related to finalizing an adoption;

(2) Reasonable and necessary adoption fees;

(3) Reasonable and necessary attorney fees directly related to finalizing an adoption; and

(4) Costs associated with an adoption home study, including:

(a) Health and psychological examinations;

(b) Placement supervision before adoption;

(c) Transportation, lodging, and food costs incurred by the adoptive parent(s) and child during pre-placement visits; and

(d) Other costs directly related to finalizing the legal adoption of the child.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0385 Is there a limit to the amount of nonrecurring adoption expenses that the department will reimburse?** ((Department)) Reimbursement by the department of nonrecurring adoption expenses must not exceed one thousand five hundred dollars per child.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

**WAC 388-27-0390 How does an adoptive parent get reimbursed for nonrecurring adoption expenses?** (1) Before the adoption is finalized, the adoptive parent must sign an agreement with the department specifying the nature and amount of nonrecurring adoption expenses. This agreement may be part of an adoption support agreement or it may be a separate agreement specific to the reimbursement for nonrecurring adoption finalization costs. The department will make no reimbursement payments unless such an agreement exists.

(2) ((Upon)) After finalization of the adoption, the adoptive parent may request reimbursement. A copy of the adoption decree and documentation supporting actual costs incurred must accompany the request for reimbursement.

(3) The department must reimburse documented actual costs or the amount specified in the signed agreement, whichever is less.

(4) The department will not reimburse nonrecurring adoption expenses that are reimbursable from other sources (for example: ((IRS, military, or the)) adoptive parent's employer).

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-27-0195 May the adoptive parent(s) change the benefits contained in the adoption support program?
- WAC 388-27-0230 How does the department evaluate a request for adoption support monthly cash payments?
- WAC 388-27-0275 When does the department review an adoption support agreement?
- WAC 388-27-0280 What is involved in the review process?
- WAC 388-27-0285 What is the department's responsibility when the adoptive parent(s) requests a review of the adoption support agreement?
- WAC 388-27-0290 What if the department does not respond to a request for a review of an adoption support agreement within thirty days?

WAC 388-27-0300 After a review, what if the department and the adoptive parent cannot agree on the terms of the adoption support agreement?

#### **WSR 18-10-009**

#### **PROPOSED RULES**

#### **DEPARTMENT OF TRANSPORTATION**

[Filed April 20, 2018, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-06-063.

Title of Rule and Other Identifying Information: Chapter 468-550 WAC, safety oversight of rail fixed guideway public transportation systems.

Hearing Location(s): On June 11, 2018, at 9:00 a.m., at the Department of Transportation (WSDOT), 310 Maple Park Avenue S.E., Nisqually Conference Room, 1D, Olympia, WA 98501. Please sign in at the reception desk.

Date of Intended Adoption: June 11, 2018.

Submit Written Comments to: Michael Flood, 401 2nd Avenue South, Suite 300, Seattle, WA 98104-3850, email FloodM@wsdot.wa.gov, fax 206-464-1286, by June 7, 2018.

Assistance for Persons with Disabilities: Contact Karen Engle, phone 360-704-6362, fax 360-704-6367, TTY 711, email EngleKa@wsdot.wa.gov, by June 7, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise chapter 468-550 WAC, Safety oversight of rail fixed guideway system rules, to meet the new federal requirements identified in 49 U.S.C. § 5329 Public Transportation Safety Program and further identified in 49 C.F.R. Part 674 State Safety Oversight.

The new federal provisions require the Federal Transit Administration (FTA) to establish a comprehensive public transportation safety program, the elements of which include a national public transportation safety plan; a training and certification program for federal, state, and local transportation agency employees with safety responsibilities; public transportation agency safety plans; and a strengthened state safety oversight (SSO) program consisting of elements at both the state and rail transit agency level.

These new federal provisions further require WSDOT SSO program to assume greater responsibility for overseeing the safety of rail fixed guideway systems in Washington state, and require FTA to review and certify WSDOT SSO program as meeting the statutory criteria set forth in the new provisions. This rule making would update the regulations for SSO of rail fixed guideway public transportation systems in place for the past twenty years, and significantly strengthen the program to prevent and mitigate accidents and incidents for rail fixed guideway systems in the state of Washington.

Reasons Supporting Proposal: FTA has adopted the rule 49 C.F.R. Part 674 for SSO of rail fixed guideway public transportation systems. Section 674.25 states that an SSO agency must establish minimum standards for the safety of all rail fixed guideway public transportation systems within

its oversight. These minimum standards must be consistent with the national public transportation safety plan, the public transportation safety certification training program, the rules for public transportation agency safety plans and all applicable federal and state law. Additionally, Washington state's SSO program must establish these rules in order to become certified by FTA to implement a Part 674 compliant oversight program.

Statutory Authority for Adoption: RCW 81.104.115 Rail fixed guideway public transportation systems.

Statute Being Implemented: 49 U.S.C. § 5329 (d), (e) and RCW 81.104.115 (1)(d).

Rule is necessary because of federal law, C.F.R. 49 Part 674.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: FTA issued a new rule, 49 C.F.R. Part 674 for state safety oversight of rail fixed guideway public transportation systems not regulated by the Federal Railroad Administration. The new rule requires revisions to chapter 468-550 WAC to meet the requirements outlined in 49 C.F.R. Part 674. This rule replaces the existing regulations for state safety oversight of rail fixed guideway public transportation systems in 49 C.F.R. Part 659 that have been in place for the past twenty years. This new rule significantly strengthens states' authorities to prevent and mitigate accidents and incidents on public transportation systems.

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael Flood, Seattle, Washington, 206-464-1291.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule making will have minimal or no economic impact to small business in Washington state. This was determined by the fact that this rule affects only four entities in Washington state, all of which are government or quasi-government entities that provide public transportation and more specifically provide rail fixed guideway public transportation. Therefore, as defined in RCW 19.85.025(4) the requirements do not apply to the rule-making process for chapter 468-550 WAC, safety oversight of rail fixed guideway public transportation systems.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 49 U.S.C. § 5329(d) and 49 C.F.R. Part 674.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule making will have minimal or no economic impact to small business in Washington state. This was determined by the fact that this rule affects only four entities in Washington state, all of which are government or quasi-government entities that provide public

transportation and more specifically provide rail fixed guideway public transportation. Therefore, as defined in RCW 19.85.025(4) the requirements do not apply to the rule-making process for chapter 468-550 WAC, safety oversight of rail fixed guideway public transportation systems.

April 18, 2018

Kara Larsen, Director  
Risk Management  
and Legal Services

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

**WAC 468-550-010 Purpose.** This chapter is adopted to comply with 49 C.F.R. Part ~~((659))~~ 674 and RCW 81.104.115, which requires the state of Washington to oversee the ~~((system))~~ agency safety program ~~((and the security and emergency preparedness plans))~~ of rail fixed guideway ~~((systems (RFGS) not regulated by the Federal Railroad Administration))~~ public transportation systems (RFGPTS) as defined in 49 C.F.R. Part 674.7. These rules prescribe the ~~((system))~~ safety ~~((and security))~~ criteria to be met by ~~((RFGS))~~ RFGPTS and are intended to improve the safety ~~((and security of RFGS))~~ of RFGPTS in Washington state. 49 C.F.R. Part 674.11c and Part 674.13a require the establishment of a state safety oversight agency (SSOA) in accordance with the requirements of 49 U.S.C. 5329c and 5329e(3)c. The Washington state department of transportation was designated in 1997 by Governor Gary Locke as the SSOA for the state of Washington. WSDOT's designation and authority as the SSOA is codified in RCW 81.104.115 and more recently in chapter 33, Laws of 2016 (Senate Bill 6358).

#### NEW SECTION

**WAC 468-550-015 Effective date.** These rules are necessary to comply with C.F.R. Part 674 and take effect upon filing with the code reviser for emergency rule making per the requirements outlined in RCW 34.05.350.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

**WAC 468-550-020 Applicability.** These rules are applicable to all Washington state entities, public or private, which own, operate, or maintain ~~((RFGS that are not regulated by the Federal Railroad Administration))~~ RFGPTS as defined in 49 C.F.R. Part 674.7.

These rules apply to all owners of rail fixed guideway public transportation systems, as defined by ~~((RCW 81.104-015))~~ 49 C.F.R. Part 674, which are required by RCW 81.112.180, 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, ~~((or 81.112.180))~~ 81.104.015 to comply with the requirements of the Washington state department of transportation for the development and implementation of ~~((a system))~~ an agency safety program plan ~~((and a security and emergency preparedness plan)).~~

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

**WAC 468-550-030 Definitions.** For the purposes of this chapter, the following definitions of terms shall apply unless the context clearly indicates otherwise:

(1) ~~Accident((reportable))~~ means ~~((any))~~ an event ((involving the operation of a RFGS along a revenue line segment, if as a result:

~~(a) An individual dies; or~~

~~(b) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or~~

~~(c) A collision, derailment, or fire causes property damage in excess of \$25,000.~~

~~(2) APTA Guidelines means the American Public Transit Association's "Manual for the Development of Rail Transit System Safety Program Plans."~~

~~(3) Chief executive officer means, but is not limited to, the mayor, county executive, or chair of the municipality, or corporate president of the public or private entity that owns, operates, or maintains a RFGS.~~

~~(4) Contractor means an entity that performs tasks required by this chapter on behalf of the department or a RFGS.~~

~~(5)) that involves any of the following: A report of a serious injury to a person; a collision involving a rail transit vehicle; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.~~

(2) Accountable executive means a single, identifiable person who has ultimate responsibility for carrying out the safety management system of a public transportation agency; responsibility for carrying out the agency's transit asset management plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's public transportation agency safety plan in accordance with 49 U.S.C. 5329(d) and the agency's transit asset management plan in accordance with 49 U.S.C. 5326.

(3) Agency means any entity that provides rail fixed guideway public transportation services.

(4) Agency safety plan is a document developed and implemented for each rail fixed guideway system, which describes its safety policies, objectives, responsibilities, and procedures. The requirements for this plan are established by the Federal Transit Administration in C.F.R. 49 Part 674 and further by the Washington state rail safety oversight program standard.

(5) APTA guidelines means the American Public Transit Association's Manual for the Development of Rail Transit System Safety Program Plans.

(6) Collision means a vehicle/vessel accident in which there is an impact of a transit vehicle/vessel with:

- Another transit vehicle;
- A nontransit vehicle;
- A fixed object;
- A person(s) (suicide/attempted suicide included);
- An animal;
- A rail vehicle;
- A vessel;
- A dock.

(7) Contractor means an entity that performs tasks required by this chapter on behalf of the department or a RFGPTS.

(8) Department means the Washington state department of transportation, which has been designated as the state safety oversight agency.

~~((6) Directional route mile means the mileage in each direction over which public transportation vehicles travel while in revenue service. Directional route miles are a measure of the route path over a facility or roadway and not the service carried on the facility. Directional route miles are computed with regard to direction of service, but without regard to the number of traffic lanes or rail tracks existing in the right of way. Directional route miles do not include staging or storage areas at the beginning or end of a route.~~

~~(7)) (9) Emergency means a situation which is life-threatening to passengers, employees, or others or which causes damage to any rail fixed guideway vehicle or facility or results in a significant ((theft)) loss of services which severely affects the ability of the system to fulfill its mission.~~

~~((8)) (10) Evacuation (reportable) is a condition that occurs when persons depart from transit vehicles or facilities for life safety reasons, including self-evacuations for life safety reasons. Evacuations to a location that may put passengers or patrons in imminent danger (such as controlled rail right of way) must also be reported.~~

(11) Fatality means a death or suicide confirmed within thirty days of a reportable event. Excludes deaths in or on transit property that are a result of illness or other natural causes.

(12) FTA means the Federal Transit Administration, or its successors, an agency within the U.S. Department of Transportation.

~~((9)) (13) Hazardous condition means a set of circumstances that if not identified and corrected has or will result in personal injury or property damage. It includes unacceptable hazardous conditions.~~

~~((10)) (14) Incident means an event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a rail transit agency.~~

(15) Incident reporting thresholds are criteria established by Federal Transit Administration in C.F.R. 49 Part ((659)) 674 and further by the Washington state rail safety oversight program standard for determining which accidents/incidents require investigation.

~~((11)) (16) Investigation means a procedure that the department or a ((RFGS)) RFGPTS utilizes to determine the cause of a reportable accident, hazardous condition, or security breach.~~

~~((12)) (17) Major system enhancement means any modification to an existing RFGPTS that will significantly impact the operations and maintenance of the system, including opening new stations, system wide modification or replacement of equipment, expanded operations and maintenance facilities, or significant increases to system capacity.~~

(18) Medical attention means emergency care at a state-licensed general hospital, critical access hospital, or health clinic, or by a religious practitioner.

~~((13))~~ Plan means the system safety program plan and the security and emergency preparedness plan of rail fixed guideway systems not regulated by the Federal Railroad Administration adopted by the RFGS detailing its safety and security policies, objectives, responsibilities and procedures.

~~((14))~~ (19) Procedure means an established and documented method to perform a task.

~~((15))~~ (20) Rail fixed guideway public transportation system or ("~~RFGS~~") "~~RFGPTS~~" means ~~((a light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or other fixed rail guideway component of a high capacity transportation system that is not regulated by the Federal Railroad Administration or its successor. "RFGS" does not include elevators, moving sidewalks or stairs, and vehicles suspended from aerial cables, unless they are an integral component of a station served by a rail fixed guideway system))~~ any fixed guideway system that uses rail, is operated for public transportation, is within the jurisdiction of a state, and is not regulated by the Federal Railroad Administration, or its successor. Rail fixed guideway public transportation system (or "RFGPTS") also means any such projects in engineering or construction phases. Rail fixed guideway public transportation systems include, but are not limited to, rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

~~((16))~~ (21) Rail transit agency (RTA) means any city, town, county, transportation authority, public transportation benefit area, regional transit authority, or other agency that owns a RFGPTS and bears ultimate accountability for it.

(22) Revenue line segment means that portion of a fixed guideway system upon, under, or through which a (~~RFGS~~) RFGPTS provides service available to the (~~general~~) public. It includes stations used by the system's passengers to enter or leave the (~~RFGS's~~) RFGPTS's conveyance.

~~((17))~~ Risk means the probability that a security breach will occur.

~~((18))~~ (23) Safety means freedom from danger.

~~((19))~~ Security and emergency preparedness plan or "SEPP" is a document developed and implemented for each rail fixed guideway system which describes its security policies, objectives, responsibilities, and procedures. This plan is a requirement of RCW 81.104.115 and meets the standards established by the Federal Transit Administration in C.F.R. 49 Part 659 and the Washington state rail safety oversight program.

(20) Seasonally means the provision of service available to the general public fewer than a total of one hundred eighty days within a twelve-month period. The provision of service any time on a calendar day is a day counted towards the threshold of one hundred eighty days.

~~((21))~~ (24) Security means freedom from intentional danger.

~~((22))~~ (25) Security breach means an unforeseen event or occurrence that endangers life or property and may result in the loss of services or system equipment.

~~((23))~~ Service available to the general public does not include operations for a specific private function when a RFGS accepts hire, such as group charters, weddings, or other private events that are not available to the general public on a walk-in basis.

(24) Standard means the system safety and security program standard which is the standard developed and adopted by the department which complies with the requirements of C.F.R. 49 Part 659.

(25) System means a composite of people, property, environment, and procedures which are integrated to perform a specific operational function in a specific environment.

(26) System safety program plan or "SSPP" is a document developed and implemented for each rail fixed guideway system which describes its safety policies, objectives, responsibilities, and procedures. The requirements for this plan are established by the Federal Transit Administration in C.F.R. 49 Part 659 and further by the Washington state rail safety oversight program standard.

(27) Triennial safety and security audit means a formal, comprehensive, on-site examination by the department of a RFGS's safety and security procedures to determine whether it complies with the RFGS's policies and procedures as outlined in the RFGS's plan.

(28) Washington state rail safety oversight program is the program administered by the Washington state department of transportation to ensure compliance by rail fixed guideway systems with the Washington state rail safety oversight program standard.

~~((29))~~ (26) System expansion means any modification to an existing RFGPTS that will increase the distance over which trains can travel in passenger service, including line extensions or new lines.

(27) Washington state rail safety oversight program is the program administered by the Washington state department of transportation to ensure compliance by rail fixed guideway public transportation systems with the Washington state rail safety oversight program standard.

(28) Washington state rail safety oversight program standard is a document developed and adopted by the Washington state department of transportation that describes the policies, objectives, responsibilities, and procedures used to provide safety and security oversight of rail fixed guideway systems. This document is a requirement established by the Federal Transit Administration in C.F.R. 49 Part ~~((659))~~ 674.

~~((30))~~ Unacceptable hazard is a real or potential condition that may endanger human life or property that after an assessment of its severity and probability cannot remain and must be mitigated.

~~((31))~~ (29) Unacceptable hazardous condition means a hazardous condition classified by the rail transit agency as being unacceptable based on a hazardous resolution matrix or other evaluation methodology approved by the department.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

**WAC 468-550-040 Requirements for ~~((system safety program plan and security and emergency preparedness plans))~~ agency safety plans.** ~~((1))~~ Each RFGS, except any that operate seasonally, shall prepare a system safety program plan and security and emergency preparedness plans. Such plans shall describe the RFGS's procedures for:

(a) Reporting and investigating reportable accidents and unacceptable hazardous conditions;

(b) Submitting corrective action plans and annual safety and security audit reports;

(c) Facilitating on-site safety and security reviews by the department; and

(d) Addressing passenger and employee security.

The plans and any revisions thereto shall, at a minimum, conform to the standard set forth in WAC 468-550-050, be approved by the RFGS's chief executive officer and submitted for departmental review, or within three months prior to beginning operations or instituting revisions to the plans. The RFGS shall not transmit the security portions of its security and emergency preparedness plan to the department. The RFGS shall notify the department of the location and availability of the security portions of its plan.

(2) Each RFGS shall implement and comply with the provisions of its plans and any revisions thereto. Further, should the RFGS change ownership or operating or maintenance providers, the RFGS shall require its successors, assigns, and contractors to continue to comply with the RFGS's established plans and shall notify the department of any change of ownership or operating or maintenance providers within thirty days of the effective date of transfer or contract.

(3) The security section of the security and emergency preparedness plan is exempt from public disclosure under chapter 42.56 RCW. Each RFGS may develop procedures to implement this subsection. Completed reports of reportable accidents and unacceptable hazardous conditions, corrective action plans, annual safety and security audit reports, published reviews of the department, published RFGS internal safety and security audits, and notifications of reportable accidents and unacceptable hazardous conditions are not subject to this exemption.

(4) Each RFGS that operates seasonally shall submit a system description and organization structure to the department within ninety days of commencing operations. Each RFGS shall update this submittal within thirty days after any changes to the system description or organizational structure occur.

(a) The system description shall identify the revenue line segments, revenue equipment, and all locations for embarking or debarking passengers.

(b) The organizational structure shall identify the decision-making structure for the RFGS, including any firm or organization contracted to undertake its seasonal operations.

(c) This submittal shall include safety contact information for the RFGS and any firm or organization contracted to undertake its seasonal operations. (1) Rail transit agencies must establish an agency safety plan that complies with the requirements set forth in the Washington state rail safety oversight program standard, which conforms to current federal regulations for agency safety plans. These requirements include the establishment of an agency safety policy, a safety and risk management program, a safety assurance program, and a safety promotion program.

(2) Agency safety plans must establish the agency procedures for the review and revision of the plan. The filing, submittal, review, and approval of agency safety plans must comply with the standard set forth in WAC 468-550-050.

(3) As described in WAC 468-550-060, agency safety plans are subject to reviews and audits from the Washington state rail safety oversight program and the Federal Transit Administration.

(4) Rail transit agencies must conduct internal audits of agency safety plans per the requirements of WAC 468-550-060.

(5) Agency safety plans must establish procedures for the notification, investigation, and reporting of accidents, incidents, and hazards in conformance with the requirements of WAC 468-550-070.

(6) Agency safety plan policy statements must be approved and signed by the agency's accountable executive. The policy statement must assign responsibility for carrying out the plan to the designated agency accountable executive.

(7) Each RFGPTS shall implement and comply with the provisions of its plans and any revisions thereto. Further, should the RFGPTS experience a change in ownership or a change in operating or maintenance providers, the RFGPTS shall require continued compliance with the RFGPTS's established plans and shall notify the department of any change of ownership or operating or maintenance providers within thirty days of the effective date of transfer or contract.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

**WAC 468-550-050 ((Department)) Procedures for ((reviewing, approving)) the submittal, review, approval, and filing ((rail fixed guideway system safety program plan and security and emergency preparedness plans and inspections)) of agency safety plans.** ((1)(a) The department shall review each RFGS system safety program plans, and all subsequent revisions, for compliance with these rules and the standard, using the system safety checklist which includes:

- Policy statement and authority for the plan
- Description of purpose for the plan
- Clearly stated goals for plan
- Identifiable and attainable objectives
- System description and organizational structure
- The plan control and update procedures
- Hazard identification and resolution process
- Accidents, hazardous conditions and reporting and investigation procedures
- Internal safety audit process
- Facilities inspections (includes system equipment and rolling stock)
- Maintenance audits and inspections (all systems and facilities)
- Rules and procedures review
- Training and certification reviews and audits
- Emergency response planning, coordination and training
- System modification review and concurrence process

- Safety data acquisition and analysis
- Interdepartmental and interagency coordination
- Configuration management
- Employee safety program
- Hazardous materials program
- Drug abuse and alcohol misuse programs
- Contractor safety coordination
- Procurement

~~(b) The department shall provide written concurrence with the RFGS's system safety program plan or provide written comments to the RFGS specifying required changes. The RFGS shall revise its plan to incorporate the department's review comments, if any, within sixty days after receipt thereof, and resubmit its revised plan for review. After resolving issues arising in the review process, the department shall notify the RFGS of its concurrence with the plans. The plans and the department's concurrence shall be maintained by the department in a permanent file.~~

~~(2)(a) The department shall review RFGS's security and emergency preparedness plan, and all subsequent revisions, for compliance with these rules and the standard, using the WSDOT security and emergency preparedness checklist which includes:~~

- Policy statement for the plan
- Purpose for the plan
- Clearly stated goals and identifiable and attainable objectives
- Scope of plan and system security program
- Security and law enforcement functions that manage and support plan
- Management authority which oversees the operation and management of the agency
- Interface of the plan with local, state and federal authorities
- Security acronyms and definitions
- Background and history of agency's rail transit services
- Organization charts and lines of authority
- Description of passenger and ridership characteristics
- Description of operations and services including operating environment
- Description of how the plan integrates with other plans including the SSPP
- Current security conditions
- Capabilities and practices
- Identification of person(s) responsible for establishing SEPP policy and developing and approving plan
- Identification of person(s) responsible for the management of the SEPP program

- Listings of the SEPP related responsibilities of individuals working within the security function
- Description of equipment used to support implementation of the plan
- Description of training, exercises, and procedures in place to ensure employee proficiency and readiness
- Description of activities to identify threats and vulnerabilities and to assess their likely impacts
- Response strategies for prioritizing vulnerabilities
- Identification and schedule of tasks to be performed for implementing the plan
- Description of methods for evaluating the effectiveness of the plan
- Process for reviewing and revising the plan and for implementing any revisions

~~(b) The department shall provide written concurrence with the RFGS's security and emergency preparedness plan or provide written comments to the RFGS specifying required changes. The RFGS shall revise its plan to incorporate the department's review comments, if any, within sixty days after receipt thereof, and resubmit its revised plan for review. After resolving issues arising in the review process, the department shall notify the RFGS of its concurrence with the plan. The plan and the department's concurrence shall be maintained by the department in a permanent file.)~~ (1) Agency safety plans must be submitted within three months prior to operations of a new RFGPTS, a system expansion, or a major system enhancement to an existing RFGPTS.

(2) Full compliance and approval of agency safety plans must be obtained in writing from WSDOT prior to commencing RFGPTS operations. The department and the RTA must accelerate review and revision timelines as necessary to ensure agency safety plan approval prior to the RFGPTS start of service date.

(3) The department must review and evaluate plans according to criteria set forth in the Washington state rail safety oversight program standard.

(4) Each calendar year, as part of its annual safety program report submittal, the transit agency must provide the department with documentation of its annual review of the agency's safety plan.

(5) The department shall provide written approval of the RFGPTS's agency safety plan or provide written comments to the RFGPTS specifying required changes. The RFGPTS shall revise its plan to incorporate the department's review comments, if any, within sixty days after receipt thereof, and resubmit its revised plan for review. After resolving issues arising in the review process, the department shall notify the RFGPTS of its concurrence with the plans. The plans and the department's concurrence shall be maintained by the department in a permanent file.

(6) The RFGPTS shall not transmit any security sensitive portions of its plans, as defined by 49 C.F.R. Part 1520. The RFGPTS shall notify the department of the location and availability of any security sensitive information.

(7) Each RFGPTS may develop procedures to implement this subsection. The Washington state rail safety oversight program standard may require these procedures to be included, summarized, or cited in the agency safety plan.

(8) Failure to comply with the requirements established in WAC 468-550-040, 468-550-050, 468-550-060, 468-550-070, and the Washington state rail safety oversight program standard may result in financial or other penalties. Financial or other penalties will be determined in accordance with WAC 468-550-080.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

WAC 468-550-060 Annual ~~(and triennial)~~ internal safety ~~(and security)~~ audits and reports. (1)~~((a) Each RFGS))~~ Each RFGPTS shall perform scheduled internal safety ~~(and security)~~ audits to evaluate compliance with the Washington state rail safety oversight program standard, to identify hazardous and risk conditions, and ~~((measure the effectiveness of its plans. The RFGS))~~ to verify that it is fully implementing its safety program as described in its plans and procedures. The RFGPTS shall include its internal safety ~~((and security))~~ audit schedule for the ~~((next year with))~~ following year in the annual report as required ~~((in))~~ by WAC 468-550-070(5). These audits shall ~~((include, but are not limited to:~~

(i) Observing work practices and employee performance during system operations;

(ii) Sampling and inspecting selected system components to verify proper maintenance; and

(iii) Reviewing RFGS records for all phases of system operations, maintenance, and security.) determine the level at which the agency has implemented the agency safety plan. Audits may include, but are not limited to, the observation of employees performing system operations and maintenance activities, employee rules compliance checks, the sampling and inspection of selected system components, interviews, and records reviews.

(2) The ~~((RFGS))~~ RFGPTS shall select a qualified person(s) or contractor to perform its internal audits and shall notify the department not later than ten days prior to performing the internal audits. The notification shall include date(s) of audit, what is to be audited, and the qualifications of those selected to perform the audit, such qualifications are subject to departmental concurrence and should describe what relevant experience and/or training qualifies the auditor(s) to conduct these audits. The department may assess the effectiveness of each ~~((RFGS))~~ RFGPTS audit program; however, any departmental review or concurrence shall not substitute for the ~~((RFGS's))~~ RFGPTS's own safety ~~((and security))~~ inspection audit programs, nor relieve the ~~((RFGS))~~ RFGPTS from its ~~((sole liability))~~ responsibility for the safety ~~((and security))~~ of its system.

~~((b) Each RFGS, as a basis for its audit process, shall prepare, maintain, and make available for departmental review records that document the results of all tests, inspections, and audits conducted by the RFGS or its contractor in compliance with the plans. These records shall include, but are not limited to:~~

- (i) Start up test records;
- (ii) Drug and alcohol test records;
- (iii) Training and certification records;
- (iv) Operation performance evaluation records;
- (v) Facility inspections;
- (vi) Maintenance audits and inspections (all systems and facilities);
- (vii) Rules and procedures review;
- (viii) Emergency response planning, coordination, and training;
- (ix) System modification review and approval process;
- (x) Safety and security data acquisition and analysis;
- (xi) Interdepartmental and interagency coordination;
- (xii) Employee safety and security program;
- (xiii) Hazardous materials program;
- (xiv) Contractor safety coordination; and
- (xv) Procurement records.

These records shall be maintained by the RFGS for a minimum of three years.

~~((2))~~ (3) Where the agency is not fully implementing its agency safety plan, or is not implementing its safety program in accordance with the agency safety plan, the agency must clearly identify deficiencies in its audit report, per the requirements of Washington state rail safety oversight program standard.

(4) Each RFGPTS shall prepare, maintain, and make available for departmental review, records that document the results of all tests, inspections, and audits conducted by the RFGPTS or its contractor in compliance with the plans. These records shall be maintained by the RFGPTS for a minimum of three years. Failure to provide the department with audit reports and associated records and documentation may result in financial or other penalties as described in WAC 468-550-080.

(5) Internal safety ~~((and security))~~ audits shall be documented in an annual report that includes the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity and the results of the plan. This annual report for the internal safety ~~((and security))~~ audits performed during the preceding year shall be included with the annual safety report ~~((required))~~ specified in WAC ~~((468-550-070(5)))~~ 468-550-100.

~~((3))~~ (6) The department ~~((shall audit each RFGS plan at least once every three years. The RFGS shall be given written notification at least thirty days in advance of the department's audit. The notification shall include a proposed schedule, planned scope, and list of activities to be reviewed for the audit. Each audit shall be preceded by an on-site, preaudit conference attended by the department's audit team, the RFGS's owner, and the RFGS staff in charge of the activities subject to audit. Each audit shall be conducted in accordance with an audit checklist. Checklists shall not restrict the department from performing additional investigations as it deems appropriate. The department shall use as a basis for its checklist the RFGS's plan and records which shall include, but are not limited to:~~

- (a) The RFGS operating rule book, bulletins, and procedures;



~~(b) The RFGS maintenance manuals and procedures for vehicles, track and signals;~~

~~(c) The RFGS procedures for identifying, documenting, evaluating, and correcting hazards;~~

~~(d) The RFGS system design criteria and project engineering procedures for system modifications;~~

~~(e) The RFGS annual internal audit reports for the previous three years;~~

~~(f) The RFGS corrective action plans for reportable accidents and unacceptable hazardous conditions reported to the department during the previous three years;~~

~~(g) APTA audit reports;~~

~~(h) National Transportation Safety Board accident investigation reports, and any other agency peer review reports, if any, prepared during the previous three years and previously prepared department audit reports.~~

~~(4) Upon the department's completion of the triennial on-site audit, the audit team leader shall prepare a draft final audit report and submit it to the RFGS. The RFGS shall respond, in writing to the recommendations made in the draft final audit report, with a plan and schedule of corrective actions within thirty days of receipt thereof. An on-site, post audit conference shall be held following each departmental audit to review the results of the audit. Audit results that identify a deficiency that is not corrected before the post audit conference is held shall be documented in the final audit report. The final audit report shall contain the department audit team's findings and recommendations and the RFGS plan and schedule for corrective action. The final audit report shall also include the department audit team's evaluation of the effectiveness of the RFGS plan and a determination of whether the plan should be updated.~~

~~(5) The department shall summarize oversight activities for all RFGS performed during the preceding twelve months in a publicly available annual report and submit it to the FTA before March 15 of each year.~~

~~(6) Each RFGS that operates seasonally shall be exempt from the provisions of this section)) may conduct an independent investigation of the agency's audit program or of specific deficiencies and findings identified by the RFGPTS internal safety audits.~~

#### NEW SECTION

**WAC 468-550-061 Triennial safety program audits conducted by the department.** (1) The department shall audit each RFGPTS's compliance with the agency safety plan at least once every three years in accordance with the requirements of the Washington state rail safety oversight program standard. The RFGPTS shall be given written notification of the audit scope and schedule at least thirty days in advance of the department's audit. Each audit shall be conducted in accordance with an audit checklist. Documentation which may be requested by the department as part of the audit includes, but is not limited to:

(a) The RFGPTS operating rule book, bulletins, and procedures;

(b) Operations and maintenance logs and records;

(c) The RFGPTS maintenance manuals and procedures for vehicles, facilities, track and signals;

(d) The RFGPTS procedures for identifying, documenting, evaluating, and correcting hazards;

(e) The RFGPTS system design criteria and project engineering procedures for system modifications;

(f) The RFGPTS annual internal audit reports for the previous three years;

(g) The RFGPTS corrective action plans for reportable accidents and unacceptable hazardous conditions reported to the department during the previous three years;

(h) APTA audit reports;

(i) National Transportation Safety Board accident investigation reports, Federal Transit Agency investigation or audit reports, or peer review reports, if any, prepared during the previous three years.

(2) Upon the department's completion of the on-site portion of the triennial safety program audit, the audit team leader shall issue a final audit report following the process established in the Washington state rail safety oversight program standard. The final audit report shall contain the department audit team's findings and recommendations. The final audit report shall also include the department audit team's evaluation of the RFGPTS agency safety plan's compliance with the Washington state rail safety oversight program standard and a determination of whether it should be updated. The RFGPTS must address all findings and recommendations identified in the final report by following the requirements set forth in the Washington state rail safety oversight program standard.

#### NEW SECTION

**WAC 468-550-062 Additional external audits conducted on RFGPTS safety programs and plans.** (1) The RFGPTS must notify the department of the schedule and scope for all external audits and investigations which will include the review of the agency safety plan, safety programs, safety critical functions, safety certification, transit asset management plan or drug and alcohol program. These include, but are not limited to, audits and investigations to be conducted by the Federal Transit Administration, USDOT, DHS, NTSB, or OSHA. The RFGPTS must notify the department of the schedule and scope at least one week prior to the start of audit activities.

(2) The Federal Transit Administration conducts an audit of WSDOT's state safety oversight program once every three years. The RFGPTS will participate in these audits and provide relevant safety program documentation and records if requested by the Federal Transportation Administration or the department.

#### NEW SECTION

**WAC 468-550-063 Audits conducted of department's state safety oversight program.** The RFGPTS will provide documentation if requested by auditors or by department personnel in support of external state or federal audits of the department's state safety oversight program. These include, but are not limited to, triennial reviews conducted by the FTA Transit Safety Oversight office of the department's SSO program compliance.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

**WAC 468-550-070 Notifying of, investigating, and reporting accidents and unacceptable hazardous conditions.** (1) Each ((RFGS)) RFGPTS shall notify the department ((by telephone, electronic mail or facsimile)) per the requirements set forth in the Washington state rail safety oversight program standard within two hours of the occurrence of any reportable accident((, or within twenty-four hours of the identification or discovery of any unacceptable hazardous condition. The department shall notify each RFGS of the person to notify and the telephone, electronic mail and facsimile numbers for notification. The notification shall include all of the following details:

- (a) Name and title of the person making the notification;
- (b) Time and date the notification is transmitted;
- (c) Synopsis of what happened, such as, but not limited to: Collision with another RFGS revenue vehicle, derailment, collision with a motor vehicle, collision with a pedestrian, collision with a bicyclist, fire, bomb threat, or hostage-taking;
- (d) Specific location of the accident or unacceptable hazardous condition;
- (e) Time of the accident or discovery of the unacceptable hazardous condition;
- (f) Identification of RFGS vehicle(s) and/or facility involved;
- (g) Initial number of fatalities and/or individuals who suffered bodily injury and immediately received medical attention away from the scene of the accident; and
- (h) Description of and preliminary value of property damage.

(2) The department has authority to perform separate, independent investigations of reportable accidents or unacceptable hazardous conditions at its own discretion.

(3) Each RFGS shall investigate all reportable accidents and unacceptable hazardous conditions. The RFGS may use its own staff or a contractor to conduct its investigation and shall designate a staff person to be responsible for submitting written investigation reports and findings to the department, on a department form, within forty five calendar days after the reportable accident or unacceptable hazardous condition was discovered. This report shall identify the causal factors contributing to the occurrence and contain a corrective action plan with an implementation schedule to prevent a recurrence of the accident, or to mitigate the unacceptable hazardous condition.

(4) The department shall review the RFGS investigation report, corrective action plan, and accompanying implementation schedule to ensure that it meets the goal of preventing and mitigating a recurrence of the reportable accident or unacceptable hazardous condition. In the event that the department does not concur with the findings of the RFGS investigation, the department shall confer with the RFGS of its preliminary review findings. The RFGS may amend its report to the department in writing, within ten calendar days after conferring with the department. If, after conferring with the RFGS, the department does not concur with the findings of the RFGS, the department shall notify the RFGS in writing of its review findings. The RFGS shall submit its response to the department's findings within forty five calendar days of

receipt thereof. Should the department and the RFGS disagree, the department will notify the FTA.

(5) Each RFGS shall submit an annual summary report to the department covering all reportable activities. The RFGS shall ensure delivery of the annual report to the department no later than February 1 after the year being reported).

(2) Each RFGPTS shall notify the Federal Transit Administration (FTA) of reportable hazards, incidents, and accidents per the requirements of 49 C.F.R. 674.33.

(3) Each RFGPTS shall notify the department per the requirements set forth in the Washington state rail safety oversight program standard within two hours of the discovery of any unacceptable hazardous condition.

(4) Each RFGPTS shall notify the department of all other reportable hazards or incidents within the reporting timelines set forth in the Washington state rail safety oversight program standard.

(5) Each RFGPTS shall investigate all reportable accidents and unacceptable hazardous conditions. The RFGPTS may use its own staff or a contractor to conduct its investigation and shall designate a staff person to be responsible for submitting written investigation reports and findings to the department, on a department form, within forty-five calendar days after the reportable accident or unacceptable hazardous condition was discovered. This report shall identify the causal factors contributing to the occurrence and contain a corrective action plan with an implementation schedule to prevent a recurrence of the accident, or to mitigate the unacceptable hazardous condition.

(a) In the event that the RFGPTS does not have all of the data and analysis necessary to complete a final report, the RFGPTS must submit a draft within forty-five days that documents progress to date.

(b) Under no circumstance may the final report be submitted more than four months from the date of the incident.

(c) The department shall review the RFGPTS final investigation report, corrective action plan, and accompanying implementation schedule to ensure that it meets the goal of preventing and mitigating a recurrence of the reportable accident or unacceptable hazardous condition.

(d) In the event that the department does not concur with the findings of the RFGPTS investigation, the corrective action plan, or the implementation schedule, the department shall take the following actions:

(i) Within forty-five calendar days of receipt of the investigation report, confer with the RFGPTS about its preliminary review findings and explain what needs to be changed;

(ii) If the RFGPTS agrees with the department's recommendations, then the RFGPTS shall amend its report to the department in writing within ten calendar days. This then follows the normal WSDOT approval process;

(iii) If the RFGPTS does not agree with the department's recommendations, then it must submit its concerns and issues in writing within ten days to the department. The department shall submit the plan to the FTA transit safety oversight office for their review. The FTA shall make the final determination.

(6) The department has authority to perform separate, independent investigations of reportable accidents or unacceptable hazardous conditions at its own discretion.

(a) WSDOT at its discretion may choose to conduct an independent investigation of any accident meeting the thresholds specified in WSDOT SSO program standard utilizing its own personnel or an authorized contractor.

(b) WSDOT may initiate its own investigation at any time prior to adopting the RTA's accident investigation report. WSDOT will inform the RTA of its intention to conduct an independent investigation in advance of beginning investigation activities on RTA facilities and infrastructure or involving interviews with RTA personnel. WSDOT will advise the RTA of the personnel who will be conducting the independent investigation, and provide a preliminary schedule of the investigation process prior to the start of investigation activities.

(c) All WSDOT authorized accident investigation personnel, including consultants hired for the purpose of conducting an accident investigation, are granted authority under the state safety oversight program to do all things reasonable and necessary to conduct their investigation including, but not limited to, entering RTA facilities, accident scenes, and other relevant locations; examining the property, vehicles, and records of the RTA; interviewing RTA personnel; and evaluating records, materials, data, analysis, and other information which is pertinent to the investigation. It is expected that the RTA will provide the WSDOT investigation team the resources and information necessary to conduct the investigation in an effective and efficient fashion.

(7) All reportable accidents and hazards must be included in an annual safety program summary report to the department per WAC 468-550-100.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

**WAC 468-550-080 Notifying of and applying financial penalties.** ~~((1) The due dates for documentation required herein are specified in (a) through (e) of this subsection. The department shall provide a RFGS a written notification of the required due date no later than one month before the applicable due date.~~

~~(a) System safety program plan and security and emergency preparedness plan within three months prior to beginning operations;~~

~~(b) Internal safety and security audit schedule for the next year by February 1;~~

~~(c) Annual report for the internal safety and security audits performed during the preceding year by February 1;~~

~~(d) Annual summary report to the department covering all reportable occurrences by February 1;~~

~~(e) Written investigation reports and findings within forty five calendar days after a reportable accident occurred, or unacceptable hazardous condition was discovered.~~

~~(2) If any RFGS notified by the department fails to deliver the required documentation by the due date specified in subsection (1) of this section, the department shall schedule a meeting with the director responsible for the RFGS's operations and maintenance to discuss the RFGS's progress~~

~~in completing the documentation and the potential consequences of further delay. In scheduling this meeting, the department shall notify the RFGS's chief executive officer of the purpose of the meeting and its time and location. The department shall attempt to schedule the meeting within one week of the specified due date.~~

~~(a) The department may cancel this meeting if the department receives the required documentation prior to the scheduled meeting.~~

~~(b) The department may defer scheduling the meeting in the event of a catastrophic event affecting the RFGS and its ability to conduct routine business.~~

~~(c) The department shall document the results of the meeting in writing to the director responsible for the RFGS's operations and maintenance and the RFGS's chief executive officer within one week of the meeting.~~

~~(d) Should the department determine that there is no reasonable cause for any further delay by the RFGS for submission of its required documentation, the department shall notify the RFGS's chief executive officer of the applicable financial penalty, as defined in subsection (5) of this section.~~

~~(e) If the department receives no further communication from the RFGS within ten calendar days of the notification made in accord with (d) of this subsection, the department shall proceed to notify FTA of the RFGS's failure to supply the required documentation and to apply the appropriate financial penalty in accord with subsection (5) of this section.~~

~~(3) If any RFGS delivers incomplete documentation by the required due date, the department shall notify the RFGS of any deficiency within one week. The RFGS shall supplement its required documentation within one week after receiving the department's notification. If the RFGS fails to supplement its documentation adequately, the department shall proceed to schedule a meeting and follow the procedures in subsection (2) of this section.~~

~~(4) If any RFGS fails to implement a corrective action plan, according to the implementation schedule developed pursuant to WAC 468-550-070(4), to prevent a recurrence of an accident or to mitigate an unacceptable hazardous condition, the department shall schedule a meeting with the director responsible for the RFGS's operations and maintenance to discuss the RFGS's progress in completing the corrective action plan and the potential consequences of further delay.~~

~~(a) The department may cancel this meeting if the department receives the required documentation prior to the scheduled meeting.~~

~~(b) The department may defer scheduling the meeting in the event of a catastrophic event affecting the RFGS and its ability to conduct routine business.~~

~~(c) The department shall document the results of the meeting in writing to the director responsible for the RFGS's operations and maintenance within one week of the meeting.~~

~~(d) Should the department determine that there is no reasonable cause for a RFGS's failure to implement the corrective action plan, the department shall notify the RFGS's chief executive officer that the department intends to notify FTA of the RFGS's noncompliance.~~

~~(e) If the department receives no further communication from the RFGS within ten calendar days of the notification made in accord with (d) of this subsection, the department~~

shall notify FTA of the RFGS's failure to implement a corrective action plan action:

(f) This subsection shall apply also to a corrective action plan upon which the department and the RFGS disagree. In this situation, the department shall use the corrective action plan and implementation schedule proposed by the RFGS.

(5) Any RFGS that fails to comply with the timelines as set forth in this chapter shall be assessed the financial penalties following:

(a) One thousand five hundred dollars for each calendar month two months prior to beginning operations, for failure to deliver to the department an acceptable system safety and security program plan;

(b) Five hundred dollars for each calendar month, beginning with February, for failure to deliver to the department an acceptable:

(i) Internal safety and security audit schedule for the next year;

(ii) Annual report for the internal safety and security audits performed during the preceding year; or

(iii) Annual summary report to the department covering all reportable occurrences; and

(c) One thousand dollars applied each thirty-day period, beginning the 90th day after a reportable accident occurred, or after an unacceptable hazardous condition was discovered for failure to deliver to the department an acceptable investigation report, corrective action plan, and accompanying implementation schedule.

(6) If FTA notifies the department that it will impose a financial penalty on the state of Washington as a consequence of a RFGS's failure to take appropriate action in a safety or security situation, the department shall:

(a) Notify that RFGS's chief executive officer that the department will impose all FTA financial penalties to that RFGS if the RFGS fails to take adequate action to bring itself into compliance to FTA's satisfaction. Said notice shall include a copy of FTA's written communication and an estimate of FTA's financial penalty.

(b) Recommend steps to the RFGS' chief executive officer that the RFGS should take to bring it into compliance with FTA requirements.

(7) Any RFGS notified by the department of its failure to take appropriate action in a safety or security situation shall take immediate and adequate action to bring itself into compliance to FTA's satisfaction and provide adequate documentation to the department of its corrective measures. The department shall provide that documentation to FTA.

(8) If any RFGS notified by the department of its failure to take appropriate action in a safety or security situation also fails to respond to the department and FTA imposes a financial penalty on the state of Washington as a consequence, the department shall apply the full amount of the financial penalty on the RFGS.

(9) In applying any financial penalty, the department shall take the following steps:

(a) Invoice the RFGS for the amount of financial penalty; the invoice shall identify:

(i) The documentation not received by the specified due date;

(ii) The number of calendar months or, for failure to deliver to the department an acceptable investigation report, corrective action plan, and accompanying implementation schedule, thirty-day periods past the specified due date;

(iii) The applicable financial penalty rate per calendar month or, for failure to deliver to the department an acceptable investigation report, corrective action plan, and accompanying implementation schedule, thirty-day periods; and

(iv) Where payment should be made.

(b) If a RFGS fails to remit the full amount of the imposed financial penalty within sixty days of when due, the department may seek judicial enforcement to recover full payment. Venue for any action hereunder shall be Thurston County.)

(1) If any RFGPTS fails to comply with any of the requirements or due dates specified in the Washington state rail safety oversight program standard, the department shall notify the RFGPTS in writing of such a violation. These violations will be designated by the department to be one or more findings of noncompliance.

(2) The RFGPTS will have fifteen calendar days to respond to this notification with:

(a) Documentation and records of corrective actions taken, for department review, that fully address the violations and findings of noncompliance; or

(b) Justification for its failure to comply or to provide the required records. The justification must include records of all supporting documentation, corrective actions taken, and all other mitigation plans proposed, planned or implemented with intent to address the violation.

(3) Within thirty days of receipt of the RFGPTS response, the department will review and issue one of the following determinations:

(a) Determination of compliance - Where the department determines that violations have been fully addressed and non-compliance findings can be closed.

(b) Determination of noncompliance with exception - Where the department determines that the RFGPTS has taken action to address violations and has a corrective action plan, acceptable in scope and schedule, in place to come into compliance.

(c) The department may establish a new deadline by which the corrective action plan addressing violations must be fully implemented. Failure by the RFGPTS to meet this new deadline may result in the issuance of a determination of noncompliance.

(d) Determination of noncompliance - Where the department determines that violations have not been adequately addressed by the RFGPTS and there is an absence of acceptable corrective actions taken and/or of acceptable scope and schedule of corrective actions to be taken.

(4) Where, the department issues a determination of non-compliance, the department may issue a second and final notification in writing that states a new deadline by which a financial penalty will be imposed if noncompliance findings cannot be addressed. The amount of the financial penalty will be stated in the written notification. If more than one finding of noncompliance exists, more than one financial penalty may be imposed. Financial penalties will be as follows:

(a) The department may issue a financial penalty of ten thousand dollars for each determination of noncompliance.

(b) Thirty days following the issuance of a financial penalty, the department will determine if the status of the violation remains in noncompliance status. This determination will be based on a review of all additional submittals and actions taken by the RFGPTS. If the status has not been changed to determination of compliance or determination of noncompliance with exception, the department may impose an additional financial penalty of ten thousand dollars per finding of noncompliance.

(c) Following each subsequent thirty-day period, the department will review all additional submittals and actions and impose an additional financial penalty of ten thousand dollars until the determination is reduced to either a finding of noncompliance with exception or a finding of compliance.

(d) If a RFGPTS fails to remit the full amount of the imposed financial penalty within sixty days of when due, the department may seek judicial enforcement to recover full payment. Venue for any action hereunder shall be Thurston County.

(5) Additionally, following any issuance by the department of a determination of noncompliance or of inadequate progress in addressing it, the department may require a meeting with the director responsible for the RFGPTS's operations and maintenance, or with the agency's chief executive, to discuss the RFGPTS's progress in completing the documentation and the potential consequences of delay.

AMENDATORY SECTION (Amending WSR 08-15-078, filed 7/15/08, effective 8/15/08)

**WAC 468-550-090 ((Reimbursement for costs associated with the management of the rail safety oversight program.)) Suspension of service, modification of service, or the removal of equipment due to failure to mitigate to hazardous conditions.** ~~(((1) Owners of rail fixed guideway systems shall reimburse WSDOT for costs incurred for its management of the Washington state rail safety oversight program. These reimbursable costs can be grouped as follows:~~

~~(a) Costs for conducting triennial safety and security audits.~~

~~(b) Costs for WSDOT staff and/or consultants to conduct investigations of incidents or unacceptable hazards, as necessary.~~

~~(c) Labor, administrative, and travel costs incurred by WSDOT for its administration of the Washington state rail safety oversight program. These include but are not limited to:~~

~~(i) Staff hours dedicated to the oversight of system safety program plan and security and emergency preparedness plan development and implementation.~~

~~(ii) Office support and supplies necessary to carry out this oversight.~~

~~(iii) Travel and labor costs associated with WSDOT's administration of the program including for the attendance at federal and state safety, security, and emergency preparedness conferences, workshops, meetings, and trainings which enhance WSDOT oversight of system safety program plan and security and emergency preparedness plan development and implementation.~~

~~(2) Triennial safety and security audits. Within ninety days after receipt of an invoice, each RFGS shall reimburse the reasonable expenses of the department in carrying out its responsibilities pursuant to WAC 468-550-060. The department shall notify the RFGS of the estimated expenses at least six months in advance of when the department audits the system.~~

~~(3) Investigations of incidents or unacceptable hazards. WSDOT at its discretion may choose to conduct an independent investigation of unacceptable hazards or incidents given that they meet the incident reporting thresholds established in the Washington state safety program standard. Costs associated with these investigations are to be reimbursed in full by the owners of the rail fixed guideway systems being investigated. This includes the cost of hiring consultants to conduct investigations, if determined necessary by WSDOT.~~

~~(4) Administrative costs. All other reimbursable costs of the Washington state rail safety oversight program are allocated to each rail fixed guideway system owner based on a formula. This formula allocates the total of all reimbursable costs for the management of the program to each rail fixed guideway system. The owners of the rail fixed guideway systems are responsible for the reimbursement of costs allocated to each rail fixed guideway system for which they own. The allocation of such reimbursable costs is determined as follows:~~

~~(a) Fifty percent of all reimbursable costs, except those for investigations of unacceptable hazards or incidents, are allocated in equal share among rail fixed guideway systems. This allocation of reimbursable costs is equal among rail fixed guideway systems, regardless of the number of passengers they carry or the length of their system. The amount of all such reimbursable costs is arrived at by dividing all such reimbursable costs by the number of RFGS, and then multiplying that result by fifty percent or (reimbursable costs/number of RFGS) x fifty percent.~~

~~(b) Fifty percent of all reimbursable costs, excluding those for investigations of unacceptable hazards or incidents, are allocated based on route mileage that is funded, obligated, and/or operational. These reimbursable costs are allocated to rail fixed guideway systems based on their share of the total directional route miles falling under the oversight of the Washington state rail safety oversight program. The owners of the rail fixed guideway systems are responsible for the reimbursement costs allocated to each rail fixed guideway system for which they own. The amount of all such reimbursable costs is arrived at by dividing the RFGS's route miles by total route miles, and then multiplying that result by the product of reimbursable costs multiplied by fifty percent or (RFGS route miles/total route miles) x (reimbursable costs x fifty percent).~~

~~(c) The total allocation of reimbursable costs to owners of rail fixed guideway systems is the total of the fifty percent of costs allocated based on an equal share allocation, and the fifty percent allocated based on directional route miles.~~

~~(d) WSDOT will provide monthly invoices to owners of rail fixed guideway systems for the reimbursement of costs described above.)) When a known unacceptable hazardous condition is not mitigated to an acceptable level by RFGPTS owners or operators, the department may require the suspen-~~

sion or modification of service or the suspended use or removal of equipment. The department may impose sanctions per WAC 468-550-080 upon owners or operators of RFGPTS for failure to meet deadlines of submissions of required reports and audits.

#### NEW SECTION

##### **WAC 468-550-100 Safety program annual report.** (1)

Per the requirements of the Washington state rail safety oversight program standard, the RFGPTS will prepare and submit to the department a safety program annual report which summarizes the agency's safety program activities during the most recent calendar year, including a summary of accidents, incidents, hazards, and internal safety program audits.

(2) The annual safety program annual report must be submitted to the department on or before February 15th of each year.

#### NEW SECTION

**WAC 468-550-110 Special provisions for rail fixed guideway public transportation systems crossing state lines and operating in both Washington and a bordering state.** (1) When a RFGPTS crosses state lines and is operating in Washington and a bordering state, the department will comply with the requirements set forth in 49 C.F.R. Part 674.15 for the designation of an oversight agency for a multistate system. The department will coordinate with the neighboring state SSOA and either ensure that both Washington's SSOA and the bordering state's SSOA are implementing uniform safety standards and requirements upon the RFGPTS (674.15a) or that a single SSOA is designated as the SSOA (674.15b).

(2) Where a bordering state agency is serving as the single entity SSOA, the bordering state's program standard and other safety standards and procedures will be used for oversight of the RFGPTS, unless otherwise stated through agreement or law. The Washington state rail safety oversight program standard will continue to apply to all other RFGPTS within Washington not subject to the special provisions of this section.

(3) An agreement will be established with the bordering state to set coordination of oversight duties and reporting for the RFGPTS subject to the program standard of a bordering state. The agreement must address the allocation of costs between the two states.

### **WSR 18-10-011**

#### **PROPOSED RULES**

#### **DEPARTMENT OF TRANSPORTATION**

[Filed April 20, 2018, 1:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-001.

Title of Rule and Other Identifying Information: WAC 468-38-100 Pilot/escort vehicle and operator requirements,

the rule provides instruction to pilot/escort vehicle operators (PEVO) when escorting oversized loads.

Hearing Location(s): On June 11, 2018, at 9:30 a.m., at the Transportation Building, Nisqually Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504. Please sign in at the reception desk.

Date of Intended Adoption: June 11, 2018.

Submit Written Comments to: Anne Ford, P.O. Box 47367, Olympia, WA 98504-7367, email fordA@wsdot.wa.gov, fax 360-704-6391, by June 7, 2018.

Assistance for Persons with Disabilities: Contact Karen Engle, phone 360-704-6362, email EngleKa@wsdot.wa.gov, by June 7, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will require certified, for hire PEVOs to carry proof of insurance on them while performing the duties of a PEVO.

#### **"(16) Are certified pilot/escort vehicle operators required to have commercial auto insurance?"**

Yes, for hire certified pilot/escort vehicle operators are required to have insurance to conduct the duties associated with this rule:

(a) One hundred thousand dollars for bodily injury to or death of one person in any one accident;

(b) Three hundred thousand dollars for bodily injury to or death of two or more persons in any one accident; and

(c) Fifty thousand dollars for damage to or destruction of property of others in any one accident.

Satisfactory evidence of the insurance shall be carried at all times by the operator of the pilot vehicle, which evidence shall be displayed upon request by a law enforcement officer."

Reasons Supporting Proposal: The Northwest Pilot Car Association (NWPCA) requested this rule to provide a requirement for PEVOs to have insurance that will cover them while escorting oversized loads. Previous requirements were not sufficient for this industry. NWPCA recommends that their members and those in this industry carry insurance beyond their personal insurance to protect them while operating as a PEVO.

Statutory Authority for Adoption: RCW 46.44.090, 46.44.093.

Statute Being Implemented: RCW 46.44.090.

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

Name of Proponent: Washington state department of transportation (WSDOT), traffic operations office, commercial vehicle services, governmental.

Name of Agency Personnel Responsible for Drafting: Justin Heryford, 7345 Linderson Way S.W., Tumwater, WA, 360-705-7987; Implementation: Anne Ford, 7345 Linderson Way S.W., Tumwater, WA, 360-705-7341; and Enforcement: Captain Michael Dahll, 106 11th Avenue S.W., Suite G300, 360-596-3800.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The rule change will not have a fiscal impact to the agency.

The proposed rule does impose more-than-minor costs on businesses.

#### Small Business Economic Impact Statement

**A brief history of the issue:** May of 2016, NWPCA proposed a rule change to WAC 468-38-100 to include a requirement for commercial auto insurance for certified PEVOs.

**An explanation of why the proposed rule is needed:** Washington state does not have a commercial insurance requirement for PEVOs. Small business owners rely on personal automobile insurance to cover them while conducting duties as a PEVO. Personal auto policies exclude business usage, which places PEVOs at risk while conducting duties as a PEVO.

**A brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule:** PEVOs will need to obtain a commercial auto policy of at least:

- (a) One hundred thousand dollars for bodily injury to or death of one person in any one accident;
- (b) Three hundred thousand dollars for bodily injury to or death of two or more persons in any one accident; and
- (c) Fifty thousand dollars for damage to or destruction of property of others in any one accident.

This type of coverage is not offered by many insurance companies and has a potential for expensive annual premiums.

**1. Identify which businesses are required to comply with the proposed rule and what the cost thresholds are. Analyze the probable cost of compliance.** Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs. Based on input, describe how compliance with the rule may cause lost sales or revenue.

Certified PEVOs working for hire as a small business conducting piloting/escorting as prescribed in WAC 468-38-100. Estimated additional costs per year are \$1,200 - \$6,000 based on information provided by NWPCA and insurance brokers with experience obtaining the coverage requested in the proposal.

The range of costs is attributed to the duties fulfilled by the PEVO, the driving record of the individual, and the type of vehicle they are purchasing the insurance for, the distances traveled and the time established in that line of work. Compliance with the rule will add additional costs to a small business, which will affect their revenue.

**2. (a) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW 19.85.030(2), or reasonable justification for not doing so, addressing the options listed in RCW 19.85.030(2);**

NWPCA will be responsible for maintaining on their web site a list of insurance providers and the benefits of obtaining a commercial auto policy for the duties associated with pilot/escort vehicle operations.

NWPCA is aware of the costs associated with the rule change and they are requesting WSDOT implement the rule for their industry.

The proposal was reviewed by NWPCA, Washington state patrol, Washington trucking associations, and the Evergreen Safety Council. The proposal comes from the industry after their concern for PEVOs conducting this type of work without commercial auto coverage was discussed within their association. NWPCA determined that private vehicle insurance would not cover costs associated during a motor vehicle accident for PEVOs while they are using their own vehicle to operate as a business. NWPCA determination included discussions with insurance providers and brokers who have experience and expertise in commercial and personal coverages.

WSDOT sent the proposal to over five hundred certified PEVOs for review and comments.

**(b) A description of how the agency will involve small businesses in the development of the rule:** Rule negotiation process included the Washington trucking associations and NWPCA whose members include both large and small businesses. The Washington trucking associations commented on the proposal saying they felt this is "a great idea." NWPCA proposed the rule to WSDOT after their own organization agreed to do so. Additionally, the proposal was sent to over five hundred certified PEVOs in Washington state.

**(c) A list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business of [or] industry to which it would otherwise apply, and:** *Certified PEVOs working as a business (for hire company) in the state of Washington. There are approximately five hundred twenty-eight certified PEVO's in Washington state.*

**(d) An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule:** No estimated changes to the current workforce associated to this industry.

**3. To obtain information for purposes of this section, an agency may survey a representative sample of affected businesses or trade associations and should, whenever possible, appoint a committee under RCW 34.05.310(2) to assist in the accurate assessment of the costs of a proposed rule, and the means to reduce the costs imposed on small business:** *PEVO survey was conducted through NWPCA to determine the additional costs associated with the proposed rule. Additionally, insurance brokers who connect this industry with the type of coverage necessary were contacted and queried on the potential costs associated to the proposed rule change.*

*WSDOT has PEVO certification reciprocity with Arizona, Colorado, Georgia, Minnesota, North Carolina, Oklahoma, Utah, and Virginia.*

*Additionally, pilot/escort certification is required in Arizona, Colorado, Florida, Georgia, Kansas, New York, North Carolina, Oklahoma, Pennsylvania, Virginia, Washington, and Utah. With the exception of New York, the Washington state certification is accepted in all states that require certification. Many other states do not require certification, but do require that PEVOs have insurance to operate in their state. States that currently require insurance are Colorado, Illinois, Iowa, Louisiana, New Mexico, Oklahoma, Pennsylvania, Utah, and Virginia.*

*The need for Insurance for pilot/escort vehicle operation is listed in the Federal Highway Administration's "Pilot/Escort Vehicle Operators Best Practices Guidelines." The Best Practices Guidelines states, "Risk is a probability of an event and is mitigated by **maintaining insurance policies, carrying spare parts, and other acts of being prepared for emergencies.**"*

April 19, 2018  
Kara Larsen, Director  
Risk Management  
and Legal Services

AMENDATORY SECTION (Amending WSR 17-11-001, filed 5/3/17, effective 6/3/17)

**WAC 468-38-100 Pilot/escort vehicle and operator requirements.** (1) A certified pilot/escort operator, acting as a warning necessary to provide safety to the traveling public, must accompany an extra-legal load when:

(a) The vehicle(s) or load exceeds eleven feet in width: Two pilot/escort vehicles are required on two lane highways, one in front and one at the rear.

(b) The vehicle(s) or load exceeds fourteen feet in width: One escort vehicle is required at the rear on multilane highways.

(c) The vehicle(s) or load exceeds twenty feet in width: Two pilot/escort vehicles are required on multilane undivided highways, one in front and one at the rear.

(d) The trailer length, including load, of a tractor/trailer combination exceeds one hundred five feet, or when the rear overhang of a load measured from the center of the rear axle exceeds one-third of the trailer length including load of a tractor/trailer or truck/trailer combination: One pilot/escort vehicle is required at the rear on two-lane highways.

(e) The trailer length, including load, of a tractor/trailer combination exceeds one hundred twenty-five feet: One pilot/escort vehicle is required at the rear on multilane highways.

(f) The front overhang of a load measured from the center of the front steer axle exceeds twenty feet: One pilot/escort vehicle is required at the front on all two-lane highways.

(g) The rear overhang of a load on a single unit vehicle, measured from the center of the rear axle, exceeds twenty feet: One pilot/escort vehicle is required at the rear on two-lane highways.

(h) The height of the vehicle(s) or load exceeds fourteen feet six inches: One pilot/escort vehicle with height measuring device (pole) is required at the front of the movement on all highways.

(i) The vehicle(s) or load exceeds twelve feet in width on a multilane highway and has a height that requires a front pilot/escort vehicle: One rear pilot/escort vehicle is required.

(j) The operator, using rearview mirrors, cannot see two hundred feet to the rear of the vehicle or vehicle combination when measured from either side of the edge of the load or last vehicle in the combination, whichever is larger: One pilot/escort vehicle is required at the rear on all highways.

(k) In the opinion of the department, a pilot/escort vehicle(s) is necessary to protect the traveling public. Assign-

ments of this nature must be authorized through the department's administrator for commercial vehicle services.

(2) **Can a pilot/escort vehicle be temporarily reassigned a position relative to the load during a move?** When road conditions dictate that the use of the pilot/escort vehicle in another position would be more effective, the pilot/escort vehicle may be temporarily reassigned. For example: A pilot/escort vehicle is assigned to the rear of an overlength load on a two-lane highway. The load is about to enter a highway segment that has curves significant enough to cause the vehicle and/or load to encroach on the oncoming lane of traffic. The pilot/escort vehicle may be temporarily reassigned to the front to warn oncoming traffic.

(3) **Can a certified flag person ever substitute for a pilot/escort vehicle?** In subsection (1)(d) and (e) of this section, the special permit may authorize a riding flag person, in lieu of a pilot/escort vehicle, to provide adequate traffic control for the configuration. The flag person is not required to ride in the pilot/escort vehicle but may ride in the transport vehicle with transporter's authorization.

(4) **Must an operator of a pilot/escort vehicle be certified to operate in the state of Washington?** Yes. To help assure compliance with the rules of this chapter, consistent basic operating procedures are needed for pilot/escort vehicle operators to properly interact with the escorted vehicle and the surrounding traffic. Operators of pilot/escort vehicles, therefore, must be certified as having received department-approved base level training as a pilot/escort vehicle operator and must comply with the following:

(a) A pilot/escort vehicle operator with a Washington state driver's license must have a valid Washington state pilot/escort vehicle operator certificate/card which must be on the operator's person while performing escort vehicle operator duties.

(b) A pilot/escort vehicle operator with a driver's license from a jurisdiction other than the state of Washington may acquire a Washington state escort vehicle operator certificate/card, or operate with a certification from another jurisdiction approved by the department, subject to the periodic review of the issuing jurisdiction's certification program. A current list of approved programs will be maintained by the department's commercial vehicle services office.

(c) A pilot/escort vehicle operator certification does not exempt a pilot/escort operator from complying with all state laws and requirements of the state in which she/he is traveling.

(d) Every applicant for a state of Washington pilot/escort operator certificate shall attend an eight-hour classroom training course offered and presented by a business, organization, government entity, or individual approved by the department. At the conclusion of the course, the applicant will be eligible to receive the certification card after successfully completing a written test with at least an eighty percent passing score. State of Washington pilot/escort vehicle operator certification cards must be renewed every three years.

(5) **What are the pretrip procedures that must be followed by the operator of a pilot/escort vehicle?**

(a) Discuss with the operator of the extra-legal vehicle the aspects of the move including, but not limited to, the vehi-



cle configuration, the route, and the responsibilities that will be assigned or shared.

(b) Prerun the route, if necessary, to verify acceptable clearances.

(c) Review the special permit conditions with the operator of the extra-legal vehicle. When the permit is a single trip extra-legal permit, displaying routing information, the pilot/escort operator(s) must have a copy of the permit, including all special conditions and attachments.

(d) Determine proper position of required pilot/escort vehicles and set procedures to be used among the operators.

(e) Check mandatory equipment, provided in subsections (9) and (10) of this section. Each operator is responsible for his or her own vehicle.

(f) Check two-way communication system to ensure clear communications between the pilot/escort vehicle(s) and the transport vehicle and predetermine the channel to be used.

(g) Acknowledge that nonemergency electronic communication is prohibited except communication between pilot/escort operator(s) and the transport vehicle during movement.

(h) Adjust mirrors, mount signs and turn on lights, provided in subsections (8)(e) and (9)(a) and (b) of this section.

**(6) What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be in front of the extra-legal movement?** The operator shall:

(a) Provide general warning to oncoming traffic of the presence of the permitted vehicle by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, road-surface hazards; overhead clearances; obstructions; traffic congestion; pedestrians; etc.;

(c) Provide guidance to the extra-legal vehicle through lane changes, egress from one designated route and access to the next designated route on the approved route itinerary, and around any obstacle;

(d) In the event of traffic buildup behind the extra-legal vehicle, locate a safe place adjacent to the highway where the extra-legal vehicle can make a temporary stop. Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), in sufficient time for the extra-legal vehicle to move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough in front of the extra-legal vehicle to allow time for the extra-legal vehicle to stop or take corrective action as necessary when notified by the front pilot/escort operator. Be far enough in front of the extra-legal vehicle to signal oncoming traffic to stop in a safe and timely manner before entering any narrow structure or otherwise restricted highway where an extra-legal vehicle has entered and must clear before oncoming traffic can enter;

(f) In accordance with training, do not be any farther ahead of the extra-legal vehicle than is reasonably prudent,

considering speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed a distance between pilot/escort vehicle and extra-legal vehicle that would interfere with maintaining clear two-way radio communication; and

(g) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

**(7) What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be at the rear of the extra-legal movement?** The operator shall:

(a) Provide general warning to traffic approaching from the rear of the extra-legal vehicle ahead by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any leading pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, objects coming loose from the extra-legal vehicle; flat tires on the extra-legal vehicle; rapidly approaching traffic or vehicles attempting to pass the extra-legal vehicle; etc.;

(c) Notify the operator of the extra-legal vehicle, and/or the operator of the lead pilot/escort vehicle, about traffic buildup or other delays to normal traffic flow resulting from the extra-legal move;

(d) In the event of traffic buildup behind the extra-legal vehicle, notify the operator of the extra-legal vehicle, and the operator(s) of any pilot/escort vehicle(s) in the lead, and assist the extra-legal vehicle in its move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough behind the extra-legal vehicle to provide visual warning to approaching traffic to slow or stop in a timely manner, depending upon the action to be taken by the extra-legal vehicle, or the condition of the highway segment (i.e., limited sight distance, mountainous terrain, narrow corridor, etc.);

(f) Do not follow more closely than is reasonably prudent, considering the speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed one-half mile distance between the pilot/escort vehicle and the extra-legal vehicle in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway; and

(g) Pilot/escort operators shall not perform tillerman duties while performing escorting duties. For this section, tillerman refers to an individual that operates the steering of the trailer or trailing unit of the transport vehicle; and

(h) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

**(8) What kind of vehicle can be used as a pilot/escort vehicle?** In addition to being in safe and reliable operating condition, the vehicle shall:

(a) Be either a single unit passenger car, including passenger van, or a two-axle truck, including a nonplacarded service truck;

(b) Not exceed a maximum gross vehicle weight or gross weight rating of sixteen thousand pounds;

(c) Have a body width of at least sixty inches but no greater than one hundred two inches;

(d) Not exceed the legal limits of size and weight, as defined in chapter 46.44 RCW; (~~and~~)

(e) Be equipped with outside rear-view mirrors, located on each side of the vehicle(-); and

(f) Not tow a trailer while escorting.

**(9) In addition to equipment required by traffic law, what additional equipment is required on the vehicle when operating as a pilot/escort, and when is it used?**

(a) A minimum of one flashing or rotating amber (yellow) light or strobe, positioned above the roof line, visible from a minimum of five hundred feet to approaching traffic from the front or rear of the vehicle and visible a full three hundred sixty degrees around the pilot/escort vehicle. Light bars, with appropriately colored lights, meeting the visibility minimums are acceptable. Lights must only be activated while escorting an extra-legal vehicle, or when used as traffic warning devices while stopped at the side of the road taking height measurements during the prunning of a planned route. The vehicle's headlights must also be activated while escorting an extra-legal vehicle.

(b) A sign reading "OVERSIZE LOAD," measuring at least five feet wide, ten inches high with black lettering at least eight inches high in a one-inch brush stroke on yellow background. The sign shall be mounted over the roof of the vehicle and shall be displayed only while performing as the pilot/escort of an extra-legal load. When the vehicle is not performing as a pilot/escort, the sign must be removed, retracted or otherwise covered.

(c) A two-way radio communications system capable of providing reliable two-way voice communications, at all times, between the operators of the pilot/escort vehicle(s) and the extra-legal vehicle(s).

(d) Nonemergency electronic communications is prohibited except communication between the pilot/escort vehicle(s) and the transport vehicle during movement.

**(10) What additional or specialized equipment must be carried in a pilot/escort vehicle?**

(a) A standard eighteen-inch STOP AND SLOW paddle sign.

(b) Three bi-directional emergency reflective triangles.

(c) A minimum of one five-pound B, C fire extinguisher, or equivalent.

(d) A high visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, *American National Standard for High Visibility Safety Apparel*, to be worn when performing pilot/escort duties outside of the vehicle. The acceptable high visibility colors are fluorescent yellow-green, fluorescent orange-red or fluorescent red.

(e) A highly visible colored hard hat, also to be worn when performing pilot/escort duties outside of the vehicle, per WAC 296-155-305.

(f) A height-measuring device (pole), which is nonconductive and nondestructive to overhead clearances, when required by the terms of the special permit. The upper portion of a height pole shall be constructed of flexible material to prevent damage to wires, lights, and other overhead objects

or structures. The pole may be carried outside of the vehicle when not in use. See also subsection (14) of this section.

(g) First-aid supplies as prescribed in WAC 296-800-15020.

(h) A flashlight in good working order with red nose cone. Additional batteries should also be on hand.

**(11) Can the pilot/escort vehicle carry passengers?** A pilot/escort vehicle may not contain passengers, human or animal, except that:

(a) A certified individual in training status or necessary flag person may be in the vehicle with the approval of the pilot/escort operator.

(b) A service animal may travel in the pilot/escort vehicle but must be located somewhere other than front seat of vehicle.

**(12) Can the pilot/escort vehicle carry any other items, equipment, or load?** Yes, as long as the items, equipment or load have been properly secured; provided that, no equipment or load may be carried in or on the pilot/escort vehicle that:

(a) Exceeds the height, length, or width of the pilot/escort vehicle, or overhangs the vehicle, or otherwise impairs its immediate recognition as a pilot/escort vehicle by the traveling public;

(b) Obstructs the view of the flashing or rotating amber lights, or "OVERSIZE LOAD" sign on the vehicle;

(c) Causes safety risks; or

(d) Otherwise impairs the performance by the operator or the pilot/escort vehicle of the duties required by these rules.

**(13) Can a pilot/escort vehicle escort more than one extra-legal load at the same time?** No, unless the department determines there are special circumstances that have resulted in an express authorization on the special permit.

**(14) When and how must a pilot/escort vehicle use a height-measuring device?** The height-measuring device (pole) must be used when escorting an extra-legal load in excess of fourteen feet six inches high, unless an alternative authorization has been granted by the department and stated on the special permit. The height pole must extend between three and six inches above the maximum height of the extra-legal vehicle, or load, to compensate for the affect of wind and motion. The height measuring device (pole) shall be mounted on the front of the lead pilot/escort vehicle. When not in the act of escorting an extra-legal height move, or pre-running a route to determine height acceptance, the height pole shall be removed, tied down or otherwise reduced to legal height.

**(15) Do the rules change when a uniformed off-duty law enforcement officer, using official police car or motorcycle, performs the escorting function?** While the spirit of the rules remains the same, specific rules may be modified to fit the situation.

**(16) Are certified pilot/escort vehicle operators required to have commercial auto insurance? Yes, for hire certified pilot/escort vehicle operators are required to have insurance to conduct the duties associated to this rule:**

(a) One hundred thousand dollars for bodily injury to or death of one person in any one accident;

(b) Three hundred thousand dollars for bodily injury to or death of two or more persons in any one accident; and

(c) Fifty thousand dollars for damage to or destruction of property of others in any one accident.

Satisfactory evidence of the insurance shall be carried at all times by the operator of the pilot vehicle, which evidence shall be displayed upon request by a law enforcement officer.

### WSR 18-10-034

#### PROPOSED RULES

#### WHATCOM COMMUNITY COLLEGE

[Filed April 25, 2018, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-06-100.

Title of Rule and Other Identifying Information: Chapter 132U-125 WAC, Whatcom Community College (WCC) student rights and responsibilities policy and chapter 132U-300 WAC, Whatcom Community College discrimination and harassment. Delete chapter 132U-125 WAC because the existing policy and procedures must be entirely rewritten. Add chapter 132U-126 WAC based on assistant attorney general (AAG) statewide model policy and procedure recommendations. Edit chapter 132U-300 WAC based on AAG statewide model policy recommendations.

Hearing Location(s): On June 7, 2018, at 9:00 a.m., at Whatcom Community College, Laidlaw Center Boardroom, 327 [237] West Kellogg Road, Bellingham, WA 98226.

Date of Intended Adoption: June 7, 2018.

Submit Written Comments to: Barbara Nolze, 237 West Kellogg Road, Bellingham, WA 98226, email bnolze@whatcom.edu, fax 360-383-4000, by June 6, 2018.

Assistance for Persons with Disabilities: Contact Kerri Holferty, phone 360-383-3043, fax 360-383-4000, TTY 360-225-7182, email ADS@whatcom.edu, by June 4, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Existing chapter 132U-125 WAC, Student rights and responsibilities and chapter 132U-300 WAC, Discrimination and harassment, have out-of-date definitions, jurisdiction, and procedures that must be updated and revised based upon AAG model policies and procedures and a statewide review of best practices among community and technical colleges.

Reasons Supporting Proposal: The existing WAC does not address the recent federal and state regulations.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Rule is necessary because of federal law, <https://www.govtrack.us/congress/bills/113/s47/text>.

Name of Proponent: Whatcom Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Barbara Nolze, Laidlaw 208, 360-383-3077; Implementation and Enforcement: Rebecca Butler, Laidlaw 208, 360-383-3073 and Becky Rawlings, Laidlaw 235, 360-383-3400.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

April 24, 2018

B. Nolze

Administrative Assistant to the  
Vice President for Student Services

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132U-125-001	Authority.
WAC 132U-125-003	Purpose.
WAC 132U-125-005	Statement of jurisdiction.
WAC 132U-125-010	Definitions.
WAC 132U-125-015	Statement of student rights.
WAC 132U-125-020	Student responsibilities and prohibited conduct.
WAC 132U-125-025	Classroom conduct.
WAC 132U-125-030	Trespass.
WAC 132U-125-035	Disciplinary sanctions.
WAC 132U-125-040	Initiation of disciplinary action.
WAC 132U-125-045	Appeal from disciplinary action.
WAC 132U-125-050	Brief adjudicative proceedings authorized.
WAC 132U-125-055	Brief adjudicative proceedings—Initial hearing.
WAC 132U-125-060	Brief adjudicative proceedings—Review of an initial decision.
WAC 132U-125-065	Brief adjudicative proceedings—College record.
WAC 132U-125-070	Student conduct committee.
WAC 132U-125-075	Appeal—Student conduct committee.
WAC 132U-125-080	Student conduct committee hearings—Presentations of evidence.
WAC 132U-125-085	Student conduct committee—Initial decision.
WAC 132U-125-090	Appeal from student conduct committee initial decision.
WAC 132U-125-095	Summary suspension.
WAC 132U-125-100	Supplemental sexual misconduct procedures.
WAC 132U-125-105	Supplemental definitions.

- WAC 132U-125-110 Supplemental complaint process.  
 WAC 132U-125-115 Supplemental appeal rights.  
 WAC 132U-125-130 Purpose.

### Chapter 132U-126 WAC

## STUDENT RIGHTS AND RESPONSIBILITIES POLICY

### NEW SECTION

**WAC 132U-126-001 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer the disciplinary procedure. Administration of the disciplinary procedures is the responsibility of the vice president for student services or designee. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

### NEW SECTION

**WAC 132U-126-003 Purpose.** Whatcom Community College, as a state supported institution of higher education, has a primary mission to contribute to the vitality of its communities by providing quality education and preparing students for active citizenship in a global society. Students and college personnel share the responsibility of contributing to a learning environment that promotes academic integrity, social justice, civility, and nonviolence within a safe and supportive college community.

Enrollment in Whatcom Community College carries with it the obligation to be a responsible citizen of the college community and to treat others with respect and dignity. All students are responsible for understanding and complying with college policies and regulations along with local, state, and federal laws. The student conduct code and disciplinary procedures are implemented to assist in the protection of the rights and freedoms of all members of the college community. The purpose of the student code is to hold students accountable while upholding their rights and responsibilities.

### NEW SECTION

**WAC 132U-126-005 Statement of jurisdiction.** (1) The student conduct code shall apply to student conduct that occurs:

- (a) On college premises;
  - (b) At or in connection with college sponsored activities;
- or
- (c) To off-campus conduct that, in the judgment of the college, adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training, internships, cooperative and distance education, online education, practicums, supervised work experiences, study abroad, or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time of admissions to the college through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.

### NEW SECTION

**WAC 132U-126-010 Definitions.** The following definitions shall apply for the purpose of this student conduct code:

(1) "Business day" any day, Monday through Friday (excluding holidays), during which college offices are open.

(2) "College community" shall include any person or entity with a connection or relationship with pursuit of the college mission.

(3) "College premises" shall include the college campus and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, leased, or controlled by the college.

(4) "Complainant" is an alleged victim of sexual misconduct.

(5) "Conduct review officer" is the vice president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary cases in accordance with the procedures of this code.

(6) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(7) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten business days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(8) "Filing" is the process by which a document is received by a college official responsible for facilitating a disciplinary process. Documents required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by first class mail to the specified college official's office; or

(c) Emailing the document to specified college official's colleges email address.

(9) "Guest" any person who is not a member of the college community, who is on institutional property or attending an institutional function that the invitation of and/or hosted by a member of the college community.

(10) "Preponderance of evidence" is defined as "more likely than not" and is the standard of responsibility that is used when determining whether a violation of the student rights and responsibilities has occurred.

(11) "President" is the president of the college. The president is authorized to delegate or reassign any and all of their responsibilities as may be reasonably necessary.

(12) "Reporting party" is a student or another member of the college community who reports an alleged violation of this code that has been committed.

(13) "Respondent" is the student against whom disciplinary action is initiated.

(14) "Service" is the process by which a document is officially delivered to a party. Service is deemed complete upon the hand delivery of the document, or upon the date the document is emailed or post marked by the mail service. Unless otherwise provided, service upon a person shall be accomplished by:

- (a) Hand delivery of the document to a person; or
- (b) Sending the document by certified or first class mail to the person's last known address; or
- (c) Emailing the document to the party's official college email address.

(15) "Student" includes all persons taking courses at or through the college, whether on a full-time or a part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admissions are considered "students."

(16) "Student conduct code" or "code" is the student rights and responsibilities policy in this chapter.

(17) "Student conduct officer" is a college administrator designated by the president or vice president for student services to be responsible for implementing and enforcing the student conduct code.

#### NEW SECTION

**WAC 132U-126-015 Statement of student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the education goals of the college:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

(a) The right of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

(3) **Sexual misconduct complainant.** In any case involving an allegation of sexual misconduct as defined in this code, a complainant is afforded certain rights under this code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which they are a complainant;

(b) The right to appeal to the student conduct committee an initial order issued by a conduct officer;

(c) The right to request presidential review of an initial order issued by the student conduct committee; and

(d) The right to be accompanied to all hearings by an advisor and/or an attorney.

#### NEW SECTION

**WAC 132U-126-020 Student responsibility for guests.** Guests and visitors on college property or at official college functions are expected to comply with all college policies and procedures, as well as all applicable local, state, and federal laws and regulations.

(1) Guests who willfully refuse to comply with an order of a college official or other law enforcement officer to desist from prohibited conduct may be ejected from the premises by legal trespass order.

(2) Students who invite guests into their college controlled residence, or to official college functions are responsible for the behavior of their guests. As a result, a student may be held responsible for any alleged violation(s) of the code committed by their guest.

#### NEW SECTION

**WAC 132U-126-025 Amnesty.** Students are encouraged to see swift medical assistance for themselves and others without fear of penalty in situations involving use of, or medical issues related to, alcohol or drugs. Students requesting and receiving medical assistance in these situations will not typically be subject to the formal student conduct process. While disciplinary action may not be taken, the college reserves the right to take steps necessary to address health

and safety concerns for the individual and the community. This policy refers to isolated incidents and does not excuse students who repeatedly or knowingly violate the alcohol or drug policy, nor does it preclude action arising from other violations of the code. The student conduct officer will consider the positive impact of reporting a situation when determining any course of action.

Complainants and witnesses who, in good faith, report sexual misconduct will not be subject to alcohol or drug violations of the code occurring at or near the time of the sexual misconduct unless their own conduct placed another person's health or safety at risk.

#### NEW SECTION

**WAC 132U-126-030 Prohibited student conduct.** The college may impose sanctions against a student found responsible for committing, attempting to commit, aiding, abetting, inciting, encouraging, or assisting another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication:

(a) Cheating includes any attempt to give or obtain unauthorized collaboration relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other act of dishonesty including, but not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students;

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Disruptive behavior.** Behavior not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders the following:

(a) Instruction, services, research, administration, disciplinary proceedings, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property or under college jurisdiction, whether or not actually conducted or sponsored by the college.

(4) **Assault or intimidation.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is rea-

sonably perceived as threatening the health or safety of another person or another person's property. Bullying is physical or verbal abuse, repeated over time, and involves a power imbalance between the aggressor and victim.

(5) **Cyber misconduct.** Use of electronic communication including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, correspondence using another's identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or property of another person. Property for the purposes of this subsection includes, but is not limited to, computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college copyrights and trademarks.

(7) **Failure to comply.** Failure to comply with a directive of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in their vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

(d) This policy does not apply to the possession and/or use of legal disabling chemical sprays when possessed and/or used for self defense.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, sale, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, or sale of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, or being under the influence of marijuana or the psychoactive compounds found in marijuana or the possession of drug paraphernalia. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or the appearance of being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, water pipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is obscene, indecent, pornographic and/or lascivious that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of race; color; national origin; sensory, mental, or physical disability; use of a service animal; age; religion; creed; gender, including pregnancy; marital status; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and/or other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vag-

inal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breast, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence laws, or anyone else protected under domestic family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; age; religion; genetic information; gender, including pregnancy; marital status; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a per-

son because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization;

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violation.** Safety violation includes any non-accidental or negligent conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of self or the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems. A safety violation may include the operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(19) **Violation of other laws and policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

#### NEW SECTION

**WAC 132U-126-035 Classroom conduct.** Faculty have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

Any instructor has the authority to exclude a student from any single class session during which the student is disruptive to the learning environment. The instructor shall report any such exclusion from the class to the vice president for student services, or designee, who may summarily suspend the student or initiate conduct proceedings as provided in this procedure. The vice president for student services, or designee, may impose a disciplinary probation that restricts the student from the classroom until the student has met with the student conduct officer and the student agrees to comply with the specific conditions outlined by the student conduct officer for behavior in the classroom. The student may appeal the disciplinary sanction according to the disciplinary appeal procedures.

#### NEW SECTION

**WAC 132U-126-040 Sanctions.** In keeping with the educational mission of Whatcom Community College, sanctions serve the purpose of educating students about their rights and responsibilities, reinforcing the high standards of scholarship expected of Whatcom students, promoting student development, and maintaining safety and well-being of members of the college community. When appropriate, the college may attempt to resolve issues without formal disciplinary action and may give verbal warnings. When a student takes responsibility for a violation or is determined to have violated the code, the student conduct officer may impose one or more of the following sanctions. This list is not meant to be exhaustive and other sanctions may be applied at the discretion of the student conduct officer.

(1) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation. Probation may be for a specific period of time or for the duration of the student's enrollment at the college.

(4) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There may be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(6) **Educational activity.** A student may be required to engage in educational activities related to violation(s). Such



activities may include, but are not limited to, attendance at educational programs, community services, project or written assignments, and/or meeting with campus officials.

(7) **Loss of privileges.** A student may be denied specific privileges on a temporary or permanent basis such as participating in specific activities or restriction from specific areas of campus.

(8) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceedings.

(9) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditional upon compliance with the recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until further evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(10) **Administrative no-contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(11) **Student housing relocation.** Students who are living in college-controlled or administered housing may be transferred to alternate college-controlled or administered housing.

(12) **Termination of student housing contract.** A student may be removed from their college-controlled housing and their housing contract terminated.

#### NEW SECTION

##### **WAC 132U-126-045 Initiation of disciplinary action.**

(1) All disciplinary actions will be initiated by the student conduct officer in response to a report filed by any college community member. A complaint should be made in writing to the office of student conduct. Additionally, information received from any source (police report, third party, electronic, etc.) may be considered as a complaint. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complaint.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to

attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the sanction imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132U-125-035.

(c) Refer the matter directly to the student conduct committee for such disciplinary action, as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective sanctions and/or conditions.

#### NEW SECTION

##### **WAC 132U-126-050 Appeal from disciplinary action.**

(1) The respondent may appeal a disciplinary action by submitting a written appeal with the conduct review officer within ten business days of service. Failure to appeal on or before the deadline constitutes a waiver of the right to appeal and the initial decision shall be deemed final.

(2) The written appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a sanction by a preponderance of the evidence.

(6) Disciplinary action imposed for violation will not begin while an appeal is pending, except summary suspension and any conditions included in a summary suspension.

(7) The student conduct committee shall hear appeals from:

(a) Disciplinary suspensions in excess of ten business days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, the president or designee.

(8) Appeals to the following sanctions shall be reviewed through brief adjudicative proceedings:

(a) Suspension of ten business days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the three sanctions listed in this subsection.

(9) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct office following the same procedures as set forth in subsection (8)(a) through (d) of this section for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any sanctions and/or conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(10) If the respondent files an appeal to a decision imposing sanctions for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to participate as a party to the appeal.

(11) Except as otherwise specified in this chapter, a complainant who files an appeal to sanctions or who participates as a party to a respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

#### NEW SECTION

**WAC 132U-126-055 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer or designee. The conduct review officer shall not participate in any case in which the conduct officer is complainant or witness; or in which they have direct or personal interest, prejudice, or bias; or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and the complainant in cases involving sexual misconduct. The conduct review officer shall conduct an informal hearing and provide each party an opportunity to be informed of the facts as viewed by the college and the initial disciplinary findings. Each party will also have an opportunity to explain their view of the matter.

(3) The conduct review officer shall serve an initial decision to both the respondent and the student conduct officer within ten business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten business days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) Upon review, if the conduct review officer determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten business days or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

#### NEW SECTION

**WAC 132U-126-060 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president or designee, provided a party files a written request for review with the conduct review officer within ten business days of service of the initial decision.

(2) The president or designee shall not participate in any case in which they are a complainant or witness; has direct or personal interest, prejudice, or bias; or has acted previously in an advisory capacity.

(3) During the review, the president or designee shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision. The decision must be served on the parties within twenty business days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president or designee does not make a disposition of the matter within twenty business days after the request is submitted.

(5) If, upon review, the president or designee determines that the respondent's conduct may warrant disciplinary suspension of more than ten business days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving sexual misconduct, the president will, on the same date as the final decision is served to the respondent, serve a written notice to the complainant informing the complainant whether the allegations of sexual mis-

conduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

#### NEW SECTION

**WAC 132U-126-070 Student conduct committee structure.** (1) The student conduct committee shall consist of five members appointed each year:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the faculty union;
- (c) One administrative staff member (other than an administrator serving as a student conduct or conduct review officer) appointed by the president or designee.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are in a party, complainant, or witness; in which they have direct or personal interest, prejudice, or bias; or in which they have acted previously in an advisory capacity. Any involved party may petition the committee for disqualification of a committee member.

#### NEW SECTION

**WAC 132U-126-075 Appeal—Student conduct committee.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven business days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Any involved party, including the committee chair, may submit a request to submit and exchange lists of potential witnesses and copies of potential exhibits that reasonably expect to be presented to the committee. This request must be submitted to the committee chair at least five business days prior to the hearing. The parties shall exchange the items no later than the third business day prior to the hearing. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or

exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearings copies of:

- (a) The conduct officer's notification of imposition of discipline or referral to the committee; and
- (b) The notice of appeal or any response to referral by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of their choice. A respondent, or complainant in a case involving allegations of sexual misconduct, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent or complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

#### NEW SECTION

**WAC 132U-126-080 Student conduct committee hearings—Presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing and issuance of its decision;
- or
- (b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the

record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sexual misconduct, neither party shall directly question or cross-examine one another. Attorneys from the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion, shall pose the questions on the party's behalf.

#### NEW SECTION

**WAC 132U-126-085 Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusion, and/or a proposed decision for its consideration.

(2) Within twenty business days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusion on all material issues of law. The decision shall state the related section(s) of the conduct code the respondent is alleged to have violated and if the allegations are sustained. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president or designee.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve

a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. A complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

#### NEW SECTION

**WAC 132U-126-090 Appeal from student conduct committee initial decision.** (1) A respondent, or complainant in a case involving allegations of sexual misconduct, who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the student conduct committee's initial decision to the president or designee by filing a written notice of appeal with the president's office within ten business days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The president or designee shall not participate in any case in which the president or designee is a complainant or witness; has direct or personal interest, prejudice, or bias has or has acted previously in an advisory capacity.

(3) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president or designee's may ask for additional briefing from the parties on issues raised on appeal. The review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(4) The president or designee shall provide a written decision to all parties within twenty business days after receipt of the notice of appeal. The president or designee's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(5) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(6) The president or designee shall not engage in an ex parte communication with any of the parties regarding any appeal.

#### NEW SECTION

**WAC 132U-126-095 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an

investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) **Notice.** Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reason for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet as scheduled with the student conduct officer or conduct review officer or to attend a scheduled disciplinary hearing.

(5) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(f) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

#### NEW SECTION

##### **WAC 132U-126-100 Sexual misconduct proceedings.**

Both the respondent and the complainant in cases involving sexual allegations of sexual misconduct shall be provided the same procedural rights to participate in student disciplinary matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decisions.

#### NEW SECTION

**WAC 132U-300-040 Introduction.** Whatcom Community College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, or honorably discharged veteran or military status, or the use of trained guide dog or service animal, as required by Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act and Washington state's law against discrimination, chapter 49.60 RCW and their implementing regulations. Employees are also protected from discrimination for filing a whistleblower complaint with the Washington state auditor.

#### NEW SECTION

##### **WAC 132U-300-050 Definitions. Complainant:**

Employee(s), applicant(s), student(s), or visitor(s) of Whatcom Community College who alleges that she or he has been subjected to discrimination or harassment due to his or her membership in a protected class.

**Complaint:** A description of facts that allege violation of the college's policy against discrimination or harassment.

**Consent:** Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if he or she is unable to understand what is happening or is disoriented,

helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

**Discrimination:** Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.

**Harassment:** A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward individuals because of their membership in a protected class or their perceived membership in a protected class. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing. Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

(a) Epithets, "jokes," ridicule, mockery, or other offensive or derogatory conduct focused upon an individual's membership in a protected class.

(b) Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.

(c) Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender or any other protected class.

**Protected class:** Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or the use of a trained guide dog or service animal.

**Resolution:** The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline.

**Respondent:** Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.

**Retaliation:** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because the person reported an alleged violation of this policy or other college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in an investigation or disciplinary proceeding.

**Sexual harassment:** A form of discrimination consisting of unwelcome, gender-based verbal, written, electronic, and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive

remarks about a person's gender. There are two types of sexual harassment:

(a) **Hostile environment sexual harassment** occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs and/or student housing.

(b) **Quid pro quo sexual harassment** occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

Examples of conduct that may qualify as sexual harassment include:

(i) Persistent comments or questions of a sexual nature;

(ii) A supervisor who gives an employee a raise in exchange for submitting to sexual advances;

(iii) An instructor who promises a student a better grade in exchange for sexual favors;

(iv) Sexually explicit statements, questions, jokes, or anecdotes;

(v) Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body;

(vi) Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences;

(vii) Persistent, unwanted attempts to change a professional relationship to an amorous relationship;

(viii) Direct or indirect propositions for sexual activity;

(ix) Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.

**Sexual violence:** Sexual violence is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(a) **Dating violence** means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(b) **Domestic violence** includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(c) **Nonconsensual sexual contact** is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(d) **Nonconsensual sexual intercourse** is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(e) **Stalking** means intentional and repeated harassment or following of another person, which places that person in

reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

#### NEW SECTION

**WAC 132U-300-060 Complaint procedure.** Whatcom Community College has enacted policies prohibiting discrimination against, and harassment of members of protected classes. Any individual found to be in violation of this policy will be subject to disciplinary action up to and including dismissal from the college or from employment.

Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX/EEO coordinator identified below. If the complaint is against that coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.whatcom.edu/home/showdocument?id=360>. Hard copies of the complaint form are available in the Human Resource Office, Laidlaw Center (LDC) 235.

The following college official is designated to handle inquiries regarding this policy:

Name: Becky Rawlings

Title: Executive Director for Human Resources, Title IX/EEO Coordinator

Office: Laidlaw Center (LDC) 235

Contact: [brawlings@whatcom.edu](mailto:brawlings@whatcom.edu)

Address: 237 W. Kellogg Rd., Bellingham, WA 98226

The Title IX/EEO coordinator or designee:

- Will accept all complaints and referrals from college employees, applicants, students, and visitors;
- Will make determinations regarding how to handle requests by complainants for confidentiality;
- Will keep accurate records of all complaints and referrals for the required time period;
- May conduct investigations or delegate and oversee investigations conducted by a designee;
- May impose interim remedial measures to protect parties during investigations of discrimination or harassment;
- Will issue written findings and recommendations upon completion of an investigation; and
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

#### NEW SECTION

**WAC 132U-300-070 Who may file a complaint.** Any employee, applicant, student, or visitor of Whatcom Community College may file a complaint. Complaints may be sub-

mitted in writing or verbally. The college encourages the timely reporting of any incidents of discrimination or harassment. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.whatcom.edu/home/showdocument?id=360>. Hard copies of the complaint form are available at the Human Resource Office, Laidlaw Center (LDC) 235. Any person submitting a discrimination complaint shall be provided with a written copy of the college's antidiscrimination policies and procedures.

#### NEW SECTION

**WAC 132U-300-080 Confidentiality and right to privacy.** Whatcom Community College will seek to protect the privacy of the complainant to the full extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Whatcom Community College policies and procedures. Although Whatcom Community College will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX/EEO coordinator/designee.

**Confidentiality requests and sexual violence complaints.** The Title IX/EEO coordinator/designee will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the Title IX/EEO coordinator/designee will inform the complainant that maintaining confidentiality may limit the college's ability to respond fully to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the Title IX/EEO coordinator/designee will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- The seriousness of the alleged sexual violence;
- The age of the complainant;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;
- Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and
- Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

If the college is unable to honor a complainant's request for confidentiality, the Title IX/EEO coordinator/designee will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reason-

ably necessary to effectively conduct and complete the investigation.

If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX/EEO coordinator/designee will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

#### NEW SECTION

**WAC 132U-300-090 Investigation procedure.** Upon receiving a discrimination complaint, the college shall commence an impartial investigation. The Title IX/EEO coordinator/designee shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX/EEO coordinator or his or her designee. If the investigation is assigned to someone other than the Title IX/EEO coordinator, the Title IX/EEO coordinator/designee shall inform the complainant and respondent(s) of the appointment of an investigator.

(1) **Interim measures.** The Title IX/EEO coordinator/designee may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of no contact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student conduct code or the college's employment policies and collective bargaining agreements.

(2) **Investigation.** Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the complainant and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring exigent circumstances. At the conclusion of the investigation, the investigator shall set forth his or her findings and recommendations in writing. If the investigator is a designee, the investigator shall send a copy of the findings and recommendations to the Title IX/EEO coordinator/designee. The Title IX/EEO coordinator/designee shall consider the findings and recommendations and determine, based on a preponderance of the evidence, whether a violation of the discrimination and harassment policy occurred, and if so, what steps will be taken to resolve the complaint, remedy the effects on any victim(s), and prevent its recurrence. Possible remedial steps may include, but are not limited to, referral for voluntary training/counseling, development of a remediation plan, limited contact orders, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the student rights and responsibilities policy (chapter 132U-126 WAC) or college employment policies and collective bargaining agreements.

(3) **Written notice of decision.** The Title IX/EEO coordinator/designee will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended to resolve the complaint, subject to

the following limitations. The complainant shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions, or recommendations directly relate to the complainant, such as a finding that the complaint is or is not meritorious or a recommendation that the respondent not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action. Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to confidentiality requirements.

(4) **Informal dispute resolution.** Informal dispute resolution processes, like mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(5) **Final decision and/or reconsideration.** Either the complainant or the respondent may seek reconsideration of the decision by the Title IX/EEO coordinator/designee. Requests for reconsideration shall be submitted in writing to the Title IX/EEO coordinator/designee within seven business days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is received within seven business days, the decision becomes final. If a request for reconsideration is received, the college president or designee shall respond within fourteen business days. The president or designee shall either deny the request or, if the president or designee determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

#### NEW SECTION

**WAC 132U-300-100 Publication of antidiscrimination policies and procedures.** The policies and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or president's designee. Any person who believes he or she has been subjected to discrimination in violation of college policy will be provided a copy of these policies and procedures.

#### NEW SECTION

**WAC 132U-300-110 Limits to authority.** Nothing in this procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Whatcom Community College policies and procedures, and federal, state, and municipal rules and regulations.



NEW SECTION

**WAC 132U-300-120 Nonretaliation, intimidation, and coercion.** Retaliation by, for, or against any participant (including complainant, respondent, witness, Title IX/EEO coordinator/designee, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individual(s) as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX/EEO coordinator/designee immediately.

NEW SECTION

**WAC 132U-300-130 Criminal complaints.** Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

**Bellingham Police Department**  
505 Grand Avenue  
Bellingham, WA 98225  
360-778-8800  
<https://www.cob.org/gov/dept/police>

**Blaine Public Safety Department**  
322 H Street  
Blaine, WA 98230  
360-332-6769  
<http://www.ci.blaine.wa.us/171/Public-Safety>

**Everson Police Department**  
111 W Main Street  
Everson, WA 98247  
360-966-4212  
<http://www.ci.everson.wa.us/police-department.html>

**Ferndale Police Department**  
2220 Main Street  
Ferndale, WA 98248  
360-384-3390  
<http://www.ferndalepd.org/>

**Lynden Police Department**  
203 19th Street  
Lynden, WA 98264  
360-354-2828  
<http://www.lyndenwa.org/departments/police/>

**Sumas Police Department**  
433 Cherry Street  
Sumas, WA 98295  
360-988-5711  
<http://www.sumaspolice.com/>

**Western Washington University**  
Department of Public Safety  
516 High Street  
Bellingham, WA 98225  
360-650-3911  
<http://www.wvu.edu/ps/police/index.shtml>

**Whatcom County Sheriff's Office**  
Public Safety Building  
311 Grand Avenue  
Bellingham, WA 98225  
360-676-6650  
<http://www.whatcomcounty.us/200/Sheriff>

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil criminal prosecution.

NEW SECTION

**WAC 132U-300-140 Other discrimination complaint options.** Discrimination complaints may also be filed with the following federal and state agencies:

**Washington State Human Rights Commission at**  
<http://www.hum.wa.gov/>

**U.S. Dept. of Education Office for Civil Rights at**  
<http://www2.ed.gov/about/offices/list/ocr/index.html>

**Equal Employment Opportunity Commission at**  
<http://www.eeoc.gov/>

**Discrimination/Harassment  
Complaint Form**

This form is designed to assist you with filing a discrimination and/or harassment complaint. Please write clearly and focus on the alleged discriminatory and/or harassing conduct. The complaint should include as much information regarding the incident giving rise to the complaint as possible, including the location, date and time of the alleged incident(s); the name of the individual or group whom the complaint is against, if known; a description of the incident(s); and the remedy sought.

Name of person filing the complaint: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

You may use the back side of this sheet if needed. Please return this form to the Title IX/EEO coordinator, LDC 235.

**WSR 18-10-046**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed April 26, 2018, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-029.

Title of Rule and Other Identifying Information: Title 98 WAC, Cemetery board, new section, abandoned cemeteries. As outlined in HB 1907, this new section outlines the requirements for landowners to allow for burials; records management and endowment care fund requirements.

Hearing Location(s): On June 12, 2018, at 10:00 a.m., at the Department of Licensing, 405 Black Lake Boulevard, Conference Room 2108, Olympia, WA 98502.

Date of Intended Adoption: June 13, 2018.

Submit Written Comments to: Julie Konnersman, Washington State Funeral and Cemetery Board, P.O. Box 9012, Olympia, WA 98507-9012, email jkonnersma@dol.wa.gov, fax 360-570-7098, by June 11, 2018.

Assistance for Persons with Disabilities: Contact Jenni Lingle, administrative assistant, phone 360-664-1564, fax 360-570-7098, TTY 711, email funerals@dol.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To codify into rule the statutory requirements that any records or documents related to an abandoned cemetery must be transferred to the state archives and any endowment care funds held when the cemetery was designated abandoned must be transferred to the department of archaeology and historic preservation.

Reasons Supporting Proposal: To implement new statutory requirements.

Statutory Authority for Adoption: RCW 68.05.105, chapter 68.60 RCW.

Statute Being Implemented: RCW 68.60.070.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Shanana Gillespie, 2000 4th Avenue N.W., Olympia, WA 98502, 360-664-1570; Implementation and Enforcement: Rick Storvick, 2000 4th Avenue N.W., Olympia, WA 98502, 360-664-1387.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is exempt under RCW 24.05.328 [34.05.328] (5)(a).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

April 26, 2018  
 Damon Monroe  
 Rules Coordinator

NEW SECTION

**WAC 98-20-030 Allowing burials in an abandoned cemetery.** The definitions found in chapter 68.04 RCW apply to this section.

(1) Human remains may be buried in an abandoned cemetery only if the following conditions exist:

(a) Ownership of the interment right existed prior to the cemetery being classified as abandoned.

(b) The person(s) having the right to control disposition per RCW 68.50.160 has proof of the ownership of the interment right for the human remains to be buried.

(c) The person(s) having the right to control disposition must follow the requirements found in RCW 70.58.230 through 70.58.260 prior to the burial of human remains.

(2) Interment rights existing prior to the cemetery being classified as abandoned are not transferable, and the provisions of chapter 68.32 RCW do not apply to abandoned cemeteries.

(3) The placement of cremated remains on an existing grave in an abandoned cemetery is not permitted unless the right of interment existed prior to the cemetery being classified as abandoned.

(4) Human remains may be removed from an abandoned cemetery with the permission of the superior court of the county where the cemetery is situated and a disinterment permit per RCW 70.58.230.

(5) The person(s) having the right to control disposition may place a grave marker on the grave of human remains buried in an abandoned cemetery.

(6) The person(s) having the right to control disposition must provide a record of the burial to the department of archaeology and historic preservation.

**WSR 18-10-051**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed April 26, 2018, 4:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-22-127.

Title of Rule and Other Identifying Information: WAC 458-16-210 (Rule 210) Nonprofit organizations or associations organized and conducted for nonsectarian purposes, is the rule that describes the property tax exemption for nonprofit organizations that are organized and conducted for nonsectarian purposes. WAC 458-16-260 (Rule 260) Nonprofit child day care centers, libraries, orphanages, homes for sick or infirm, hospitals, outpatient dialysis facilities, is the rule that describes the property tax exemption available to these types of facilities.

Hearing Location(s): On June 7, 2018, at 10:00 a.m., in Conference Room 252, 6400 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: June 14, 2018.

Submit Written Comments to: Leslie Mullin, P.O. Box 47453, Olympia, WA 98504-7453, email LeslieMu@dor.wa.gov, fax 360-534-1606.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules 210 and 260 are being amended to clarify property tax exemption standards and requirements for certain nonprofit organizations.

Reasons Supporting Proposal: Providing the qualifying standards used by the department of revenue when evaluating nonprofit exemption applications will provide nonprofit organizations and associations with a better understanding of the exemption requirements before they apply.

Statutory Authority for Adoption: RCW 84.36.865.

Statute Being Implemented: RCW 84.36.030, 84.36.031, and 84.36.040.

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: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed amendments for Rules 210 and 260 clarify the standards currently used by the department of revenue when determining eligibility for the property tax exemptions described in RCW 84.36.030(1) and 84.36.040, respectively. The proposed rule amendments do not impose more than a minor cost on businesses as they do not impose any new fees, filing requirements, or recordkeeping guidelines that have not already been established by the department of revenue in the administration of property tax exemptions.

April 26, 2018  
Erin T. Lopez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-07-021, filed 3/10/15, effective 4/10/15)

**WAC 458-16-210 Nonprofit organizations or associations organized and conducted for nonsectarian purposes.** (1) **Introduction.** This rule explains the real and personal property tax exemption available under ~~((the provisions of))~~ RCW 84.36.030(1) to nonprofit organizations or associations organized and conducted for nonsectarian purposes.

(2) **Definitions.** For purposes of this rule, the following definitions apply:

(a) "Benevolent" refers to social service~~((s-er))~~ programs directed at persons of all ages arising from or prompted by motives of charity or a sense of benevolence, that are marked by a kindly disposition to promote the happiness and prosperity of others by generosity in and pleasure at doing good

works, or are organized for the purpose of doing good. For example, a benevolent organization may provide a food bank~~((, a))~~ or soup kitchen~~((, or counseling services at cost))~~.

(b) "Character building" means social service~~((s-er))~~ programs designed for the general public good that assist people with general living skills, developing interview and job seeking skills, or assist people in working towards independent living and self sufficiency. These services include, but are not limited to, programs designed to develop an individual's moral or ethical strength, leadership, integrity, self-discipline, fortitude, self-esteem, and reputation.

(c) "Commercial or enterprise activity" refers to an activity or enterprise that has profit making as its primary purpose.

(d) "Community outreach group" means a nonprofit group organized to extend social services to a particular segment of the community. ~~((For example,))~~ Examples of a community outreach group include a rescue mission organized to feed the homeless or a program that targets juveniles "at risk" of criminal or abusive behavior.

(e) "Nonsectarian purpose" means a purpose that is not associated with or limited to a particular religious group or denomination.

(f) "Protective" refers to activities that are meant to cover, to guard, or to shield other persons from injury or destruction or to save others from financial loss. For example, a protective organization may provide housing for battered persons or for the developmentally disabled or may assist persons with behavioral problems by providing encouragement, support, and training.

(g) "Rehabilitative or rehabilitation" refers to ~~((activities))~~ programs designed to restore individuals to a former capacity, to a condition of health, or to useful or constructive activity. For example, a rehabilitative organization may assist an exoffender's reentry into the community or assist persons to overcome alcohol or substance abuse, or to overcome the effects of a physical injury, stroke, or heart attack.

(h) "Social service" means programs designed to help people resolve problems, become more self-sufficient, prevent dependency, strengthen family relationships, and/or enhance the functioning of individuals in society. These services include, but are not limited to, programs in the general categories of:

- (i) Socialization and development; and
- (ii) Therapy, ~~((help,))~~ rehabilitation, and social protection.

(3) **Exemption.** The real and personal property owned by nonprofit organizations, associations, or corporations are exempt from taxation if the organization, association, or corporation is organized and conducted for nonprofit and nonsectarian purposes. To be exempt, the property must be exclusively used ((for)) to deliver character-building, benevolent, protective, or rehabilitative social services directed at persons of all ages.

(a) Gift and giving. To qualify for this exemption, there must be an element of gift and giving in the nonprofit organization's, association's, or corporation's activities, in relation to the people it serves. This ~~((element of gift and giving))~~ requires voluntarily giving something of value with no expectation of compensation or ~~((remuneration))~~ payment. ~~((The words "gift" and "giving," within the context of this~~

rule, mean a voluntary act. In order to meet this requirement of gift and giving)) To comply with this requirement, the nonprofit organization, association, or corporation must annually demonstrate that the use of the property meets one of the following conditions:

(i) Provide goods and/or services free of charge or at a rate that is reduced by at least twenty percent (~~(below the total actual cost of such goods and/or services)~~), to a minimum of fifteen percent of the total number of people assisted by that nonprofit organization, association, or corporation; or

(ii) Contributes at least ten percent of ~~((its))~~ the total annual income earned from the property towards the support of character-building, benevolent, protective or rehabilitative social services or programs. For purposes of meeting the ten percent requirement:

(A) "Total annual income" refers to the total income reported to the Internal Revenue Service for that year and includes, but is not limited to, funds received through direct and indirect public support, government grants, membership fees, and other contributions. The term does not include funds that are specifically donated or contributed for capital improvements.

~~((A) In order to meet this ten percent requirement,))~~ (B) A nonprofit organization, association, or corporation may include, but is not limited to including, the value of time volunteers donate to carry out program services and functions, the loan of its facilities to community outreach groups, and gifts of scholarships and other fee subsidies.

~~((B))~~ (C) If a nonprofit organization (~~(utilizes)~~), association, or corporation includes volunteer time (~~(to reach the ten percent requirement)~~), it must maintain records identifying the individuals who donate their services and the number of hours they donate. The value of donated time will be calculated by using the federal minimum wage standard.

~~((C))~~ (D) If a nonprofit organization, association, or corporation allows community outreach groups to use its facilities free of charge, it must maintain records identifying the community outreach groups that used the exempt property and the number of hours each group used the exempt property. The value of this use will be calculated by taking the number of hours or any portion of an hour, the facility is used by these groups and multiplying it by the customary ~~((charge))~~ fee the nonprofit organization, association, or corporation charges to rent its facility to any other group.

(b) Conditions and restrictions. A nonprofit organization, association, or corporation may not impose conditions or restrictions on the use of the exempt property by persons who do not personally pay the total actual cost of a social service, except conditions or restrictions that are reasonably necessary to safeguard the exempt property and to comply with the purposes of this exemption.

(c) Relief of public obligation. To qualify for an exemption under this rule, property must be used to relieve a public obligation. For example, a court ruled that a student housing provider did not qualify for a property tax exemption because the provider did not relieve county taxpayers of a legal requirement to provide student housing. *Adult Student Housing, Inc. v. Department of Revenue*, 41 Wn.App. 583, 593-94, 705 P.2d 793, 798-99 (1985).

(d) Fraternal organizations. Property used by a fraternal organization or association for fraternal purposes does not qualify for an exemption under this rule.

~~((d))~~ (e) Nonqualifying property. If any portion of the organization's ~~((or))~~, association's, or corporation's property is used for a commercial or enterprise activity rather than a nonprofit, nonsectarian exempt purpose, then that portion will not qualify for this exemption and must be segregated from property used for exempt purposes. The burden is upon the applicant to prove that the property is not used for commercial or enterprise activities.

~~((e))~~ (f) Selling donated merchandise. The sale of donated merchandise is considered an exempt use of ~~((the))~~ property that is otherwise exempt under this rule if the proceeds are dedicated to the exempt purpose associated with the nonprofit ~~((nonsectarian))~~ organization ~~((or))~~, association, or corporation. For example, thrift store operations that are restricted to the sale of "donated merchandise" will not jeopardize this exemption if the ~~((claimant))~~ applicant can verify the proceeds are directed to an exempt purpose.

~~((f))~~ (g) Property with option to repurchase. Pursuant to RCW 84.36.031, property leased, loaned, ~~((or))~~ sold with the option to repurchase, or otherwise made available to organizations described in RCW 84.36.030, does not qualify for ~~((this))~~ an exemption under RCW 84.36.030 unless:

(i) The property is owned by an organization exempt under RCW 84.36.020 or 84.36.030 and the organization loans, leases, or rents the property to another organization for the exempt purposes ~~((described))~~ provided in RCW 84.36.030; or

(ii) The property is owned by an entity formed exclusively for the purpose of leasing the property to an organization that will use the property for the exempt purposes ~~((described))~~ provided in RCW 84.36.030 if:

(A) The lessee uses the property for the exempt purposes provided in RCW 84.36.030;

(B) The immediate previous owner of the property had received an exemption under RCW 84.36.020 or 84.36.030 for the property; and

(C) The benefit of the exemption inures to the benefit of the lessee organization.

(4) **Additional requirements.** Any nonprofit organization ~~((or))~~, association, or corporation that applies for a property tax exemption under this rule must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 provides additional conditions and requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.030.

AMENDATORY SECTION (Amending WSR 15-07-021, filed 3/10/15, effective 4/10/15)

**WAC 458-16-260 Nonprofit child day care centers, free libraries, orphanages, homes for sick or infirm, hospitals, outpatient dialysis facilities.** (1) **Introduction.** This rule explains the property tax exemption available under the provisions of RCW 84.36.040 for property used by nonprofit child day care centers, free libraries, orphanages, homes for the sick or infirm, hospitals, and outpatient dialysis facilities. This rule also explains the property tax exemption available

to property leased to and used by a hospital for hospital purposes if the hospital is established under chapter 36.62 RCW or is owned and operated by a public hospital district established under chapter 70.44 RCW.

(2) **Definitions.** For purposes of this rule, the following definitions apply:

(a) "Convalescent" or "chronic care" means any or all procedures commonly employed in caring for the sick including, but not limited to, administering medicines, preparing special diets, providing bedside nursing care, applying dressings and bandages, and carrying out any treatment prescribed by a duly licensed practitioner of the healing arts.

(b) "Child day care center" means a nonprofit organization that regularly provides child day care and early learning services for a group of children for periods of less than twenty-four consecutive hours.

(c) "Free library" means a building or room containing collections of books, periodicals, other written materials such as magazines and newspapers, and audio or visual recordings. A free library must be accessible to the public for viewing, listening to, or borrowing these materials without charge, but a nominal fee may be imposed for any materials that are damaged, lost, or not returned by the borrower in a timely manner.

(d) "Home for the sick or infirm" means any home, place, or institution that operates or maintains facilities to provide convalescent or chronic care, or both, for three or more persons not related by blood or marriage to the operator, who by reason of illness or infirmity, are unable to properly care for themselves.

(i) The services must be provided to persons over a continuous period of twenty-four hours or more.

(ii) A boarding home, guest home, hotel, or similar institution that is held forth to the public as providing and supplying only room, board, or laundry services to persons who do not need medical or nursing treatment or supervision is not considered a "home for the sick or infirm" for purposes of this rule.

~~((c))~~ (c) "Hospital" means a nonprofit organization, association, or corporation engaged in providing medical, surgical, nursing, or related health care services for the prevention, diagnosis, or treatment of human illness, pain, injury, disability, deformity, or abnormality, including mental illness, treatment of mentally incompetent persons, or treatment of chemically dependent persons. The term also means all buildings or portions of buildings that are currently licensed as part of a hospital pursuant to chapters 70.41 or 71.12 RCW, and are part of an integrated, interrelated, homogeneous unit exclusively used for hospital purposes. The licensed hospital must be able to provide health care services to inpatients over a continuous period of twenty-four hours or more. The term also includes:

(i) Administrative and support facilities integral and necessary to the functioning of the licensed hospital;

(ii) Buildings used as a residence for persons engaged or employed on a regular basis in the operation of a licensed hospital. Such buildings include, but are not limited to, a nurse's home or a residence for hospital employees; and

(iii) Residential units administered by a licensed hospital that are exclusively used to temporarily house families of inpatients in an integrated program of therapy.

"Hospital" does not mean:

(A) Hotels or similar places that furnish only food and lodging or simple domiciliary care;

(B) Clinics or physician's offices (~~((not))~~), unless licensed as part of a hospital (~~((-where patients are not regularly kept as bed patients for twenty-four hours or more))~~);

(C) Nursing homes as defined in chapter 18.51 RCW; and

(D) Maternity homes as defined in chapter 18.46 RCW.

(3) **Exemption for exclusively used property.** All real and personal property exclusively used for the actual operation of the activity for which the exemption is granted, by a nonprofit organization, association, or corporation for the following institutions is exempt from taxation:

(a) Child day care centers;

(b) Free (~~((public))~~) libraries;

(c) Orphanages and orphan asylums;

(d) Homes for the sick or infirm;

(e) Hospitals for the sick; and

(f) Outpatient dialysis facilities.

(4) **Exemption for loaned, leased, or rented property.**

Property loaned, leased, or rented to an institution listed in subsections (3)(a) through (f) of this rule is also exempt from taxation if:

(a) The property is exclusively used for the actual operation of the activity for which the exemption is granted, by the nonprofit organization, association, or corporation;

(b) The benefit of the exemption inures to the user; and

(c) The property was specifically identified as loaned, leased, or rented when the application for exemption was made.

(5) **Property leased or rented to and used by publicly owned and operated hospitals.** All real and personal property leased or rented to and used by a hospital for hospital purposes is exempt from property tax if the hospital is established under chapter 36.62 RCW or is owned and operated by a public hospital district established under chapter 70.44 RCW. The benefit of the exemption must inure to the entity using the exempt property.

(6) **Additional requirements.** Any nonprofit organization or association that applies for a property tax exemption under this rule must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 provides additional conditions and requirements (~~((that))~~), including licensing obligations, which must be complied with to obtain a property tax exemption under RCW 84.36.040.

## WSR 18-10-056

### PROPOSED RULES

### WASHINGTON STATE SCHOOL FOR THE BLIND

[Filed April 27, 2018, 8:51 a.m.]

Supplemental Notice to WSR 17-23-083.

Preproposal statement of inquiry was filed as WSR 17-19-078.

Title of Rule and Other Identifying Information: Repeal WAC 72-276-090 Costs of providing copies of public records and replace with WAC 72-276-095 Copying fees—Payments.

Hearing Location(s): On June 5, 2018, at 1:00 p.m., at the Washington State School for the Blind, 2214 East 13th Street, Administration Building, Board Room, Vancouver, WA 98661.

Date of Intended Adoption: June 5, 2018.

Submit Written Comments to: Janet Kurz, Executive Assistant, 2214 East 13th Street, Vancouver, WA 98661, email janet.kurz@wssb.wa.gov, fax 360-737-2120, by May 31, 2018.

Assistance for Persons with Disabilities: Contact Janet Kurz, executive assistant, phone 360-947-3302, fax 360-737-2120, email janet.kurz@wssb.wa.gov, by May 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to comply with the 2017 legislative amendment to RCW 42.56.120, section 3, chapter 304, Laws of 2017, that requires that effective July 23, 2017, if an agency uses the new law's amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The School for the Blind is not calculating actual costs for copying records because to do so would be unduly burdensome. The School for the Blind intends to adopt the rule so it can use the statutory default copy fee schedule. In addition, RCW 42.56.120 as amended by section 3, chapter 304, Laws of 2017 allows an agency to waive any charge assessed for a public record pursuant to agency rule. The School for the Blind intends to enact a rule to address waiver of charges assessed for a public record. The School for the Blind intends to continue to explain the procedures for payment for copies. Finally, the School for the Blind intends to repeal WAC 72-276-090, its copying fees rule originally adopted under former chapter 42.17 RCW because that rule is now outdated. The anticipated effects of the rule change is that it will change the copying fees for public records. The school is proposing to replace WAC 72-276-090 with WAC 72-276-095 Copying fees—Payments.

Reasons Supporting Proposal: To comply with the 2017 legislative amendment to RCW 42.56.120, section 3, chapter 304, Laws of 2017, that requires that effective July 23, 2017, if an agency uses the new law's amended statutory default copy fee schedule (rather than determining actual costs of copies), the agency must have a rule declaring the reason it is not calculating actual costs is because to do so would be unduly burdensome. The School for the Blind is not calculating actual costs for copying records because to do so would be unduly burdensome. The School for the Blind intends to adopt the rule so it can use the statutory default copy fee schedule. In addition, RCW 42.56.120 as amended by section 3, chapter 304, Laws of 2017, allows an agency to waive any charge assessed for a public record pursuant to agency rule. The School for the Blind intends to enact a permanent rule to address waiver of charges assessed for a public record. The

school is proposing to replace WAC 72-276-090 with WAC 72-276-095 Copying fees—Payments.

Statutory Authority for Adoption: RCW 42.56.040, 42.56.070, 42.56.100, 42.56.120 (as amended by chapter 304, Laws of 2017).

Statute Being Implemented: RCW 42.56.120 (as amended by chapter 304, Laws of 2017).

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

Name of Proponent: Washington State School for the Blind, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Janet Kurz, Vancouver, Washington, 360-947-3302; and Enforcement: Scott McCallum, Vancouver, Washington, 360-947-3301.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date, the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: This rule change is done to implement the legislative changes to public records copying fees dictated in the 2017 legislative amendment to RCW 42.56.120, section 3, chapter 304, Laws of 2017.

April 27, 2018  
Scott McCallum  
Superintendent

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 72-276-090 Costs of providing copies of public records.

#### NEW SECTION

**WAC 72-276-095 Copying fees—Payments.** (1) The following copy fees and payment procedures apply to requests to the school under chapter 42.56 RCW.

(2) Pursuant to RCW 42.56.120 (2)(b), the school is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The school does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct such a study would interfere with other essential agency functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of autho-

rized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3) and (4).

(3) The school will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The school will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the school may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The school may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the school are summarized in the fee schedule available on the school's web site at [www.wssb.wa.gov](http://www.wssb.wa.gov).

(4) Requestors may be required to pay for copies in advance of receiving records. Fee waivers are an exception and are available for some small requests under the following conditions:

(a) It is within the discretion of the public records officer to waive copying fees when:

(i) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or

(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) When requestors are required to pay in advance, fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The school will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the Washington State School for the Blind. The school prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The school will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

Hearing Location(s): On June 21, 2018, at 10:00 a.m., at 2901 Third Avenue, 1st Floor Agate Conference Room, Seattle, WA 98121.

Date of Intended Adoption: June 21, 2018.

Submit Written Comments to: Sheri Tonn, Chair, 2901 Third Avenue, Suite 500, email [BeverJ@wsdot.wa.gov](mailto:BeverJ@wsdot.wa.gov), fax 206-515-3906, by June 14, 2018.

Assistance for Persons with Disabilities: Contact Jolene Hamel, phone 206-515-3904, fax 206-515-3906, email [HamelJ@wsdot.wa.gov](mailto:HamelJ@wsdot.wa.gov), by June 19, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board will be considering amendments to this rule in anticipation of administering a state pilot exam in November 2018 to qualify applicants for entrance into a training program. The board intends to test applicants for both the Puget Sound and Grays Harbor pilotage districts. Modifications, updates, clarification, and housekeeping are among the elements reflected in this proposed rule.

Reasons Supporting Proposal: The purpose of modifying this rule is to update the pilot exam qualifications to include a sea service category for ATBs (articulated tug barge) based on feedback from industry stakeholders, and to clarify language for aspirant ease in determining exam eligibility.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: Chapter 88.16 RCW.

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

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting: Jaimie C. Bever, 2901 Third Avenue, Seattle, WA 98121, 206-515-3887; Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, 206-515-3904.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

April 30, 2018

Jaimie C. Bever

Executive Director

**WSR 18-10-061**  
**PROPOSED RULES**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**

[Filed April 30, 2018, 9:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-07-075.

Title of Rule and Other Identifying Information: WAC 363-116-0751 Qualifications for pilot applicants.

AMENDATORY SECTION (Amending WSR 12-05-064, filed 2/15/12, effective 3/17/12)

**WAC 363-116-0751 Qualifications for pilot applicants.** (1) Sea service.

(a) In addition to meeting the preexamination requirements of RCW 88.16.090, pilot applicants must, before taking the examination provided in WAC 363-116-076, meet one of the following indicated service requirements as master, while holding a minimum license as mate/master of

steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC):

Vessel Type	Minimum Size	Waters	Minimum Time
Cargo or tank	5000 GRT or 10,000 GT (ITC)	Ocean or near coastal	1 year as master
Cargo or tank	700 GRT or 1400 GT (ITC)	Ocean or near coastal	2 years as master
Cargo or tank	1600 GRT or 3000 GT (ITC)	Inland	2 years as master
Passenger or ferry	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as master
Towing	150 GRT or 300 GT (ITC)	Ocean, near coastal or inland	2 years as master
Articulated tug barge (ATB)	Combined 10,000 GRT (ITC)	Ocean or near coastal	4 years sailing as a mate/master with a minimum of 1 year as master
U.S. Flag government	3000 displacement tons	Ocean, near coastal or inland	2 years as commanding officer or master
Special purpose	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as master

Other	Minimum Size	Waters	Minimum Time
Professional pilot association or government employed pilot	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	3 years as pilot

(b) In calculating sea service under subsection (1) of this section, a year of service shall equal three hundred sixty days of service on the vessel in the required capacity. Pilot applicants combining the above types of sea service shall have a total of at least two years of the various service times, except that one day of service as master on cargo, tank, or passenger vessels of at least 5000 GRT or 10,000 GT (ITC) shall be credited as two days of service time for the purpose of calculating such combined service times.

(2) In lieu of the requirements of subsection (1) of this section, a pilot applicant may substitute either:

(a) Three years of service as an active member of an organized professional pilot association or as a government employed pilot during which periods the pilot applicant was actively engaged in piloting and docking vessels while holding a minimum license as a master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters. For purposes of this section, piloting shall refer to piloting vessels in the capacity of the pilot in charge of navigation with no other responsibilities (either when piloting or not piloting) as a member of the ship's crew; or

(b) Two years of service as a commanding officer or master of U.S. flag government vessels of not less than 3000 displacement tons. The pilot applicant must hold at the time of application a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters; or

(c) Two years of service as master of special purpose vessels of not less than 1600 GRT or 3000 GT (ITC) while holding a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC), provided that the sea time making up the sea service was spent in charge of a vessel that can be documented to have been underway and to have required the type of ship-handling, navigation and leadership skills that the board finds necessary to provide the experience needed to become a pilot. Evaluation of service time on special purpose vessels shall be made by the board on a case-by-case basis and shall not be approved unless the board finds the service to be the substantial equivalent of the sea service required in subsection (1)(a) and (b) of this section or (a) and (b) of this subsection (2). The determination of the board as to the suitability of service as master of a special purpose vessel will be final.

(3) As used in this section these terms shall have the following meanings:

(a) Cargo or tank vessels shall refer to vessels primarily engaged in the transportation of cargo between points.

(b) Passenger vessels shall refer to vessels primarily engaged in the transportation of passengers between points. This shall include yachts only to the extent and for such times that such vessels are actively engaged in moving passengers between points.

(c) Ferry vessels shall refer to vessels primarily engaged in the transportation of vehicles and passengers between points.

(d) Towing vessels shall refer to vessels primarily engaged in commercial towing of vessels or in ship assist work.

(e) GRT shall refer to gross register tonnage (domestic).

(f) GT (ITC) shall refer to gross tonnage measured in accordance with the requirements of the 1969 *International Convention on Tonnage Measurement of Ships*.

(g) Master shall refer to the person of master's rank on the vessel's station bill or muster list or other such document who, in the event of an emergency or the sounding of a general alarm, is required to be on the bridge and in charge. If there is no such designation, the term master shall refer to the person of master's rank and pay who is ultimately in charge of the navigation of the vessel as reflected in the vessel's official log book, or there being no official log book, the bridge log of the vessel.

(h) Mate shall refer to the person of mate's rank (third mate, second mate, chief mate or simply mate) whose duties include regular bridge watchkeeping.

(4) It will be the responsibility of the pilot applicant to provide adequate documentation to enable the board to set forth and verify sea service in the manner specified in the board's application form.

The board will not provide applicants with a final determination verifying service until it receives an application form. An applicant will not get official notification of whether he/she qualifies to sit for the examination until the board reviews a formal application. In the event an applicant is working on a vessel other than one of the five specified in subsection (1)(a) of this section, e.g., a special purpose vessel, he/she will be required to provide the board with suffi-



cient documentation to demonstrate to the board the amount of time involved in the navigation of a vessel underway.

**WSR 18-10-064**  
**PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed April 30, 2018, 11:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-065.

Title of Rule and Other Identifying Information: WAC 260-36-260 Employees and duties.

Hearing Location(s): On June 8, 2018, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: June 8, 2018.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-459-6461, by May 31, 2018.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, TTY 360-459-6462, email patty.brown@whrc.state.wa.us, by May 31, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adds expected duties for grooms regarding work expectations.

Reasons Supporting Proposal: Original duties described did not consider duties not generally associated with the care of a horse, but duties expected of grooms in general maintenance of the stable, such as assisting with feed and hay delivery.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

April 30, 2018  
Douglas L. Moore  
Executive Secretary

AMENDATORY SECTION (Amending WSR 12-23-015, filed 11/9/12, effective 12/10/12)

**WAC 260-36-260 Employees and duties.** (1) Employees of licensed trainers are grooms, assistant trainers, exer-

cise riders (both at the track and at the farm), and pony riders (both at the track and at the farm). Employees of a trainer may only perform those duties for which they are licensed and as outlined in this section. For the purposes of industrial insurance coverage under the horse industry account, coverage will only extend while an employee is properly licensed by the commission, employed by a licensed trainer, and only performing duties associated with the employee's license.

(2) Exercise riders, both at the track and farm may only perform the following duties:

(a) Exercise horses, which includes riding, lunge and line drive horses;

(b) Assist with saddling horses for training;

(c) Unsaddle horses following training;

(d) Clean tack following training;

(e) An exercise rider may not perform any of the duties of a groom, assistant trainer, pony rider, or other duties not usually preparing horses for competition.

(3) Pony riders may only perform the following duties:

(a) Escort horses to the track during training;

(b) Escort horses to the receiving barn and to the stable following a race;

(c) Escort horses to the starting gate in the post parade during racing (pony rider - track only);

(d) Clean stalls, rake and clean stable area associated with their ponies;

(e) A pony rider may not perform any duties of a groom, assistant trainer, exercise rider, or other duties not normally associated with escorting horses.

(4) Grooms may perform the following duties:

(a) Clean stalls, rake and clean stable area;

(b) Bathe, groom, feed, and water horses;

(c) Lead horses to and from hot walkers or to the track and/or receiving barn and paddock;

(d) Apply bandages, salves, topical medications, etc.;

(e) Tack horses for training;

(f) Handle horses in the paddock and test barn; ~~((and))~~

(g) Stacking or arranging feed and hay in the stable or barn area of a track or farm where a trainer has coverage. (when feed or supplies are delivered by a vendor the unloading of the feed or supplies is excluded);

(h) Assist in the loading and unloading of horses from trailers and van services in the stable or barn area of a track or farm where a trainer has coverage; and

(i) A groom may not mount or ride a horse.

(5) Assistant trainers may perform the duties of a groom and additionally may represent the trainer in other matters such as entering and scratching horses. An assistant trainer also may not mount or ride a horse.

**WSR 18-10-070**  
**PROPOSED RULES**  
**BENTON CLEAN AIR AGENCY**

[Filed April 30, 2018, 3:24 p.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Regulation 1: Article 3 - Industrial Source Regulations, Article 8 - Asbestos, Article 10 - Fees and Charges.

Hearing Location(s): On June 28, 2018, at 5:00 p.m., at Benton Clean Air Agency, 526 South Steptoe Street, Kennewick, WA 99336.

Date of Intended Adoption: June 28, 2018.

Submit Written Comments to: Robin Priddy, Benton Clean Air Agency, 526 South Steptoe Street, Kennewick, WA 99336, email robin.priddy@bentoncleanair.org, fax 509-783-6562, by June 28, 2018.

Assistance for Persons with Disabilities: Contact 711 relay, or Robin Priddy, phone 509-178-1304 [509-783-1304], fax 509-783-6562, email robin.priddy@bentoncleanair.org, by June 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes to Articles 8 and 10 are administrative in nature to provide consistency throughout Regulation 1. The changes to Article 3 are to address concerns regarding odors from marijuana processors and producers commercially licensed through the Washington state liquor and cannabis board (LCB).

Reasons Supporting Proposal: The changes to Article 3 are proposed to ensure proper response to complaints from the public regarding odors from marijuana processors and producers that are commercially licensed through the LCB. The changes to Articles 8 and 10 are administrative and are proposed to make Regulation 1 more consistent.

Statutory Authority for Adoption: RCW 70.94.141, 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et. seq., 42 U.S.C. 7412.

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

Name of Proponent: Benton Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Robin Priddy, 526 South Steptoe Street, Kennewick, 99336, 509-783-1304.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 70.94.141(1).

Explanation of exemptions: A small business economic impact statement was not prepared under chapter 19.85 RCW. This is a local agency rule and pursuant to RCW 70.94.141(1), chapter 19.85 RCW does not apply.

April 30, 2018  
Robin Priddy  
Director

## NEW SECTION

### **Section 3.04 Standards for Marijuana Production and Marijuana Processing**

#### A. Purpose.

The production and processing of marijuana emits air contaminants. Section 3.04 establishes standards to minimize air contaminants from stationary sources that produce or process marijuana.

#### B. Applicability.

This section applies to all persons or entities having an active Washington State Liquor and Cannabis Board (LCB) license for marijuana production operations and marijuana processing operations in Benton County.

#### C. Definitions.

Unless a different meaning is clearly required by context, words and phrases used in this section will have the following meaning:

1. "Control of environmental conditions" means modifying surroundings to facilitate plant growth, may include, but is not limited to; lighting, temperature, relative humidity, and carbon dioxide levels. For implementation of Section 3.04, watering plants and short term covering of plants for a portion of each day as needed for frost protection are not considered control of environmental conditions.

2. "Housing unit" means a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building, and which have direct access from the outside of the building or through a common hall.

3. "Indoor marijuana production and indoor marijuana processing" means production or processing occurring in a fully enclosed building that is permanently affixed to the ground, has permanent rigid walls, a roof that is permanent and non-retractable, and doors. The building is equipped to maintain control of environmental conditions. Hoop houses, temporary structures, or other similar structures are not considered indoor.

4. "Marijuana" means all parts of the cannabis plant, as defined in Chapter 69.50 RCW as it now exists or as amended.

5. "Processor (process, processing)" means LCB licensed operations that dry, cure, extract, compound, convert, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products.

6. "Producer (production, producing)" means LCB licensed operations that propagate, grow, harvest, and trim marijuana to be processed.

7. "Public Place" - means that portion of any building used by and open to the public. A public place does not include a private residence. A public place also includes a lot, parcel, or plot of land that includes a building or structure thereon that is used by and open to the public.

8. "Responsible person" means any person who owns or controls property on which Section 3.04 is applicable.

#### D. Marijuana Odor.

With respect to odor, it shall be unlawful for any production or processing facility of marijuana to cause an odor that can be detected beyond the facilities property line. The agency may take enforcement action pursuant to chapter 70.94 RCW, under this section if the Control Officer or a duly authorized representative has documented the following:

1. The odor or can be readily smelled from a public place or the private property of another housing unit;

2. An affidavit from a person making a complaint that demonstrates that they have experienced the odor of marijuana so as to unreasonably interfere with their life and property. (The affidavit should describe or identify, to the extent possible, the location, duration, and offensiveness of the odor experienced by the complainant);

3. The source of the odor.

E. With respect to odor, the agency will determine whether or not a violation of Section 3.04D has occurred based on its review of the information obtained during the investigation.

F. When determining whether to take formal enforcement action authorized in Section 3.04D, the agency may consider written evidence provided by the person causing the odors which demonstrates to the satisfaction of the agency that all controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed. If the agency determines that all such efforts are being employed by the person causing the odors and that no additional control measures or alternate operating practices are appropriate, the agency may decline to pursue formal enforcement action.

G. Nothing in this section shall be construed to impair any cause of action or legal remedy of any person, or the public for injury or damages arising from the emission of any air contaminant in such place, manner or concentration as to constitute air pollution or a common law nuisance.

H. Requirements.

All persons or entities subject to the requirements of Section 3.04 must comply with the following:

1. Production and processing must occur indoors, as defined in 3.04(C), unless the operation is exempt under Section 3.04(M);

2. Indoor production and processing requirements:

a. Control equipment and facility design:

i. Operations must be equipped with air pollution control equipment that is properly sized for the air flow to be controlled. Air pollution control equipment may include, but is not limited to, carbon adsorption within the facility, carbon filtration on facility exhaust points, vertical exhaust stacks. Air pollution control equipment is not required for windows, doors, or other openings, provided these openings are kept closed except as needed for active ingress or egress; or

ii. Operations must be designed to prevent exhaust from production and processing operations directly to the outside; or

iii. Both.

b. Operations must meet the requirements of Section 3.04(D).

3. Operation and maintenance plan. Air pollution control equipment must be operated and maintained in accordance with the manufacturers recommendations. An operation and maintenance plan for the air pollution control equipment must be available on site. The plan must include written operation instructions and maintenance schedules. Record shall be kept of the dates and description of all maintenance and repair performed on the air pollution control equipment.

Record must be kept on site for the previous 24 months and be provided to the agency upon request.

I. Compliance with Other Laws and Regulations. Compliance with Regulation I, Article 3, Section 3.04, does not constitute an exemption from compliance with other Sections of Regulation I, or other laws or regulations.

J. Producers, Processors and Responsible Persons. If there is a violation of Regulation I, Article 3, Section 3.04D, a Notice of Violation may be issued to all producers and processors on the parcel, and all responsible persons.

K. Compliance Schedule. All persons or entities subject to the requirements of Article 3, Section 3.04 must be in compliance with Section 3.04 requirements as follows:

1. New producers and processors or expansion at existing producers and processors, that begin or expand operations after (xx/xx/xxxx), must be in full compliance with Section 3.04 requirements before production and/or processing begins.

L. Any new marijuana production or processing facility must notify the agency by completing the proof of notification form found on [bentoncleanair.org](http://bentoncleanair.org).

M. Exemptions.

1. Existing marijuana producers and processors, in-operation prior to the Section 3.04 effective date (xx/xx/xxx) are exempt from of Section 3.04 H. This exemption does not exclude them from the requirements of Section 3.04D.

2. Any existing marijuana producer or processor, in-operation prior to the section 3.04 effective date (xx/xx/xxxx) found to be in violation of Section 3.04D, may be required to comply with Section 3.04 H within 180 days of receipt of the penalty from said violation or as defined by a compliance schedule agreed upon with the Benton Clean Air Agency.

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

## AMENDATORY SECTION

### **SECTION 8.01 Definitions**

A. "AHERA Building Inspector" means a person who has successfully completed the training requirements for a building inspector established by United States Environmental Protection Agency (EPA) Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

B. "AHERA Project Designer" means a person who has successfully completed the training requirements for an abatement project designer established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

C. "Asbestos" means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentine), crocidolite (riebeckite), or anthophyllite.

D. "Asbestos-Containing Material" means any material containing more than one percent (1%) asbestos as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993 or a more effective method as approved by EPA.

E. "Asbestos-Containing Waste Material" means any waste that contains or is contaminated with asbestos-containing material. Asbestos-containing waste material includes asbestos-containing material that has been removed from a structure, disturbed, or deteriorated in a way that it is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or high efficiency particulate air (HEPA) filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. "Asbestos Project" means any activity involving the abatement, renovation, demolition, removal, salvage, clean-up or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

G. "Asbestos Survey" means a written report resulting from a thorough inspection performed pursuant to Section 8.02 of this Regulation.

H. "Asphalt Shingles" means asphalt roofing in shingle form, composed of glass felt or felts impregnated and coated on both sides with asphalt, and surfaced on the weather side with mineral granules. Some asphalt shingle styles are commonly referred to as three-tab shingles.

I. "Competent Person" means a person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate the hazards, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

J. "Component" means any equipment, pipe, structural member, or other item or material.

K. "Contiguous" means touching or adjoining.

L. "Controlled Area" means an area to which only certified asbestos workers, representatives of the Agency, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA), have access.

M. "Demolition" means wrecking, razing, leveling, dismantling, or intentional burning of a structure, making the structure permanently uninhabitable or unusable in part or whole. It includes any related handling operations. It also includes moving a structure (except a mobile home which remains intact) and wrecking or taking out of any load-supporting structural member.

N. "Disposal Container" means a carton, bag, drum, box, or crate designed for the purpose of safely transporting and disposing of asbestos-containing waste material.

O. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing

condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

P. "Homogenous Area" means an area of surfacing material, thermal system insulation material, or a miscellaneous material that is uniform in color or texture. Unless approved otherwise by the Agency, rubble piles, debris piles, ash, soil, and similar materials are not homogeneous areas.

Q. "Friable Asbestos-Containing Material" means asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Each of these descriptions is separate and distinct, meaning the term includes asbestos-containing material that, when dry, can be:

1. Crumbled by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal;

2. Pulverized by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; or

3. Reduced to powder by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal.

4. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

R. "Leak-Tight Container" means a dust-tight and liquid tight disposal container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

S. "Nonfriable Asbestos-Containing Material" means asbestos-containing material that is not friable (e.g., when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal).

T. "Owner-Occupied, Single-Family Residence" means any non-multiple residential unit that is used by one family who owns the property as their domicile (permanent and primary residence) both prior to and after renovation or demolition, and can demonstrate such to the Agency upon request (e.g. utility bills). This term does not include rental properties, multiple unit buildings (e.g. duplexes and condominiums with two or more units) or multiple-family units, nor does this term include any mixed-use building (e.g. a business being operated out of a residence), structure, or installation that contains a residential unit.

U. "Owner's Agent" means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, demolition, or property subject to Article 8 of this Regulation. It also includes the person(s) submitting a notifi-

cation pursuant to Section 8.03 of this Regulation and/or performing the asbestos survey.

V. "Person" means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

W. "Renovation" means altering a structure or component in any way, other than demolition, that disturbs materials totaling greater than or equal to 10 linear feet, or greater than or equal to 48 square feet, that ((a material that)) was considered a suspect asbestos containing material prior to performing an asbestos survey.

X. "Residential Unit" means any building with four or fewer dwelling units each containing space for uses such as living, sleeping, preparation of food, and eating that is used, occupied, or intended or designed to be occupied by one family as their domicile. This term includes houses, mobile homes, trailers, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include any facility that contains a residential unit.

Y. "Structure" means something built or constructed, in part or in whole. Examples include, but are not limited to, the following in part or in whole: houses, garages, commercial buildings, mobile homes, bridges, "smoke" stacks, pole-buildings, canopies, lean-tos, and foundations. This term does not include normally mobile equipment (e.g., cars, recreational vehicles, boats, etc.).

Z. "Surfacing Material" means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fire-proofing material on structural members, or other material on surfaces for decorative purposes.

AA. "Suspect Asbestos-Containing Material" means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, and cement siding. Suspect asbestos-containing material must be presumed to be asbestos-containing material unless

demonstrated otherwise (e.g. as determined using the method specified in the EPA publication, *Method for the Determination of Asbestos in Building Materials*, EPA/600/R-93/116, July 1993).

AB. "Thermal System Insulation" means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

AC. "Visible Emissions" means any emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

AD. "Wallboard System" means joint compound and tape specifically applied to cover nail holes, joints and wall corners. It does not mean "add on materials" such as sprayed on materials, paints, textured ceilings or wall coverings. A wallboard system where joint compound and tape have become an integral system (40 CFR Part 61 FRL4821-7) may be analyzed as a composite sample for determining if it is an asbestos-containing material.

AE. "Waste Generator" means any owner or owner's agent that generates, produces, or is in part or whole, responsible for an activity that results in asbestos-containing waste material.

AF. "Workday" means Monday through Friday 8:00 a.m. to 5:00 p.m. excluding legal holidays observed by the Agency.

AMENDATORY SECTION

**SECTION 10.08 Asbestos Fees and Waiting Periods**

A. Any fee required under Table 10-1 for asbestos projects will be due and payable at the time of filing, unless otherwise specified to the applicant by the Agency.

B. Failure to pay all or part of the fee may result in the commencement of a formal enforcement action.

C. The waiting period begins at the time of filing.

**Table 10-1: Asbestos Fees**

<b>Demolition/Asbestos Projects at Residential Units</b>		
<b>Activity</b>	<b>Waiting Period</b>	<b>Fee</b>
Demolition	5 Days	\$50
Owner Occupied Single Family Residence Asbestos Project $\geq$ 10 linear. ft. or $\geq$ 48 sq. ft. of friable ACM performed by owner-occupant	Prior Notice	\$25
Asbestos Project Involving Only Non-Friable ACM $\geq$ 10 linear feet or $\geq$ 48 sq. ft That Will Remain Non-Friable	Prior Notice	\$25
All Other Residential Asbestos Projects $\geq$ 10 linear feet or $\geq$ 48 sq. ft	3 Days	\$50
Renovations $\geq$ 10 linear feet or $\geq$ 48 sq. ft with No ACM	Prior Notice	\$0
Demolition or Asbestos Project Amendment	Prior Notice	\$0
Emergency Notification Waiver	Prior Notice	Twice the Regular Fee
Asbestos Project Using Alternate Work Practices	10 Days	Twice the Regular Fee
<b>Demolition/Asbestos Projects at Facilities</b>		
<b>Activity</b>	<b>Waiting Period</b>	<b>Fee</b>
Demolition	10 Days	\$150

Demolition/Asbestos Projects at Facilities		
Activity	Waiting Period	Fee
Asbestos Project Involving Only Non-Friable ACM <u>≥10 linear feet or ≥ 48 sq. ft</u> That Will Remain Non-Friable	Prior Notice	\$25
Asbestos Project (amount of friable ACM): 10 to 259 ln ft and/or 48 to 159 ft <sup>2</sup> 260 to 999 ln ft and/or 160 to 4,999 ft <sup>2</sup> 1,000 to 9,999 ln ft and/or 5,000 to 49,999 ft <sup>2</sup> Over 10,000 ln ft and/or Over 50,000 ft <sup>2</sup>	10 Days	\$150
	10 Days	\$325
	10 Days	\$650
	10 Days	\$1800
Renovation <u>≥ 10 linear feet or ≥ 48 sq. ft</u> with No ACM	Prior Notice	\$0
Demolition or Asbestos Project Amendment	Prior Notice	\$0
Emergency Notification Waiver	Prior Notice	Twice the Regular Fee
Asbestos Project Using Alternate Work Practices	10 Days	Twice the Regular Fee
Asbestos Containing Waste Material Temporary Storage Permit		
ACWM Temporary Storage Permit Application		\$75

**WSR 18-10-075**  
**WITHDRAWAL OF PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
 (By the Code Reviser's Office)  
 [Filed May 1, 2018, 9:50 a.m.]

WAC 182-543-1000 and 182-543-2000, proposed by the health care authority in WSR 17-21-039, appearing in issue 17-21 of the Washington State Register, which was distributed on November 1, 2017, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 18-10-077**  
**WITHDRAWAL OF PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**  
 (By the Code Reviser's Office)  
 [Filed May 1, 2018, 9:52 a.m.]

WAC 314-20-092, 314-24-162 and 314-24-260, proposed by the liquor and cannabis board in WSR 17-21-111, appearing in issue 17-21 of the Washington State Register, which was distributed on November 1, 2017, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 18-10-079**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**  
 [Filed May 1, 2018, 10:47 a.m.]

Continuance of WSR 18-06-085.  
 Preproposal statement of inquiry was filed as WSR 13-14-085.

Title of Rule and Other Identifying Information: Amends WAC 181-86-180 concerning voluntary revocation. The primary change is the format requirements and clarification.

Hearing Location(s): On July 24, 2018, at 8:30, at the Radisson Hotel, 18118 International Boulevard, Seattle, WA 98188.

Date of Intended Adoption: July 24, 2018.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna@k12.wa.us, fax 360-586-4548, by July 17, 2018.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, by July 17, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The office of professional practice (OPP) offers voluntary surrender of a license. This WAC change clarifies and simplifies the requirements.

Reasons Supporting Proposal: Streamlines and clarifies rule, does not make significant policy changes.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, Catherine Slagle, director of OPP, office of the superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, 600 Washington Street, Olympia, WA 98504, 360-725-6238.

A school district fiscal impact statement is not required under RCW 28A.305.135.

March 6, 2018
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-86-180 Voluntary surrender of certificates. A holder of a certificate who has not received a final order for revocation of his or her certificate may voluntarily surrender his or her certificate to the superintendent of public instruction if the certificate holder believes that he or she is or might be ineligible to hold a certificate for any reason which is or might constitute grounds for ((revocation of)) disciplinary action for the certificate holder other than conviction of a felony crime stated within WAC 181-86-013(1).

A certificate holder voluntarily surrendering a certificate shall provide the superintendent of public instruction the following affidavit((s)).

"I((, . . . . .)) have reason to believe that I am or might be ineligible to hold a certificate(s) for reasons ((which)) that do or might constitute grounds for ((revocation of the certificate(s)). Accordingly, I hereby voluntarily surrender the following certificate(s):

- (1) ..... Cert. No. ....
(2) ..... Cert. No. ....

I have not been to the best of my knowledge convicted of any felony crime listed within WAC 181-86-013(1).

I agree, if I request reinstatement of the certificate(s) I have voluntarily surrendered, to provide the superintendent of public instruction with an affidavit describing in full the reasons for my voluntary surrender of the certificate(s) listed above. I further understand that the superintendent of public instruction will notify other states and public and private school officials within the state of Washington that I have voluntarily surrendered my)) disciplinary action on the certificate(s). I further understand that the superintendent of public instruction will notify other states and public and private school officials with the state of Washington that I have voluntarily surrendered my certificate(s)."

Name: Certificate Number:

Upon request for reinstatement of such certificate, the applicant must comply with chapter 181-77 or 181-79A WAC and, in addition, must disclose in full the reasons for the voluntary surrender of the certificate. In the event the surrendered certificate would have expired or lapsed but for the surrendering of the certificate, the applicant must meet all requirements for reinstating an expired or lapsed certificate.

WSR 18-10-080
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed May 1, 2018, 11:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-09-064.

Title of Rule and Other Identifying Information: Beryllium, chapter 296-850 WAC is a new rule the department is proposing to be at-least-as-effective-as the beryllium rule the Occupational Safety and Health Administration (OSHA) recently adopted. Additionally, air contaminant tables in chapter 296-841 WAC, Airborne contaminants and chapter 296-307 WAC, Safety standards for agriculture, are included in this proposed rule making to update the permissible exposure limits (PEL) for beryllium to be the same as OSHA's new PEL requirements. The PEL tables in chapter 296-307 WAC are identical to the PEL tables in chapter 296-841 WAC.

Hearing Location(s): On June 12, 2018, at 9:00 a.m., at the Department of Labor and Industries, 12806 Gateway Drive South, Tukwila, WA 98168; and on June 13, 2018, at 9:00 a.m., at the Department of Labor and Industries, 4310 West 24th Avenue, Kennewick, WA 99338.

Date of Intended Adoption: August 21, 2018.

Submit Written Comments to: Gail Hughes, Administrative Regulations Analyst, Department of Labor and Industries, Division of Occupational Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email gail.hughes@lni.wa.gov, fax 360-902-5619, by June 19, 2018.

Assistance for Persons with Disabilities: Contact Gail Hughes, administrative regulations analyst, phone 360-902-6772, fax 360-902-5619, email gail.hughes@lni.wa.gov, by June 4, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to add chapter 296-850 WAC, Beryllium, as a new chapter to Title 296 WAC, Department of labor and industries. This proposal responds to OSHA's final rule on beryllium in General Industry C.F.R. 1910.1024, Construction C.F.R. 1926.1124 and Maritime C.F.R. 1915.1024. This rule will limit worker exposure to beryllium and beryllium compounds (as Be), which can cause the debilitating lung disease known as chronic beryllium disease (CBD) and lung cancer. This rule mirrors OSHA's final rule, with minor differences in the definitions, medical removal, and medical surveillance sections that allow for implementation of the rule to be consistent with existing requirements in Title 51 RCW. The PEL tables in WAC 296-307-62625 and 296-841-20025 are also being updated to reflect OSHA's reduced beryllium PELs.

Amended Sections:

WAC 296-841-20025 Permissible exposure limits (PELs) and 296-307-62625 Permissible exposure limits of air contaminants.

- Update PEL table to reflect OSHA's new PEL requirements.

**New Sections:****WAC 296-850-090 Definitions.**

- Add definitions for the following: Action level, airborne exposure and airborne exposure to beryllium, beryllium lymphocyte proliferation test (BeLPT), beryllium work area, CBD diagnostic center, CBD, competent person, confirmed positive, construction work, emergency, high-efficiency particulate air filter, objective data, physician or other licensed health care professional (PLHCP), regulated area, ship breaking, ship building, ship repairing.

**WAC 296-850-100 Scope and application.**

- Add this section to clarify what is not covered in this rule.

**WAC 296-850-110 Permissible exposure limits.**

- Add the requirements for employee exposure limits to beryllium using time-weighted average (TWA), PEL and short-term exposure limit (STEL).

**WAC 296-850-115 Exposure assessment.**

- Add the requirement that the employer must assess the airborne exposure of each employee who is or may reasonably be expected to be exposed to airborne beryllium by using either the *performance* option or the *scheduled monitoring* option.
- Add the requirements for the performance option.
- Add the requirements for the scheduled monitoring option.
- Add reassessment of exposure requirements.
- Add methods of sample analysis.
- Add employee notification of assessment results.
- Add observation of monitoring.

**WAC 296-850-120 Beryllium work areas and regulated areas.**

- Add that the employer must establish and maintain a beryllium work area when required and a regulated area as required by proposed rule.
- Add requirements for identifying each beryllium work area through signs and other methods.
- Add requirements to limit access to regulated areas.
- Add requirements that employees entering regulated areas use respiratory protection and personal protective clothing and equipment.

**WAC 296-850-125 Competent person.**

- Add that employer must designate a competent person to regularly inspect construction and maintenance job sites where employees can be expected to be exposed to airborne beryllium above the TWA, PEL or STEL to ensure compliance with this rule.

**WAC 296-850-130 Methods of compliance.**

- Add requirements for the following:
  - Written exposure control plan.
  - Engineering and work practice controls.
  - Prohibition of rotation.

**WAC 296-850-135 Respiratory protection.**

- Add requirements that the employer must provide respiratory protection at no cost to the employee and ensure it is used as required by this proposed rule.
- Add requirements that the employer must implement a respiratory protection program as required by this proposed rule.

**WAC 296-850-140 Personal protective clothing and equipment.**

- Add requirements for the following:
  - Provision and use of personal protective clothing [clothing] and equipment;
  - Removal and storage of beryllium-contaminated personal protective clothing and equipment;
  - Cleaning and replacement of personal protective clothing and equipment.

**WAC 296-850-145 Hygiene areas and practices.**

- Add requirements to provide readily accessible washing facilities as required by applicable rules.
- Add requirements for change rooms and showers.
- Add requirements for eating and drinking areas that are as free as practicable of beryllium.
- Add prohibited activities such as not allowing employees to eat or drink in regulated areas where the exposure could be above the TWA, PEL or STEL.

**WAC 296-850-150 Housekeeping.**

- Add requirements that the employer must maintain all surfaces in beryllium work areas as free as practicable of beryllium, ensuring all spills are cleaned up promptly.
- Add requirement for appropriate cleaning methods in beryllium work areas.
- Add requirements for disposal of materials contaminated with beryllium.

**WAC 296-850-155 Medical surveillance.**

- Add requirements for medical surveillance that must be provided at no cost to the employee when there is a possibility of beryllium exposure as identified in the proposed rule.
- Add requirements for the frequency of medical examinations and the contents of the examination.
- Add requirements for information that must be provided to PLHCP.
- Add requirements that the employee receives the licensed physician's written medical report for the employee.
- Add requirements for the licensed physician's written medical opinion for the employer.
- Add requirements for a CBD diagnostic center.

**WAC 296-850-160 Medical removal.**

- Add requirements for when an employee is eligible for medical removal and what the employer must provide if the employee is eligible for medical removal.



**WAC 296-850-165 Communication of hazards.**

- Add that employers, chemical manufacturers, importers, and distributors must comply with the globally harmonized system for hazard communication for beryllium.
- Add requirements for warning signs, posting, sign specification, and warning labels.
- Add requirement that the employer must provide employees information and training as required in chapter 296-901 WAC, Globally harmonized system for hazard communication.

**WAC 296-850-170 Recordkeeping.**

- Add requirements for employer to capture air monitoring data, objective data, medical surveillance, and training records.
- Add requirements for access to records and transfer of records.

**WAC 296-850-175 Dates.**

- Add requirement for the dates this proposed rule becomes effective.

**WAC 296-850-180 Appendix A—Control strategies to minimize beryllium exposure of this standard is non-mandatory.**

- Add a nonmandatory Appendix A, Control strategies to minimize beryllium exposure of the standard.
- Add a table of exposure control recommendations.

**WAC 296-850-190 Appendix B—Considerations when using the blood beryllium lymphocyte proliferation test in the screening and evaluation of beryllium sensitization—Nonmandatory.**

- Add a nonmandatory Appendix B, Considerations when using the blood beryllium lymphocyte proliferation test in the screening and evaluation of beryllium sensitization.

Reasons Supporting Proposal: By law, labor and industries', DOSH is required to update our rules to be at-least-as-effective-as federal OSHA. The department currently does not have rules governing beryllium, therefore with the adoption by OSHA of beryllium rules to protect workers the department is required to adopt rules for beryllium to be at-least-as-effective-as OSHA.

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 necessary because of federal law, 29 C.F.R. 1910.1024, 1926.1124 and 1915.1024.

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

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, 360-902-5516; Implementation and Enforcement: Anne Soiza, Tumwater, Washington, 360-902-5090.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Gail Hughes, Department of Labor and Industries, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-6772, fax 360-902-5519, email gail.hughes@lni.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 29 C.F.R. 1910.1024, 1915.1024, and 1926.1124 - Safety rules for beryllium. RCW 49.17.050 requires the department of labor and industries "adopt occupational health and safety standards which are at least as effective as those adopted or recognized by the United State[s] secretary of labor under the authority of the Occupational Safety and Health Act of 1970." DOSH receives federal funding as part of the agreement with OSHA as a "state plan state." Not adopting rules in response to OSHA would jeopardize this funding.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The department has identified two proposed requirements that are different from OSHA's new standards or existing Washington laws. (1) This proposal will allow an employee with a single abnormal or borderline BeLPT result to be medically removed and receive related benefits before confirmatory testing is completed, while the OSHA standard requires at least two tests to confirm a positive result before an employee can receive this type of benefit. The costs of providing this benefit would be the same under both the proposed rule and OSHA standard if an employee with an initial abnormal or borderline result is subsequently confirmed positive through follow-up testing. Only when the first test result turns out to be false positive, meaning an employee with an initial other than normal test result is not subsequently confirmed positive through follow-up testing would the costs be higher under the proposed rule. (2) For the employee with one abnormal or borderline BeLPT result, both OSHA and this proposed rule require the employer offer follow-up testing. However, the proposed rule also allows these workers and those with two borderline BeLPT results to request an evaluation at a CBD diagnostic center that is mutually agreed upon by the employer and the employee, or at a CBD diagnostic center that is also a department-recognized CRI research and clinical assessment center if requested by the employee.

The department has estimated the average cost per business of these two amendments for all affected businesses, and has compared it to the minor cost threshold based on one percent of the annual average payroll in an affected industry. The department concludes that this average cost is much lower than the minor cost threshold for businesses in any affected industry (a detailed analysis on how this determination is derived is available upon request). Therefore, a small business economic impact statement is not required for this rule making pursuant to RCW 19.85.030(1).

May 1, 2018  
Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 18-07-098, filed 3/20/18, effective 4/23/18)

**WAC 296-307-62625 Permissible exposure limits of air contaminants.**

**IMPORTANT:**

The following information applies to Table 3, Permissible Exposure Limits for Air Contaminants.

- Exposure needs to be determined from personal air samples taken in the breathing zone or from monitoring representative of the employee's breathing zone.

- Ppm refers to parts of vapor or gas per million parts of air by volume, at 25 degrees C and 760 mm Hg pressure.

- Mg/m<sup>3</sup> refers to milligrams of substance per cubic meter of air.

- For a metal that is measured as the metal itself, only the CAS number for the metal is given. The CAS numbers for individual compounds of the metal are not provided. For more information about CAS registry numbers see the web site: <http://www.cas.org>.

- Time weighted averages (TWA<sub>8</sub>) represent the maximum allowed average exposure for any 8-hour time period. For work periods longer than 8 hours the TWA<sub>8</sub> needs to be determined using the 8 continuous hours with the highest average concentration.

- Short-term exposure limits (STEL) represent maximum allowed average exposure for any fifteen-minute period, unless another time period is noted in Table 3.

- The ceiling represents the maximum allowed exposure for the shortest time period that can feasibly be measured.

- An "X" in the "skin" column indicates the substance can be absorbed through the skin, either by airborne or direct contact.

- Requirements for the use of gloves, coveralls, goggles, and other personal protective equipment can be found in WAC 296-307-100.

- The respirable fraction of particulate is measured by sampling with a size-selector having the following characteristics:

Mean aerodynamic diameter in micrometers	Percent passing the selector
1	97
2	91
3	74
4	50
5	30
6	17
7	9
8	5
10	1

**Table 3 "Permissible Exposure Limits for Air Contaminants"**

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Abate (Temephos)	3383-96-8	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Acetaldehyde	75-07-0	100 ppm	150 ppm	—	—
Acetic acid	64-19-7	10 ppm	20 ppm	—	—
Acetic anhydride	108-24-7	—	—	5 ppm	—
Acetone	67-64-1	750 ppm	1,000 ppm	—	—
Acetonitrile	75-05-8	40 ppm	60 ppm	—	—
2-Acetylaminofluorene	53-96-3	—	—	—	—
Acetylene	74-86-2	Simple asphyxiant	—	—	—
Acetylene dichloride (1,2-Dichloroethylene)	540-59-0	200 ppm	250 ppm	—	—
Acetylene tetrabromide	79-27-6	1 ppm	3 ppm	—	—
Acetylsalicylic acid (Aspirin)	50-78-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Acrolein	107-02-8	0.1 ppm	0.3 ppm	—	—
Acrylamide	79-06-1	0.03 mg/m <sup>3</sup>	0.09 mg/m <sup>3</sup>	—	X
Acrylic acid	79-10-7	10 ppm	20 ppm	—	X
Acrylonitrile (Vinyl cyanide)	107-13-1	2 ppm	10 ppm	—	—
Aldrin	309-00-2	0.25 mg/m <sup>3</sup>	0.75 mg/m <sup>3</sup>	—	X
Allyl alcohol	107-18-6	2 ppm	4 ppm	—	X
Allyl chloride	107-05-1	1 ppm	2 ppm	—	—
Allyl glycidyl ether (AGE)	106-92-3	5 ppm	10 ppm	—	—
Allyl propyl disulfide	2179-59-1	2 ppm	3 ppm	—	—
alpha-Alumina (Aluminum oxide)	1344-28-1	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Aluminum (as Al)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Pyro powders	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Welding fumes	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Soluble salts	—	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Alkyls (NOC)	—	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Aluminum oxide (Alundum, Corundum)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
4-Aminodiphenyl	92-67-1	—	—	—	—
2-Aminoethanol (Ethanalamine)	141-43-5	3 ppm	6 ppm	—	—
2-Aminopyridine	504-29-0	0.5 ppm	1.5 ppm	—	—
Amitrole	61-82-5	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Ammonia	7664-41-7	25 ppm	35 ppm	—	—
Ammonium chloride, fume	12125-02-9	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Ammonium sulfamate (Ammate)	7773-06-0	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5.0 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
n-Amyl acetate	628-63-7	100 ppm	150 ppm	—	—
sec-Amyl acetate	626-38-0	125 ppm	156 ppm	—	—
Aniline and homologues	62-53-3	2 ppm	4 ppm	—	X
Anisidine (o, p-isomers)	29191-52-4	0.1 ppm	0.3 ppm	—	X
Antimony and compounds (as Sb)	7440-36-0	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
ANTU (alpha Naphthyl thiourea)	86-88-4	0.3 mg/m <sup>3</sup>	0.9 mg/m <sup>3</sup>	—	—
Argon	7440-37-1	Simple asphyxiant	—	—	—
Arsenic, organic compounds (as As)	7440-38-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Arsenic, inorganic compounds (as As) (when use is covered by WAC 296-62-07347)	7440-38-2	0.01 mg/m <sup>3</sup>	—	—	—
Arsenic, inorganic compounds (as As) (when use is not covered by WAC 296-62-07347)	7440-38-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Arsine	7784-42-1	0.05 ppm	0.15 ppm	—	—
Asbestos	—	—	—	—	—
Asphalt (Petroleum fumes)	8052-42-4	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Atrazine	1912-24-9	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Azinphos methyl (Guthion)	86-50-0	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Azodrin (Monocrotophos)	6923-22-4	0.25 mg/m <sup>3</sup>	0.75 mg/m <sup>3</sup>	—	—
Barium, soluble compounds (as Ba)	7440-39-3	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Barium sulfate	7727-43-7	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Baygon (Propoxur)	114-26-1	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Benomyl	17804-35-2	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Benzene	71-43-2	1 ppm	5 ppm	—	—
Benzidine	92-87-5	—	—	—	—
p-Benzoquinone (Quinone)	106-51-4	0.1 ppm	0.3 ppm	—	—

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Benzo(a) pyrene (Coal tar pitch volatiles)	65996-93-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Benzoyl peroxide	94-36-0	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Benzyl chloride	100-44-7	1 ppm	3 ppm	—	—
Beryllium and beryllium compounds (as Be) (see chapter 296-850 WAC)	7440-41-7	<del>((0-002))</del> 0.0002 mg/m <sup>3</sup>	<del>((0-005))</del> 0.002 mg/m <sup>3</sup> <del>((0-025 mg/m<sup>3</sup>))</del> <del>((30 min-))</del>	—	—
Biphenyl (Diphenyl)	92-52-4	0.2 ppm	0.6 ppm	—	—
Bismuth telluride, undoped	1304-82-1	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Bismuth telluride, Se-doped	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Borates, tetra, sodium salts	—	—	—	—	—
Anhydrous	1330-43-4	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Decahydrate	1303-96-4	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Pentahydrate	12179-04-3	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Boron oxide	1303-86-2	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Boron tribromide	10294-33-4	—	—	1 ppm	—
Boron trifluoride	6737-07-2	—	—	1 ppm	—
Bromacil	314-40-9	1 ppm	3 ppm	—	—
Bromine	7726-95-6	0.1 ppm	0.3 ppm	—	—
Bromine pentafluoride	7789-30-2	0.1 ppm	0.3 ppm	—	—
Bromochloromethane (Chlorobromomethane)	74-97-5	200 ppm	250 ppm	—	—
Bromoform	15-25-2	0.5 ppm	1.5 ppm	—	X
Butadiene (1,3-butadiene)	106-99-0	1 ppm	5 ppm	—	—
Butane	106-97-8	800 ppm	1,000 ppm	—	—
Butanethiol (Butyl mercaptan)	109-79-5	0.5 ppm	1.5 ppm	—	—
2-Butanone (Methyl ethyl ketone)	78-93-3	200 ppm	300 ppm	—	—
2-Butoxy ethanol (Butyl cellosolve)	111-76-2	25 ppm	38 ppm	—	X
n-Butyl acetate	123-86-4	150 ppm	200 ppm	—	—
sec-Butyl acetate	105-46-4	200 ppm	250 ppm	—	—
tert-Butyl acetate	540-88-5	200 ppm	250 ppm	—	—
Butyl acrylate	141-32-2	10 ppm	20 ppm	—	—
n-Butyl alcohol	71-36-3	—	—	50 ppm	X
sec-Butyl alcohol	78-92-2	100 ppm	150 ppm	—	—
tert-Butyl alcohol	75-65-0	100 ppm	150 ppm	—	—
Butylamine	109-73-9	—	—	5 ppm	X
Butyl cellosolve (2-Butoxy ethanol)	111-76-2	25 ppm	38 ppm	—	—
tert-Butyl chromate (as CrOs)	1189-85-1	—	—	0.1 mg/m <sup>3</sup>	X
n-Butyl glycidyl ether (BGE)	2426-08-6	25 ppm	38 ppm	—	—
n-Butyl lactate	138-22-7	5 ppm	10 ppm	—	—
Butyl mercaptan	109-79-5	0.5 ppm	1.5 ppm	—	—
o-sec-Butylphenol	89-72-5	5 ppm	10 ppm	—	X
p-tert-Butyl-toluene	98-51-1	10 ppm	20 ppm	—	—
Cadmium oxide fume (as Cd)	1306-19-0	0.005 mg/m <sup>3</sup>	—	—	—
Cadmium dust and salts (as Cd)	7440-43-9	0.005 mg/m <sup>3</sup>	—	—	—
Calcium arsenate	—	0.01 mg/m <sup>3</sup>	—	—	—
Calcium carbonate	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Calcium cyanamide	156-62-7	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Calcium hydroxide	1305-62-0	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Calcium oxide	1305-78-8	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Calcium silicate	1344-95-2	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Calcium sulfate	7778-18-9	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Camphor (synthetic)	76-22-2	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Caprolactam	105-60-2	—	—	—	—
Dust	—	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Vapor	—	5 ppm	10 ppm	—	—
Captafol (Difolatan)	2425-06-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Captan	133-06-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Carbaryl (Sevin)	63-25-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Carbofuran (Furadon)	1563-66-2	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Carbon black	1333-86-4	3.5 mg/m <sup>3</sup>	7 mg/m <sup>3</sup>	—	—
Carbon dioxide	124-38-9	5,000 ppm	30,000 ppm	—	—
Carbon disulfide	75-15-0	4 ppm	12 ppm	—	X
Carbon monoxide	630-08-0	35 ppm	200 ppm (5 min.)	1,500 ppm	—
Carbon tetrabromide	558-13-4	0.1 ppm	0.3 ppm	—	—
Carbon tetrachloride (Tetrachloromethane)	56-23-5	2 ppm	4 ppm	—	X
Carbonyl chloride (Phosgene)	7803-51-2	0.1 ppm	0.3 ppm	—	—
Carbonyl fluoride	353-50-4	2 ppm	5 ppm	—	—
Catechol (Pyrocatechol)	120-80-9	5 ppm	10 ppm	—	X
Cellosolve acetate (2-Ethoxyethylacetate)	111-15-9	5 ppm	10 ppm	—	X
Cellulose (paper fiber)	9004-34-6	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Cesium hydroxide	21351-79-1	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Chlordane	57-74-9	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Chlorinated camphene (Toxaphen)	8001-35-2	0.5 mg/m <sup>3</sup>	1 mg/m <sup>3</sup>	—	X
Chlorinated diphenyl oxide	55720-99-5	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Chlorine	7782-50-5	0.5 ppm	—	1 ppm	—
Chlorine dioxide	10049-04-4	0.1 ppm	0.3 ppm	—	—
Chlorine trifluoride	7790-91-2	—	—	0.1 ppm	—
Chloroacetaldehyde	107-20-0	—	—	1 ppm	—
α-Chloroacetophenone (Phenacyl chloride)	532-21-4	0.05 ppm	0.15 ppm	—	—
Chloroacetyl chloride	79-04-9	0.05 ppm	0.15 ppm	—	—
Chlorobenzene (Monochlorobenzene)	108-90-7	75 ppm	113 ppm	—	—
o-Chlorobenzylidene malononitrile (OCBM)	2698-41-1	—	—	0.05 ppm	X
Chlorobromomethane	74-97-5	200 ppm	250 ppm	—	—
2-Chloro-1, 3-butadiene (beta-Chloroprene)	126-99-8	10 ppm	20 ppm	—	X
Chlorodifluoromethane	75-45-6	1,000 ppm	1,250 ppm	—	—
Chlorodiphenyl (42% Chlorine) (PCB) (Polychlorobiphenyls)	53469-21-9	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Chlorodiphenyl (54% Chlorine) (Polychlorobiphenyls (PCB))	11097-69-1	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
1-Chloro-2, 3-epoxypropane (Epichlorhydrin)	106-89-8	2 ppm	4 ppm	—	X
2-Chloroethanol (Ethylene chlorohydrin)	107-07-3	—	—	1 ppm	X
Chloroethylene (vinyl chloride)	75-01-4	1 ppm	5 ppm	—	—
Chloroform (Trichloromethane)	67-66-3	2 ppm	4 ppm	—	—
1-Chloro-1-nitropropane	600-25-9	2 ppm	4 ppm	—	—
bis-Chloromethyl ether	542-88-1	—	—	—	—
Chloromethyl methyl ether (Methyl chloromethyl ether)	107-30-2	—	—	—	—
Chloropentafluoroethane	76-15-3	1,000 ppm	1,250 ppm	—	—
Chloropicrin (Nitrotrichloromethane)	76-06-2	0.1 ppm	0.3 ppm	—	—
beta-Chloroprene (2-Chloro-1, 3-butadiene)	126-99-8	10 ppm	20 ppm	—	X
o-Chlorostyrene	2039-87-4	50 ppm	75 ppm	—	—
o-Chlorotoluene	95-49-8	50 ppm	75 ppm	—	—
2-Chloro-6-trichloromethyl pyridine (Nitrapyrin)	1929-82-4	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Chlorpyrifos	2921-88-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Chromic acid and chromates (as CrO <sub>3</sub> )	Varies with compound	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Chromium, soluble, chromic and chromous salts (as Cr)	7440-47-3	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Chromium (VI) compounds (as Cr)	—	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	—
Chromium metal and insoluble salts	7440-47-3	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Chromyl chloride	14977-61-8	0.025 ppm	0.075 ppm	—	—
Chrysene (Coal tar pitch volatiles)	65996-93-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Clopidol	2971-90-6	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Coal dust (less than 5% SiO <sub>2</sub> )	—	—	—	—	—
Respirable fraction	—	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Coal dust (greater than or equal to 5% SiO <sub>2</sub> )	—	—	—	—	—
Respirable fraction	—	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Coal tar pitch volatiles (benzene soluble fraction) (Particulate polycyclic aromatic hydrocarbons)	65996-93-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Cobalt, metal fume & dust (as Co)	7440-48-4	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	—
Cobalt carbonyl (as Co)	10210-68-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Cobalt hydrocarbonyl (as Co)	16842-03-8	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Coke oven emissions	—	0.15 mg/m <sup>3</sup>	—	—	—
Copper (as Cu)	7440-50-8	—	—	—	—
Fume	—	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Dusts and mists	—	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Cotton dust (raw) (waste sorting, blending, clean- ing, willowing and garetting)	—	1 mg/m <sup>3</sup>	—	—	—
Corundum (Aluminum oxide)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Crag herbicide (Sesone, Sodium-2, 4-dichloro-phenoxyethyl sulfate)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Cresol (all isomers)	1319-77-3	5 ppm	10 ppm	—	X
Crotonaldehyde	123-73-9; 4170-30-3	2 ppm	4 ppm	—	—
Cruformate	299-86-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Cumene	98-82-8	50 ppm	75 ppm	—	X
Cyanamide	420-04-2	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Cyanide (as CN)	Varies with compound	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	X
Cyanogen	460-19-5	10 ppm	20 ppm	—	—
Cyanogen chloride	506-77-4	—	—	0.3 ppm	—
Cyclohexane	110-82-7	300 ppm	375 ppm	—	—
Cyclohexanol	108-93-0	50 ppm	75 ppm	—	X
Cyclohexanone	108-94-1	25 ppm	38 ppm	—	X
Cyclohexene	110-83-8	300 ppm	375 ppm	—	—
Cyclohexylamine	108-91-8	10 ppm	20 ppm	—	—
Cyclonite (RDX)	121-82-4	1.5 mg/m <sup>3</sup>	3.0 mg/m <sup>3</sup>	—	X
Cyclopentadiene	542-92-7	75 ppm	113 ppm	—	—
Cyclopentane	287-92-3	600 ppm	750 ppm	—	—
Cyhexatin (Tricyclohexyltin hydroxide)	13121-70-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
2,4-D (Dichlorophenoxy-acetic acid)	94-75-7	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
DBCP (1,2-Dibromo-3-chloropropane)	96-12-8	0.001 ppm	—	0.005 ppm	—
DDT (Dichlorodiphenyltri-chloroethane)	50-29-3	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
DDVP, (Dichlorvos)	62-73-7	0.1 ppm	0.3 ppm	—	X
Dasanit (Fensulfthion)	115-90-2	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Decaborane	17702-41-9	0.05 ppm	0.15 ppm	—	X
Demeton	8065-48-3	0.01 ppm	0.03 ppm	—	X
Diacetone alcohol (4-hydroxy-4-methyl-2-pentanone)	123-42-2	50 ppm	75 ppm	—	—
1, 2-Diaminoethane (Ethylenediamine)	107-15-3	10 ppm	20 ppm	—	—
Diazinon	333-41-5	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Diazomethane	334-88-3	0.2 ppm	0.6 ppm	—	—
Diborane	19287-45-7	0.1 ppm	0.3 ppm	—	—
Dibrom (see Naled)	300-76-5	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	X
1, 2-Dibromo-3-chloropropane (DBCP)	96-12-8	0.001 ppm	—	0.005 ppm	—
2-N-Dibutylamino ethanol	102-81-8	2 ppm	4 ppm	—	X
Dibutyl phosphate	107-66-4	1 ppm	2 ppm	—	—
Dibutyl phthalate	84-74-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Dichloroacetylene	7572-29-4	—	—	0.1 ppm	—
o-Dichlorobenzene	95-50-1	—	—	50 ppm	—
p-Dichlorobenzene	106-46-7	75 ppm	110 ppm	—	—
3, 3'-Dichlorobenzidine	91-94-1	—	—	—	—
Dichlorodiphenyltri-chloroethane (DDT)	50-29-3	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
Dichlorodifluoromethane	75-71-8	1,000 ppm	1,250 ppm	—	—
1, 3-Dichloro-5, 5-dimethyl hydantoin	118-52-5	0.2 mg/m <sup>3</sup>	0.4 mg/m <sup>3</sup>	—	—
1, 1-Dichloroethane (Ethylidene chloride)	75-34-3	100 ppm	150 ppm	—	—
1, 2-Dichloroethane (Ethylene dichloride)	107-06-2	1 ppm	2 ppm	—	—
1, 1-Dichloroethylene (Vinylidene chloride)	75-35-4	1 ppm	3 ppm	—	—
1, 2-Dichloroethylene (Acetylene dichloride)	540-59-0	200 ppm	250 ppm	—	—

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Dichloroethyl ether	111-44-4	5 ppm	10 ppm	—	X
Dichlorofluoromethane	75-43-4	10 ppm	20 ppm	—	—
Dichloromethane (Methylene chloride)	75-09-2	25 ppm	125 ppm	—	—
1, 1-Dichloro-1-nitroethane	594-72-9	2 ppm	10 ppm	—	—
Dichlorophenoxyacetic acid (2, 4-D)	94-75-7	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
1, 2-Dichloropropane (Propylene dichloride)	78-87-5	75 ppm	110 ppm	—	—
Dichloropropene	542-75-6	1 ppm	3 ppm	—	X
2, 2-Dichloropropionic acid	75-99-0	1 ppm	3 ppm	—	—
Dichlorotetrafluoroethane	76-14-2	1,000 ppm	1,250 ppm	—	—
Dichlorvos (DDVP)	62-73-7	0.1 ppm	0.3 ppm	—	X
Dicrotophos	141-66-2	0.25 mg/m <sup>3</sup>	0.75 mg/m <sup>3</sup>	—	X
Dicyclopentadiene	77-73-6	5 ppm	10 ppm	—	—
Dicyclopentadienyl iron	102-54-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Dieldrin	60-57-1	0.25 mg/m <sup>3</sup>	0.75 mg/m <sup>3</sup>	—	X
Diethanolamine	111-42-2	3 ppm	6 ppm	—	—
Diethylamine	109-89-7	10 ppm	25 ppm	—	—
2-Diethylaminoethanol	100-37-8	10 ppm	20 ppm	—	X
Diethylene triamine	111-40-0	1 ppm	3 ppm	—	X
Diethyl ether (Ethyl ether)	60-29-7	400 ppm	500 ppm	—	—
Diethyl ketone	96-22-0	200 ppm	250 ppm	—	—
Diethyl phthalate	84-66-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Difluorodibromomethane	75-61-6	100 ppm	150 ppm	—	—
Difolatan (Captafol)	2425-06-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Diglycidyl ether (DGE)	2238-07-5	0.1 ppm	0.3 ppm	—	—
Dihydroxybenzene (Hydroquinone)	123-31-9	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Diisobutyl ketone (2, 6-Dimethylheptanone)	108-83-8	25 ppm	38 ppm	—	—
Diisopropylamine	108-18-9	5 ppm	10 ppm	—	X
Dimethoxymethane (Methylal)	109-87-5	1,000 ppm	1,250 ppm	—	—
Dimethyl acetamide	127-19-5	10 ppm	20 ppm	—	X
Dimethylamine	124-40-3	10 ppm	20 ppm	—	—
4-Dimethylaminoazo benzene	60-11-7	—	—	—	—
Dimethylaminobenzene (Xylidene)	1300-73-8	2 ppm	4 ppm	—	X
Dimethylaniline (N, N-Dimethylaniline)	121-69-7	5 ppm	10 ppm	—	X
Dimethylbenzene (Xylene)	1300-73-8	100 ppm	150 ppm	—	—
Dimethyl-1, 2-dibromo-2, 2-dichloroethyl phosphate (Naled)	300-76-5	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	X
Dimethylformamide	68-12-2	10 ppm	20 ppm	—	X
2, 6-Dimethylheptanone (Diisobutyl ketone)	108-83-8	25 ppm	38 ppm	—	—
1, 1-Dimethylhydrazine	57-14-7	0.5 ppm	1.5 ppm	—	X
Dimethyl phthalate	131-11-3	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Dimethyl sulfate	77-78-1	0.1 ppm	0.3 ppm	—	X
Dinitolmide (3, 5-Dinitro-o-toluamide)	148-01-6	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Dinitrobenzene (all isomers - alpha, meta and para)	528-29-0; 99-65-0; 100-25-4	0.15 ppm	0.45 ppm	—	X
Dinitro-o-cresol	534-52-1	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
3, 5-Dinitro-o-toluamide (Dinitolmide)	148-01-6	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Dinitrotoluene	25321-14-6	1.5 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X



Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Dioxane (Diethylene dioxide)	123-91-1	25 ppm	38 ppm	—	X
Dioxathion	78-34-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Diphenyl (Biphenyl)	92-52-4	0.2 ppm	0.6 ppm	—	—
Diphenylamine	122-39-4	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Diphenylmethane diisocyanate (Methylene bisphenyl isocyanate (MDI))	101-68-8	—	—	0.02 ppm	—
Dipropylene glycol methyl ether	34590-94-8	100 ppm	150 ppm	—	X
Dipropyl ketone	123-19-3	50 ppm	75 ppm	—	—
Diquat	85-00-7	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Di-sec, Octyl phthalate (Di-2-ethylhexylphthalate)	117-81-7	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Disulfram	97-77-8	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Disulfoton	298-04-4	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
2, 6-Di-tert-butyl-p-cresol	128-37-0	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Diuron	330-54-1	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Divinyl benzene	1321-74-0	10 ppm	20 ppm	—	—
Emery	12415-34-8	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Endosulfan (Thiodan)	115-29-7	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Endrin	72-20-8	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Epichlorhydrin (1-Chloro-2, 3-epoxypropane)	106-89-8	2 ppm	4 ppm	—	X
EPN	2104-64-5	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
1, 2-Epoxypropane (Propylene oxide)	75-56-9	20 ppm	30 ppm	—	—
2, 3-Epoxy-1-propanol (Glycidol)	556-52-5	25 ppm	38 ppm	—	—
Ethane	—	Simple asphyxiant	—	—	—
Ethanethiol (Ethyl mercaptan)	75-08-1	0.5 ppm	1.5 ppm	—	—
Ethanol (Ethyl alcohol)	64-17-5	1,000 ppm	1,250 ppm	—	—
Ethanolamine (2-Aminoethanol)	141-43-5	3 ppm	6 ppm	—	—
Ethion	563-12-2	0.4 mg/m <sup>3</sup>	1.2 mg/m <sup>3</sup>	—	X
2-Ethoxyethanol (Glycol monoethyl ether)	110-80-5	5 ppm	10 ppm	—	X
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	5 ppm	10 ppm	—	X
Ethyl acetate	141-78-6	400 ppm	500 ppm	—	—
Ethyl acrylate	140-88-5	5 ppm	25 ppm	—	X
Ethyl alcohol (ethanol)	64-17-5	1,000 ppm	1,250 ppm	—	—
Ethylamine	75-04-07	10 ppm	20 ppm	—	—
Ethyl amyl ketone (5-Methyl-3-heptanone)	541-85-5	25 ppm	38 ppm	—	—
Ethyl benzene	100-41-4	100 ppm	125 ppm	—	—
Ethyl bromide	74-96-4	200 ppm	250 ppm	—	—
Ethyl butyl ketone (3-Heptanone)	106-35-4	50 ppm	75 ppm	—	—
Ethyl chloride	75-00-3	1,000 ppm	1,250 ppm	—	—
Ethylene	74-85-1	Simple asphyxiant	—	—	—
Ethylene chlorohydrin (2-Chloroethanol)	107-07-3	—	—	1 ppm	X
Ethylenediamine (1,2-Diaminoethane)	107-15-3	10 ppm	20 ppm	—	X
Ethylene dibromide	106-93-4	0.1 ppm	0.5 ppm	—	—
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	1 ppm	2 ppm	—	—
Ethylene glycol	107-21-1	—	—	50 ppm	—
Ethylene glycol dinitrate	628-96-6	—	0.1 mg/m <sup>3</sup>	—	X

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Ethylene glycol monomethyl ether acetate (Methyl cellosolve acetate)	—	5 ppm	10 ppm	—	X
Ethyleneimine	151-56-4	—	—	—	X
Ethylene oxide	75-21-8	1 ppm	5 ppm	—	—
Ethyl ether (Diethyl ether)	60-29-7	400 ppm	500 ppm	—	—
Ethyl formate	109-94-4	100 ppm	125 ppm	—	—
Ethylidene chloride (1, 1-Dichloroethane)	107-06-2	1 ppm	2 ppm	—	—
Ethylidene norbornene	16219-75-3	—	—	5.0 ppm	—
Ethyl mercaptan (Ethanethiol)	75-08-1	0.5 ppm	1.5 ppm	—	—
n-Ethylmorpholine	100-74-3	5 ppm	10 ppm	—	X
Ethyl sec-amyl ketone (5-methyl-3-heptanone)	541-85-5	25 ppm	38 ppm	—	—
Ethyl silicate	78-10-4	10 ppm	20 ppm	—	—
Fenamiphos	22224-92-6	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Fensulfothion (Dasanit)	115-90-2	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Fenthion	55-38-9	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Ferbam	—	—	—	—	—
Total particulate	14484-64-1	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Ferrovandium dust	12604-58-9	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Fluorides (as F)	Varies with compound	2.5 mg/m <sup>3</sup>	5 mg/m <sup>3</sup>	—	—
Fluorine	7782-41-4	0.1 ppm	0.3 ppm	—	—
Fluorotrichloromethane (see Trichlorofluoro methane)	75-69-4	—	—	1,000 ppm	—
Fonofos	944-22-9	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Formaldehyde	50-00-0	0.75 ppm	2 ppm	—	—
Formamide	75-12-7	20 ppm	30 ppm	—	—
Formic acid	64-18-6	5 ppm	10 ppm	—	—
Furadon (carbofuran)	1563-66-2	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Furfural	98-01-1	2 ppm	4 ppm	—	X
Furfuryl alcohol	98-00-0	10 ppm	15 ppm	—	X
Gasoline	8006-61-9	300 ppm	500 ppm	—	—
Germanium tetrahydride	7782-65-2	0.2 ppm	0.6 ppm	—	—
Glass, fibrous or dust	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Gluteraldehyde	111-30-8	—	—	0.2 ppm	—
Glycerin mist	56-81-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Glycidol (2, 3-Epoxy-1-propanol)	556-52-5	25 ppm	38 ppm	—	—
Glycol monoethyl ether (2-Ethoxyethanol)	110-80-5	5 ppm	10 ppm	—	X
Grain dust (oat, wheat, barley)	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Graphite, natural	7782-42-5	—	—	—	—
Respirable particulate	—	2.5 mg/m <sup>3</sup>	5 mg/m <sup>3</sup>	—	—
Graphite, synthetic	—	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Guthion (Azinphosmethyl)	86-50-0	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Gypsum	13397-24-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Hafnium	7440-58-6	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Helium	—	Simple asphyxiant	—	—	—
Heptachlor	76-44-8	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Heptane (n-heptane)	142-82-5	400 ppm	500 ppm	—	—
2-Heptanone (Methyl n-amyl ketone)	110-43-0	50 ppm	75 ppm	—	—
3-Heptanone (Ethyl butyl ketone)	106-35-4	50 ppm	75 ppm	—	—
Hexachlorobutadiene	87-68-3	0.02 ppm	0.06 ppm	—	X
Hexachlorocyclopentadiene	77-47-4	0.01 ppm	0.03 ppm	—	—
Hexachloroethane	67-72-1	1 ppm	3 ppm	—	X
Hexachloronaphthalene	1335-87-1	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Hexafluoroacetone	684-16-2	0.1 ppm	0.3 ppm	—	X
Hexane	—	—	—	—	—
n-hexane	110-54-3	50 ppm	75 ppm	—	—
other isomers	Varies with compound	500 ppm	1,000 ppm	—	—
2-Hexanone (Methyl-n-butyl ketone)	591-78-6	5 ppm	10 ppm	—	—
Hexone (Methyl isobutyl ketone)	108-10-1	50 ppm	75 ppm	—	—
sec-Hexyl acetate	108-84-9	50 ppm	75 ppm	—	—
Hexylene glycol	107-41-5	—	—	25 ppm	—
Hydrazine	302-01-2	0.1 ppm	0.3 ppm	—	X
Hydrogen	—	Simple asphyxiant	—	—	—
Hydrogenated terphenyls	61788-32-7	0.5 ppm	1.5 ppm	—	—
Hydrogen bromide	10035-10-6	—	—	3.0 ppm	—
Hydrogen chloride	7647-01-0	—	—	5.0 ppm	—
Hydrogen cyanide	74-90-8	—	4.7 ppm	—	X
Hydrogen fluoride	7664-39-3	—	—	3 ppm	—
Hydrogen peroxide	7722-84-1	1 ppm	3 ppm	—	—
Hydrogen selenide (as Se)	7783-07-5	0.05 ppm	0.15 ppm	—	—
Hydrogen sulfide	7783-06-4	10 ppm	15 ppm	—	—
Hydroquinone (Dihydroxybenzene)	123-31-9	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
4-Hydroxy-4-methyl-2-pentanone (Diacetone alcohol)	123-42-2	50 ppm	75 ppm	—	—
2-Hydroxypropyl acrylate	99-61-1	0.5 ppm	1.5 ppm	—	X
Indene	95-13-6	10 ppm	20 ppm	—	—
Indium and compounds (as In)	7440-74-6	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Iodine	7553-56-2	—	—	0.1 ppm	—
Iodoform	75-47-8	0.6 ppm	1.8 ppm	—	—
Iron oxide dust and fume (as Fe)	1309-37-1	—	—	—	—
Total particulate	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Iron pentacarbonyl (as Fe)	13463-40-6	0.1 ppm	0.2 ppm	—	—
Iron salts, soluble (as Fe)	Varies with compound	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Isoamyl acetate	123-92-2	100 ppm	150 ppm	—	—
Isoamyl alcohol (primary and secondary)	123-51-3	100 ppm	125 ppm	—	—
Isobutyl acetate	110-19-0	150 ppm	188 ppm	—	—
Isobutyl alcohol	78-83-1	50 ppm	75 ppm	—	—
Isooctyl alcohol	26952-21-6	50 ppm	75 ppm	—	X
Isophorone	78-59-1	4 ppm	—	5 ppm	—
Isophorone diisocyanate	4098-71-9	0.005 ppm	0.02 ppm	—	X
Isopropoxyethanol	109-59-1	25 ppm	38 ppm	—	—
Isopropyl acetate	108-21-4	250 ppm	310 ppm	—	—
Isopropyl alcohol	67-63-0	400 ppm	500 ppm	—	—
Isopropylamine	75-31-0	5 ppm	10 ppm	—	—
N-Isopropylaniline	768-52-5	2 ppm	4 ppm	—	X

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Isopropyl ether	108-20-3	250 ppm	313 ppm	—	—
Isopropyl glycidyl ether (IGE)	4016-14-2	50 ppm	75 ppm	—	—
Kaolin	—	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Ketene	463-51-4	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Lannate (Methomyl)	16752-77-5	2.5 mg/m <sup>3</sup>	5 mg/m <sup>3</sup>	—	—
Lead, inorganic (as Pb)	7439-92-1	0.05 mg/m <sup>3</sup>	—	—	—
Lead arsenate (as Pb)	3687-31-8	0.05 mg/m <sup>3</sup>	—	—	—
Lead chromate (as Pb)	7758-97-6	0.05 mg/m <sup>3</sup>	—	—	—
Limestone	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Lindane	58-89-9	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Lithium hydride	7580-67-8	0.025 mg/m <sup>3</sup>	0.075 mg/m <sup>3</sup>	—	—
L.P.G. (liquified petroleum gas)	68476-85-7	1,000 ppm	1,250 ppm	—	—
Magnesite	546-93-0	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Magnesium oxide fume	1309-48-4	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Malathion	121-75-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	X
Maleic anhydride	108-31-6	0.25 ppm	0.75 ppm	—	—
Manganese and compounds (as Mn)	7439-96-5	—	—	5 mg/m <sup>3</sup>	—
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Manganese tetroxide and fume (as Mn)	7439-96-5	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Marble	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
MBOCA (4, 4'-Methylene bis (2-chloro-aniline))	101-14-4	—	—	—	X
MDA (4, 4-Methylene dianiline)	101-77-9	0.01 ppm	0.1 ppm	—	X
MDI (Methylene bisphenyl isocyanate) (Diphenylmethane diisocyanate)	101-68-8	—	—	0.02 ppm	—
MEK (Methyl ethyl ketone) (2-Butanone)	78-93-3	200 ppm	300 ppm	—	—
MEKP (Methyl ethyl ketone peroxide)	1338-23-4	—	—	0.2 ppm	—
Mercury (as Hg)	7439-97-6	—	—	—	—
Aryl and inorganic	—	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Organo-alkyl compounds	—	0.01 mg/m <sup>3</sup>	0.03 mg/m <sup>3</sup>	—	X
Vapor	—	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	X
Mesityl oxide	141-79-7	15 ppm	25 ppm	—	—
Methacrylic acid	79-41-4	20 ppm	30 ppm	—	X
Methane	—	Simple asphyxiant	—	—	—
Methanethiol (Methyl mercaptan)	74-93-1	0.5 ppm	1.5 ppm	—	—
Methanol (Methyl alcohol)	67-56-1	200 ppm	250 ppm	—	X

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Methomyl (lannate)	16752-77-5	2.5 mg/m <sup>3</sup>	5 mg/m <sup>3</sup>	—	—
Methoxychlor	72-43-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
2-Methoxyethanol (Methyl cellosolve)	109-86-4	5 ppm	10 ppm	—	X
2-Methoxyethyl acetate (Methyl cellosolve acetate)	110-49-6	5 ppm	10 ppm	—	X
4-Methoxyphenol	150-76-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Methyl acetate	79-20-9	200 ppm	250 ppm	—	—
Methyl acetylene (propyne)	74-99-7	1,000 ppm	1,250 ppm	—	—
Methyl acetylene-propadiene mixture (MAPP)	—	1,000 ppm	1,250 ppm	—	—
Methyl acrylate	96-33-3	10 ppm	20 ppm	—	X
Methylacrylonitrile	126-98-7	1 ppm	3 ppm	—	X
Methylal (Dimethoxy-methane)	109-87-5	1,000 ppm	1,250 ppm	—	—
Methyl alcohol (methanol)	67-56-1	200 ppm	250 ppm	—	X
Methylamine	74-89-5	10 ppm	20 ppm	—	—
Methyl amyl alcohol (Methyl isobutyl carbinol)	108-11-2	25 ppm	40 ppm	—	X
Methyl n-amyl ketone (2-Heptanone)	110-43-0	50 ppm	75 ppm	—	—
N-Methyl aniline (Monomethyl aniline)	100-61-8	0.5 ppm	1.5 ppm	—	X
Methyl bromide	74-83-9	5 ppm	10 ppm	—	X
Methyl-n-butyl ketone (2-Hexanone)	591-78-6	5 ppm	10 ppm	—	—
Methyl cellosolve (2-Methoxyethanol)	109-86-4	5 ppm	10 ppm	—	X
Methyl cellosolve acetate (2-Methoxyethyl acetate)	110-49-6	5 ppm	10 ppm	—	X
Methyl chloride	74-87-3	50 ppm	100 ppm	—	—
Methyl chloroform (1, 1, 1-trichlorethane)	71-55-6	350 ppm	450 ppm	—	—
Methyl chloromethyl ether (chloromethyl methyl ether)	107-30-2	—	—	—	—
Methyl 2-cyanoacrylate	137-05-3	2 ppm	4 ppm	—	—
Methylcyclohexane	108-87-2	400 ppm	500 ppm	—	—
Methylcyclohexanol	25639-42-3	50 ppm	75 ppm	—	—
Methylcyclohexanone	583-60-8	50 ppm	75 ppm	—	X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12108-13-3	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Methyl demeton	8022-00-2	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Methylene bisphenyl isocyanate (MDI) (Diphenylmethane diisocyanate)	101-68-8	—	—	0.02 ppm	—
4, 4'-Methylene bis (2-chloro-aniline) (MBOCA)	101-14-4	—	—	—	X
Methylene bis (4-cyclohexylisocyanate)	5124-30-1	—	—	0.01 ppm	—
Methylene chloride (Dichloromethane)	75-09-2	25 ppm	125 ppm	—	—
4, 4-Methylene dianiline (MDA)	101-77-9	0.01 ppm	0.1 ppm	—	X
Methyl ethyl ketone (MEK) (2-Butanone)	78-93-3	200 ppm	300 ppm	—	—
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	—	—	0.2 ppm	—
Methyl formate	107-31-3	100 ppm	150 ppm	—	—
5-Methyl-3-heptanone (Ethyl amyl ketone)	541-85-5	25 ppm	38 ppm	—	—
Methyl hydrazine (Monomethyl hydrazine)	60-34-4	—	—	0.2 ppm	X
Methyl iodide	74-88-4	2 ppm	4 ppm	—	X
Methyl isoamyl ketone	110-12-3	50 ppm	75 ppm	—	—
Methyl isobutyl carbinol (Methyl amyl alcohol)	108-11-2	25 ppm	40 ppm	—	X
Methyl isobutyl ketone (Hexone)	108-10-1	50 ppm	75 ppm	—	—
Methyl isocyanate	624-83-9	0.02 ppm	0.06 ppm	—	X
Methyl isopropyl ketone	563-80-4	200 ppm	250 ppm	—	—

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Methyl mercaptan (Methanethiol)	74-93-1	0.5 ppm	1.5 ppm	—	—
Methyl methacrylate	80-62-6	100 ppm	150 ppm	—	—
Methyl parathion	298-00-0	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Methyl propyl ketone (2-Pentanone)	107-87-9	200 ppm	250 ppm	—	—
Methyl silicate	684-84-5	1 ppm	3 ppm	—	—
alpha-Methyl styrene	98-83-9	50 ppm	100 ppm	—	—
Mevinphos (Phosdrin)	7786-34-7	0.01 ppm	0.03 ppm	—	X
Metribuzin	21087-64-9	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Mica (Silicates) Respirable fraction	12001-26-2	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	—
Molybdenum (as Mo)	7439-98-7	—	—	—	—
Soluble compounds	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Insoluble compounds	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Monochlorobenzene (Chlorobenzene)	108-90-7	75 ppm	113 ppm	—	—
Monocrotophos (Azodrin)	6923-22-4	0.25 mg/m <sup>3</sup>	0.75 mg/m <sup>3</sup>	—	—
Monomethyl aniline (N-Methyl aniline)	100-61-8	0.5 ppm	1.5 ppm	—	X
Monomethyl hydrazine	—	—	—	0.2 ppm	—
Morpholine	110-91-8	20 ppm	30 ppm	—	X
Naled (Dibrom)	300-76-5	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	X
Naphtha	8030-30-6	100 ppm	150 ppm	—	X
Naphthalene	91-20-3	10 ppm	15 ppm	—	—
alpha-Naphthylamine	134-32-7	—	—	—	—
beta-Naphthylamine	91-59-8	—	—	—	—
Neon	7440-01-9	Simple asphyxiant	—	—	—
Nickel carbonyl (as Ni)	13463-39-3	0.001 ppm	0.003 ppm	—	—
Nickel (as Ni)	7440-02-0	—	—	—	—
Metal and insoluble compounds	—	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Soluble compounds	—	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Nicotine	54-11-5	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Nitrapyrin (2-Chloro-6 trichloromethyl pyridine)	1929-82-4	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Nitric acid	7697-37-2	2 ppm	4 ppm	—	—
Nitric oxide	10102-43-9	25 ppm	38 ppm	—	—
p-Nitroaniline	100-01-6	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	X
Nitrobenzene	98-95-3	1 ppm	3 ppm	—	X
4-Nitrobiphenyl	92-93-3	—	—	—	—
p-Nitrochlorobenzene	100-00-5	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
4-Nitrodiphenyl	—	—	—	—	—
Nitroethane	79-24-3	100 ppm	150 ppm	—	—
Nitrogen	7727-37-9	Simple asphyxiant	—	—	—
Nitrogen dioxide	10102-44-0	—	1 ppm	—	—
Nitrogen oxide (Nitrous oxide)	10024-97-2	50 ppm	75 ppm	—	—
Nitrogen trifluoride	7783-54-2	10 ppm	20 ppm	—	—
Nitroglycerin	55-63-0	—	0.1 mg/m <sup>3</sup>	—	X
Nitromethane	75-52-5	100 ppm	150 ppm	—	—
1-Nitropropane	108-03-2	25 ppm	38 ppm	—	—
2-Nitropropane	79-46-9	10 ppm	20 ppm	—	—
N-Nitrosodimethylamine	62-75-9	—	—	—	—
Nitrotoluene	—	—	—	—	—
o-isomer	88-72-2	2 ppm	4 ppm	—	X

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
m-isomer	98-08-2	2 ppm	4 ppm	—	X
p-isomer	99-99-0	2 ppm	4 ppm	—	X
Nitrotrichloromethane (Chloropicrin)	76-06-2	0.1 ppm	0.3 ppm	—	—
Nitrous oxide (Nitrogen oxide)	10024-97-2	50 ppm	75 ppm	—	—
Nonane	111-84-2	200 ppm	250 ppm	—	—
Octachloronaphthalene	2234-13-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Octane	111-65-9	300 ppm	375 ppm	—	—
Oil mist mineral (particulate)	8012-95-1	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Osmium tetroxide (as Os)	20816-12-0	0.0002 ppm	0.0006 ppm	—	—
Oxalic acid	144-62-7	1 mg/m <sup>3</sup>	2 mg/m <sup>3</sup>	—	—
Oxygen difluoride	7783-41-7	—	—	0.05 ppm	—
Ozone	10028-15-6	0.1 ppm	0.3 ppm	—	—
Paper fiber (Cellulose)	9004-34-6	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Paraffin wax fume	8002-74-2	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Paraquat	—	—	—	—	—
Respirable fraction	4685-14-7	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
	1910-42-5	—	—	—	—
	2074-50-2	—	—	—	—
Parathion	56-38-2	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Particulate polycyclic aromatic hydrocarbons (benzene soluble fraction) (coal tar pitch volatiles)	65996-93-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Particulates not otherwise regulated	—	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Pentaborane	19624-22-7	0.005 ppm	0.015 ppm	—	—
Pentachloronaphthalene	1321-64-8	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Pentachlorophenol	87-86-5	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Pentaerythritol	115-77-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Pentane	109-66-0	600 ppm	750 ppm	—	—
2-Pentanone (methyl propyl ketone)	107-87-9	200 ppm	250 ppm	—	—
Perchloroethylene (tetrachloroethylene)	127-18-4	25 ppm	38 ppm	—	—
Perchloromethyl mercaptan	594-42-3	0.1 ppm	0.3 ppm	—	—
Perchloryl fluoride	7616-94-6	3 ppm	6 ppm	—	—
Perlite	—	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Petroleum distillates (Naptha, rubber solvent)	—	100 ppm	150 ppm	—	—
Phenacyl chloride (a-Chloroacetophenone)	532-21-4	0.05 ppm	0.15 ppm	—	—
Phenol	108-95-2	5 ppm	10 ppm	—	X
Phenothiazine	92-84-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	X
p-Phenylene diamine	106-50-3	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Phenyl ether (vapor)	101-84-8	1 ppm	3 ppm	—	—
Phenyl ether-diphenyl mixture (vapor)	—	1 ppm	3 ppm	—	—
Phenylethylene (Styrene)	100-42-5	50 ppm	100 ppm	—	—

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Phenyl glycidyl ether (PGE)	122-60-1	1 ppm	3 ppm	—	—
Phenylhydrazine	100-63-0	5 ppm	10 ppm	—	X
Phenyl mercaptan	108-98-5	0.5 ppm	1.5 ppm	—	—
Phenylphosphine	638-21-1	—	—	0.05 ppm	—
Phorate	298-02-2	0.05 mg/m <sup>3</sup>	0.2 mg/m <sup>3</sup>	—	X
Phosdrin (Mevinphos)	7786-34-7	0.01 ppm	0.03 ppm	—	X
Phosgene (carbonyl chloride)	75-44-5	0.1 ppm	0.3 ppm	—	—
Phosphine	7803-51-2	0.3 ppm	1 ppm	—	—
Phosphoric acid	7664-38-2	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Phosphorus (yellow)	7723-14-0	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Phosphorous oxychloride	10025-87-3	0.1 ppm	0.3 ppm	—	—
Phosphorus pentachloride	10026-13-8	0.1 ppm	0.3 ppm	—	—
Phosphorus pentasulfide	1314-80-3	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Phosphorus trichloride	12-2-19	0.2 ppm	0.5 ppm	—	—
Phthalic anhydride	85-44-9	1 ppm	3 ppm	—	—
m-Phthalodinitrile	626-17-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Picloram	1918-02-1	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Picric acid (2, 4, 6-Trinitrophenol)	88-89-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Pindone					
(2-Pivalyl-1, 3-indandione, Pival)	83-26-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Piperazine dihydrochloride	142-64-3	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Pival (Pindone)	83-26-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Plaster of Paris	26499-65-0	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Platinum (as Pt)	7440-06-4	—	—	—	—
Metal	—	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Soluble salts	—	0.002 mg/m <sup>3</sup>	0.006 mg/m <sup>3</sup>	—	—
Polychlorobiphenyls					
(Chlorodiphenyls)	—	—	—	—	—
42% Chlorine (PCB)	53469-21-9	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
54% Chlorine (PCB)	11097-69-1	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Portland cement	65997-15-1	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Potassium hydroxide	1310-58-3	—	—	2 mg/m <sup>3</sup>	—
Propane	74-98-6	1,000 ppm	1,250 ppm	—	—
Propargyl alcohol	107-19-7	1 ppm	3 ppm	—	X
beta-Propiolactone	57-57-8	—	—	—	—
Propionic acid	79-09-4	10 ppm	20 ppm	—	—
Propoxur (Baygon)	114-26-1	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
n-Propyl acetate	109-60-4	200 ppm	250 ppm	—	—
n-Propyl alcohol	71-23-8	200 ppm	250 ppm	—	X
n-Propyl nitrate	627-13-4	25 ppm	40 ppm	—	—
Propylene	—	Simple asphyxiant	—	—	—
Propylene dichloride					
(1, 2-Dichloropropane)	78-87-5	75 ppm	110 ppm	—	—
Propylene glycol dinitrate	6423-43-4	0.05 ppm	0.15 ppm	—	X



Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Propylene glycol monomethyl ether	107-98-2	100 ppm	150 ppm	—	—
Propylene imine	75-55-8	2 ppm	4 ppm	—	X
Propylene oxide (1,2-Epoxypropane)	75-56-9	20 ppm	30 ppm	—	—
Propyne (Methyl acetylene)	74-99-7	1,000 ppm	1,250 ppm	—	—
Pyrethrum	8003-34-7	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Pyridine	110-86-1	5 ppm	10 ppm	—	—
Pyrocatechol (Catechol)	120-80-9	5 ppm	10 ppm	—	X
Quinone (p-Benzoquinone)	106-51-4	0.1 ppm	0.3 ppm	—	—
RDX (Cyclonite)	—	1.5 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
Resorcinol	108-46-3	10 ppm	20 ppm	—	—
Rhodium (as Rh)	7440-16-6	—	—	—	—
Insoluble compounds, metal fumes and dusts	—	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Soluble compounds, salts	—	0.001 mg/m <sup>3</sup>	0.003 mg/m <sup>3</sup>	—	—
Ronnel	299-84-3	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Rosin core solder, pyrolysis products (as formaldehyde)	8050-09-7	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Rotenone	83-79-4	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Rouge	—	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Rubber solvent (naphtha)	8030-30-6	100 ppm	150 ppm	—	—
Selenium compounds (as Se)	7782-49-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Selenium hexafluoride (as Se)	7783-79-1	0.05 ppm	0.15 ppm	—	—
Sesone (Crag herbicide)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Sevin (Carbaryl)	63-25-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Silane (see Silicon tetrahydride)	7803-62-5	5 ppm	10 ppm	—	—
Silica, amorphous, precipitated and gel	112926-00-8	6 mg/m <sup>3</sup>	12 mg/m <sup>3</sup>	—	—
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	61790-53-2	—	—	—	—
Total particulate	—	6 mg/m <sup>3</sup>	12 mg/m <sup>3</sup>	—	—
Respirable fraction	—	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	—
Silica, crystalline cristobalite	—	—	—	—	—
Respirable fraction	14464-46-1	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	—
Applies where the exposure limit in chapter 296-840 WAC is not in effect.					
Silica, crystalline quartz	—	—	—	—	—
Respirable fraction	14808-60-7	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Applies where the exposure limit in chapter 296-840 WAC is not in effect.					
Silica, crystalline tripoli (as quartz)	—	—	—	—	—
Respirable fraction	1317-95-9	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Silica, crystalline tridymite	—	—	—	—	—
Respirable fraction	15468-32-3	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	—
Applies where the exposure limit in chapter 296-840 WAC is not in effect.					
Silica, fused	—	—	—	—	—
Respirable fraction	60676-86-0	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Silicates (less than 1% crystalline silica )	—	—	—	—	—

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Mica	—	—	—	—	—
Respirable fraction	12001-26-2	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	—
Soapstone	—	—	—	—	—
Total particulate	—	6 mg/m <sup>3</sup>	12 mg/m <sup>3</sup>	—	—
Respirable fraction	—	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	—
Talc (containing asbestos)	—	—	—	—	—
Talc (containing no asbestos)	—	—	—	—	—
Respirable fraction	14807-96-6	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Tremolite	—	—	—	—	—
Silicon	7440-21-3	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Silicon carbide	409-21-2	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Silicon tetrahydride (Silane)	7803-62-5	5 ppm	10 ppm	—	—
Silver, metal dust and soluble compounds (as Ag)	7440-22-4	0.01 mg/m <sup>3</sup>	0.03 mg/m <sup>3</sup>	—	—
Soapstone	—	—	—	—	—
Total particulate	—	6 mg/m <sup>3</sup>	12 mg/m <sup>3</sup>	—	—
Respirable fraction	—	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	—
Sodium azide (as HN <sub>3</sub> or NaN <sub>3</sub> )	26628-22-8	—	—	0.1 ppm	X
Sodium bisulfite	7631-90-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Sodium-2, 4-dichloro-phenoxyethyl sulfate (Crag herbicide)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Sodium fluoroacetate	62-74-8	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	X
Sodium hydroxide	1310-73-2	—	—	2 mg/m <sup>3</sup>	—
Sodium metabisulfite	7681-57-4	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Starch	9005-25-8	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Stibine	7803-52-3	0.1 ppm	0.3 ppm	—	—
Stoddard solvent	8052-41-3	100 ppm	150 ppm	—	—
Strychnine	57-24-9	0.15 mg/m <sup>3</sup>	0.45 mg/m <sup>3</sup>	—	—
Styrene (Phenylethylene, Vinyl benzene)	100-42-5	50 ppm	100 ppm	—	—
Subtilisins	9014-01-1	—	0.00006 mg/m <sup>3</sup> (60 min.)	—	—
Sucrose	57-50-1	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Sulfotep (TEDP)	3689-24-5	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Sulfur dioxide	7446-09-5	2 ppm	5 ppm	—	—
Sulfur hexafluoride	2551-62-4	1,000 ppm	1,250 ppm	—	—
Sulfuric acid	7664-93-9	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Sulfur monochloride	10025-67-9	—	—	1 ppm	—
Sulfur pentafluoride	5714-22-1	—	—	0.01 ppm	—
Sulfur tetrafluoride	7783-60-0	—	—	0.1 ppm	—

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Sulfuryl fluoride	2699-79-8	5 ppm	10 ppm	—	—
Sulprofos	35400-43-2	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Systox (Demeton)	8065-48-3	0.01 ppm	0.03 ppm	—	X
2, 4, 5-T	93-76-5	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Talc (containing asbestos)	—	—	—	—	—
Talc (containing no asbestos)	—	—	—	—	—
Respirable fraction	14807-96-6	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Tantalum	—	—	—	—	—
Metal and oxide dusts	7440-25-7	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
TDI (Toluene-2, 4-diisocyanate)	584-84-9	0.005 ppm	0.02 ppm	—	—
TEDP (Sulfotep)	3689-24-5	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Tellurium and compounds (as Te)	13494-80-9	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Tellurium hexafluoride (as Te)	7783-80-4	0.02 ppm	0.06 ppm	—	—
Temephos (Abate)	3383-96-8	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
TEPP	107-49-3	0.004 ppm	0.012 ppm	—	X
Terphenyls	26140-60-3	—	—	0.5 ppm	—
1, 1, 1, 2-Tetrachloro-2, 2-difluoroethane	76-11-0	500 ppm	625 ppm	—	—
1, 1, 2, 2-Tetrachloro-1, 2-difluoroethane	76-12-0	500 ppm	625 ppm	—	—
1, 1, 2, 2-Tetrachloroethane	79-34-5	1 ppm	3 ppm	—	X
Tetrachloroethylene (Perchloroethylene)	127-18-4	25 ppm	38 ppm	—	—
Tetrachloromethane (Carbon tetrachloride)	56-23-5	2 ppm	4 ppm	—	X
Tetrachloronaphthalene	1335-88-2	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	X
Tetraethyl lead (as Pb)	78-00-2	0.075 mg/m <sup>3</sup>	0.225 mg/m <sup>3</sup>	—	X
Tetrahydrofuran	109-99-9	200 ppm	250 ppm	—	—
Tetramethyl lead (as Pb)	75-74-1	0.075 mg/m <sup>3</sup>	0.225 mg/m <sup>3</sup>	—	X
Tetramethyl succinonitrile	3333-52-6	0.5 ppm	1.5 ppm	—	X
Tetranitromethane	509-14-8	1 ppm	3 ppm	—	—
Tetrasodium pyrophosphate	7722-88-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Tetryl (2, 4, 6-trinitrophenyl-methylnitramine)	479-45-8	1.5 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
Thallium (soluble compounds) (as Tl)	7440-28-0	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
4, 4-Thiobis (6-tert-butyl-m-cresol)	96-69-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Thiodan (Endosulfan)	115-29-7	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Thioglycolic acid	68-11-1	1 ppm	3 ppm	—	X
Thionyl chloride	7719-09-7	—	—	1 ppm	—
Thiram	137-26-8	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Tin (as Sn)	—	—	—	—	—
Inorganic compounds	7440-31-5	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Organic compounds	7440-31-5	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Tin oxide (as Sn)	21651-19-4	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Titanium dioxide	13463-67-7	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
TNT (2, 4, 6-Trinitrotoluene)	118-96-7	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Toluene	108-88-3	100 ppm	150 ppm	—	—

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Toluene-2, 4-diisocyanate (TDI)	584-84-9	0.005 ppm	0.02 ppm	—	—
m-Toluidine	108-44-1	2 ppm	4 ppm	—	X
o-Toluidine	95-53-4	2 ppm	4 ppm	—	X
p-Toluidine	106-49-0	2.0 ppm	4 ppm	—	X
Toxaphene (Chlorinated camphene)	8001-35-2	0.5 mg/m <sup>3</sup>	1 mg/m <sup>3</sup>	—	X
Tremolite	—	—	—	—	—
Tributyl phosphate	126-73-8	0.2 ppm	0.6 ppm	—	—
Trichloroacetic acid	76-03-9	1 ppm	3 ppm	—	—
1, 2, 4-Trichlorobenzene	120-82-1	—	—	5 ppm	—
1, 1, 1-Trichloroethane (Methyl chloroform)	71-55-6	350 ppm	450 ppm	—	—
1, 1, 2-Trichloroethane	79-00-5	10 ppm	20 ppm	—	—
Trichloroethylene	79-01-6	50 ppm	200 ppm	—	—
Trichlorofluoromethane (Fluorotrichloromethane)	75-69-4	—	—	1,000 ppm	—
Trichloromethane (Chloroform)	67-66-3	2 ppm	4 ppm	—	—
Trichloronaphthalene	1321-65-9	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	X
1, 2, 3-Trichloropropane	96-18-4	10 ppm	20 ppm	—	X
1, 1, 2-Trichloro-1, 2, 2-trifluoroethane	76-13-1	1,000 ppm	1,250 ppm	—	—
Tricyclohexyltin hydroxide (Cyhexatin)	13121-70-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Triethylamine	121-44-8	10 ppm	15 ppm	—	—
Trifluorobromomethane	75-63-8	1,000 ppm	1,250 ppm	—	—
Trimellitic anhydride	552-30-7	0.005 ppm	0.015 ppm	—	—
Trimethylamine	75-50-3	10 ppm	15 ppm	—	—
Trimethyl benzene	25551-13-7	25 ppm	38 ppm	—	—
Trimethyl phosphite	121-45-9	2 ppm	4 ppm	—	—
2, 4, 6-Trinitrophenol (Picric acid)	88-89-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
2, 4, 6-Trinitrophenyl-methylnitramine (Tetryl)	479-45-8	1.5 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
2, 4, 6-Trinitrotoluene (TNT)	118-96-7	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Triorthocresyl phosphate	78-30-8	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Triphenyl amine	603-34-9	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Triphenyl phosphate	115-86-6	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	—
Tungsten (as W)	7440-33-7	—	—	—	—
Soluble compounds	—	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Insoluble compounds	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Turpentine	8006-64-2	100 ppm	150 ppm	—	—
Uranium (as U)	7440-61-1	—	—	—	—
Soluble compounds	—	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	—
Insoluble compounds	—	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
n-Valeraldehyde	110-62-3	50 ppm	75 ppm	—	—
Vanadium (as V2O5)	—	—	—	—	—
Respirable fraction	1314-62-1	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	—
Vegetable oil mist	—	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Vinyl acetate	108-05-1	10 ppm	20 ppm	—	—
Vinyl benzene (Styrene)	100-42-5	50 ppm	100 ppm	—	—
Vinyl bromide	593-60-2	5 ppm	10 ppm	—	—
Vinyl chloride (Chloroethylene)	75-01-4	1 ppm	5 ppm	—	—
Vinyl cyanide (Acrylonitrile)	107-13-1	2 ppm	10 ppm	—	—
Vinyl cyclohexene dioxide	106-87-6	10 ppm	20 ppm	—	X

Substance	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Vinyl toluene	25013-15-4	50 ppm	75 ppm	—	—
Vinylidene chloride (1, 1-Dichloroethylene)	75-35-4	1 ppm	3 ppm	—	—
VM & P Naphtha	8032-32-4	300 ppm	400 ppm	—	—
Warfarin	81-81-2	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Welding fumes (total particulate)	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Wood dust	—	—	—	—	—
Nonallergenic; (All woods except allergenics)	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Allergenics (e.g. cedar, mahogany and teak)	—	2.5 mg/m <sup>3</sup>	5 mg/m <sup>3</sup>	—	—
Xylenes (ortho, meta, and para isomers) (Dimethylbenzene)	1330-20-7	100 ppm	150 ppm	—	—
m-Xylene alpha, alpha-diamine	1477-55-0	—	—	0.1 mg/m <sup>3</sup>	X
Xylidine (Dimethylaminobenzene)	1300-73-8	2 ppm	4 ppm	—	X
Yttrium	7440-65-5	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Zinc chloride fume	7646-85-7	1 mg/m <sup>3</sup>	2 mg/m <sup>3</sup>	—	—
Zinc chromate (as CrO <sub>3</sub> )	Varies with compound	0.05 mg/m <sup>3</sup>	—	0.1 mg/m <sup>3</sup>	—
Zinc oxide	1314-13-2	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Zinc oxide fume	1314-13-2	5 mg/g <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Zinc stearate	557-05-1	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Zirconium compounds (as Zr)	7440-67-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—

**AMENDATORY SECTION** (Amending WSR 18-07-098, filed 3/20/18, effective 4/23/18)

**WAC 296-841-20025 Permissible exposure limits (PELs).**

**IMPORTANT:**

The following information applies to Table 3, Permissible Exposure Limits (PELs) for Airborne Contaminants.

(1) Ppm refers to parts of vapor or gas per million parts of air by volume, at 25 degrees C and 760 mm Hg pressure.

(2) Mg/m<sup>3</sup> refers to milligrams of an airborne contaminant per cubic meter of air.

(3) F/cc refers to fibers per cubic centimeter of air.

(4) For a metal that is measured as the metal itself, only the CAS number for the metal is given. The CAS numbers for individual compounds of the metal are not provided. For more information about CAS registry numbers see the web site: <http://www.cas.org>.

(5) Short-term exposure limits (STEL) pertain to fifteen-minute exposure periods, unless another time period is noted in Table 3.

(6) An "X" in the "skin" column indicates the contaminant can be absorbed through the skin, either by airborne or direct contact.

(a) Personal protective equipment (PPE) to prevent skin contact may be needed to minimize the risk for adverse health effects when employees are exposed to these chemicals.

(b) Requirements for the use of gloves, coveralls, goggles, and other personal protective equipment can be found in WAC 296-800-160, Personal protective equipment (PPE).

(7) Nuisance dusts (also known as inert dusts) are included in the Table 3 listing, particulates not otherwise regulated (PNOR).

The PNOR listing in Table 3 also applies to other particulate airborne contaminants for which a specific PEL is NOT listed **unless** the airborne contaminant is found to require a lower limit.

(8) The respirable fraction of a particulate airborne contaminant is measured by sampling with a size-selector having the following characteristics:

Mean aerodynamic diameter in micrometers	Percent passing the selector
1	97
2	91
3	74
4	50
5	30
6	17
7	9
8	5
10	1

Table 3 "Permissible Exposure Limits (PELs) for Airborne Contaminants"

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Abate (Temephos)	3383-96-8	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Acetaldehyde	75-07-0	100 ppm	150 ppm	—	—
Acetic acid	64-19-7	10 ppm	20 ppm	—	—
Acetic anhydride	108-24-7	—	—	5 ppm	—
Actinolite (asbestiform) (as asbestos) (see WAC 296-62-077 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Acetone	67-64-1	750 ppm	1,000 ppm	—	—
Acetonitrile	75-05-8	40 ppm	60 ppm	—	—
2-Acetylaminofluorene (see WAC 296-62-073)	53-96-3	—	—	—	—
Acetylene	74-86-2	Simple asphyxiant	—	—	—
Acetylene dichloride (1,2-Dichloroethylene)	540-59-0	200 ppm	250 ppm	—	—
Acetylene tetrabromide	79-27-6	1 ppm	3 ppm	—	—
Acetylsalicylic acid (Aspirin)	50-78-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Acrolein	107-02-8	0.1 ppm	0.3 ppm	—	—
Acrylamide	79-06-1	0.03 mg/m <sup>3</sup>	0.09 mg/m <sup>3</sup>	—	X
Acrylic acid	79-10-7	10 ppm	20 ppm	—	X
Acrylonitrile (Vinyl cyanide) (see WAC 296-62-07336)	107-13-1	2 ppm	10 ppm	—	—
Aldrin	309-00-2	0.25 mg/m <sup>3</sup>	0.75 mg/m <sup>3</sup>	—	X
Allyl alcohol	107-18-6	2 ppm	4 ppm	—	X
Allyl chloride	107-05-1	1 ppm	2 ppm	—	—
Allyl glycidyl ether (AGE)	106-92-3	5 ppm	10 ppm	—	—
Allyl propyl disulfide	2179-59-1	2 ppm	3 ppm	—	—
alpha-Alumina (Aluminum oxide)	1344-28-1	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Aluminum (as Al)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Pyro powders	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Welding fumes	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Soluble salts	—	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Alkyls (NOC)	—	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Aluminum oxide (Alundum, Corundum)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
4-Aminodiphenyl (see WAC 296-62-073)	92-67-1	—	—	—	—
2-Aminoethanol (Ethanolamine)	141-43-5	3 ppm	6 ppm	—	—
2-Aminopyridine	504-29-0	0.5 ppm	1.5 ppm	—	—
Amitrole	61-82-5	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Ammonia	7664-41-7	25 ppm	35 ppm	—	—
Ammonium chloride, fume	12125-02-9	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Ammonium sulfamate (Ammate)	7773-06-0	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5.0 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Amosite (as asbestos) (see WAC 296-62-077 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
n-Amyl acetate	628-63-7	100 ppm	150 ppm	—	—
sec-Amyl acetate	626-38-0	125 ppm	156 ppm	—	—
Aniline and homologues	62-53-3	2 ppm	4 ppm	—	X
Anisidine (o, p-isomers)	29191-52-4	0.1 ppm	0.3 ppm	—	X
Anthophyllite (asbestiform) (as asbestos) (see WAC 296-62-077 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Antimony and compounds (as Sb)	7440-36-0	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
ANTU (alpha Naphthyl thiourea)	86-88-4	0.3 mg/m <sup>3</sup>	0.9 mg/m <sup>3</sup>	—	—
Argon	7440-37-1	Simple asphyxiant	—	—	—
Arsenic, organic compounds (as As)	7440-38-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Arsenic, inorganic compounds (as As) (when use is covered by chapter 296-848 WAC)	7440-38-2	0.01 mg/m <sup>3</sup>	—	—	—
Arsenic, inorganic compounds (as As) (when use is not covered by chapter 296-848 WAC)	7440-38-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Arsine	7784-42-1	0.05 ppm	0.15 ppm	—	—
Asbestos (see WAC 296-62-077 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Asphalt (Petroleum fumes)	8052-42-4	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Atrazine	1912-24-9	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Azinphos methyl (Guthion)	86-50-0	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Azodrin (Monocrotophos)	6923-22-4	0.25 mg/m <sup>3</sup>	0.75 mg/m <sup>3</sup>	—	—
Barium, soluble compounds (as Ba)	7440-39-3	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Barium sulfate	7727-43-7	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Baygon (Propoxur)	114-26-1	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Benomyl	17804-35-2	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Benzene (see chapter 296-849 WAC)	71-43-2	1 ppm	5 ppm	—	—
Benzidine (see WAC 296-62-073)	92-87-5	—	—	—	—
p-Benzoquinone (Quinone)	106-51-4	0.1 ppm	0.3 ppm	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Benzo(a) pyrene (Coal tar pitch volatiles)	65996-93-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Benzoyl peroxide	94-36-0	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Benzyl chloride	100-44-7	1 ppm	3 ppm	—	—
Beryllium and beryllium compounds (as Be) (see chapter 296-850 WAC)	7440-41-7	((0.002)) 0.0002 mg/m <sup>3</sup>	((0.005)) 0.002 mg/m <sup>3</sup> ((30 min.))	((0.025 mg/m <sup>3</sup> )) —	—
Biphenyl (Diphenyl)	92-52-4	0.2 ppm	0.6 ppm	—	—
Bismuth telluride, undoped	1304-82-1	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Bismuth telluride, Se-doped	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Borates, tetra, sodium salts	—	—	—	—	—
Anhydrous	1330-43-4	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Decahydrate	1303-96-4	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Pentahydrate	12179-04-3	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Boron oxide	1303-86-2	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Boron tribromide	10294-33-4	—	—	1 ppm	—
Boron trifluoride	6737-07-2	—	—	1 ppm	—
Bromacil	314-40-9	1 ppm	3 ppm	—	—
Bromine	7726-95-6	0.1 ppm	0.3 ppm	—	—
Bromine pentafluoride	7789-30-2	0.1 ppm	0.3 ppm	—	—
Bromochloromethane (Chlorobromomethane)	74-97-5	200 ppm	250 ppm	—	—
Bromoform	15-25-2	0.5 ppm	1.5 ppm	—	X
Butadiene (1,3-butadiene) (see WAC 296-62-07460)	106-99-0	1 ppm	5 ppm	—	—
Butane	106-97-8	800 ppm	1,000 ppm	—	—
Butanethiol (Butyl mercaptan)	109-79-5	0.5 ppm	1.5 ppm	—	—
2-Butanone (Methyl ethyl ketone)	78-93-3	200 ppm	300 ppm	—	—
2-Butoxy ethanol (Butyl cellosolve)	111-76-2	25 ppm	38 ppm	—	X
n-Butyl acetate	123-86-4	150 ppm	200 ppm	—	—
sec-Butyl acetate	105-46-4	200 ppm	250 ppm	—	—
tert-Butyl acetate	540-88-5	200 ppm	250 ppm	—	—
Butyl acrylate	141-32-2	10 ppm	20 ppm	—	—
n-Butyl alcohol	71-36-3	—	—	50 ppm	X
sec-Butyl alcohol	78-92-2	100 ppm	150 ppm	—	—
tert-Butyl alcohol	75-65-0	100 ppm	150 ppm	—	—
Butylamine	109-73-9	—	—	5 ppm	X
Butyl cellosolve (2-Butoxy ethanol)	111-76-2	25 ppm	38 ppm	—	—
tert-Butyl chromate (as Cr) (see WAC 296-62-08003)	1189-85-1	0.005 mg/m <sup>3</sup>	—	0.1 mg/m <sup>3</sup>	X
n-Butyl glycidyl ether (BGE)	2426-08-6	25 ppm	38 ppm	—	—
n-Butyl lactate	138-22-7	5 ppm	10 ppm	—	—
Butyl mercaptan	109-79-5	0.5 ppm	1.5 ppm	—	—
o-sec-Butylphenol	89-72-5	5 ppm	10 ppm	—	X



Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
p-tert-Butyl-toluene	98-51-1	10 ppm	20 ppm	—	—
Cadmium oxide fume (as Cd) (see WAC 296-62-074 and 296-155-174)	1306-19-0	0.005 mg/m <sup>3</sup>	—	—	—
Cadmium dust and salts (as Cd) (see WAC 296-62-074 and 296-155-174)	7440-43-9	0.005 mg/m <sup>3</sup>	—	—	—
Calcium arsenate (see chapter 296-848 WAC)	—	0.01 mg/m <sup>3</sup>	—	—	—
Calcium carbonate	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Calcium cyanamide	156-62-7	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Calcium hydroxide	1305-62-0	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Calcium oxide	1305-78-8	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Calcium silicate	1344-95-2	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Calcium sulfate	7778-18-9	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Camphor (synthetic)	76-22-2	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Caprolactam	105-60-2	—	—	—	—
Dust	—	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Vapor	—	5 ppm	10 ppm	—	—
Captafol (Difolatan)	2425-06-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Captan	133-06-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Carbaryl (Sevin)	63-25-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Carbofuran (Furadon)	1563-66-2	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Carbon black	1333-86-4	3.5 mg/m <sup>3</sup>	7 mg/m <sup>3</sup>	—	—
Carbon dioxide	124-38-9	5,000 ppm	30,000 ppm	—	—
Carbon disulfide	75-15-0	4 ppm	12 ppm	—	X
Carbon monoxide	630-08-0	35 ppm	200 ppm (5 min.)	1,500 ppm	—
Carbon tetrabromide	558-13-4	0.1 ppm	0.3 ppm	—	—
Carbon tetrachloride (Tetrachloromethane)	56-23-5	2 ppm	4 ppm	—	X
Carbonyl chloride (Phosgene)	7803-51-2	0.1 ppm	0.3 ppm	—	—
Carbonyl fluoride	353-50-4	2 ppm	5 ppm	—	—
Catechol (Pyrocatechol)	120-80-9	5 ppm	10 ppm	—	X
Cellosolve acetate (2-Ethoxyethylacetate)	111-15-9	5 ppm	10 ppm	—	X
Cellulose (paper fiber)	9004-34-6	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Cesium hydroxide	21351-79-1	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Chlordane	57-74-9	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Chlorinated camphene (Toxaphen)	8001-35-2	0.5 mg/m <sup>3</sup>	1 mg/m <sup>3</sup>	—	X
Chlorinated diphenyl oxide	55720-99-5	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Chlorine	7782-50-5	0.5 ppm	—	1 ppm	—
Chlorine dioxide	10049-04-4	0.1 ppm	0.3 ppm	—	—
Chlorine trifluoride	7790-91-2	—	—	0.1 ppm	—
Chloroacetaldehyde	107-20-0	—	—	1 ppm	—
a-Chloroacetophenone (Phenacyl chloride)	532-21-4	0.05 ppm	0.15 ppm	—	—
Chloroacetyl chloride	79-04-9	0.05 ppm	0.15 ppm	—	—
Chlorobenzene (Monochlorobenzene)	108-90-7	75 ppm	113 ppm	—	—
o-Chlorobenzylidene malononitrile (OCBM)	2698-41-1	—	—	0.05 ppm	X
Chlorobromomethane	74-97-5	200 ppm	250 ppm	—	—
2-Chloro-1, 3-butadiene (beta-Chloroprene)	126-99-8	10 ppm	20 ppm	—	X
Chlorodifluoromethane	75-45-6	1,000 ppm	1,250 ppm	—	—
Chlorodiphenyl (42% Chlorine) (PCB) (Polychlorobiphenyls)	53469-21-9	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
Chlorodiphenyl (54% Chlorine) (Polychlorobiphenyls (PCB))	11097-69-1	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
1-Chloro-2, 3-epoxypropane (Epichlorhydrin)	106-89-8	2 ppm	4 ppm	—	X
2-Chloroethanol (Ethylene chlorohydrin)	107-07-3	—	—	1 ppm	X
Chloroethylene (vinyl chloride) (see WAC 296-62-07329)	75-01-4	1 ppm	5 ppm	—	—
Chloroform (Trichloromethane)	67-66-3	2 ppm	4 ppm	—	—
1-Chloro-1-nitropropane	600-25-9	2 ppm	4 ppm	—	—
bis-Chloromethyl ether (see WAC 296-62-073)	542-88-1	—	—	—	—
Chloromethyl methyl ether (Methyl chloromethyl ether) (see WAC 296-62-073)	107-30-2	—	—	—	—
Chloropentafluoroethane	76-15-3	1,000 ppm	1,250 ppm	—	—
Chloropicrin (Nitrotrichloromethane)	76-06-2	0.1 ppm	0.3 ppm	—	—
beta-Chloroprene (2-Chloro-1, 3-butadiene)	126-99-8	10 ppm	20 ppm	—	X
o-Chlorostyrene	2039-87-4	50 ppm	75 ppm	—	—
o-Chlorotoluene	95-49-8	50 ppm	75 ppm	—	—
2-Chloro-6-trichloromethyl pyridine (Nitrapyrin)	1929-82-4	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Chlorpyrifos	2921-88-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Chromic acid and chromates (as Cr) (when the compound is not covered by WAC 296-62-08003)	Varies with compound	—	—	0.1 mg/m <sup>3</sup>	—
Chromium	—	—	—	—	—
Chromium (VI) compounds (as Cr) (when the compound is covered by WAC 296-62-08003)	—	0.005 mg/m <sup>3</sup>	—	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Chromium metal or Chromium (II) compounds Or Chromium (III) compounds	7440-47-3	0.5 mg/m <sup>3</sup>	—	—	—
Chromyl chloride (as Cr) (see WAC 296-62-08003)	14977-61-8	0.005 mg/m <sup>3</sup>	—	—	—
Chrysene (Coal tar pitch volatiles)	65996-93-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Chrysotile (as asbestos) (see WAC 296-62-077 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Clopidol	2971-90-6	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Coal dust (less than 5% SiO <sub>2</sub> )	—	—	—	—	—
Respirable fraction	—	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Coal dust (greater than or equal to 5% SiO <sub>2</sub> )	—	—	—	—	—
Respirable fraction	—	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Coal tar pitch volatiles (benzene soluble fraction) Acridine Anthracene Benzo (a) pyrene Chrysene Phenanthrene Pyrene	65996-93-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Cobalt, metal fume & dust (as Co)	7440-48-4	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	—
Cobalt carbonyl (as Co)	10210-68-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Cobalt hydrocarbonyl (as Co)	16842-03-8	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Coke oven emissions (see WAC 296-62-200)	—	0.15 mg/m <sup>3</sup>	—	—	—
Copper (as Cu)	7440-50-8	—	—	—	—
Fume	—	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Dusts and mists	—	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Cotton dust (raw) (waste sorting, blending, cleaning, willowing and gartting) (see WAC 296-62-14533)	—	1 mg/m <sup>3</sup>	—	—	—
Corundum (Aluminum oxide)	7429-90-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Crag herbicide (Sesone, Sodium-2, 4-dichloro-phenoxyethyl sulfate)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Cresol (all isomers)	1319-77-3	5 ppm	10 ppm	—	X
Crocidolite (as asbestos) (see WAC 296-62-077 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Crotonaldehyde	123-73-9; 4170-30-3	2 ppm	4 ppm	—	—
Crufomate	299-86-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Cumene	98-82-8	50 ppm	75 ppm	—	X
Cyanamide	420-04-2	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Cyanide (as CN)	Varies with compound	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	X
Cyanogen	460-19-5	10 ppm	20 ppm	—	—
Cyanogen chloride	506-77-4	—	—	0.3 ppm	—
Cyclohexane	110-82-7	300 ppm	375 ppm	—	—
Cyclohexanol	108-93-0	50 ppm	75 ppm	—	X
Cyclohexanone	108-94-1	25 ppm	38 ppm	—	X
Cyclohexene	110-83-8	300 ppm	375 ppm	—	—
Cyclohexylamine	108-91-8	10 ppm	20 ppm	—	—
Cyclonite (RDX)	121-82-4	1.5 mg/m <sup>3</sup>	3.0 mg/m <sup>3</sup>	—	X
Cyclopentadiene	542-92-7	75 ppm	113 ppm	—	—
Cyclopentane	287-92-3	600 ppm	750 ppm	—	—
Cyhexatin (Tricyclohexyltin hydroxide)	13121-70-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
2,4-D (Dichlorophenoxy-acetic acid)	94-75-7	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
DBCP (1,2-Dibromo-3-chloropropane) (see WAC 296-62-07342)	96-12-8	0.001 ppm	—	0.005 ppm	—
DDT (Dichlorodiphenyltri-chloroethane)	50-29-3	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
DDVP, (Dichlorvos)	62-73-7	0.1 ppm	0.3 ppm	—	X
Dasanit (Fensulfothion)	115-90-2	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Decaborane	17702-41-9	0.05 ppm	0.15 ppm	—	X
Demeton	8065-48-3	0.01 ppm	0.03 ppm	—	X
Diacetone alcohol (4-hydroxy-4-methyl-2-pentanone)	123-42-2	50 ppm	75 ppm	—	—
1, 2-Diaminoethane (Ethylenediamine)	107-15-3	10 ppm	20 ppm	—	—
Diazinon	333-41-5	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Diazomethane	334-88-3	0.2 ppm	0.6 ppm	—	—
Diborane	19287-45-7	0.1 ppm	0.3 ppm	—	—
Dibrom (see Naled)	300-76-5	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	X
1, 2-Dibromo-3-chloropropane (DBCP) (see WAC 296-62-07342)	96-12-8	0.001 ppm	—	0.005 ppm	—
2-N-Dibutylamino ethanol	102-81-8	2 ppm	4 ppm	—	X
Dibutyl phosphate	107-66-4	1 ppm	2 ppm	—	—
Dibutyl phthalate	84-74-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Dichloroacetylene	7572-29-4	—	—	0.1 ppm	—
o-Dichlorobenzene	95-50-1	—	—	50 ppm	—
p-Dichlorobenzene	106-46-7	75 ppm	110 ppm	—	—
3, 3'-Dichlorobenzidine (see WAC 296-62-073)	91-94-1	—	—	—	—
Dichlorodiphenyltri-chloroethane (DDT)	50-29-3	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
Dichlorodifluoromethane	75-71-8	1,000 ppm	1,250 ppm	—	—
1, 3-Dichloro-5, 5-dimethyl hydantoin	118-52-5	0.2 mg/m <sup>3</sup>	0.4 mg/m <sup>3</sup>	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
1, 1-Dichloroethane (Ethylidene chloride)	75-34-3	100 ppm	150 ppm	—	—
1, 2-Dichloroethane (Ethylene dichloride)	107-06-2	1 ppm	2 ppm	—	—
1, 1-Dichloroethylene (Vinylidene chloride)	75-35-4	1 ppm	3 ppm	—	—
1, 2-Dichloroethylene (Acetylene dichloride)	540-59-0	200 ppm	250 ppm	—	—
Dichloroethyl ether	111-44-4	5 ppm	10 ppm	—	X
Dichlorofluoromethane	75-43-4	10 ppm	20 ppm	—	—
Dichloromethane (Methylene chloride) (see chapter 296-859 WAC)	75-09-2	25 ppm	125 ppm	—	—
1, 1-Dichloro-1-nitroethane	594-72-9	2 ppm	10 ppm	—	—
Dichlorophenoxyacetic acid (2, 4-D)	94-75-7	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
1, 2-Dichloropropane (Propylene dichloride)	78-87-5	75 ppm	110 ppm	—	—
Dichloropropene	542-75-6	1 ppm	3 ppm	—	X
2, 2-Dichloropropionic acid	75-99-0	1 ppm	3 ppm	—	—
Dichlorotetrafluoroethane	76-14-2	1,000 ppm	1,250 ppm	—	—
Dichlorvos (DDVP)	62-73-7	0.1 ppm	0.3 ppm	—	X
Dicrotophos	141-66-2	0.25 mg/m <sup>3</sup>	0.75 mg/m <sup>3</sup>	—	X
Dicyclopentadiene	77-73-6	5 ppm	10 ppm	—	—
Dicyclopentadienyl iron	102-54-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Dieldrin	60-57-1	0.25 mg/m <sup>3</sup>	0.75 mg/m <sup>3</sup>	—	X
Diethanolamine	111-42-2	3 ppm	6 ppm	—	—
Diethylamine	109-89-7	10 ppm	25 ppm	—	—
2-Diethylaminoethanol	100-37-8	10 ppm	20 ppm	—	X
Diethylene triamine	111-40-0	1 ppm	3 ppm	—	X
Diethyl ether (Ethyl ether)	60-29-7	400 ppm	500 ppm	—	—
Diethyl ketone	96-22-0	200 ppm	250 ppm	—	—
Diethyl phthalate	84-66-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Difluorodibromomethane	75-61-6	100 ppm	150 ppm	—	—
Difolatan (Captafol)	2425-06-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Diglycidyl ether (DGE)	2238-07-5	0.1 ppm	0.3 ppm	—	—
Dihydroxybenzene (Hydroquinone)	123-31-9	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Diisobutyl ketone (2, 6- Dimethylheptanone)	108-83-8	25 ppm	38 ppm	—	—
Diisopropylamine	108-18-9	5 ppm	10 ppm	—	X
Dimethoxymethane (Methylal)	109-87-5	1,000 ppm	1,250 ppm	—	—
Dimethyl acetamide	127-19-5	10 ppm	20 ppm	—	X
Dimethylamine	124-40-3	10 ppm	20 ppm	—	—
4-Dimethylaminoazo benzene (see WAC 296-62-073)	60-11-7	—	—	—	—
Dimethylaminobenzene (Xylidene)	1300-73-8	2 ppm	4 ppm	—	X
Dimethylaniline (N, N-Dimethylaniline)	121-69-7	5 ppm	10 ppm	—	X

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Dimethylbenzene (Xylene)	1300-73-8	100 ppm	150 ppm	—	—
Dimethyl-1, 2-dibromo-2, 2-dichloroethyl phosphate (Naled)	300-76-5	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	X
Dimethylformamide	68-12-2	10 ppm	20 ppm	—	X
2, 6-Dimethylheptanone (Diisobutyl ketone)	108-83-8	25 ppm	38 ppm	—	—
1, 1-Dimethylhydrazine	57-14-7	0.5 ppm	1.5 ppm	—	X
Dimethyl phthalate	131-11-3	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Dimethyl sulfate	77-78-1	0.1 ppm	0.3 ppm	—	X
Dinitolmide (3, 5-Dinitro-o-toluamide)	148-01-6	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Dinitrobenzene (all isomers - alpha, meta and para)	528-29-0; 99-65-0; 100-25-4	0.15 ppm	0.45 ppm	—	X
Dinitro-o-cresol	534-52-1	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
3, 5-Dinitro-o-toluamide (Dinitolmide)	148-01-6	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Dinitrotoluene	25321-14-6	1.5 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
Dioxane (Diethylene dioxide)	123-91-1	25 ppm	38 ppm	—	X
Dioxathion	78-34-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Diphenyl (Biphenyl)	92-52-4	0.2 ppm	0.6 ppm	—	—
Diphenylamine	122-39-4	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Diphenylmethane diisocyanate (Methylene bisphenyl isocyanate (MDI))	101-68-8	—	—	0.02 ppm	—
Dipropylene glycol methyl ether	34590-94-8	100 ppm	150 ppm	—	X
Dipropyl ketone	123-19-3	50 ppm	75 ppm	—	—
Diquat	85-00-7	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Di-sec, Octyl phthalate (Di-2-ethylhexylphthalate)	117-81-7	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Disulfram	97-77-8	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Disulfoton	298-04-4	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
2, 6-Di-tert-butyl-p-cresol	128-37-0	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Diuron	330-54-1	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Divinyl benzene	1321-74-0	10 ppm	20 ppm	—	—
Emery	12415-34-8	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Endosulfan (Thiodan)	115-29-7	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Endrin	72-20-8	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Epichlorhydrin (1-Chloro-2, 3-epoxypropane)	106-89-8	2 ppm	4 ppm	—	X
EPN	2104-64-5	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
1, 2-Epoxypropane (Propylene oxide)	75-56-9	20 ppm	30 ppm	—	—
2, 3-Epoxy-1-propanol (Glycidol)	556-52-5	25 ppm	38 ppm	—	—
Ethane	—	Simple asphyxiant	—	—	—
Ethanethiol (Ethyl mercaptan)	75-08-1	0.5 ppm	1.5 ppm	—	—
Ethanol (Ethyl alcohol)	64-17-5	1,000 ppm	1,250 ppm	—	—
Ethanolamine (2-Aminoethanol)	141-43-5	3 ppm	6 ppm	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Ethion	563-12-2	0.4 mg/m <sup>3</sup>	1.2 mg/m <sup>3</sup>	—	X
2-Ethoxyethanol (Glycol monoethyl ether)	110-80-5	5 ppm	10 ppm	—	X
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9	5 ppm	10 ppm	—	X
Ethyl acetate	141-78-6	400 ppm	500 ppm	—	—
Ethyl acrylate	140-88-5	5 ppm	25 ppm	—	X
Ethyl alcohol (ethanol)	64-17-5	1,000 ppm	1,250 ppm	—	—
Ethylamine	75-04-07	10 ppm	20 ppm	—	—
Ethyl amyl ketone (5-Methyl-3-hepatone)	541-85-5	25 ppm	38 ppm	—	—
Ethyl benzene	100-41-4	100 ppm	125 ppm	—	—
Ethyl bromide	74-96-4	200 ppm	250 ppm	—	—
Ethyl butyl ketone (3-Heptanone)	106-35-4	50 ppm	75 ppm	—	—
Ethyl chloride	75-00-3	1,000 ppm	1,250 ppm	—	—
Ethylene	74-85-1	Simple asphyxiant	—	—	—
Ethylene chlorohydrin (2-Chloroethanol)	107-07-3	—	—	1 ppm	X
Ethylenediamine (1,2-Diaminoethane)	107-15-3	10 ppm	20 ppm	—	X
Ethylene dibromide	106-93-4	0.1 ppm	0.5 ppm	—	—
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	1 ppm	2 ppm	—	—
Ethylene glycol	107-21-1	—	—	50 ppm	—
Ethylene glycol dinitrate	628-96-6	—	0.1 mg/m <sup>3</sup>	—	X
Ethylene glycol monomethyl ether acetate (Methyl cellosolve acetate)	—	5 ppm	10 ppm	—	X
Ethyleneimine (see WAC 296-62-073)	151-56-4	—	—	—	X
Ethylene oxide (see chapter 296-855 WAC)	75-21-8	1 ppm	5 ppm	—	—
Ethyl ether (Diethyl ether)	60-29-7	400 ppm	500 ppm	—	—
Ethyl formate	109-94-4	100 ppm	125 ppm	—	—
Ethylidene chloride (1, 1-Dichloroethane)	107-06-2	1 ppm	2 ppm	—	—
Ethylidene norbornene	16219-75-3	—	—	5.0 ppm	—
Ethyl mercaptan (Ethanethiol)	75-08-1	0.5 ppm	1.5 ppm	—	—
n-Ethylmorpholine	100-74-3	5 ppm	10 ppm	—	X
Ethyl sec-amyl ketone (5-methyl-3-heptanone)	541-85-5	25 ppm	38 ppm	—	—
Ethyl silicate	78-10-4	10 ppm	20 ppm	—	—
Fenamiphos	22224-92-6	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Fensulfothion (Dasanit)	115-90-2	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Fenthion	55-38-9	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Ferbam	—	—	—	—	—
Total particulate	14484-64-1	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Ferrovandium dust	12604-58-9	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Fluorides (as F)	Varies with compound	2.5 mg/m <sup>3</sup>	5 mg/m <sup>3</sup>	—	—
Fluorine	7782-41-4	0.1 ppm	0.3 ppm	—	—
Fluorotrichloromethane (see Trichlorofluoro methane)	75-69-4	—	—	1,000 ppm	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Fonofos	944-22-9	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Formaldehyde (see chapter 296-856 WAC)	50-00-0	0.75 ppm	2 ppm	—	—
Formamide	75-12-7	20 ppm	30 ppm	—	—
Formic acid	64-18-6	5 ppm	10 ppm	—	—
Furadon (carbofuran)	1563-66-2	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Furfural	98-01-1	2 ppm	4 ppm	—	X
Furfuryl alcohol	98-00-0	10 ppm	15 ppm	—	X
Gasoline	8006-61-9	300 ppm	500 ppm	—	—
Germanium tetrahydride	7782-65-2	0.2 ppm	0.6 ppm	—	—
Glass, fibrous or dust	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Glutaraldehyde	111-30-8	—	—	0.2 ppm	—
Glycerin mist	56-81-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Glycidol (2, 3-Epoxy-1-propanol)	556-52-5	25 ppm	38 ppm	—	—
Glycol monoethyl ether (2-Ethoxyethanol)	110-80-5	5 ppm	10 ppm	—	X
Grain dust (oat, wheat, barley)	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Graphite, natural	7782-42-5	—	—	—	—
Respirable particulate	—	2.5 mg/m <sup>3</sup>	5 mg/m <sup>3</sup>	—	—
Graphite, synthetic	—	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Guthion (Azinphosmethyl)	86-50-0	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Gypsum	13397-24-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Hafnium	7440-58-6	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Helium	—	Simple asphyxiant	—	—	—
Heptachlor	76-44-8	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Heptane (n-heptane)	142-82-5	400 ppm	500 ppm	—	—
2-Heptanone (Methyl n-amyl ketone)	110-43-0	50 ppm	75 ppm	—	—
3-Heptanone (Ethyl butyl ketone)	106-35-4	50 ppm	75 ppm	—	—
Hexachlorobutadiene	87-68-3	0.02 ppm	0.06 ppm	—	X
Hexachlorocyclopentadiene	77-47-4	0.01 ppm	0.03 ppm	—	—
Hexachloroethane	67-72-1	1 ppm	3 ppm	—	X
Hexachloronaphthalene	1335-87-1	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Hexafluoroacetone	684-16-2	0.1 ppm	0.3 ppm	—	X
Hexane	—	—	—	—	—
n-hexane	110-54-3	50 ppm	75 ppm	—	—
other isomers	Varies with compound	500 ppm	1,000 ppm	—	—
2-Hexanone (Methyl-n-butyl ketone)	591-78-6	5 ppm	10 ppm	—	—
Hexone (Methyl isobutyl ketone)	108-10-1	50 ppm	75 ppm	—	—



Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
sec-Hexyl acetate	108-84-9	50 ppm	75 ppm	—	—
Hexylene glycol	107-41-5	—	—	25 ppm	—
Hydrazine	302-01-2	0.1 ppm	0.3 ppm	—	X
Hydrogen	—	Simple asphyxiant	—	—	—
Hydrogenated terphenyls	61788-32-7	0.5 ppm	1.5 ppm	—	—
Hydrogen bromide	10035-10-6	—	—	3.0 ppm	—
Hydrogen chloride	7647-01-0	—	—	5.0 ppm	—
Hydrogen cyanide	74-90-8	—	4.7 ppm	—	X
Hydrogen fluoride	7664-39-3	—	—	3 ppm	—
Hydrogen peroxide	7722-84-1	1 ppm	3 ppm	—	—
Hydrogen selenide (as Se)	7783-07-5	0.05 ppm	0.15 ppm	—	—
Hydrogen sulfide	7783-06-4	10 ppm	15 ppm	—	—
Hydroquinone (Dihydroxybenzene)	123-31-9	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
4-Hydroxy-4-methyl-2-pentanone (Diacetone alcohol)	123-42-2	50 ppm	75 ppm	—	—
2-Hydroxypropyl acrylate	99-61-1	0.5 ppm	1.5 ppm	—	X
Indene	95-13-6	10 ppm	20 ppm	—	—
Indium and compounds (as In)	7440-74-6	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Iodine	7553-56-2	—	—	0.1 ppm	—
Iodoform	75-47-8	0.6 ppm	1.8 ppm	—	—
Iron oxide dust and fume (as Fe)	1309-37-1	—	—	—	—
Total particulate	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Iron pentacarbonyl (as Fe)	13463-40-6	0.1 ppm	0.2 ppm	—	—
Iron salts, soluble (as Fe)	Varies with compound	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Isoamyl acetate	123-92-2	100 ppm	150 ppm	—	—
Isoamyl alcohol (primary and secondary)	123-51-3	100 ppm	125 ppm	—	—
Isobutyl acetate	110-19-0	150 ppm	188 ppm	—	—
Isobutyl alcohol	78-83-1	50 ppm	75 ppm	—	—
Isooctyl alcohol	26952-21-6	50 ppm	75 ppm	—	X
Isophorone	78-59-1	4 ppm	—	5 ppm	—
Isophorone diisocyanate	4098-71-9	0.005 ppm	0.02 ppm	—	X
Isopropoxyethanol	109-59-1	25 ppm	38 ppm	—	—
Isopropyl acetate	108-21-4	250 ppm	310 ppm	—	—
Isopropyl alcohol	67-63-0	400 ppm	500 ppm	—	—
Isopropylamine	75-31-0	5 ppm	10 ppm	—	—
N-Isopropylaniline	768-52-5	2 ppm	4 ppm	—	X
Isopropyl ether	108-20-3	250 ppm	313 ppm	—	—
Isopropyl glycidyl ether (IGE)	4016-14-2	50 ppm	75 ppm	—	—
Kaolin	—	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Ketene	463-51-4	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
Lannate (Methomyl)	16752-77-5	2.5 mg/m <sup>3</sup>	5 mg/m <sup>3</sup>	—	—
Lead, inorganic (as Pb) (see WAC 296-62-07521 and 296-155-176)	7439-92-1	0.05 mg/m <sup>3</sup>	—	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Lead arsenate (as Pb) (see WAC 296-62-07521, 296-155-176, and chapter 296-848 WAC)	3687-31-8	0.05 mg/m <sup>3</sup>	—	—	—
Lead chromate (as Pb) (see WAC 296-62-08003, 296-62-07521, and 296-155-176)	7758-97-6	0.05 mg/m <sup>3</sup>	—	—	—
Limestone	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Lindane	58-89-9	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Lithium hydride	7580-67-8	0.025 mg/m <sup>3</sup>	0.075 mg/m <sup>3</sup>	—	—
L.P.G. (liquified petroleum gas)	68476-85-7	1,000 ppm	1,250 ppm	—	—
Magnesite	546-93-0	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Magnesium oxide fume	1309-48-4	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Malathion	121-75-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	X
Maleic anhydride	108-31-6	0.25 ppm	0.75 ppm	—	—
Manganese and compounds (as Mn)	7439-96-5	—	—	5 mg/m <sup>3</sup>	—
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Manganese tetroxide and fume (as Mn)	7439-96-5	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Marble	1317-65-3	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
MBOCA (4, 4'-Methylene bis (2-chloro-aniline)) (see WAC 296-62-073)	101-14-4	—	—	—	X
MDA (4, 4-Methylene dianiline) (see WAC 296-62-076 and 296-155-173)	101-77-9	0.01 ppm	0.1 ppm	—	X
MDI (Methylene bisphenyl isocyanate) (Diphenylmethane diisocyanate)	101-68-8	—	—	0.02 ppm	—
MEK (Methyl ethyl ketone) (2-Butanone)	78-93-3	200 ppm	300 ppm	—	—
MEKP (Methyl ethyl ketone peroxide)	1338-23-4	—	—	0.2 ppm	—
Mercury (as Hg)	7439-97-6	—	—	—	—
Aryl and inorganic	—	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Organo-alkyl compounds	—	0.01 mg/m <sup>3</sup>	0.03 mg/m <sup>3</sup>	—	X
Vapor	—	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	X
Mesityl oxide	141-79-7	15 ppm	25 ppm	—	—
Methacrylic acid	79-41-4	20 ppm	30 ppm	—	X

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Methane	—	Simple asphyxiant	—	—	—
Methanethiol (Methyl mercaptan)	74-93-1	0.5 ppm	1.5 ppm	—	—
Methanol (Methyl alcohol)	67-56-1	200 ppm	250 ppm	—	X
Methomyl (lannate)	16752-77-5	2.5 mg/m <sup>3</sup>	5 mg/m <sup>3</sup>	—	—
Methoxychlor	72-43-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
2-Methoxyethanol (Methyl cellosolve)	109-86-4	5 ppm	10 ppm	—	X
2-Methoxyethyl acetate (Methyl cellosolve acetate)	110-49-6	5 ppm	10 ppm	—	X
4-Methoxyphenol	150-76-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Methyl acetate	79-20-9	200 ppm	250 ppm	—	—
Methyl acetylene (propyne)	74-99-7	1,000 ppm	1,250 ppm	—	—
Methyl acetylene-propadiene mixture (MAPP)	—	1,000 ppm	1,250 ppm	—	—
Methyl acrylate	96-33-3	10 ppm	20 ppm	—	X
Methylacrylonitrile	126-98-7	1 ppm	3 ppm	—	X
Methylal (Dimethoxy-methane)	109-87-5	1,000 ppm	1,250 ppm	—	—
Methyl alcohol (methanol)	67-56-1	200 ppm	250 ppm	—	X
Methylamine	74-89-5	10 ppm	20 ppm	—	—
Methyl amyl alcohol (Methyl isobutyl carbinol)	108-11-2	25 ppm	40 ppm	—	X
Methyl n-amyl ketone (2-Heptanone)	110-43-0	50 ppm	75 ppm	—	—
N-Methyl aniline (Monomethyl aniline)	100-61-8	0.5 ppm	1.5 ppm	—	X
Methyl bromide	74-83-9	5 ppm	10 ppm	—	X
Methyl-n-butyl ketone (2-Hexanone)	591-78-6	5 ppm	10 ppm	—	—
Methyl cellosolve (2-Methoxyethanol)	109-86-4	5 ppm	10 ppm	—	X
Methyl cellosolve acetate (2-Methoxyethyl acetate)	110-49-6	5 ppm	10 ppm	—	X
Methyl chloride	74-87-3	50 ppm	100 ppm	—	—
Methyl chloroform (1, 1, 1-trichlorethane)	71-55-6	350 ppm	450 ppm	—	—
Methyl chloromethyl ether (chloromethyl methyl ether) (see WAC 296-62-073)	107-30-2	—	—	—	—
Methyl 2-cyanoacrylate	137-05-3	2 ppm	4 ppm	—	—
Methylcyclohexane	108-87-2	400 ppm	500 ppm	—	—
Methylcyclohexanol	25639-42-3	50 ppm	75 ppm	—	—
Methylcyclohexanone	583-60-8	50 ppm	75 ppm	—	X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12108-13-3	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Methyl demeton	8022-00-2	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Methylene bisphenyl isocyanate (MDI) (Diphenylmethane diisocyanate)	101-68-8	—	—	0.02 ppm	—
4, 4'-Methylene bis (2-chloro-aniline) (MBOCA) (see WAC 296-62-073)	101-14-4	—	—	—	X

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Methylene bis (4-cyclohexylisocyanate)	5124-30-1	—	—	0.01 ppm	—
Methylene chloride (Dichloromethane) (see chapter 296-859 WAC)	75-09-2	25 ppm	125 ppm	—	—
4, 4-Methylene dianiline (MDA) (see WAC 296-62-076 and 296-155-173)	101-77-9	0.01 ppm	0.1 ppm	—	X
Methyl ethyl ketone (MEK) (2-Butanone)	78-93-3	200 ppm	300 ppm	—	—
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	—	—	0.2 ppm	—
Methyl formate	107-31-3	100 ppm	150 ppm	—	—
5-Methyl-3-heptanone (Ethyl amyl ketone)	541-85-5	25 ppm	38 ppm	—	—
Methyl hydrazine (Monomethyl hydrazine)	60-34-4	—	—	0.2 ppm	X
Methyl iodide	74-88-4	2 ppm	4 ppm	—	X
Methyl isoamyl ketone	110-12-3	50 ppm	75 ppm	—	—
Methyl isobutyl carbinol (Methyl amyl alcohol)	108-11-2	25 ppm	40 ppm	—	X
Methyl isobutyl ketone (Hexone)	108-10-1	50 ppm	75 ppm	—	—
Methyl isocyanate	624-83-9	0.02 ppm	0.06 ppm	—	X
Methyl isopropyl ketone	563-80-4	200 ppm	250 ppm	—	—
Methyl mercaptan (Methanethiol)	74-93-1	0.5 ppm	1.5 ppm	—	—
Methyl methacrylate	80-62-6	100 ppm	150 ppm	—	—
Methyl parathion	298-00-0	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Methyl propyl ketone (2-Pentanone)	107-87-9	200 ppm	250 ppm	—	—
Methyl silicate	684-84-5	1 ppm	3 ppm	—	—
alpha-Methyl styrene	98-83-9	50 ppm	100 ppm	—	—
Mevinphos (Phosdrin)	7786-34-7	0.01 ppm	0.03 ppm	—	X
Metribuzin	21087-64-9	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Mica (Silicates) Respirable fraction	12001-26-2	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	—
Molybdenum (as Mo)	7439-98-7	—	—	—	—
Soluble compounds	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Insoluble compounds	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Monochlorobenzene (Chlorobenzene)	108-90-7	75 ppm	113 ppm	—	—
Monocrotophos (Azodrin)	6923-22-4	0.25 mg/m <sup>3</sup>	0.75 mg/m <sup>3</sup>	—	—
Monomethyl aniline (N-Methyl aniline)	100-61-8	0.5 ppm	1.5 ppm	—	X
Monomethyl hydrazine	—	—	—	0.2 ppm	—
Morpholine	110-91-8	20 ppm	30 ppm	—	X
Naled (Dibrom)	300-76-5	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	X
Naphtha	8030-30-6	100 ppm	150 ppm	—	X
Naphthalene	91-20-3	10 ppm	15 ppm	—	—
alpha-Naphthylamine (see WAC 296-62-073)	134-32-7	—	—	—	—
beta-Naphthylamine (see WAC 296-62-073)	91-59-8	—	—	—	—
Neon	7440-01-9	Simple asphyxiant	—	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Nickel carbonyl (as Ni)	13463-39-3	0.001 ppm	0.003 ppm	—	—
Nickel (as Ni)	7440-02-0	—	—	—	—
Metal and insoluble compounds	—	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Soluble compounds	—	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Nicotine	54-11-5	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Nitrapyrin (2-Chloro-6 trichloromethyl pyridine)	1929-82-4	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Nitric acid	7697-37-2	2 ppm	4 ppm	—	—
Nitric oxide	10102-43-9	25 ppm	38 ppm	—	—
p-Nitroaniline	100-01-6	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	X
Nitrobenzene	98-95-3	1 ppm	3 ppm	—	X
4-Nitrobiphenyl (see WAC 296-62-073)	92-93-3	—	—	—	—
p-Nitrochlorobenzene	100-00-5	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
4-Nitrodiphenyl (see WAC 296-62-073)	—	—	—	—	—
Nitroethane	79-24-3	100 ppm	150 ppm	—	—
Nitrogen	7727-37-9	Simple asphyxiant	—	—	—
Nitrogen dioxide	10102-44-0	—	1 ppm	—	—
Nitrogen oxide (Nitrous oxide)	10024-97-2	50 ppm	75 ppm	—	—
Nitrogen trifluoride	7783-54-2	10 ppm	20 ppm	—	—
Nitroglycerin	55-63-0	—	0.1 mg/m <sup>3</sup>	—	X
Nitromethane	75-52-5	100 ppm	150 ppm	—	—
1-Nitropropane	108-03-2	25 ppm	38 ppm	—	—
2-Nitropropane	79-46-9	10 ppm	20 ppm	—	—
N-Nitrosodimethylamine (see WAC 296-62-073)	62-75-9	—	—	—	—
Nitrotoluene	—	—	—	—	—
o-isomer	88-72-2	2 ppm	4 ppm	—	X
m-isomer	98-08-2	2 ppm	4 ppm	—	X
p-isomer	99-99-0	2 ppm	4 ppm	—	X
Nitrotrichloromethane (Chloropicrin)	76-06-2	0.1 ppm	0.3 ppm	—	—
Nitrous oxide (Nitrogen oxide)	10024-97-2	50 ppm	75 ppm	—	—
Nonane	111-84-2	200 ppm	250 ppm	—	—
Nuisance dusts (see Particulates not otherwise regulated)	—	—	—	—	—
Octachloronaphthalene	2234-13-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Octane	111-65-9	300 ppm	375 ppm	—	—
Oil mist mineral (particulate)	8012-95-1	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Osmium tetroxide (as Os)	20816-12-0	0.0002 ppm	0.0006 ppm	—	—
Oxalic acid	144-62-7	1 mg/m <sup>3</sup>	2 mg/m <sup>3</sup>	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Oxygen	—	—	—	—	—
See requirements in other chapters such as: Chapter 296-809 WAC, Confined spaces; chapter 296-843 WAC, Hazardous waste operations; chapter 296-824 WAC, Emergency response; WAC 296-62-100, Oxygen deficient atmospheres					
Oxygen difluoride	7783-41-7	—	—	0.05 ppm	—
Ozone	10028-15-6	0.1 ppm	0.3 ppm	—	—
Paper fiber (Cellulose)	9004-34-6	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Paraffin wax fume	8002-74-2	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Paraquat	—	—	—	—	—
Respirable fraction	4685-14-7 1910-42-5 2074-50-2	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Parathion	56-38-2	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Particulate polycyclic aromatic hydrocarbons (see coal tar pitch volatiles)	—	—	—	—	—
Particulates not otherwise regulated	—	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Pentaborane	19624-22-7	0.005 ppm	0.015 ppm	—	—
Pentachloronaphthalene	1321-64-8	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Pentachlorophenol	87-86-5	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Pentaerythritol	115-77-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Pentane	109-66-0	600 ppm	750 ppm	—	—
2-Pentanone (methyl propyl ketone)	107-87-9	200 ppm	250 ppm	—	—
Perchloroethylene (tetrachloroethylene)	127-18-4	25 ppm	38 ppm	—	—
Perchloromethyl mercaptan	594-42-3	0.1 ppm	0.3 ppm	—	—
Perchloryl fluoride	7616-94-6	3 ppm	6 ppm	—	—
Perlite	—	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Petroleum distillates (Naphtha, rubber solvent)	—	100 ppm	150 ppm	—	—
Phenacyl chloride (a-Chloroacetophenone)	532-21-4	0.05 ppm	0.15 ppm	—	—
Phenol	108-95-2	5 ppm	10 ppm	—	X
Phenothiazine	92-84-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	X
p-Phenylene diamine	106-50-3	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Phenyl ether (vapor)	101-84-8	1 ppm	3 ppm	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Phenyl ether-diphenyl mixture (vapor)	—	1 ppm	3 ppm	—	—
Phenylethylene (Styrene)	100-42-5	50 ppm	100 ppm	—	—
Phenyl glycidyl ether (PGE)	122-60-1	1 ppm	3 ppm	—	—
Phenylhydrazine	100-63-0	5 ppm	10 ppm	—	X
Phenyl mercaptan	108-98-5	0.5 ppm	1.5 ppm	—	—
Phenylphosphine	638-21-1	—	—	0.05 ppm	—
Phorate	298-02-2	0.05 mg/m <sup>3</sup>	0.2 mg/m <sup>3</sup>	—	X
Phosdrin (Mevinphos)	7786-34-7	0.01 ppm	0.03 ppm	—	X
Phosgene (carbonyl chloride)	75-44-5	0.1 ppm	0.3 ppm	—	—
Phosphine	7803-51-2	0.3 ppm	1 ppm	—	—
Phosphoric acid	7664-38-2	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Phosphorus (yellow)	7723-14-0	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Phosphorous oxychloride	10025-87-3	0.1 ppm	0.3 ppm	—	—
Phosphorus pentachloride	10026-13-8	0.1 ppm	0.3 ppm	—	—
Phosphorus pentasulfide	1314-80-3	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Phosphorus trichloride	12-2-19	0.2 ppm	0.5 ppm	—	—
Phthalic anhydride	85-44-9	1 ppm	3 ppm	—	—
m-Phthalodinitrile	626-17-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Picloram	1918-02-1	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Picric acid (2, 4, 6-Trinitrophenol)	88-89-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Pindone (2-Pivalyl-1, 3-indandione, Pival)	83-26-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Piperazine dihydrochloride	142-64-3	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Pival (Pindone)	83-26-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Plaster of Paris	26499-65-0	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Platinum (as Pt)	7440-06-4	—	—	—	—
Metal	—	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Soluble salts	—	0.002 mg/m <sup>3</sup>	0.006 mg/m <sup>3</sup>	—	—
Polychlorobiphenyls (Chlorodiphenyls)	—	—	—	—	—
42% Chlorine (PCB)	53469-21-9	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
54% Chlorine (PCB)	11097-69-1	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Portland cement	65997-15-1	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Potassium hydroxide	1310-58-3	—	—	2 mg/m <sup>3</sup>	—
Propane	74-98-6	1,000 ppm	1,250 ppm	—	—
Propargyl alcohol	107-19-7	1 ppm	3 ppm	—	X
beta-Propiolactone (see WAC 296-62-073)	57-57-8	—	—	—	—
Propionic acid	79-09-4	10 ppm	20 ppm	—	—
Propoxur (Baygon)	114-26-1	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	—
n-Propyl acetate	109-60-4	200 ppm	250 ppm	—	—
n-Propyl alcohol	71-23-8	200 ppm	250 ppm	—	X
n-Propyl nitrate	627-13-4	25 ppm	40 ppm	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Propylene	—	Simple asphyxiant	—	—	—
Propylene dichloride (1, 2-Dichloropropane)	78-87-5	75 ppm	110 ppm	—	—
Propylene glycol dinitrate	6423-43-4	0.05 ppm	0.15 ppm	—	X
Propylene glycol monomethyl ether	107-98-2	100 ppm	150 ppm	—	—
Propylene imine	75-55-8	2 ppm	4 ppm	—	X
Propylene oxide (1,2- Epoxypropane)	75-56-9	20 ppm	30 ppm	—	—
Propyne (Methyl acetylene)	74-99-7	1,000 ppm	1,250 ppm	—	—
Pyrethrum	8003-34-7	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Pyridine	110-86-1	5 ppm	10 ppm	—	—
Pyrocatachol (Catechol)	120-80-9	5 ppm	10 ppm	—	X
Quinone (p-Benzoquinone)	106-51-4	0.1 ppm	0.3 ppm	—	—
RDX (Cyclonite)	—	1.5 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
Resorcinol	108-46-3	10 ppm	20 ppm	—	—
Rhodium (as Rh)	7440-16-6	—	—	—	—
Insoluble compounds, metal fumes and dusts	—	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Soluble compounds, salts	—	0.001 mg/m <sup>3</sup>	0.003 mg/m <sup>3</sup>	—	—
Ronnel	299-84-3	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Rosin core solder, pyrolysis products (as formaldehyde)	8050-09-7	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Rotenone	83-79-4	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Rouge	—	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Rubber solvent (naphtha)	8030-30-6	100 ppm	150 ppm	—	—
Selenium compounds (as Se)	7782-49-2	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
Selenium hexafluoride (as Se)	7783-79-1	0.05 ppm	0.15 ppm	—	—
Sesone (Crag herbicide)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Sevin (Carbaryl)	63-25-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Silane (see Silicon tetrahydride)	7803-62-5	5 ppm	10 ppm	—	—
Silica, amorphous, precipitated and gel	112926-00-8	6 mg/m <sup>3</sup>	12 mg/m <sup>3</sup>	—	—
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	61790-53-2	—	—	—	—
Total particulate	—	6 mg/m <sup>3</sup>	12 mg/m <sup>3</sup>	—	—
Respirable fraction	—	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	—
Silica, crystalline cristobalite	—	—	—	—	—
Respirable fraction	14464-46-1	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	—
Applies where the exposure limit in chapter 296-840 WAC is not in effect.					
Silica, crystalline quartz	—	—	—	—	—
Respirable fraction	14808-60-7	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Applies where the exposure limit in chapter 296-840 WAC is not in effect.					



Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Silica, crystalline tripoli (as quartz)	—	—	—	—	—
Respirable fraction	1317-95-9	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Silica, crystalline tridymite	—	—	—	—	—
Respirable fraction	15468-32-3	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	—
Applies where the exposure limit in chapter 296-840 WAC is not in effect.					
Silica, fused	—	—	—	—	—
Respirable fraction	60676-86-0	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Silicates (less than 1% crystalline silica)	—	—	—	—	—
Mica	—	—	—	—	—
Respirable fraction	12001-26-2	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	—
Soapstone	—	—	—	—	—
Total particulate	—	6 mg/m <sup>3</sup>	12 mg/m <sup>3</sup>	—	—
Respirable fraction	—	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	—
Talc (containing asbestos) (as asbestos) (see WAC 296-62-07705 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Talc (containing no asbestos)	—	—	—	—	—
Respirable fraction	14807-96-6	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Tremolite (asbestiform) (as asbestos) (see WAC 296-62-07705 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Silicon	7440-21-3	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Silicon carbide	409-21-2	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Silicon tetrahydride (Silane)	7803-62-5	5 ppm	10 ppm	—	—
Silver, metal dust and soluble compounds (as Ag)	7440-22-4	0.01 mg/m <sup>3</sup>	0.03 mg/m <sup>3</sup>	—	—
Soapstone	—	—	—	—	—
Total particulate	—	6 mg/m <sup>3</sup>	12 mg/m <sup>3</sup>	—	—
Respirable fraction	—	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	—
Sodium azide (as HN <sub>3</sub> or NaN <sub>3</sub> )	26628-22-8	—	—	0.1 ppm	X
Sodium bisulfite	7631-90-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Sodium-2, 4-dichloro-phenoxyethyl sulfate (Crag herbicide)	136-78-7	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Sodium fluoroacetate	62-74-8	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	X
Sodium hydroxide	1310-73-2	—	—	2 mg/m <sup>3</sup>	—
Sodium metabisulfite	7681-57-4	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Starch	9005-25-8	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Stibine	7803-52-3	0.1 ppm	0.3 ppm	—	—
Stoddard solvent	8052-41-3	100 ppm	150 ppm	—	—
Strychnine	57-24-9	0.15 mg/m <sup>3</sup>	0.45 mg/m <sup>3</sup>	—	—
Styrene (Phenylethylene, Vinyl benzene)	100-42-5	50 ppm	100 ppm	—	—
Subtilisins	9014-01-1	—	0.00006 mg/m <sup>3</sup> (60 min.)	—	—
Sucrose	57-50-1	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Sulfotep (TEDP)	3689-24-5	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Sulfur dioxide	7446-09-5	2 ppm	5 ppm	—	—
Sulfur hexafluoride	2551-62-4	1,000 ppm	1,250 ppm	—	—
Sulfuric acid	7664-93-9	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Sulfur monochloride	10025-67-9	—	—	1 ppm	—
Sulfur pentafluoride	5714-22-1	—	—	0.01 ppm	—
Sulfur tetrafluoride	7783-60-0	—	—	0.1 ppm	—
Sulfuryl fluoride	2699-79-8	5 ppm	10 ppm	—	—
Sulprofos	35400-43-2	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Systox (Demeton)	8065-48-3	0.01 ppm	0.03 ppm	—	X
2, 4, 5-T (2, 4, 5- tri- chlorophenoxyacetic acid)	93-76-5	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Talc (containing asbestos) (as asbestos) (see WAC 296-62-07705 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Talc (containing no asbestos)	—	—	—	—	—
Respirable fraction	14807-96-6	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Tantalum	—	—	—	—	—
Metal and oxide dusts	7440-25-7	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
TDI (Toluene-2, 4-diisocyanate)	584-84-9	0.005 ppm	0.02 ppm	—	—
TEDP (Sulfotep)	3689-24-5	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	X
Tellurium and compounds (as Te)	13494-80-9	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Tellurium hexafluoride (as Te)	7783-80-4	0.02 ppm	0.06 ppm	—	—
Temphos (Abate)	3383-96-8	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
TEPP	107-49-3	0.004 ppm	0.012 ppm	—	X
Terphenyls	26140-60-3	—	—	0.5 ppm	—
1, 1, 1, 2-Tetrachloro-2, 2-difluoroethane	76-11-0	500 ppm	625 ppm	—	—
1, 1, 2, 2-Tetrachloro-1, 2-difluoroethane	76-12-0	500 ppm	625 ppm	—	—
1, 1, 2, 2-Tetrachloroethane	79-34-5	1 ppm	3 ppm	—	X
Tetrachloroethylene (Perchloroethylene)	127-18-4	25 ppm	38 ppm	—	—
Tetrachloromethane (Carbon tetrachloride)	56-23-5	2 ppm	4 ppm	—	X
Tetrachloronaphthalene	1335-88-2	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	X
Tetraethyl lead (as Pb)	78-00-2	0.075 mg/m <sup>3</sup>	0.225 mg/m <sup>3</sup>	—	X

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Tetrahydrofuran	109-99-9	200 ppm	250 ppm	—	—
Tetramethyl lead (as Pb)	75-74-1	0.075 mg/m <sup>3</sup>	0.225 mg/m <sup>3</sup>	—	X
Tetramethyl succinonitrile	3333-52-6	0.5 ppm	1.5 ppm	—	X
Tetranitromethane	509-14-8	1 ppm	3 ppm	—	—
Tetrasodium pyrophosphate	7722-88-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Tetryl (2, 4, 6-trinitrophenyl-methylnitramine)	479-45-8	1.5 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
Thallium (soluble compounds) (as Tl)	7440-28-0	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
4, 4-Thiobis (6-tert-butyl-m-cresol)	96-69-5	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Thiodan (Endosulfan)	115-29-7	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Thioglycolic acid	68-11-1	1 ppm	3 ppm	—	X
Thionyl chloride	7719-09-7	—	—	1 ppm	—
Thiram (see WAC 296-62-07519)	137-26-8	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Tin (as Sn)	—	—	—	—	—
Inorganic compounds	7440-31-5	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Organic compounds	7440-31-5	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Tin oxide (as Sn)	21651-19-4	2 mg/m <sup>3</sup>	4 mg/m <sup>3</sup>	—	—
Titanium dioxide	13463-67-7	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
TNT (2, 4, 6-Trinitrotoluene)	118-96-7	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Toluene	108-88-3	100 ppm	150 ppm	—	—
Toluene-2, 4-diisocyanate (TDI)	584-84-9	0.005 ppm	0.02 ppm	—	—
m-Toluidine	108-44-1	2 ppm	4 ppm	—	X
o-Toluidine	95-53-4	2 ppm	4 ppm	—	X
p-Toluidine	106-49-0	2.0 ppm	4 ppm	—	X
Toxaphene (Chlorinated camphene)	8001-35-2	0.5 mg/m <sup>3</sup>	1 mg/m <sup>3</sup>	—	X
Tremolite (asbestiform) (as asbestos) (see WAC 296-62-07705 and chapter 296-65 WAC)	—	0.1 f/cc	1.0 f/cc (30 minutes)	—	—
Tributyl phosphate	126-73-8	0.2 ppm	0.6 ppm	—	—
Trichloroacetic acid	76-03-9	1 ppm	3 ppm	—	—
1, 2, 4-Trichlorobenzene	120-82-1	—	—	5 ppm	—
1, 1, 1-Trichloroethane (Methyl chloroform)	71-55-6	350 ppm	450 ppm	—	—
1, 1, 2-Trichloroethane	79-00-5	10 ppm	20 ppm	—	—
Trichloroethylene	79-01-6	50 ppm	200 ppm	—	—
Trichlorofluoromethane (Fluorotrichloromethane)	75-69-4	—	—	1,000 ppm	—
Trichloromethane (Chloroform)	67-66-3	2 ppm	4 ppm	—	—
Trichloronaphthalene	1321-65-9	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	X
1, 2, 3-Trichloropropane	96-18-4	10 ppm	20 ppm	—	X

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
1, 1, 2-Trichloro-1, 2, 2-trifluoroethane	76-13-1	1,000 ppm	1,250 ppm	—	—
Tricyclohexyltin hydroxide (Cyhexatin)	13121-70-5	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Triethylamine	121-44-8	10 ppm	15 ppm	—	—
Trifluorobromomethane	75-63-8	1,000 ppm	1,250 ppm	—	—
Trimellitic anhydride	552-30-7	0.005 ppm	0.015 ppm	—	—
Trimethylamine	75-50-3	10 ppm	15 ppm	—	—
Trimethyl benzene	25551-13-7	25 ppm	38 ppm	—	—
Trimethyl phosphite	121-45-9	2 ppm	4 ppm	—	—
2, 4, 6-Trinitrophenol (Picric acid)	88-89-1	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
2, 4, 6-Trinitrophenyl-methylnitramine (Tetryl)	479-45-8	1.5 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	X
2, 4, 6-Trinitrotoluene (TNT)	118-96-7	0.5 mg/m <sup>3</sup>	1.5 mg/m <sup>3</sup>	—	X
Triorthocresyl phosphate	78-30-8	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	X
Triphenyl amine	603-34-9	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Triphenyl phosphate	115-86-6	3 mg/m <sup>3</sup>	6 mg/m <sup>3</sup>	—	—
Tungsten (as W)	7440-33-7	—	—	—	—
Soluble compounds	—	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Insoluble compounds	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Turpentine	8006-64-2	100 ppm	150 ppm	—	—
Uranium (as U)	7440-61-1	—	—	—	—
Soluble compounds	—	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	—
Insoluble compounds	—	0.2 mg/m <sup>3</sup>	0.6 mg/m <sup>3</sup>	—	—
n-Valeraldehyde	110-62-3	50 ppm	75 ppm	—	—
Vanadium (as V2O5)	—	—	—	—	—
Respirable fraction	1314-62-1	0.05 mg/m <sup>3</sup>	0.15 mg/m <sup>3</sup>	—	—
Vegetable oil mist	—	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Vinyl acetate	108-05-1	10 ppm	20 ppm	—	—
Vinyl benzene (Styrene)	100-42-5	50 ppm	100 ppm	—	—
Vinyl bromide	593-60-2	5 ppm	10 ppm	—	—
Vinyl chloride (Chloroethylene) (see WAC 296-62-07329)	75-01-4	1 ppm	5 ppm	—	—
Vinyl cyanide (Acrylonitrile) (see WAC 296-62-07336)	107-13-1	2 ppm	10 ppm	—	—
Vinyl cyclohexene dioxide	106-87-6	10 ppm	20 ppm	—	X
Vinyl toluene	25013-15-4	50 ppm	75 ppm	—	—
Vinylidene chloride (1, 1-Dichloroethylene)	75-35-4	1 ppm	3 ppm	—	—
VM & P Naphtha	8032-32-4	300 ppm	400 ppm	—	—
Warfarin	81-81-2	0.1 mg/m <sup>3</sup>	0.3 mg/m <sup>3</sup>	—	—
Welding fumes (total particulate)	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Wood dust	—	—	—	—	—
Nonallergenic; (All woods except allergenics)	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Allergenics (e.g. cedar, mahogany and teak)	—	2.5 mg/m <sup>3</sup>	5 mg/m <sup>3</sup>	—	—

Airborne contaminant	CAS	TWA <sub>8</sub>	STEL	Ceiling	Skin
Xylenes (ortho, meta, and para isomers) (Dimethylbenzene)	1330-20-7	100 ppm	150 ppm	—	—
m-Xylene alpha, alpha-diamine	1477-55-0	—	—	0.1 mg/m <sup>3</sup>	X
Xylidine (Dimethylaminobenzene)	1300-73-8	2 ppm	4 ppm	—	X
Yttrium	7440-65-5	1 mg/m <sup>3</sup>	3 mg/m <sup>3</sup>	—	—
Zinc chloride fume	7646-85-7	1 mg/m <sup>3</sup>	2 mg/m <sup>3</sup>	—	—
Zinc chromate (as Cr) (see WAC 296-62-08003)	Varies with compound	0.005 mg/m <sup>3</sup>	—	0.1 mg/m <sup>3</sup>	—
Zinc oxide	1314-13-2	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m	—	—
Zinc oxide fume	1314-13-2	5 mg/g <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Zinc stearate	557-05-1	—	—	—	—
Total particulate	—	10 mg/m <sup>3</sup>	20 mg/m <sup>3</sup>	—	—
Respirable fraction	—	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—
Zirconium compounds (as Zr)	7440-67-2	5 mg/m <sup>3</sup>	10 mg/m <sup>3</sup>	—	—

## NEW SECTION

**WAC 296-850-090 Definitions.** For the purposes of this section the following definitions apply:

**Action level** - A concentration of airborne beryllium of 0.1 micrograms per cubic meter of air (µg/m<sup>3</sup>) calculated as an 8-hour time-weighted average (TWA).

**Airborne exposure and airborne exposure to beryllium** - The exposure to airborne beryllium that would occur if the employee were not using a respirator.

**Beryllium lymphocyte proliferation test (BeLPT)** - The measurement of blood lymphocyte proliferation in a laboratory test when lymphocytes are challenged with a soluble beryllium salt.

**Beryllium work area** - Any work area containing a process or operation that can release beryllium where employees are, or can reasonably be expected to be, exposed to airborne beryllium at any level or where there is the potential for dermal contact with beryllium.

**CBD diagnostic center** - A medical diagnostic center that has an on-site pulmonary specialist and on-site facilities to perform a clinical evaluation for the presence of chronic beryllium disease (CBD). This evaluation must include pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The CBD diagnostic center must also have the capacity to transfer BAL samples to a laboratory for appropriate diagnostic testing within twenty-four hours. The on-site pulmonary specialist must be able to interpret the biopsy pathology and the BAL diagnostic test results.

**Chronic beryllium disease (CBD)** - A chronic granulomatous (inflammatory) disease primarily of the lung, caused by exposure to beryllium, that meets the diagnostic criteria published in the department of labor and industries clinical guideline for the *Diagnosis of Beryllium Sensitization and Chronic Beryllium Disease*.

**Competent person** - An individual who is capable of identifying existing and foreseeable beryllium hazards in the

workplace and who has authorization to take prompt corrective measures to eliminate or minimize them. The competent person must have the knowledge, ability, and authority necessary to fulfill the responsibilities set forth in WAC 296-850-125. This term is applicable in construction work conducted under contract with a building or facility owner or other building representative.

**Confirmed positive** - The person tested has beryllium sensitization, as indicated by two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results, or any cases confirmed by the criteria published in the department of labor and industries clinical guideline for the *Diagnosis of Beryllium Sensitization and Chronic Beryllium Disease*. It also means the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.

**Construction work** - All or any part of excavation, construction, erection, alteration, repair, demolition, and dismantling, of buildings and other structures and all operations in connection therewith; the excavation, construction, alteration and repair of sewers, trenches, caissons, conduits, pipe lines, roads and all operations pertaining thereto; the moving of buildings and other structures, and to the construction, alteration, repair, or removal of wharfs, docks, bridges, culverts, trestles, piers, abutments or any other construction, alteration, repair or removal work related thereto.

**Emergency** - Any uncontrolled release of airborne beryllium.

**High-efficiency particulate air (HEPA) filter** - A filter that is at least 99.97 percent efficient in removing particles 0.3 micrometers in diameter.

**Objective data** - Information, such as air monitoring data from industry-wide surveys or calculations based on the composition of a substance, demonstrating airborne exposure to beryllium associated with a particular product or material or a specific process, task, or activity. The data must reflect workplace conditions closely resembling or with a higher air-

borne exposure potential than the processes, types of material, control methods, work practices, and environmental conditions in the employer's current operations.

**Physician or other licensed health care professional (PLHCP)** - An individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows the individual to independently provide or be delegated the responsibility to provide some or all of the health care services required by WAC 296-850-155.

**Regulated area** - An area, including temporary work areas where maintenance or nonroutine tasks are performed, where an employee's airborne exposure exceeds, or can reasonably be expected to exceed, either the time-weighted average (TWA) permissible exposure limit (PEL) or short term exposure limit (STEL).

**Ship breaking** - Breaking down a vessel's structure to scrap the vessel, including the removal of gear, equipment or any component part of a vessel.

**Ship building** - Construction of a vessel, including the installation of machinery and equipment.

**Ship repairing** - Repair of a vessel including, but not limited to, alterations, conversions, installations, cleaning, painting, and maintenance.

#### NEW SECTION

**WAC 296-850-100 Scope and application.** This standard applies to occupational exposure to beryllium in all forms, compounds, and mixtures, except:

(1) This standard does not apply to articles, as defined in chapter 296-901 WAC, Globally harmonized system for hazard communication, that contain beryllium and that the employer does not process.

(2) This standard does not apply to materials containing less than 0.1% beryllium by weight where the employer has objective data demonstrating that employee exposure to beryllium will remain below the action level as an 8-hour TWA under any foreseeable conditions.

#### NEW SECTION

**WAC 296-850-110 Permissible exposure limits. (1) Time-weighted average (TWA) PEL.** The employer must ensure that no employee is exposed to an airborne concentration of beryllium in excess of 0.2 µg/m<sup>3</sup> calculated as an 8-hour TWA.

(2) **Short-term exposure limit (STEL).** The employer must ensure that no employee is exposed to an airborne concentration of beryllium in excess of 2.0 µg/m<sup>3</sup> as determined over a sampling period of fifteen minutes.

#### NEW SECTION

**WAC 296-850-115 Exposure assessment. (1) General.** The employer must assess the airborne exposure of each employee who is or may reasonably be expected to be exposed to airborne beryllium in accordance with either the performance option in subsection (2) of this section or the scheduled monitoring option in subsection (3) of this section.

(2) **Performance option.** The employer must assess the 8-hour TWA exposure and the fifteen-minute short-term exposure for each employee on the basis of any combination

of air monitoring data and objective data sufficient to accurately characterize airborne exposure to beryllium.

#### (3) **Scheduled monitoring option.**

(a) The employer must perform initial monitoring to assess the 8-hour TWA exposure for each employee on the basis of one or more personal breathing zone air samples that reflect the airborne exposure of employees on each shift, for each job classification, and in each work area.

(b) The employer must perform initial monitoring to assess the short-term exposure from fifteen-minute personal breathing zone air samples measured in operations that are likely to produce airborne exposure above the STEL for each work shift, for each job classification, and in each work area.

(c) Where several employees perform the same tasks on the same shift and in the same work area, the employer may sample a representative fraction of these employees in order to meet the requirements of this subsection. In representative sampling, the employer must sample the employee(s) expected to have the highest airborne exposure to beryllium.

(d) If initial monitoring indicates that airborne exposure is below the action level and at or below the STEL, the employer may discontinue monitoring for those employees whose airborne exposure is represented by such monitoring.

(e) Where the most recent exposure monitoring indicates that airborne exposure is at or above the action level but at or below the TWA PEL, the employer must repeat such monitoring within six months of the most recent monitoring.

(f) Where the most recent exposure monitoring indicates that airborne exposure is above the TWA PEL, the employer must repeat such monitoring within three months of the most recent 8-hour TWA exposure monitoring.

(g) Where the most recent (noninitial) exposure monitoring indicates that airborne exposure is below the action level, the employer must repeat such monitoring within six months of the most recent monitoring until two consecutive measurements, taken seven or more days apart, are below the action level, at which time the employer may discontinue 8-hour TWA exposure monitoring for those employees whose exposure is represented by such monitoring, except as otherwise provided in subsection (4) of this section, reassessment of exposure.

(h) Where the most recent exposure monitoring indicates that airborne exposure is above the STEL, the employer must repeat such monitoring within three months of the most recent short-term exposure monitoring until two consecutive measurements, taken seven or more days apart, are below the STEL, at which time the employer may discontinue short-term exposure monitoring for those employees whose exposure is represented by such monitoring, except as otherwise provided in subsection (4) of this section, reassessment of exposure.

(4) **Reassessment of exposure.** The employer must reassess airborne exposure whenever a change in the production, process, control equipment, personnel, or work practices may reasonably be expected to result in new or additional airborne exposure at or above the action level or STEL, or when the employer has any reason to believe that new or additional airborne exposure at or above the action level or STEL has occurred.

(5) **Methods of sample analysis.** The employer must ensure that all air monitoring samples used to satisfy the monitoring requirements of this subsection are evaluated by a laboratory that can measure beryllium to an accuracy of plus or minus twenty-five percent within a statistical confidence level of ninety-five percent for airborne concentrations at or above the action level.

(6) **Employee notification of assessment results.**

(a) Within fifteen working days after completing an exposure assessment in accordance with this subsection, the employer must notify each employee whose airborne exposure is represented by the assessment of the results of that assessment individually in writing or post the results in an appropriate location that is accessible to each of these employees.

(b) Whenever an exposure assessment indicates that airborne exposure is above the TWA PEL or STEL, the employer must describe in the written notification the corrective action being taken to reduce airborne exposure to or below the exposure limit(s) exceeded where feasible corrective action exists but had not been implemented when the monitoring was conducted.

(7) **Observation of monitoring.**

(a) The employer must provide an opportunity to observe any exposure monitoring required by this standard to each employee whose airborne exposure is measured or represented by the monitoring and each employee's representative(s).

(b) When observation of monitoring requires entry into an area where the use of personal protective clothing or equipment (which may include respirators) is required, the employer must provide each observer with appropriate personal protective clothing and equipment at no cost to the observer and must ensure that each observer uses such clothing and equipment.

(c) The employer must ensure that each observer follows all other applicable safety and health procedures.

NEW SECTION

**WAC 296-850-120 Beryllium work areas and regulated areas. (1) Establishment.**

(a) The employer must establish and maintain a beryllium work area wherever the criteria for a "beryllium work area" set forth in WAC 296-850-090 Definitions, are met.

**Exception:** It is not required to establish a work area for construction work, ship breaking, ship building or ship repairing.

(b) The employer must establish and maintain a regulated area wherever employees are, or can reasonably be expected to be, exposed to airborne beryllium at levels above the TWA PEL or STEL.

**Exception:** It is not required to establish a regulated area for construction work.

(2) **Demarcation.**

(a) The employer must identify each beryllium work area through signs or any other methods that adequately establish and inform each employee of the boundaries of each beryllium work area.

(b) The employer must identify each regulated area in accordance with WAC 296-850-165(2) warning signs, of this rule.

(3) **Access.** The employer must limit access to regulated areas to:

(a) Persons the employer authorizes or requires to be in a regulated area to perform work duties;

(b) Persons entering a regulated area as designated representatives of employees for the purpose of exercising the right to observe exposure monitoring procedures under WAC 296-850-115(7) observation of monitoring; and

(c) Persons authorized by law to be in a regulated area.

(4) **Provision of personal protective clothing and equipment, including respirators.** The employer must provide and ensure that each employee entering a regulated area uses:

(a) Respiratory protection in accordance with WAC 296-850-135 Respiratory protection, of this rule; and

(b) Personal protective clothing and equipment in accordance with WAC 296-850-140 Personal protective clothing and equipment, of this rule.

NEW SECTION

**WAC 296-850-125 Competent person.** For construction and maintenance projects, wherever employees are, or can reasonably be expected to be, exposed to airborne beryllium at levels above the TWA PEL or STEL, the employer must designate a competent person to:

(1) Make frequent and regular inspections of job sites, materials, and equipment;

(2) Implement the written exposure control plan under WAC 296-850-130 Methods of compliance, of this rule;

(3) Ensure that all employees use respiratory protection in accordance with WAC 296-850-135 Respiratory protection, of this rule; and

(4) Ensure that all employees use personal protective clothing and equipment in accordance with WAC 296-850-140 Personal protective clothing and equipment, of this rule.

NEW SECTION

**WAC 296-850-130 Methods of compliance. (1) Written exposure control plan.**

(a) The employer must establish, implement, and maintain a written exposure control plan, which must contain:

(i) A list of operations and job titles reasonably expected to involve airborne exposure to or dermal contact with beryllium;

(ii) A list of operations and job titles reasonably expected to involve airborne exposure at or above the action level;

(iii) A list of operations and job titles reasonably expected to involve airborne exposure above the TWA PEL or STEL;

(iv) Procedures for minimizing cross-contamination, including preventing the transfer of beryllium between surfaces, equipment, clothing, materials, and articles within beryllium work areas;

(v) Procedures for keeping surfaces as free as practicable of beryllium;

(vi) Procedures for minimizing the migration of beryllium from beryllium work areas to other locations within or outside the workplace;

(vii) A list of engineering controls, work practices, and respiratory protection required by subsection (2) of this section engineering and work practice controls, of this rule;

(viii) A list of personal protective clothing and equipment required by WAC 296-850-140 Personal protective clothing and equipment, of this rule; and

(ix) Procedures for removing, laundering, storing, leaning, repairing, and disposing of beryllium-contaminated personal protective clothing and equipment, including respirators.

(b) The employer must review and evaluate the effectiveness of each written exposure control plan at least annually and update it, as necessary, when:

(i) Any change in production processes, materials, equipment, personnel, work practices, or control methods results, or can reasonably be expected to result, in new or additional airborne exposure to beryllium;

(ii) The employer has any reason to believe that new or additional airborne exposure is occurring or will occur.

(c) The employer must make a copy of the written exposure control plan accessible to each employee who is, or can reasonably be expected to be, exposed to airborne beryllium in accordance with chapter 296-802 WAC, Employee medical and exposure records.

**(2) Engineering and work practice controls.**

(a) Where exposures are, or can reasonably be expected to be, at or above the action level, the employer must ensure that at least one of the following is in place to reduce airborne exposure:

(i) Material and/or process substitution;

(ii) Isolation, such as ventilated partial or full enclosures;

(iii) Local exhaust ventilation, such as at the points of operation, material handling, and transfer; or

(iv) Process control, such as wet methods and automation.

(b) An employer is exempt from using these controls to the extent that:

(i) The employer can establish that such controls are not feasible; or

(ii) The employer can demonstrate that airborne exposure is below the action level, using no fewer than two representative personal breathing zone samples taken at least seven days apart, for each affected operation.

(c) If airborne exposure exceeds the TWA PEL or STEL after implementing the listed control(s) in this subsection, the employer must implement additional or enhanced engineering and work practice controls to reduce airborne exposure to or below the exposure limit(s) exceeded.

(d) Wherever the employer demonstrates that it is not feasible to reduce airborne exposure to or below the PELs by the engineering and work practice controls, the employer must implement and maintain engineering and work practice controls to reduce airborne exposure to the lowest levels feasible and supplement these controls by using respiratory protection in accordance with WAC 296-850-135 Respiratory protection, of this rule.

(3) **Prohibition of rotation.** The employer must not rotate employees to different jobs to achieve compliance with the PELs.

NEW SECTION

**WAC 296-850-135 Respiratory protection.** (1) **General.** The employer must provide respiratory protection at no cost to the employee and ensure that each employee uses respiratory protection:

(a) During periods necessary to install or implement feasible engineering and work practice controls where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL;

(b) During operations, including maintenance and repair activities and nonroutine tasks, when engineering and work practice controls are not feasible and airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL;

(c) During operations for which an employer has implemented all feasible engineering and work practice controls when such controls are not sufficient to reduce airborne exposure to or below the TWA PEL or STEL;

(d) During emergencies; and

(e) When an employee who is eligible for medical removal under WAC 296-850-160(1) chooses to remain in a job with airborne exposure at or above the action level, as permitted by WAC 296-850-160 (2)(b).

(2) **Respiratory protection program.** Where this standard requires an employer to provide respiratory protection, the selection and use of such respiratory protection must be in accordance with chapter 296-842 WAC, Respirators.

(3) The employer must provide at no cost to the employee a powered air-purifying respirator (PAPR) instead of a negative pressure respirator when:

(a) Respiratory protection is required by this standard;

(b) An employee entitled to such respiratory protection requests a PAPR; and

(c) The PAPR provides adequate protection to the employee in accordance with subsection (2) of this section, respiratory protection program of this rule.

NEW SECTION

**WAC 296-850-140 Personal protective clothing and equipment.** (1) **Provision and use.** The employer must provide at no cost, and ensure that each employee uses, appropriate personal protective clothing and equipment in accordance with the written exposure control plan required under subsection (1) of this section and other applicable requirements for personal protective equipment. (WAC 296-800-160 Summary personal protective equipment (PPE). Chapter 296-155 WAC, Part C, Personal protective and lifesaving equipment. WAC 296-304-090 Personal protective equipment (PPE)—General requirements.):

(a) Where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL; or

(b) Where there is a reasonable expectation of dermal contact with beryllium.

**(2) Removal and storage.**

(a) The employer must ensure that each employee removes all beryllium-contaminated personal protective



clothing and equipment at the end of the work shift, at the completion of tasks involving beryllium, or when personal protective clothing or equipment becomes visibly contaminated with beryllium, whichever comes first.

(b) The employer must ensure that each employee removes beryllium-contaminated personal protective clothing and equipment as specified in the written exposure control plan required by WAC 296-850-130(1).

(c) The employer must ensure that each employee stores and keeps beryllium-contaminated personal protective clothing and equipment separate from street clothing and that storage facilities prevent cross-contamination as specified in the written exposure control plan required by WAC 296-850-130(1).

(d) The employer must ensure that no employee removes beryllium-contaminated personal protective clothing or equipment from the workplace, except for employees authorized to do so for the purposes of laundering, cleaning, maintaining or disposing of beryllium-contaminated personal protective clothing and equipment at an appropriate location or facility away from the workplace.

(e) When personal protective clothing or equipment required by this standard is removed from the workplace for laundering, cleaning, maintenance or disposal, the employer must ensure that personal protective clothing and equipment are stored and transported in sealed bags or other closed containers that are impermeable and are labeled in accordance with WAC 296-850-165(3) and chapter 296-901 WAC, Globally harmonized system for hazard communication.

### (3) Cleaning and replacement.

(a) The employer must ensure that all reusable personal protective clothing and equipment required by this standard is cleaned, laundered, repaired, and replaced as needed to maintain its effectiveness.

(b) The employer must ensure that beryllium is not removed from personal protective clothing and equipment by blowing, shaking or any other means that disperses beryllium into the air.

(c) The employer must inform in writing the persons or the business entities who launder, clean or repair the personal protective clothing or equipment required by this standard of the potentially harmful effects of airborne exposure to and dermal contact with beryllium and that the personal protective clothing and equipment must be handled in accordance with this standard.

## NEW SECTION

### **WAC 296-850-145 Hygiene areas and practices. (1)**

**General.** For each employee working in a beryllium work area, the employer must:

(a) Provide readily accessible washing facilities in accordance with this standard and other applicable sanitation standards (WAC 296-800-230 Summary (drinking water, bathrooms, washing facilities and waste disposal); WAC 296-155-140 Sanitation; WAC 296-304-06002 Sanitation) to remove beryllium from the hands, face, and neck; and

(b) Ensure that employees who have dermal contact with beryllium wash any exposed skin at the end of the activity, process, or work shift and prior to eating, drinking, smoking,

chewing tobacco or gum, applying cosmetics, or using the toilet.

(2) **Change rooms.** In addition to the requirements of subsection (1)(a) of this section, the employer must provide employees who work in a beryllium work area with a designated change room in accordance with this standard and other applicable sanitation standards (WAC 296-800-230 Summary (drinking water, bathrooms, washing facilities and waste disposal); WAC 296-155-140 Sanitation; WAC 296-304-06002 Sanitation) where employees are required to remove their personal clothing.

### (3) Showers.

(a) The employer must provide showers in accordance with other applicable sanitation standards (WAC 296-800-230 Summary (drinking water, bathrooms, washing facilities and waste disposal); WAC 296-155-140 Sanitation; WAC 296-304-06002 Sanitation) where:

(i) Airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL; and

(ii) Beryllium can reasonably be expected to contaminate employees' hair or body parts other than hands, face, and neck.

(b) Employers required to provide showers must ensure that each employee showers at the end of the work shift or work activity if:

(i) The employee reasonably could have had airborne exposure above the TWA PEL or STEL; and

(ii) Beryllium could reasonably have contaminated the employee's hair or body parts other than hands, face, and neck.

(4) **Eating and drinking areas.** Wherever the employer allows employees to consume food or beverages at a worksite where beryllium is present, the employer must ensure that:

(a) Surfaces in eating and drinking areas are as free as practicable of beryllium;

(b) No employees enter any eating or drinking area with personal protective clothing or equipment unless, prior to entry, surface beryllium has been removed from the clothing or equipment by methods that do not disperse beryllium into the air or onto an employee's body; and

(c) Eating and drinking facilities provided by the employer are in accordance with other applicable sanitation standards (WAC 296-800-230 Summary (drinking water, bathrooms, washing facilities and waste disposal); WAC 296-155-140 Sanitation; WAC 296-304-06002 Sanitation).

(5) **Prohibited activities.** The employer must ensure that no employees eat, drink, smoke, chew tobacco or gum, or apply cosmetics in regulated areas and other work areas where there is a reasonable expectation of exposure above the TWA PEL or STEL.

## NEW SECTION

### **WAC 296-850-150 Housekeeping. (1) General.**

(a) The employer must maintain all surfaces in beryllium work areas as free as practicable of beryllium and in accordance with the written exposure control plan required under WAC 296-850-130(1) and the cleaning methods required under this subsection; and

(b) The employer must ensure that all spills and emergency releases of beryllium are cleaned up promptly and in

accordance with the written exposure control plan required under WAC 296-850-130(1) and the cleaning methods required under this subsection.

**(2) Cleaning methods.**

(a) The employer must ensure that surfaces in beryllium work areas are cleaned by HEPA-filtered vacuuming or other methods that minimize the likelihood and level of airborne exposure.

(b) The employer must not allow dry sweeping or brushing for cleaning surfaces in beryllium-work areas unless HEPA-filtered vacuuming or other methods that minimize the likelihood and level of airborne exposure are not safe or effective.

(c) The employer must not allow the use of compressed air for cleaning beryllium-contaminated surfaces unless the compressed air is used in conjunction with a ventilation system designed to capture the particulates made airborne by the use of compressed air.

(d) Where employees use dry sweeping, brushing, or compressed air to clean beryllium-contaminated surfaces, the employer must provide, and ensure that each employee uses, respiratory protection and personal protective clothing and equipment in accordance with WAC 296-850-135 Respiratory protection, and WAC 296-850-140 Personal protective clothing and equipment.

(e) The employer must ensure that cleaning equipment is handled and maintained in a manner that minimizes the likelihood and level of airborne exposure and the reentrainment of airborne beryllium in the workplace.

**(3) Disposal.** The employer must ensure that:

(a) Materials designated for disposal that contain or are contaminated with beryllium are disposed of in sealed, impermeable enclosures, such as bags or containers, that are labeled in accordance with WAC 296-850-165(3) warning labels.

(b) Materials designated for recycling that contain or are contaminated with beryllium are cleaned to be as free as practicable of surface beryllium contamination and labeled in accordance with WAC 296-850-165(3), or placed in sealed, impermeable enclosures, such as bags or containers, that are labeled in accordance with WAC 296-850-165(3).

**NEW SECTION**

**WAC 296-850-155 Medical surveillance. (1) General.**

(a) The employer must make medical surveillance required by this section available at no cost to the employee, and at a reasonable time and place, to each employee:

(i) Who is or is reasonably expected to be exposed at or above the action level for more than thirty days per year;

(ii) Who shows signs or symptoms of CBD or other beryllium-related health effects;

(iii) Who is exposed to beryllium during an emergency; or

(iv) Whose most recent written medical opinion required by this section recommends periodic medical surveillance.

(b) The employer must ensure that all medical examinations and procedures required by this standard are performed by, or under the direction of, a licensed physician.

(c) When requested by an employee who provides the employer with an abnormal or borderline finding for a single

blood BeLPT or two borderline blood BeLPT, the employer must arrange for medical examinations and procedures to be performed at a CBD diagnostic center that is mutually agreed upon by the employer and the employee, or at the CBD diagnostic center requested by the employee, when the center is recognized by the department as a center for research and clinical assessment of chemically related illness (see RCW 51.32.360).

**(2) Frequency.** The employer must provide a medical examination:

(a) Within thirty days after determining that:

(i) An employee meets the criteria of subsection (1)(a)(i) of this section, unless the employee has received a medical examination, provided in accordance with this standard, within the last two years; or who shows signs or symptoms of CBD or other beryllium-related health effects;

(ii) An employee meets the criteria of subsection (1)(a)(ii) or (iii) of this section.

(b) At least every two years thereafter for each employee who continues to meet the criteria of subsection (1)(a)(i), (ii), or (iv) of this section.

(c) At the termination of employment for each employee who meets any of the criteria of subsection (1)(a) of this section at the time the employee's employment terminates, unless an examination has been provided in accordance with this standard during the six months prior to the date of termination.

**(3) Contents of examination.**

(a) The employer must ensure that the PLHCP conducting the examination advises the employee of the risks and benefits of participating in the medical surveillance program and the employee's right to opt out of any or all parts of the medical examination.

(b) The employer must ensure that the employee is offered a medical examination that includes:

(i) A medical and work history, with emphasis on past and present airborne exposure to or dermal contact with beryllium, smoking history, and any history of respiratory system dysfunction;

(ii) A physical examination with emphasis on the respiratory system;

(iii) A physical examination for skin rashes;

(iv) Pulmonary function tests, performed in accordance with the guidelines established by the American Thoracic Society including forced vital capacity (FVC) and forced expiratory volume in one second (FEV1);

(v) A standardized BeLPT or equivalent test, upon the first examination and at least every two years thereafter, unless the employee is confirmed positive. If the results of the BeLPT are other than normal, follow-up BeLPT testing must be offered within thirty days, unless the employee has been confirmed positive or unless the employee requests a medical examination as according to subsection (1)(c) of this section. Samples must be analyzed in a laboratory certified under the College of American Pathologists/Clinical Laboratory Improvement Amendments (CLIA) guidelines to perform the BeLPT;

(vi) A low dose computed tomography (LDCT) scan, when recommended by the PLHCP after considering the employee's history of exposure to beryllium along with other

risk factors, such as smoking history, family medical history, sex, age, and presence of existing lung disease; and

(vii) Any other test deemed appropriate by the PLHCP.

(4) **Information provided to the PLHCP.** The employer must ensure that the examining PLHCP (and the evaluating CBD diagnostic center, if an evaluation is required under subsection (7) of this section) has a copy of this rule and must provide the following information, if known:

(a) A description of the employee's former and current duties that relate to the employee's airborne exposure to and dermal contact with beryllium;

(b) The employee's former and current levels of airborne exposure;

(c) A description of any personal protective clothing and equipment, including respirators, used by the employee, including when and for how long the employee has used that personal protective clothing and equipment; and

(d) Information from records of employment-related medical examinations previously provided to the employee, currently within the control of the employer, after obtaining written consent from the employee.

(5) **Licensed physician's written medical report for the employee.**

**Exception:** When the PLHCP assists the worker in filing a claim under Title 51 RCW, Industrial insurance, the PLHCP does not need to prepare a separate report for the employee if all the information required in this section is entered into the claim record, the report is directly shared with the employee, and the PLHCP explains the results of the examination to the employee. The PLHCP may provide additional reports or notes to make sure the employee understands the results of the examination and recommendations.

The employer must ensure that the employee receives a written medical report from the licensed physician within forty-five days of the examination (including any follow-up BeLPT required under subsection (3)(b)(v) of this section) and that the PLHCP explains the results of the examination to the employee. The written medical report must contain:

(a) A statement indicating the results of the medical examination, including the licensed physician's opinion as to whether the employee has:

(i) Any detected medical condition, such as CBD or beryllium sensitization (i.e., the employee is confirmed positive, as defined in WAC 296-850-090), that may place the employee at increased risk from further airborne exposure; and

(ii) Any medical conditions related to airborne exposure that require further evaluation or treatment.

(b) Any recommendations on:

(i) The employee's use of respirators, protective clothing, or equipment; or

(ii) Limitations on the employee's airborne exposure to beryllium.

(c) If the employee is confirmed positive or diagnosed with CBD or if the licensed physician otherwise deems it appropriate, the written report must also contain a referral for an evaluation at a CBD diagnostic center.

(d) If the employee is confirmed positive or diagnosed with CBD, the written report must also contain a recommendation for continued periodic medical surveillance.

(e) If the employee is confirmed positive or diagnosed with CBD, the written report must also contain a recommendation for medical removal from airborne exposure to beryllium, as described in WAC 296-850-160.

(6) **Licensed physician's written medical opinion for the employer.**

**Exception:** When a claim has been initiated the PLHCP does not need to prepare a separate report for the employer if all information required in this section is entered into the claim record. As part of initiating a claim, the employee agrees to share all of the relevant medical records, and the limits on information reported to the employer in this section do not apply.

(a) The employer must obtain a written medical opinion from the licensed physician within forty-five days of the medical examination (including any follow-up BeLPT required under subsection (3)(b)(v) of this section). The written medical opinion must contain only the following:

(i) The date of the examination;

(ii) A statement that the examination has met the requirements;

(iii) Any recommended limitations on the employee's use of respirators, protective clothing, or equipment; and

(iv) A statement that the PLHCP has explained the results of the medical examination to the employee, including any tests conducted, any medical conditions related to airborne exposure that require further evaluation or treatment, and any special provisions for use of personal protective clothing or equipment.

(b) If the employee provides written authorization, the written opinion must also contain any recommended limitations on the employee's airborne exposure to beryllium.

(c) If the employee is confirmed positive or diagnosed with CBD or if the licensed physician otherwise deems it appropriate, and the employee provides written authorization, the written opinion must also contain a referral for an evaluation at a CBD diagnostic center.

(d) If the employee is confirmed positive or diagnosed with CBD and the employee provides written authorization, the written opinion must also contain a recommendation for continued periodic medical surveillance.

(e) If the employee is confirmed positive or diagnosed with CBD and the employee provides written authorization, the written opinion must also contain a recommendation for medical removal from airborne exposure to beryllium, as described in WAC 296-850-160.

(f) The employer must ensure that each employee receives a copy of the written medical opinion described in this subsection within forty-five days of any medical examination (including any follow-up BeLPT required under subsection (3)(b)(v) of this section) performed for that employee.

(7) **CBD diagnostic center.**

(a) The employer must provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employer and the employee, or at the CBD diagnostic center requested by the employee, when the center is recognized by the department as a center for research and clinical assessment of chemically related illness (see RCW 51.32.360). The examination must be provided within thirty days of:

(i) The employer's receipt of a physician's written medical opinion to the employer that recommends referral to a CBD diagnostic center; or

(ii) The employee presenting to the employer a physician's written medical report indicating that the employee has been confirmed positive or diagnosed with CBD, or recommending referral to a CBD diagnostic center.

(b) The employer must ensure that the employee receives a written medical report from the CBD diagnostic center that contains all the information required in subsection (5)(a), (b), (c), and (e) of this section and that the PLHCP explains the results of the examination to the employee within thirty days of the examination.

(c) The employer must obtain a written medical opinion from the CBD diagnostic center within thirty days of the medical examination. The written medical opinion must contain only the information in subsection (6)(a) of this section, as applicable, unless the employee provides written authorization to release additional information. If the employee provides written authorization, the written opinion must also contain the information from subsection (6)(b), (d), and (e) of this section, if applicable.

(d) The employer must ensure that each employee receives a copy of the written medical opinion from the CBD diagnostic center described in this subsection within thirty days of any medical examination performed for that employee.

(e) After an employee has received the initial clinical evaluation at a CBD diagnostic center described in (a) of this subsection, the employee may choose to have any subsequent medical examinations for which the employee is eligible under this section performed at a CBD diagnostic center mutually agreed upon by the employer and the employee, or at the CBD diagnostic center requested by the employee, when the center is recognized by the department as a center for research and clinical assessment of chemically related illness (see RCW 51.32.360). The employer must provide such examinations at no cost to the employee.

#### NEW SECTION

**WAC 296-850-160 Medical removal.** (1) An employee is eligible for medical removal, if the employee works in a job with airborne exposure at or above the action level and either:

(a) The employee provides the employer with:

(i) An abnormal or borderline finding for a single blood BeLPT test, until confirmatory testing is completed; or

(ii) A written medical report indicating a confirmed positive finding or CBD diagnosis; or

(iii) A written medical report recommending removal from airborne exposure to beryllium in accordance with WAC 296-850-155 (5)(e) or (7)(b); or

(b) The employer receives a written medical opinion recommending removal from airborne exposure to beryllium in accordance with WAC 296-850-155 (6)(e) or (7)(c).

(2) If an employee is eligible for medical removal, the employer must provide the employee with the employee's choice of:

(a) Removal as described in subsection (3) of this section; or

(b) Remaining in a job with airborne exposure at or above the action level, provided that the employer provides, and ensures that the employee uses, respiratory protection that complies with WAC 296-850-135 Respiratory protection, of this rule whenever airborne exposures are at or above the action level.

(3) If the employee chooses removal:

(a) If a comparable job is available where airborne exposures to beryllium are below the action level, and the employee is qualified for that job or can be trained within one month, the employer must remove the employee to that job. The employer must maintain for six months from the time of removal the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal.

(b) If comparable work is not available, the employer must maintain the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal for six months or until such time that comparable work described in (a) of this subsection becomes available, whichever comes first.

(4) The employer's obligation to provide medical removal protection benefits to a removed employee shall be reduced to the extent that the employee receives compensation for earnings lost during the period of removal from a publicly or employer-funded compensation program, or receives income from another employer made possible by virtue of the employee's removal.

#### NEW SECTION

**WAC 296-850-165 Communication of hazards.** (1) **General.**

(a) Chemical manufacturers, importers, distributors, and employers must comply with all requirements of chapter 296-901 WAC, Globally harmonized system for hazard communication, for beryllium.

(b) In classifying the hazards of beryllium, at least the following hazards must be addressed: Cancer; lung effects (CBD and acute beryllium disease); beryllium sensitization; skin sensitization; and skin, eye, and respiratory tract irritation.

(c) Employers must include beryllium in the hazard communication program established to comply with the HCS. Employers must ensure that each employee has access to labels on containers of beryllium and to safety data sheets, and is trained in accordance with the requirements of chapter 296-901 WAC, Globally harmonized system for hazard communication, and subsection (4) of this section.

(2) **Warning signs.**

(a) **Posting.** The employer must provide and display warning signs at each approach to a regulated area so that each employee is able to read and understand the signs and take necessary protective steps before entering the area.

(b) **Sign specification.**

(i) The employer must ensure that the warning signs required by (a) of this subsection are legible and readily visible.

(ii) The employer must ensure each warning sign required by (a) of this subsection bears the following legend:

DANGER  
REGULATED AREA  
BERYLLIUM  
MAY CAUSE CANCER  
CAUSES DAMAGE TO LUNGS  
AUTHORIZED PERSONNEL ONLY  
WEAR RESPIRATORY PROTECTION AND PERSONAL  
PROTECTIVE CLOTHING AND EQUIPMENT IN THIS AREA

(3) **Warning labels.** Consistent with chapter 296-901 WAC, Globally harmonized system for hazard communication, the employer must label each bag and container of clothing, equipment, and materials contaminated with beryllium, and must, at a minimum, include the following on the label:

DANGER  
CONTAINS BERYLLIUM  
MAY CAUSE CANCER  
CAUSES DAMAGE TO LUNGS  
AVOID CREATING DUST  
DO NOT GET ON SKIN

**(4) Employee information and training.**

(a) For each employee who has, or can reasonably be expected to have, airborne exposure to or dermal contact with beryllium:

(i) The employer must provide information and training in accordance with chapter 296-901 WAC, Globally harmonized system for hazard communication;

(ii) The employer must provide initial training to each employee by the time of initial assignment; and

(iii) The employer must repeat the training required under this standard annually for each employee.

(b) The employer must ensure that each employee who is, or can reasonably be expected to be, exposed to airborne beryllium can demonstrate knowledge and understanding of the following:

(i) The health hazards associated with airborne exposure to and contact with beryllium, including the signs and symptoms of CBD;

(ii) The written exposure control plan, with emphasis on the location(s) of beryllium work areas, including any regulated areas, and the specific nature of operations that could result in airborne exposure, especially airborne exposure above the TWA PEL or STEL;

(iii) The purpose, proper selection, fitting, proper use, and limitations of personal protective clothing and equipment, including respirators;

(iv) Applicable emergency procedures;

(v) Measures employees can take to protect themselves from airborne exposure to and contact with beryllium, including personal hygiene practices;

(vi) The purpose and a description of the medical surveillance program required by WAC 296-850-155 including risks and benefits of each test to be offered;

(vii) The purpose and a description of the medical removal protection provided under WAC 296-850-160;

(viii) The contents of the standard; and

(ix) The employee's right of access to records under chapter 296-802 WAC, Employee medical and exposure records.

(c) When a workplace change (such as modification of equipment, tasks, or procedures) results in new or increased airborne exposure that exceeds, or can reasonably be expected to exceed, either the TWA PEL or the STEL, the employer must provide additional training to those employees affected by the change in airborne exposure.

(d) Employee information. The employer must make a copy of this rule and its appendices readily available at no cost to each employee and designated employee representative(s).

**NEW SECTION**

**WAC 296-850-170 Recordkeeping. (1) Air monitoring data.**

(a) The employer must make and maintain a record of all exposure measurements taken to assess airborne exposure as prescribed in WAC 296-850-115 Exposure assessment.

(b) This record must include at least the following information:

(i) The date of measurement for each sample taken;

(ii) The task that is being monitored;

(iii) The sampling and analytical methods used and evidence of their accuracy;

(iv) The number, duration, and results of samples taken;

(v) The type of personal protective clothing and equipment, including respirators, worn by monitored employees at the time of monitoring; and

(vi) The name, Social Security number, and job classification of each employee represented by the monitoring, indicating which employees were actually monitored.

(c) The employer must ensure that exposure records are maintained and made available in accordance with chapter 296-802 WAC, Employee medical and exposure records.

**(2) Objective data.**

(a) Where an employer uses objective data to satisfy the exposure assessment requirements under WAC 296-850-115, the employer must make and maintain a record of the objective data relied upon.

(b) This record must include at least the following information:

(i) The data relied upon;

(ii) The beryllium-containing material in question;

(iii) The source of the objective data;

(iv) A description of the process, task, or activity on which the objective data were based; and

(v) Other data relevant to the process, task, activity, material, or airborne exposure on which the objective data were based.

(c) The employer must ensure that objective data are maintained and made available in accordance with chapter 296-802 WAC, Employee medical and exposure records.

**(3) Medical surveillance.**

(a) The employer must make and maintain a record for each employee covered by medical surveillance under WAC 296-850-155.

(b) The record must include the following information about each employee:

(i) Name, Social Security number, and job classification;

(ii) A copy of all licensed physicians' written medical opinions for each employee; and

(iii) A copy of the information provided to the PLHCP as required by WAC 296-850-155(4).

(c) The employer must ensure that medical records are maintained and made available in accordance with chapter 296-802 WAC, Employee medical and exposure records.

**(4) Training.**

(a) At the completion of any training required by this standard, the employer must prepare a record that indicates the name, Social Security number, and job classification of each employee trained, the date the training was completed, and the topic of the training.

(b) This record must be maintained for three years after the completion of training.

(5) **Access to records.** The employer shall ensure records are maintained and made available in accordance with chapter 296-802 WAC, Employee medical and exposure records.

(6) **Transfer of records.** The employer must comply with the requirements involving transfer of records set forth in chapter 296-802 WAC, Employee medical and exposure records.

NEW SECTION

**WAC 296-850-175 Dates.** (1) **Effective date.** This standard shall become effective October 1, 2018.

(2) **Compliance dates.** All obligations of this standard commence and become enforceable on October 1, 2018, except:

(a) Change rooms and showers required by WAC 296-850-145 of this standard must be provided by March 11, 2019; and

(b) Engineering controls required by WAC 296-850-130 Methods of compliance, of this rule must be implemented by March 10, 2020.

NEW SECTION

**WAC 296-850-180 Appendix A—Control strategies to minimize beryllium exposure of this standard is non-mandatory.** WAC 296-850-130(2) of this chapter requires employers to use one or more of the control methods listed in WAC 296-850-130(2) to minimize worker exposure in each operation in a beryllium work area, unless the operation is exempt under WAC 296-850-130 (2)(b). This appendix sets forth a non-exhaustive list of control options that employers could use to comply with WAC 296-850-130(2) for a number of specific beryllium operations.

**Table A.1: Exposure Control Recommendations**

<b>Operation</b>	<b>Minimal Control Strategy*</b>	<b>Application Group</b>
Beryllium Oxide Forming (e.g., pressing, extruding)	<p>For pressing operations:</p> <p>(1) Install local exhaust ventilation (LEV) on oxide press tables, oxide feed drum breaks, press tumblers, powder rollers, and die set disassembly stations;</p> <p>(2) Enclose the oxide presses; and</p> <p>(3) Install mechanical ventilation (make-up air) in processing areas.</p> <p>For extruding operations:</p> <p>(1) Install LEV on extruder powder loading hoods, oxide supply bottles, rod breaking operations, centerless grinders, rod laydown tables, dicing operations, surface grinders, discharge end of extrusion presses;</p> <p>(2) Enclose the centerless grinders; and</p> <p>(3) Install mechanical ventilation (make-up air) in processing areas.</p>	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites
Chemical Processing Operations (e.g., leaching, pickling, degreasing, etching, plating)	<p>For medium and high gassing operations:</p> <p>(1) Perform operation with a hood having a maximum of one open side; and</p> <p>(2) Design process so as to minimize spills; if accidental spills occur, perform immediate cleanup.</p>	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites; Copper Rolling, Drawing and Extruding

Operation	Minimal Control Strategy*	Application Group
Finishing (e.g., grinding, sanding, polishing, deburring)	<p>(1) Perform portable finishing operations in a ventilated hood. The hood should include both downdraft and backdraft ventilation, and have at least two sides and a top.</p> <p>(2) Perform stationary finishing operations using a ventilated and enclosed hood at the point of operation. The grinding wheel of the stationary unit should be enclosed and ventilated.</p>	Secondary Smelting; Fabrication of Beryllium Alloy Products; Dental Labs
Furnace Operations (e.g., Melting and Casting)	<p>(1) Use LEV on furnaces, pelletizer; arc furnace ingot machine discharge; pellet sampling; arc furnace bins and conveyors; beryllium hydroxide drum dumper and dryer; furnace rebuilding; furnace tool holders; arc furnace tundish and tundish skimming, tundish preheat hood, and tundish cleaning hoods; dross handling equipment and drums; dross recycling; and tool repair station, charge make-up station, oxide screener, product sampling locations, drum changing stations, and drum cleaning stations.</p> <p>(2) Use mechanical ventilation (make-up air) in furnace building.</p>	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites; Nonferrous Foundries; Secondary Smelting
Machining	<p>Use: (1) LEV consistent with ACGIH® ventilation guidelines on deburring hoods, wet surface grinder enclosures, belt sanding hoods, and electrical discharge machines (for operations such as polishing, lapping, and buffing);</p> <p>(2) High velocity low volume hoods or ventilated enclosures on lathes, vertical mills, CNC mills, and tool grinding operations;</p> <p>(3) For beryllium oxide ceramics, LEV on lapping, dicing, and laser cutting; and</p> <p>(4) Wet methods (e.g., coolants).</p>	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites; Copper Rolling, Drawing, and Extruding; Precision Turned Products
Mechanical Processing (e.g., material handling (including scrap), sorting, crushing, screening, pulverizing, shredding, pouring, mixing, blending)	<p>(1) Enclose and ventilate sources of emission;</p> <p>(2) Prohibit open handling of materials; and</p> <p>(3) Use mechanical ventilation (make-up air) in processing areas.</p>	Primary Beryllium Production; Beryllium Oxide Ceramics and Composites; Aluminum and Copper Foundries; Secondary Smelting

Operation	Minimal Control Strategy*	Application Group
Metal Forming (e.g., rolling, drawing, straightening, annealing, extruding)	(1) For rolling operations, install LEV on mill stands and reels such that a hood extends the length of the mill; (2) For point and chamfer operations, install LEV hoods at both ends of the rod; (3) For annealing operations, provide an inert atmosphere for annealing furnaces, and LEV hoods at entry and exit points; (4) For swaging operations, install LEV on the cutting head; (5) For drawing, straightening, and extruding operations, install LEV at entry and exit points; and (6) For all metal forming operations, install mechanical ventilation (make-up air) for processing areas.	Primary Beryllium Production; Copper Rolling, Drawing, and Extruding; Fabrication of Beryllium Alloy Products
Welding	For fixed welding operations: (1) Enclose work locations around the source of fume generation and use local exhaust ventilation; and (2) Install close capture hood enclosure designed so as to minimize fume emission from the enclosure welding operation.  For manual operations: (1) Use portable local exhaust and general ventilation.	Primary Beryllium Production; Fabrication of Beryllium Alloy Products; Welding

\* All LEV specifications should be in accordance with the ACGIH® Publication No. 2094, "Industrial Ventilation - A Manual of Recommended Practice" wherever applicable.

**NEW SECTION**

**WAC 296-850-190 Appendix B—Considerations when using the blood beryllium lymphocyte proliferation test in the screening and evaluation of beryllium sensitization—Nonmandatory.**

**Purpose:**

The purpose of this appendix is to provide medical information and recommendations to aid physicians and other licensed health care professionals (PLHCPs) regarding compliance with the medical surveillance provisions of the beryllium standard. Appendix B is for informational and guidance purposes only and none of the statements in Appendix B should be construed as imposing a mandatory requirement on employers that is not otherwise imposed by the beryllium standard (chapter 296-850 WAC, Beryllium). The complete medical surveillance requirements for examinations and procedures under this chapter are described in WAC 296-850-155.

**Chronic Beryllium Disease and Beryllium Sensitization:**

Chronic beryllium disease (CBD) is a chronic granulomatous (inflammatory) disease primarily of the lung, caused by exposure to beryllium that meets the diagnostic criteria

published in the *Department of Labor and Industries Clinical Guideline for the Diagnosis of Beryllium Sensitization and Chronic Beryllium Disease*. Some patients diagnosed with CBD remain free of symptoms following diagnosis, while others develop progressive worsening of clinically significant disease. (Balmes et al. 2014. Page e54) "Medical therapy of CBD is directed at suppressing the immune response to beryllium and subsequent granuloma formation and fibrosis." (Ibid)

Summarizing their review of the development of beryllium sensitization, the Federal Occupational Safety and Health Administration (OSHA) described how the immune systems of sensitized workers have been activated to react to beryllium exposures such that subsequent exposure to beryllium can progress to serious lung disease. (OSHA 2017, page 2492) According to this rule, sensitized workers are considered to be confirmed positive if supported by two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results, or any cases confirmed by the criteria published in the *Department of Labor and Industries Clinical Guideline for the Diagnosis of Beryllium Sensitization and Chronic Beryllium Disease*. It also means the result



of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.

It is prudent to remove sensitized workers from further exposure to beryllium. (Balmes et al. 2014; OSHA 2017)

Additional information regarding beryllium sensitization and chronic beryllium disease are included in the *Department of Labor and Industries Clinical Guideline for the Diagnosis of Beryllium Sensitization and Chronic Beryllium Disease*, which may be requested from the department.

### The Beryllium Lymphocyte Proliferation Test:

The beryllium lymphocyte proliferation test is performed by taking lymphocytes from either bronchoalveolar lavage fluid (the BAL BeLPT) or peripheral blood (the blood BeLPT), culturing them *in vitro*, and exposing them to beryllium sulfate to stimulate lymphocyte proliferation. The observation of beryllium-specific proliferation indicates beryllium sensitization.

While test results from either the blood BeLPT or the BAL BeLPT can be used to confirm sensitization to beryllium, (L&I Clinical Beryllium Guideline) it is the blood BeLPT that is typically used when screening for beryllium sensitization. Abnormal and borderline test results are considered "other than normal" in that they form the basis for diagnosing beryllium sensitization according to the diagnostic criteria used by this rule. Under these diagnostic criteria, no single blood BeLPT result can be used to diagnose beryllium sensitization.

The sensitivity of the BeLPT refers to its ability to correctly yield an other than normal result (i.e., abnormal or borderline) in those who are truly sensitized to beryllium. The specificity of the test refers to its ability to correctly yield a normal result in those who are not sensitized to beryllium.

Per Stange et al. (2004) and Middleton et al. (2006), for a single blood BeLPT the sensitivity is 0.723, and the specificity is 0.9737.

Abnormal or borderline results in workers who are in fact not sensitized to beryllium are considered false positives. Normal results in workers who are truly sensitized to beryllium are considered false negatives.

The diagnostic criteria for confirmed positive beryllium sensitization used by this rule requires any single abnormal or borderline blood BeLPT result be confirmed, which reduces the risk of unsensitized workers being falsely labeled as sensitized by false positive results of the blood BeLPT.

With a sensitivity of 0.723, a single blood BeLPT would be expected to falsely yield a negative result in nearly thirty percent of truly sensitized workers who undergo the test. Testing algorithms have been published that use multiple blood BeLPTs to reduce false negative results while continuing to control the risk of false positives. (Middleton et al. 2006, L&I Clinical Beryllium Guideline)

**Thus, by controlling the sequence and number of blood BeLPTs he or she orders, the ordering provider exerts significant control over the risk that workers who are truly sensitized to beryllium could be falsely labeled as unsensitized due to false negative results of the blood BeLPT.** The following is designed to provide information to assist the ordering provider who tailors these decisions to the needs of the population and individuals being tested.

These published testing algorithms reduce the risk of false negatives by using split-sample blood beryllium lymphocyte proliferation testing, which is the measurement of blood lymphocyte proliferation in two laboratory tests when a single sample of blood is split into two samples and sent to two independent laboratories, whereupon the lymphocytes are challenged with a soluble beryllium salt and two results returned. (Welch et al. 2004; Middleton et al. 2006; Balmes et al. 2014, OSHA 2017)

The highest sensitivity for performing beryllium sensitization testing using the blood BeLPT (86%) described in NIOSH beryllium rulemaking testimony (NIOSH page 32) relies upon a testing algorithm that requires either one or two rounds of testing, where split-sample blood BeLPTs are performed at each round. Thus, a minimum of two initial blood BeLPTs are obtained from independent laboratories in this testing algorithm, followed if needed by a second simultaneously-obtained pair. (Middleton et al. 2006)

An alternative algorithm with a lower sensitivity (65.7%) uses a single blood BeLPT for the initial round of testing. If the initial result is abnormal or borderline, this triggers a second round of testing with a split-sample blood BeLPT. (Ibid)

### Round two split-sample testing:

Although not required by this rule, providers should consider the advantages of using split-sample testing for the second round of blood BeLPT testing, compared to single-sample testing:

- If only a single blood BeLPT is performed during a second round of testing, nearly thirty percent of truly sensitized workers would be expected to have a false negative test result and additional evaluation recommended.
- Split-sample testing for the second round decreases the risk of such false-negative results
- Based on published blood BeLPT performance characteristics (Stange et al. 2004; Middleton et al. 2006) false negative tests are more common than false positives (unless beryllium sensitization is sufficiently rare in the screened population.)
- For some result patterns, split-sample testing may be a faster way to arrive at a sensitization determination, which may be particularly relevant for workers who are receiving medical removal protection benefits while the diagnostic evaluation proceeds
- The risk of false-positives is low with either algorithm that uses split-sample testing (Middleton et al. 2006)

Per WAC 296-850-155 (3)(b)(v) and (vii), employers must make split-sample testing available to workers if requested by the provider who is determining whether an employee is sensitized to beryllium. In addition, WAC 296-850-155 (3)(b)(v) and (vii) requires employers to make multiple rounds of blood BeLPT testing available if requested by the provider. Providers need not cease testing if an initial abnormal or borderline result is followed by single- instead of split-sample testing and a single negative blood BeLPT results, for example.

Per WAC 296-850-155 (5)(c) and (6)(c) providers may at any time choose to refer workers to their choice of either a chronic beryllium disease diagnostic center that is mutually agreed upon by the employer and the employee, or to a facil-

ity recognized by the department as a center for research and clinical assessment of chemically related illness (see RCW 51.32.360).

#### Round one split-sample testing:

Although not required by this rule, providers should also consider circumstances under which split-sample testing at the time of the initial evaluation may be advantageous:

- This achieves the highest sensitivity (86%) of any screening algorithm described in this appendix, while controlling the risk of false-positive test results. (Middleton et al. 2006)

- Except in populations where beryllium sensitization is sufficiently rare, this increase in sensitivity compared to performing the first round of testing with just a single blood BeLPT significantly reduces the number of false negative test results relative to the increase in false positives.

- Patient-specific considerations include the risk of loss-to-follow-up, the expected time to next screening examination, provider index of suspicion, and the consequences of sustaining ongoing exposure to beryllium in the case of a missed diagnosis.

#### Additional considerations:

The tests used to diagnose beryllium sensitization may have been performed at any time following exposure. (L&I Clinical Beryllium Guideline) Thus, there may be a need to gather additional records of tests that have yielded abnormal or borderline results, but that may not be in the possession of the employer or provided to the provider at the start of the screening examination.

Diagnostic criteria used in the rule anticipate the possibility of false-negative testing: If deemed appropriate, sensitization can be confirmed by bronchoalveolar lavage BeLPT (BAL BeLPT). (L&I Clinical Beryllium Guideline)

Diagnosing chronic beryllium disease using the secondary diagnostic pathway requires all criteria be met and requires the performance of both the blood BeLPT and BAL BeLPT (unless medically contraindicated), but does not require sensitization be confirmed as described in the primary diagnostic pathway. (L&I Clinical Beryllium Guideline)

#### Concluding recommendations:

Providers should consider providing split-sample blood BeLPTs in nearly all circumstances where round two testing is indicated or required.

Providers should consider whether patient- and population-based considerations warrant using split-sample testing for the first round of blood BeLPT testing.

#### References:

Balmes, J.R., et al. *An official American Thoracic Society statement: diagnosis and management of beryllium sensitivity and chronic beryllium disease*. Am J Respir Crit Care Med, 2014. **190**(10): p. e34-59.

Beryllium hearing exhibit 005: National Institute for Occupational Safety and Health (NIOSH) Testimony. Docket No. OSHA-H005C-2006-0870-1725.

*The Clinical Guideline for the Diagnosis of Beryllium Sensitization and Chronic Beryllium Disease*, as published by the Washington State Department of Labor and Industries.

Department of Labor: Occupational Safety and Health Administration (OSHA). *Occupational Exposure to Beryllium*. Federal Register. Vol. 82, No. 5. Monday, January 9, 2017. Rules and Regulations. Docket No. OSHA-H005C-2006-0870.

Middleton, D.C., et al. The BeLPT: algorithms and implications. Am J Ind Med, 2006. **49**(1): p. 36-44.

Stange, A.W., F.J. Furman, and D.E. Hilmas. *The beryllium lymphocyte proliferation test: Relevant issues in beryllium health surveillance*. Am J Ind Med, 2004. **46**(5): p. 453-62. Middleton et al. 2006.

Welch, L., et al. *Screening for Beryllium Disease Among Construction Trade Workers at Department of Energy Nuclear Sites*. Am J Ind Med, 2004. **46**:207-218.

### WSR 18-10-084

#### PROPOSED RULES

### PUBLIC EMPLOYMENT RELATIONS COMMISSION

[Filed May 1, 2018, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-23-027.

Title of Rule and Other Identifying Information: WAC 391-08-150 Adjudicative proceedings—Prehearing motions, the agency is proposing to adopt a general rule of procedure that sets forth time frames for the filing of prehearing motions as well as guidelines for the filing of responses to prehearing motions.

Hearing Location(s): On June 12, 2018, at 1:30 p.m., at 112 Henry Street, Suite 300, Olympia, WA 98504-0919. Main conference room of the agency's Olympia headquarters.

Date of Intended Adoption: August 7, 2018.

Submit Written Comments to: Dario de la Rosa, 112 Henry Street, Suite 300, P.O. Box 40919, Olympia, WA 98504-0919, email dario.delarosa@perc.wa.gov, fax 360-570-7334, by June 11, 2018.

Assistance for Persons with Disabilities: Contact Diane Tucker, phone 360-570-7335, fax 360-570-7334, email diane.tucker@perc.wa.gov, by June 8, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new rule sets forth the processes and procedures for the filing of prehearing motions. It will provide more stability and predictability to the prehearing process by precluding prehearing motions that could unnecessarily delay a scheduled hearing.

Reasons Supporting Proposal: The agency currently does not have a formal process for addressing prehearing motions.

Statutory Authority for Adoption: RCW 41.58.050, 28B.52.065, 41.56.090, 41.59.110, 41.76.060.

Name of Proponent: Staff, public employment relations commission, governmental.

Name of Agency Personnel Responsible for Drafting: Dario de la Rosa, Olympia, 360-570-7328; Implementation and Enforcement: Michael Sellars, Olympia, 360-570-7306.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is a procedural rule relating to the conduct of administrative hearings before the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

May 1, 2018  
Dario de la Rosa  
Rules Coordinator

### NEW SECTION

**WAC 391-08-155 Adjudicative proceedings—Prehearing motions** Unless controlled by WAC 391-08-180, 391-25-170, 391-25-190, 391-45-070, 391-45-210, or 391-45-250, all prehearing motions shall be made in writing and filed and served on all parties of record in accordance with WAC 391-08-120. All motions should be supported by legal authorities and may be accompanied by other supporting materials, such as affidavits.

(1) Prehearing motions may be filed at any time prior to the scheduling of a hearing date. The presiding hearing officer or examiner shall establish a schedule for all parties of record to respond to the motion.

(2) If a hearing date(s) have been established, all dispositive prehearing motions must be filed with the presiding hearing officer or examiner at least 21 days prior to the first established hearing date.

(a) When a prehearing motion is filed where a hearing date has been established, the non-moving party or parties must file and serve responses to the motion within 7 days from the date in which the motion was filed under WAC 391-08-120.

(b) The presiding hearing officer or examiner must rule on the motion at least 7 days prior to the first established hearing date.

**WSR 18-10-098**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed May 2, 2018, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-142.

Title of Rule and Other Identifying Information: Chapter 392-105 WAC.

Hearing Location(s): On June 7, 2018, at 1:00 p.m., at the Office of the Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 600 South Washington Street,

Olympia, WA 98501. Those wishing to testify at the June 7, 2018, hearing should arrive by 1:00 p.m.

Date of Intended Adoption: June 12, 2018.

Submit Written Comments to: Dierk Meierbachtol, P.O. Box 47200, Olympia, WA 98504-7200, email publicrecordsrequest@k12.wa.us, fax 360-753-4201, by June 7, 2018.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by May 31, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these amendments is to reorganize and streamline chapter 392-105 WAC and to revise the chapter to conform with EHB 1595 (65th legislature, 2017, regular session). The proposed rules:

- Clarify the ways the public may make public records requests, and how the agency responds to and sends the requested records;
- Establish the guidelines for inspection of public records;
- Remove current costs for copying public records and state the agency charges copies under the default fees in RCW 42.56.120;
- Provide that the agency must identify how specific exemptions cited apply to denial of public records;
- Specify that denial notices include information about the requestor's right to a review; and
- Provide that the agency must maintain a records index.

As part of its streamlining, the agency is proposing to repeal sections because the content of those rules is not addressed in other sections of the proposed rules.

Reasons Supporting Proposal: OSPI is making these proposed changes in response to recent legislation that revised the Public Records Act, chapter 42.56 RCW. Additionally, OSPI is taking this opportunity to update its public records rules so as to streamline and simplify the rules to provide better clarity to the public.

Statutory Authority for Adoption: RCW 28A.300.040.

Statute Being Implemented: RCW 28A.300.040, chapter 42.56 RCW.

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

Name of Agency Personnel Responsible for Drafting: Dierk Meierbachtol, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, 360-725-6004; and Implementation: Cade Walker, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, 360-725-6372.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on

small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

May 1, 2018  
Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 80-05-034, filed 4/15/80)

**WAC 392-105-010 ((Access to public records.)) Purpose and authority.** ~~((1) All public records as defined by RCW 42.17.020 (26) and (28) prepared, owned, used, or retained by the superintendent of public instruction shall be available for public inspection and copying during normal office hours in the office where they are located, except for the following:~~

~~(a) Personal information in files maintained by the superintendent of public instruction to the extent that disclosure would violate any individual's right to privacy.~~

~~(b) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by the agency in connection with any agency action.~~

~~(c) Records which are relevant to a controversy to which the agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.~~

~~(d) Any other information which is exempt from public inspection under RCW 42.17.310 where disclosure would violate personal privacy or vital government interests.~~

~~(2) The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital government interests, can be deleted from the specific records sought. No exception shall be construed to permit the nondisclosure of statistical information when such information is not descriptive of any readily identifiable person or persons.)~~ The purpose of this chapter is to implement the requirements of the Public Records Act, chapter 42.56 RCW. The superintendent of public instruction adopts these rules to provide the fullest assistance to requestors and full access to the agency's public records while protecting those records from damage or disorganization; preventing excessive interference with essential agency functions, including the agency's core mission of supervising all matters pertaining to public schools; and not unreasonably disrupting agency operations.

AMENDATORY SECTION (Amending WSR 92-10-016, filed 4/28/92, effective 5/29/92)

**WAC 392-105-020 ((Office hours.)) Agency description—Contact information—Public records officer.** ~~((Public records shall be available for inspection and copying during the customary office hours of the agency. For purposes of this chapter, the customary office hours shall be from 8:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.)) (1) The office of superintendent of public instruction is an agency~~

headed by the superintendent of public instruction, a constitutional officer of the state charged with supervision over all matters pertaining to public schools. The powers and duties of the superintendent and the agency are described in Title 28A RCW.

(2) The superintendent of public instruction's administrative offices are located at: Old Capital Building, 600 Washington Street S.E., Olympia, WA 98504.

(3) The superintendent of public instruction's public records officer may be contacted at the following mailing address, telephone number, or email address:

Public Records Officer  
Office of the Superintendent of Public Instruction  
P.O. Box 47200  
Olympia, WA 98504-7200  
360-725-6372  
publicrecordsrequest@k12.wa.us

Information and records are also available at the superintendent of public instruction web site at [www.k12.wa.us](http://www.k12.wa.us).

(4) The public records officer will oversee compliance with the act, but another agency staff member may process the request. Therefore, these rules will refer to the public records officer or designee. The public records officer or designee and the agency will provide the fullest assistance to requestors and prevent fulfilling public records requests from causing excessive interference with the agency's essential functions.

AMENDATORY SECTION (Amending WSR 93-07-039, filed 3/11/93, effective 4/11/93)

**WAC 392-105-030 ((Copying.)) Definitions.** ~~((No fee shall be charged for the inspection of public records. The superintendent of public instruction may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records; such charges shall not exceed the amount necessary to reimburse SPI for its actual costs incident to such copying. No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate official. All charges must be paid by money order, check, or cash in advance.)) (1) "Agency" means the office of superintendent of public instruction.~~

(2) "Public record" and "writing" shall have the meanings as stated in RCW 42.56.010.

(3) "Public records officer" means the employee designated by the superintendent under RCW 42.56.580(1) responsible for overseeing the agency's compliance with the Public Records Act.

(4) "Superintendent of public instruction" and "superintendent" mean the elected officer of the state as defined by RCW 28A.300.010 who is the head of the office of superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 93-07-039, filed 3/11/93, effective 4/11/93)

**WAC 392-105-040 (~~(Review of denials of public records requests.)~~) Request, hours for inspection, and organization of public records.** ~~((1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement which constituted or accompanied the denial.~~

~~(2) The written request by a person demanding prompt review of a decision denying a public record shall be submitted to the SPI or his or her designee.~~

~~(3) Within two business days after receiving the written request by a person petitioning for a prompt review of a decision denying a public record, the superintendent of public instruction or his or her designee, shall complete such review.~~

~~(4) During the course of the review the superintendent of public instruction or his or her designee shall consider the obligations of the agency fully to comply with the intent of chapter 42.17 RCW insofar as it requires providing full public access to official records, but shall also consider both the exemptions provided in RCW 42.17.310 through 42.17.315, and the provisions of the statute which require the agency to protect public records from damage or disorganization, prevent excessive interference with essential functions of the agency, and prevent any unreasonable invasion of personal privacy by deleting identifying details.)~~ **(1) Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the agency must make the request in writing on the agency's request form or through an online portal, or by letter, or email addressed to the public records officer at the email address publicly designated by superintendent of public instruction, or by submitting the request in person at the address listed in WAC 392-105-020, and must include the following information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any email address;

(iv) Identification of the public records adequate for the public records officer or designee to locate the records; and

(v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit, in accordance with the allowable costs under WAC 392-105-060.

(c) A records request form is available for use by requestors at the office of the public records officer and online at [www.k12.wa.us/publicrecordsrequest](http://www.k12.wa.us/publicrecordsrequest).

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

**(2) Hours for inspection of public records.** Public records are available for inspection and copying during normal business hours of the agency, Monday through Friday,

8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the administrative offices of the agency. Many public records are also available for inspection and copying on the agency's web site, [www.k12.wa.us](http://www.k12.wa.us), at any time, at no cost.

**(3) Organization of public records.** The agency will maintain its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. When inspecting records in person, a requestor must comply with protection requirements of WAC 392-105-060 and must make reasonable efforts to maintain the organization of the public records.

AMENDATORY SECTION (Amending WSR 92-10-016, filed 4/28/92, effective 5/29/92)

**WAC 392-105-050 Protection of public records.** ~~((Public records and a facility for their inspection will be provided by the public records officer. Such records shall not be removed from the place designated. Copies of such records may be arranged according to the provisions of WAC 392-105-030.))~~ In order to adequately protect the agency's public records, requestors must comply with the following guidelines while inspecting public records:

(1) Requestors may not remove any public record from the agency's premises.

(2) Requestors must have a designated agency employee present while inspecting a public record.

(3) Requestors may not mark or deface a public record in any manner during inspection.

(4) Requestors may not dismantle public records that are maintained in a file or jacket, or in chronological or other filing order, or those records that, if lost or destroyed, would constitute excessive interference with the agency's essential functions.

(5) Access to agency file cabinets, shelves, vaults, or other storage areas is restricted to agency personnel, unless other arrangements are made with the public records officer or designee.

AMENDATORY SECTION (Amending WSR 93-07-039, filed 3/11/93, effective 4/11/93)

**WAC 392-105-060 (~~(Records index.)~~) Costs of providing copies of public records.** ~~((1) The agency has available for the use of all persons a current index which provides identifying information as to the following records issued, adopted, or promulgated by the agency after June 30, 1972:~~

~~(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudicated cases;~~

~~(b) Those statements of policy and interpretative policy, statute and the constitution which have been adopted by the agency;~~

~~(c) Administrative staff manuals and instructional staff that affect a member of the public;~~

~~(d) Planning policies and goals, and interim and planning decisions;~~

~~(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports,~~

or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(2) The current index maintained by the agency shall be available to all persons under the same rules and all the same conditions as are applied to public records available for inspection.) (1) **Inspection.** The agency does not charge a fee for the inspection of public records, either in person or on the agency's web site.

(2) **Statutory default costs.** Pursuant to RCW 42.56-.120(2), the agency declares for the following reasons that it would be unduly burdensome to calculate the actual costs it charges for providing copies of public records:

(a) Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs; and

(c) A study would interfere with and disrupt other essential agency functions.

**(3) Fee schedule.**

(a) The agency may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120 and as published in the agency's fee schedule available on the agency web site at [www.k12.wa.us](http://www.k12.wa.us).

(b) The agency will charge the actual amount charged by an external vendor for records copied by an external vendor including records in nonstandard sizes or formats as published in the agency's fee schedule available on the agency web site at [www.k12.wa.us](http://www.k12.wa.us).

(4) **Processing payments.** Before copying public records, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all of the records. The public records officer or designee may require payment of the remainder of the copying costs before providing all of the records, or the payment of costs of copying an installment before providing the installment. The agency will not charge sales tax when it makes copies of public records.

(5) **Customized electronic access services.** At the agency's sole discretion, the agency may provide customized electronic access to public records if the agency estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other agency purposes. The agency will charge the actual costs, including staff time, necessary to reimburse the agency for providing customized electronic access services.

(6) **Costs of mailing.** The agency may also charge actual costs of mailing, including the costs of the shipping container.

(7) **Payment of fees.** The agency will not release any requested copies of public records unless and until the

requestor has paid all copying and other charges as set forth in this section.

(8) **Waiver of fees.** The agency may waive any charges for providing public records at the discretion of the public records officer. This determination will be made on a case-by-case basis.

**NEW SECTION**

**WAC 392-105-070 Responses to public records requests.** (1) **Acknowledging receipt of request.** The agency will respond to a request within five business days of receipt, by:

(a) Providing the record(s);

(b) Providing an internet address and link to the record(s) on the agency web site;

(c) Acknowledging that the agency has received the request, asking for clarification to the extent the request is unclear, and providing a reasonable estimate of the time the agency will require to respond to the request if not clarified; or

(d) Denying the public record request.

(2) **Requests for clarification.** In acknowledging receipt of a public record request that is unclear, the agency may ask the requestor to clarify what information the requestor is seeking.

(3) **Additional time.** Additional time required to respond to a request may be based upon the following:

(a) The need to clarify the intent of the request;

(b) The need to locate and assemble the information requested;

(c) The need to notify third persons or agencies affected by the request; or

(d) The need to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(4) **Processing requests.** The agency will process requests in the order in which they are received. The agency may modify this approach as necessary to ensure that requests that seek larger volumes of records, require closer review, or are otherwise more time consuming, do not unreasonably delay simpler, more routine requests.

**(5) Providing records in installments.**

(a) The agency may elect to provide responsive records on a partial or installment basis when:

(i) It appears that the number of records responsive to a request may be large; or

(ii) The process of locating, assembling, or reviewing the records may be lengthy.

(b) The agency has no obligation to locate and assemble records responsive to a subsequent installment until the previous installment has been claimed or inspected.

**(6) Providing electronic records.**

(a) When electronic records are requested, the agency will provide:

(i) The nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available; or

(ii) At the agency's discretion, in a format that is reasonably translatable from the format in which the agency keeps the records.

(b) The agency is under no obligation to convert electronic records to a specific format identified by the requestor.

(c) When metadata is requested, the agency will provide the records in a native file format that preserves metadata where technically feasible. Metadata may be unavailable for records that require conversion to a nonnative format in order to apply exemptions.

(7) **Completion of inspection or disclosure.** When the inspection or disclosure of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the agency has completed a reasonable search for the requested records and made any located nonexempt records available for inspection or disclosure.

(8) **Closing withdrawn or abandoned requests.** The public records officer or designee will close a request and indicate to the requestor that the agency has closed the request when:

(a) The requestor withdraws the request;

(b) The requestor fails to clarify a request within ten business days after being asked to clarify the information the requestor is seeking;

(c) The requestor fails to comply with the agency's guidelines for inspecting public records;

(d) The requestor fails to pay any copying or other charges; or

(e) The requestor fails to claim or inspect an installment within ten business days after the public records officer or designee provides notice of the installment's availability.

#### NEW SECTION

**WAC 392-105-080 Determination regarding exempt records.** (1) When the agency denies, in whole or in part, a request for inspection of any public record, the agency must include a statement of the specific exemption authorizing the denial and a brief explanation of how the exemption applies to the record withheld.

(2) If only a portion of a record is exempt from disclosure but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

#### NEW SECTION

**WAC 392-105-090 Review of denials of public records requests.** (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing, including email, to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer must promptly provide the petition and any other relevant information to the superintendent of public instruction or his or her designee. The superintendent or des-

ignee must consider the petition and either affirm or reverse the denial within two business days following the agency's receipt of the petition, or within such other time as the agency and the requestor mutually agree to.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the agency denies a requestor access to public records because the agency claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter under WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

#### NEW SECTION

**WAC 392-105-100 Records index.** (1) The records retention schedule established by the division of the state archives of the office of the secretary of state serves as an index for the identification and location of the agency's records, including those described in RCW 42.56.070(5). The records retention schedule indexes records according to the originating program or section, and then the record series title. Each title is further identified by a statement of function or purpose, and the retention period. The records retention schedule is available to the public for inspection and copying. With the assistance of the public records officer or designee, any person can obtain access to the agency's public records using the records retention schedule.

(2) Policy statements and interpretive statements as defined in RCW 34.05.010 are available on the agency's web site or upon request through the agency's public records office.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-105-001	Purpose.
WAC 392-105-003	Description of organization.
WAC 392-105-005	Operations and procedures.
WAC 392-105-007	Definitions.
WAC 392-105-015	Public records officer.
WAC 392-105-025	Requests for public records.
WAC 392-105-035	Determination regarding exempt records.
WAC 392-105-045	Records index—Inspection.
WAC 392-105-055	List of employees and elected officers.

WSR 18-10-102
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed May 2, 2018, 9:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-020.

Title of Rule and Other Identifying Information: WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): On June 12, 2018, at 1:00 p.m., in Conference Room 252, 6400 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: June 19, 2018.

Submit Written Comments to: Brenton M. Madison, P.O. Box 47453, Olympia, WA 98504-7453, email BrentonM@dor.wa.gov, fax 360-534-1606, by June 12, 2018.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5717 or 360-725-7514, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax.

Reasons Supporting Proposal: This proposal provides the revised stumpage value tables for July 1 to December 31, 2018.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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: Brenton M. Madison, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1583; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Brenton M. Madison, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1583, fax 360-534-1606, email BrentonM@dor.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Only large businesses are required to use the values contained in the rules,

small businesses have other statutory authority for their tax reporting obligations.

May 2, 2018
Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-02-058, filed 12/29/17, effective 1/1/18)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) Introduction. This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) Stumpage value tables. The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((January)) July 1, 2018 through ((June 30)) December 31, 2018:

Washington State Department of Revenue
STUMPAGE VALUE TABLE

((January)) July 1 through ((June 30)) December 31, 2018

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Starting July 1, 2012, there are no separate

Quality Codes per Species Code.

Table with columns: Species Name, Species Code, SVA (Stumpage Value Area), and Haul Zone (1-5). Rows include Douglas-fir, Western Hemlock and Other Conifer, Western Redcedar, Ponderosa Pine, Red Alder, Black Cottonwood, Other Hardwood, Douglas-fir Poles & Piles, Western Redcedar Poles, Chipwood, and Small Logs.



Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	1-6	299	292	285	278	271
Posts <sup>(8)</sup>	LPP	1-6	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	1-6	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	1-6	0.50	0.50	0.50	0.50	0.50
Douglas-fir <sup>(2)</sup>	DF	1	\$545	\$538	\$531	\$524	\$517
		2	550	543	536	529	522
		3	553	546	539	532	525
		4	616	609	602	595	588
		5	657	650	643	636	629
		6	306	299	292	285	278
Western Hemlock and Other Conifer <sup>(3)</sup>	WH	1	395	388	381	374	367
		2	429	422	415	408	401
		3	350	343	336	329	322
		4	401	394	387	380	373
		5	510	503	496	489	482
		6	278	271	264	257	250
Western Redcedar <sup>(4)</sup>	RC	1-5	1314	1307	1300	1293	1286
		6	1302	1295	1288	1281	1274
Ponderosa Pine <sup>(5)</sup>	PP	1-6	211	204	197	190	183
Red Alder	RA	1-5	626	619	612	605	598
Black Cottonwood	BC	1-5	112	105	98	91	84
Other Hardwood	OH	1-5	340	333	326	319	312
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	841	834	827	820	813
Western Redcedar Poles	RCL	1-5	1549	1542	1535	1528	1521
		6	1484	1477	1470	1463	1456
Chipwood <sup>(6)</sup>	CHW	1-5	13	12	11	10	9
		6	1	1	1	1	1
Small Logs <sup>(6)</sup>	SML	6	28	27	26	25	24
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	1-6	299	292	285	278	271
Posts <sup>(8)</sup>	LPP	1-6	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	1-6	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	1-6	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, Lodgepole Pine in SVA 6, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine in SVA 6, and all Pines in SVA 1-5.
- (6) Stumpage value per ton.

- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage Value per 8 lineal feet or portion thereof.
- (9) Stumpage Value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.,) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ~~(January)~~ July 1 through ~~(June 30)~~ December 31, 2018:

**TABLE 9—Harvest Adjustment Table  
Stumpage Value Areas 1, 2, 3, 4, and 5  
(~~January~~) July 1 through (~~June 30~~) December 31, 2018**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
<b>II. Logging conditions</b>		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
<b>III. Remote island adjustment:</b>		
	For timber harvested from a remote island	-\$50.00
<b>IV. Thinning</b>		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table  
Stumpage Value Area 6  
(~~January~~) July 1 through (~~June 30~~) December 31, 2018**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
<b>II. Logging conditions</b>		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
--------------------	------------	--

Note: A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.

III. Remote island adjustment:  
For timber harvested from a remote island -\$50.00

**TABLE 11—Domestic Market Adjustment**

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$0.00

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass,** has a \$0/ton stumpage value.

**WSR 18-10-104**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
 [Filed May 2, 2018, 10:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-07-016 on March 6, 2017.

Title of Rule and Other Identifying Information: WAC 220-310-210 Possession and delivery of Canadian-origin food fish and shellfish.

Hearing Location(s): On June 14, 2018, at 8:00 a.m., at the Natural Resource[s] Building, 1111 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: June 15, 2018.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, email Rules.Coordinator@dfw.wa.gov, fax 360-902-2155, by June 13, 2018.

Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2349, email dolores.noyes@dfw.wa.gov, by June 5, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department needs to clarify the process for anglers who catch Canadian-based food fish and shellfish and land their catch in Washington state ports.

Reasons Supporting Proposal: The proposed changes to the rule clarify and update what anglers need to do to comply with both Canadian regulations and land their catch in Washington state ports in a legal manner.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Bird, 1111 Washington Street S.E., Olympia, WA, 360-902-2403; Implementation and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

May 1, 2018  
 Scott Bird  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-16-109, filed 7/28/17, effective 8/28/17)

**WAC 220-310-210 Possession and delivery of Canadian-origin food fish and shellfish.** (1) ~~((Canadian license required.))~~ It is unlawful to possess in marine waters or deliver into Washington shellfish or food fish taken for personal use from Canadian waters unless the person ~~((who))~~ also possesses ~~((or delivers the shellfish or food fish possesses))~~ a valid Canadian sport fishing license and catch record card, if one is required ~~((, for the shellfish and food fish taken)).~~

(2) Canadian-origin rockfish restrictions: It is unlawful to possess yelloweye or canary rockfish taken for personal use from Canadian waters.

(3) Canadian-origin halibut restrictions:

(a) The daily limit of halibut is one daily limit, regardless of the origin of the halibut.

(b) The possession limit is two halibut if at least one halibut was taken from Washington waters. It is unlawful to possess in excess of the Canadian possession limit of halibut for the time and area fished if all halibut were taken from Canadian waters.

(c) It is unlawful to possess more than one daily limit of halibut aboard the fishing vessel.

(4) Canadian-origin salmon restrictions:

(a) It is unlawful to possess in marine waters or deliver into Washington any fresh salmon taken for personal use from Canadian waters unless:

(i) Such salmon ((meet current)) are in compliance with current salmon regulations for the waters of the applicable department of fish and wildlife catch record card area((- However, if the vessel operator has a valid Canadian customs clearance number obtained once they are in Canadian waters fishers aboard the vessel may deliver Canadian origin salmon into Washington that are lawfully taken in Canada, regardless of whether the salmon meet the current salmon regulations for the area where delivered.)); or

(ii) The vessel operator obtained a valid Canadian customs clearance number while the vessel was moored at a Canadian government dock in Ucluelet, Victoria, Sydney, White Rock, or Bedwell Harbor, British Columbia; or

(iii) The vessel operator has completed and submitted the trip report via the internet at [http://wdfw/licensing/canadian\\_catch.php](http://wdfw/licensing/canadian_catch.php); and

(iv) The salmon in possession are in compliance with Canadian fishing regulations.

(b) It is unlawful to fish for any species in state or offshore waters from a vessel having Canadian-origin salmon aboard that do not meet the current salmon regulations for the waters being fished.

(c) It is unlawful for a fisher to fish for any species in state or offshore waters if the fisher possesses in the field any salmon that do not meet the current salmon regulations for the waters being fished.

(5) "Delivery" of Canadian-origin fish into Washington defined. For the purposes of this section, "delivery" means transportation by a private or commercial recreational fishing vessel. Delivery in Washington is complete when, within the state, the vessel anchors, moors, ties to a float or pier, or is placed or attempted to be placed on a boat trailer. "Delivery"

is also complete if the fish or shellfish are offloaded from the vessel within state waters.

**WSR 18-10-105  
PROPOSED RULES  
DEPARTMENT OF COMMERCE**

[Filed May 2, 2018, 10:18 a.m.]

Supplemental Notice to WSR 18-07-112.

Preproposal statement of inquiry was filed as WSR 17-14-065.

Title of Rule and Other Identifying Information: Chapter 194-26 WAC, determination of the average greenhouse gas emission output from new, commercially available combined cycle combustion turbines.

Hearing Location(s): On June 11, 2018, at 1 p.m., at the Washington State Department of Commerce, Columbia Room, 1011 Plum Street S.E., Olympia, WA 98501. A courtesy call-in line will be available to allow for comments to be provided by phone during the hearing. The call-in number is 360-407-3780 and PIN Code is 326990#. Participants choosing to provide oral comments via the conference line are advised to also submit written comments, in the event of technical difficulties.

Date of Intended Adoption: June 18, 2018.

Submit Written Comments to: Greg Nothstein, P.O. Box 42525, Olympia, WA 98504-2525, email greg.nothstein@commerce.wa.gov, by 5 p.m., June 14, 2018.

Assistance for Persons with Disabilities: Contact Carolee Sharp, phone 360-725-3118, TTY 360-586-0772, email carolee.sharp@commerce.wa.gov, by June 4, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update the average greenhouse gas emission output from new, commercially available combined cycle combustion turbines.

Reasons Supporting Proposal: Updating the average greenhouse gas emission output from new, commercially available combined cycle combustion turbines every five years is required by statute.

Statutory Authority for Adoption: RCW 80.80.050.

Statute Being Implemented: RCW 80.80.040, 80.80.050.

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

Name of Proponent: Washington state department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Greg Nothstein, 1011 Plum Street S.E., Olympia, WA 98501, 360-725-3112.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Commerce is not an agency listed in RCW 34.05.-328 (5)(a)(i) as one to which that statute applies.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: RCW 80.80.050 requires commerce to update the average greenhouse gas emission output from new, commercially available combined cycle combustion turbines every five years.

May 2, 2018

Jaime Rossman

Rules Coordinator

**Chapter 194-26 WAC**

**AVERAGE AVAILABLE GREENHOUSE ((GAS)) GASES EMISSIONS OUTPUT FOR EMISSIONS PERFORMANCE STANDARD**

AMENDATORY SECTION (Amending WSR 13-06-074, filed 3/6/13, effective 4/6/13)

**WAC 194-26-010 Authority.** This chapter is promulgated pursuant to ~~((the authority granted in RCW 80.80.040, requiring the department of commerce to adopt the average available greenhouse gases emissions output as determined under RCW 80.80.050 as the greenhouse gas emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments))~~ RCW 80.80.050, which requires the energy division of the department of commerce to survey new combined-cycle natural gas thermal electric generation turbines commercially available and offered for sale by manufacturers and purchased in the United States to determine the average rate of emissions of greenhouse gases for these turbines and adopt the average available greenhouse gases emissions output by rule every five years beginning five years after July 22, 2007.

AMENDATORY SECTION (Amending WSR 13-06-074, filed 3/6/13, effective 4/6/13)

**WAC 194-26-020 Average available greenhouse ((gas)) gases emissions output.** (1) The energy ((policy)) division of the department of commerce has surveyed new combined-cycle natural gas thermal electric generation turbines commercially available and offered for sale by manufacturers and purchased in the United States, and finds the average ((rate of emissions of)) available greenhouse gases ((for these turbines)) emissions output to be nine hundred ((and seventy)) thirty pounds per megawatt-hour as of the effective date of this section.

(2) The purpose of this subsection is to provide historical values for the average available greenhouse gases emissions output established in WAC 194-26-020.

<u>Average available greenhouse gases emissions output (lb GHG/MWh) - Historical Values</u>	<u>Date established by rule</u>	<u>Date superseded by rule</u>
<u>970</u>	<u>4/6/13</u>	<u>Effective date of this section</u>

**WSR 18-10-106**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed May 2, 2018, 10:19 a.m.]

May 2, 2018

Erin T. Lopez

Rules Coordinator

Original Notice.

Title of Rule and Other Identifying Information: WAC 458-20-196 Bad debts, this rule provides information on how to claim bad debt deductions, credits and refunds when reporting taxes on Washington excise tax returns. Examples are also provided.

Hearing Location(s): On June 6, 2018, at 1:00 p.m., in Conference Room 252, 6400 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: June 13, 2018.

Submit Written Comments to: Rex Munger, P.O. Box 47453, Olympia, WA 98504-7453, email RexM@dor.wa.gov, fax 360-534-1606.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5717 or 360-725-7514, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments only clarify application of existing WAC 458-20-196, and the application of RCW 82.04.4284, 82.08.037, and 82.12.037. The proposed rule does not impose more-than-minor costs on business, as it does not propose any new requirements not already provided for in statute.

Reasons Supporting Proposal: The department is amending Rule 196 to clarify the manner in which bad debts are to be reported on Washington state excise tax returns. Additionally, examples are expanded to demonstrate how bad debt reporting is to be done in the case of repossessed property.

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

Statute Being Implemented: RCW 82.04.4284, 82.08.037, and 82.12.037.

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: Rex Munger, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1554; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule language for WAC 458-20-196 provides information to businesses on how to report bad debts. The proposed rule does not impose more-than-minor costs on businesses, as it does not propose any new tax rate, tax measure, reporting or recordkeeping requirements not already established by statute.

AMENDATORY SECTION (Amending WSR 10-21-012, filed 10/7/10, effective 11/7/10)

**WAC 458-20-196 Bad debts.** (1) **Introduction.** This ~~((section))~~ rule provides information about the tax treatment of bad debts ~~((under the business and occupation (B&O), public utility, retail sales, and use taxes.~~

~~(a) **Bad debt deduction for accrual basis taxpayers.** Bad debt credits, refunds, and deductions occur when income reported by a taxpayer is not received. Taxpayers who report using the cash method do not report income until it is received. For this reason, bad debts are most relevant to taxpayers reporting income on an accrual basis. However, some transactions must be reported on an accrual basis by all taxpayers, including installment sales and leases. These transactions are eligible for a bad debt credit, refund, or deduction as described in this section. For information on cash and accrual accounting methods, refer to WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods). Refer to WAC 458-20-198 (Installment sales, method of reporting) and WAC 458-20-199(3) for information about reporting installment sales.~~

~~(b) **Relationship between retailing B&O tax deduction and retail sales tax credit.** Generally, a retail sales tax credit for bad debts is reported as a deduction from the measure of sales tax on the excise tax return. The amount of this deduction, or the measure of a recovery of sales tax that must be reported, may differ from the amount reported as a deduction or recovery from the retailing B&O tax classification due to exempt sales (for example: Sales of motor vehicles and trailers for use in interstate or foreign commerce (RCW 82.08.0263); sales of manufacturing machinery and equipment (RCW 82.08.02565).)~~

~~(c) **Relationship to federal income tax return.** Washington credits, refunds, and deductions for bad debts are based on federal standards for worthlessness under section 166 of the Internal Revenue Code. If a federal income tax return is not required to be filed (for example, where the taxpayer is an exempt entity for federal purposes), the taxpayer is eligible for a bad debt credit, refund, or deduction on the Washington tax return if the taxpayer would otherwise be eligible for the federal bad debt deduction.~~

~~(2) **Retail sales and use tax.**~~

~~(a) **General rule.** Under RCW 82.08.037 and 82.12.037, sellers are entitled to a credit or refund for sales and use taxes previously paid on "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003. Taxpayers may claim the credit or refund for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. However, "bad debts" do not include:~~

~~(i) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;~~

~~(ii) Expenses incurred in attempting to collect debt;~~

(iii) Debts sold or assigned by the seller to third parties, where the third party is without recourse against the seller (see (c) of this subsection for additional information about this restriction); and

(iv) The value of repossessed property taken in payment of debt.

(b) **Recoveries.** If a taxpayer takes a credit or refund for sales or use taxes paid on a bad debt and later collects some or all of the debt, the amount of sales or use tax recovered must be repaid in the tax reporting period during which collection was made. The amount of tax that must be repaid is determined by applying the recovered amount first proportionally to the taxable price of the property or service and the sales or use tax thereon and secondly to any interest, service charges, and any other charges.

(c) **Assigned debt and installment sales.** Effective July 1, 2010, RCW 82.08.037 and 82.12.037 limit who can claim a credit or refund for retail sales or use tax. Only the original seller in the transaction that generated the bad debt, or a certified service provider (CSP) used by the seller, is entitled to claim a credit or refund on or after July 1, 2010. If the original seller in the transaction that generated the bad debt has sold or assigned the debt instrument to a third party with recourse, the original seller may claim a credit or refund only after the debt instrument is reassigned by the third party to the original seller. In the case where the seller uses a CSP to administer its sales tax responsibilities the CSP may claim, on behalf of the seller, the credit or refund allowed. See chapter 23, Laws of 2010, 1st sp. sess., (2ESSB 6143).

### (3) **Business and occupation tax.**

(a) **General rule.** Under RCW 82.04.4284, taxpayers may deduct from the measure of B&O tax "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003, on which tax was previously paid. Taxpayers may claim the deduction for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. However, the amount of the deduction must be adjusted to exclude amounts attributable to:

- (i) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;
- (ii) Sales or use taxes payable to a seller;
- (iii) Expenses incurred in attempting to collect debt; and
- (iv) The value of repossessed property taken in payment of debt.

(b) **Recoveries.** Recoveries received by a taxpayer after a bad debt is claimed are applied under the rules described in subsection (2)(b) of this section if the transaction involved is a retail sale. The amount attributable to "taxable price" is reported under the retailing B&O tax classification. If the recovery of debt is not related to a retail sale, recovered amount is applied proportionally against the components of the debt (e.g., interest and principal remaining on a wholesale sale).

(c) **Extracting and manufacturing classifications.** Bad debt deductions are only allowed under the extracting or manufacturing classifications when the value of products is computed on the basis of gross proceeds of sales.

(4) **Public utility tax.** Under RCW 82.16.050(5), taxpayers may deduct from the measure of public utility tax "bad debts" under section 166 of the Internal Revenue Code, as amended or renumbered as of January 1, 2003, on which tax was previously paid. Taxpayers may claim the deduction for the tax reporting period in which the bad debt is written off as uncollectible in the taxpayer's books and records and would be eligible for a bad debt deduction for federal income tax purposes. No deduction is allowed for collection or other expenses.

(5) **Application of payments—General rule.** The special rules for application of payments received in recovery of previously claimed bad debts described in subsections (2)(b) and (3)(b) of this section are not used for other payments. Payments received before a bad debt credit, refund, or deduction is claimed should be applied first against interest and then ratably against other charges. Another commercially reasonable method may be used if approved by the department.

(6) **Private label credit cards.** If a business contracts with a financial company to provide a private label credit card program, and the financial company becomes the exclusive owner of the credit card accounts and solely bears the risk of all credit losses, the business that contracted with the financial company is not entitled to any bad debt deduction if a customer fails to pay his or her credit card invoice.

**Example.** Hot Shot Ski Equipment (Hot Shot) is a sporting equipment retailer. Hot Shot contracts with ABC Financial Institution (ABC) to issue a Hot Shot private label credit card. ABC has the authority to accept or reject an applicant's credit card application. After Hot Shot transmits the credit card sales records to ABC, ABC pays Hot Shot the proceeds of the sales including the retail sales tax minus any applicable service fees. Hot Shot remits the retail sales tax to the Department of Revenue. If a customer using the Hot Shot credit card fails to pay ABC the outstanding amount on the credit card invoice, ABC suffers the loss. Hot Shot is not entitled to a bad debt deduction or credit as it has no bad debt loss when a customer defaults on a debt to ABC.

(7) **Reserve method.** Ordinarily, taxpayers must report bad debt refunds, credits or deductions for specifically identified transactions. However, taxpayers who are allowed by the Internal Revenue Service to use a reserve method of reporting bad debts for federal income tax purposes, or who secure permission from the department to do so, may deduct a reasonable addition to a reserve for bad debts. What constitutes a reasonable addition to a reserve for bad debts must be determined in light of the facts and will vary between classes of business and with conditions of business prosperity. An addition to a reserve allowed as a deduction by the Internal Revenue Service for federal income tax purposes, in the absence of evidence to the contrary, will be presumed reasonable. When the reserve method is employed, an adjustment to the amount of loss deducted must be made annually to make the total loss claimed for the tax year coincide with the amount actually sustained.

(8) **Statute of limitations for claiming bad debts.** No credit, refund, or deduction, as applicable, may be claimed for debt that became eligible for a bad debt deduction for federal income tax purposes more than four years before the

beginning of the calendar year in which the credit, refund, or deduction is claimed.

(9) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

In all cases, an eight percent combined state and local sales tax rate is assumed. Figures are rounded to the nearest dollar. Payments are applied first against interest and then ratably against the taxable price, sales tax, and other charges except when the special rules for subsequent recoveries on a bad debt apply (see subsections (2) and (3) of this section). It is assumed that the income from all retail sales described has been properly reported under the retailing B&O tax classification and that all interest or service fees described have been accrued and reported under the service and other activities B&O tax classification.

(a) **Scenario 1.** Joe's Hardware makes a retail sale of goods with a selling price of \$500 and pays \$40 in sales tax to the department. No payment is received by Joe at the time of sale.

(i) **Bad debt.** One and a half years later, no payment has been received by Joe, and the balance with interest is \$627. Joe is entitled to claim a bad debt deduction on his federal income tax return. He is also entitled to claim a bad debt sales tax credit or refund in the amount of \$40, a B&O tax deduction of \$500 under the retailing B&O tax classification, and a B&O tax deduction of \$87 under the service and other activities B&O tax classification.

(ii) **Recoveries.** Six months after the credit and deduction are claimed, a \$50 payment is received on the debt. Recoveries received on a retail sale after a credit and deduction have already been claimed must be applied first proportionally to the taxable price and sales tax thereon in order to determine the amount of tax that must be repaid. Therefore, Joe must report \$4, or  $\$50 \times (\$40/\$540)$ , of sales tax on the current excise tax return and \$46, or  $\$50 \times (\$500/\$540)$  under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$40 credit for sales tax is reduced to zero.

(b) **Scenario 2.** Joe makes a retail sale of goods on credit for \$500 and pays \$40 in sales tax to the department. No payment is received at the time of sale. Over the following year, regular payments are received and the debt is reduced to \$345, exclusive of any interest or service charges. The \$345 represents sales tax due to Joe in the amount of \$26, or  $\$345 \times (\$40/\$540)$ , and \$319 remaining of the original purchase price, or  $\$345 \times (\$500/\$540)$ . Payments cease.

(i) **Bad debt.** Six months later the balance with interest and service fees is \$413. Joe is entitled to claim a bad debt deduction on the federal income tax return. He is also entitled to claim a sales tax refund or credit on the current excise tax return of \$26, a deduction under the retailing B&O tax classification of \$319, and a deduction under the service and other activities B&O tax classification of \$68.

(ii) **Recoveries.** Before Joe charges off the debt, he repossesses the goods. At that time, the goods have a fair market value of \$250. No credit is allowed for repossessed property, so the value of the collateral must be applied

against the outstanding balance. After the value of the collateral is applied, Joe has a remaining balance of \$163, or  $\$413 - \$250$ . The allocation rules for recoveries do not apply because a bad debt credit or refund has not yet been taken. The value is applied first against the \$68, or  $\$413 - \$345$ , of interest, so the \$163 remaining is attributable entirely to taxable price and sales tax. Any costs Joe may incur related to locating, repossessing, storing, or selling the goods do not offset the value of the collateral because no credit is allowed for collection costs. Joe is entitled to a sales tax refund or credit in the amount of \$12, or  $\$163 \times (\$40/\$540)$  and deduction of \$151, or  $\$163 \times (\$500/\$540)$  under the retailing B&O tax classification.

(iii) **Sales of repossessed goods.** If Joe later sells the repossessed goods, he must pay B&O tax and collect retail sales tax as applicable. If the sales price of the repossessed goods is different from the fair market value previously reported and the statute of limitations applicable to the original transaction has not expired, Joe must report the difference between the selling price and the claimed fair market value as an additional bad debt credit or deduction or report it as an additional recovery, as appropriate.

(c) **Scenario 3.** Phil, of Phil's Fine Cars, sells a car at retail for \$1000 and charges Alice, the buyer, an additional \$50 for license and registration fees.

(i) **Trade-in accepted.** Phil accepts trade-in property with a value of \$500 in which Alice has \$300 of equity. (The value of trade-in property of like kind is excluded from the selling price for purposes of the retail sales tax. Refer to WAC 458-20-247 for further information.) Phil properly bills Alice for \$40 of sales tax, for a total of \$1090 owed to Phil by Alice. Phil pays the department the \$40 in sales tax. No payment other than the trade-in is received by Phil at the time of sale.

(ii) **Bad debt.** Eight months later, Phil has not received any payment. Phil is entitled to claim a bad debt deduction on his federal income tax return. The equity in the trade-in is equivalent to a payment received at the time of purchase, reducing the balance remaining on the initial sale to \$790, or  $\$1090 - \$300$ . Phil is entitled to claim a sales tax credit or refund of \$29, or  $\$790 \times (\$40/\$1090)$  of sales tax, and a deduction of \$725, or  $\$790 \times (\$1000/\$1090)$  under the retailing B&O tax classification, exclusive of any deduction for accrued interest.

(d) **Scenario 4.** Phil sells a car at retail for \$1000, and charges Jake an additional \$50 for license and registration fees. Phil properly bills Jake for \$80 of sales tax and remits it to the department. No money is received from Jake at the time of sale.

(i) **Bad debt.** Eight months later Phil is entitled to claim a bad debt deduction on the federal income tax return. Phil claims an \$80 sales tax credit, a \$1000 retailing B&O tax deduction, and an additional amount under the service and other activities classification for accrued interest.

(ii) **Recoveries.** Six months after claiming a bad debt, Phil receives a \$200 payment from Jake. Recoveries must be allocated first proportionally to the taxable price (the measure of the sales tax) and the sales tax thereon, and secondly to other charges. B&O tax consequences follow the same rules. Accordingly, Phil must report \$15, or  $\$200 \times (\$80/\$1080)$  of sales tax and \$185, or  $\$200 \times (\$1000/\$1080)$  of income under

the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$80 sales tax credit is reduced to zero.

(e) **Scenario 5.** Phil sells a car at retail for \$1000, and charges Robin an additional \$50 for license and registration fees.

(i) Trade-in accepted. Phil accepts trade-in property with a value of \$500 in which Robin has \$300 of equity. Phil properly bills Robin for \$40 of sales tax for a total of \$1090 owed to Phil by Robin. No payment other than the trade-in is received by Phil at the time of sale.

(ii) Bad debt. Eight months later, no payment has been received by Phil. Phil is entitled to claim a bad debt deduction on the federal income tax return. The equity in the trade-in is equivalent to a payment received at the time of purchase, reducing the balance remaining on the initial sale to \$790, or \$1090 - \$300. Phil is entitled to claim a sales tax credit or refund of \$29, or  $790 \times (\$40/\$1090)$  of sales tax, and a deduction of \$725, or  $790 \times (\$1000/\$1090)$  under the retailing B&O tax classification, exclusive of any deduction for accrued interest.

(iii) Recoveries. Six months after that, Phil receives a \$200 payment from Robin. Recoveries must be allocated first proportionally to the taxable price (the measure of the sales tax) and sales tax thereon, and secondly to other charges. B&O tax consequences follow the same rules. Accordingly, Phil must report \$15, or  $200 \times (\$40/\$540)$  in sales tax, and \$185, or  $200 \times (\$500/\$540)$  under the retailing B&O tax classification. Additional recoveries should be applied in the same manner until the original \$29 sales tax credit is reduced to zero.

(f) **Scenario 6.** The facts are the same as in Scenario 3 (e) of this subsection, except that immediately after the sale, Phil assigns the contract to a finance company without recourse, receiving face value for the contract. The finance company may not claim the retail sales tax credit or refund. The finance company may not claim any deductions for Phil's B&O tax liability. No bad debt deduction or credit is available to Phil, as the contract was sold without recourse.)) for income reported by a taxpayer that is ultimately not received.

(a) **References to related rules.** The department has adopted other rules that readers may want to refer to:

(i) WAC 458-20-197 When tax liability arises;

(ii) WAC 458-20-198 Installment sales, method of reporting;

(iii) WAC 458-20-199 Accounting methods;

(iv) WAC 458-20-229 Refunds.

(b) **Examples.** The rule includes a number of examples that identify a set of facts and then state a conclusion. These examples are only a general guide. The tax results of other situations must be determined after a review of all facts and circumstances. For each of the examples, assume an 8% retail sales tax rate.

(2) **Definitions.** The following definitions apply throughout this rule:

(a) "Bad debt" is an amount owed to the taxpayer as payment for the sale of goods, services, or digital products which is not actually received and is written off as a worthless debt on the taxpayer's books and records. For Washington excise tax reporting purposes, a bad debt is based on federal income

tax standards of worthlessness under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003. A bad debt may only be taken by the original seller of goods, services, or digital products.

(b) "Bad debts" do not include:

(i) Amounts due on property remaining in the seller's possession until the full purchase price is paid;

(ii) Expenses incurred in attempting to collect debt;

(iii) Debts sold or assigned by the seller to third parties, where the third party is without recourse against the seller (see subsection (6)(a) of this rule); and

(iv) The value of repossessed property taken as payment of debt at the time the property is repossessed.

(3) **Reporting a bad debt.**

(a) Only amounts previously reported as gross income on the Washington excise tax return are eligible for reporting as bad debts to the state of Washington. The bad debts reported must meet the federal revenue code standards for worthlessness. However, if a taxpayer who is not required to file a federal return is otherwise eligible for a federal income tax bad debt deduction, credit, or refund, that taxpayer may claim a Washington bad debt deduction, credit, or refund on a previously paid Washington state tax. For taxpayers who file a consolidated federal return with controlled affiliates, the bad debt deduction, credit or refund is only available to the original seller or provider that incurred the loss from the worthless debt.

(b) Taxpayers who report using the cash method do not report income until it is received. For this reason, bad debts are most relevant to taxpayers reporting income on an accrual basis. However, some transactions must be reported on an accrual basis by all taxpayers, including installment sales and leases. These transactions are eligible for a bad debt deduction as described in this rule.

(c) Bad debts can be reported using one of the following methods:

(i) **Deductions:** Generally, a bad debt is reported as a deduction from the measure of the tax previously reported and paid on the excise tax return. The bad debts discussed in this rule are assumed to be reported as deductions unless otherwise stated.

(ii) **Credits:** A bad debt credit is most commonly taken when there is a change in the retail sales tax rate between the time of sale and the reporting of the bad debt. To claim the credit, a taxpayer must complete a Schedule B addendum to their excise tax return. This form is available on the department's web site at [dor.wa.gov](http://dor.wa.gov).

(iii) **Refunds:** A taxpayer may also claim a bad debt by requesting a refund directly from the department using the process as described in WAC 458-20-229.

(d) **Reserve method.** Ordinarily, taxpayers must report bad debt deductions, credits, or refunds for specifically identified transactions. However, taxpayers who are allowed by the Internal Revenue Service to use a reserve method of reporting bad debts for federal income tax purposes, or who secure permission from the department to do so, may deduct a reasonable addition to a reserve for bad debts. What constitutes a reasonable addition to a reserve for bad debts will vary by business type and economic factors. The department presumes reserve methods allowed by the Internal Revenue Ser-



vice for federal income tax purposes are reasonable, absent contrary evidence. When the reserve method is used, the amount of loss deducted must be adjusted annually to make the total loss claimed for the tax year coincide with the amount of actual loss.

**(c) Statute of limitations for claiming bad debts.** No deduction, credit, or refund may be claimed for debt that became eligible for a bad debt deduction for federal income tax purposes more than four years before the beginning of the calendar year in which the credit, refund, or deduction is claimed.

**(4) Claiming bad debt deductions for various taxes paid.**

**(a) Business and occupation (B&O) tax.** Taxpayers may deduct from the measure of B&O tax, bad debts on which B&O tax was previously paid. RCW 82.04.4284.

**(b) Retail sales and use tax.** Taxpayers may take a bad debt deduction for retail sales and use taxes previously paid on bad debts. RCW 82.08.037 and 82.12.037.

**Example 1.** Joe's Hardware, which reports on an accrual basis, sells \$500 worth of goods to a buyer. Joe's Hardware receives no payment from the buyer at the time of sale. Joe's Hardware reports and remits \$40 (8% of \$500) in retail sales tax to the department. Joe's Hardware also reports \$500 of gross income under the retailing B&O tax classification, and reports service and other activities B&O tax on the interest and fees accruing on the outstanding balance.

A year and a half after the sale, Joe's Hardware has still not received any payment, and the balance with interest and fees is \$627 (\$500 selling price + \$40 retail sales tax + \$87 accrued interest and fees). Joe's Hardware meets the requirements to claim a federal income tax bad debt deduction. Therefore, it may claim a \$40 bad debt retail sales tax deduction, and a \$500 bad debt deduction from gross income under the retailing B&O tax classification. It may also take a bad debt deduction of \$87 for the accrued interest and fees previously reported under the service and other activities B&O tax classification.

**(5) Post bad debt reporting: Payments, recoveries and repossessions.**

**(a) Application of payments.**

If a taxpayer takes a bad debt deduction for a previously paid tax, and later collects some or all of the debt, the amount of tax recovered must be reported and paid in the tax-reporting period in which the collection was made. The amount of tax reported and paid is determined by first applying the recovered amount proportionally to the taxable price of the property or service and the retail sales or use tax thereon. Secondly, the recovered amount is applied to any interest, service charges, and any other charges. RCW 82.08.037(4).

**Example 2.** Joe's Hardware in Example 1 above receives a \$50 payment on the \$500 purchase six months after claiming the bad debt deduction. Joe's Hardware must report and pay an additional \$3.70 of retail sales tax on its current excise tax return ( $\$50 \text{ payment} \times (\$40 \text{ retail sales tax} / \$540 \text{ selling price} + \text{retail sales tax})$ ).

In addition, it must report \$46.30 as gross income under the retailing B&O tax classification ( $\$50 \text{ payment} \times (\$500 \text{ selling price} / \$540 \text{ selling price} + \text{retail sales tax})$ ).

Additional recoveries are reported in this same manner until the original \$40 retail sales tax bad debt deduction reduces to zero.

**(b) Repossessions:**

**(i)** When determining the amount of a bad debt deduction, the value of any property repossessed from a buyer for nonpayment must be subtracted from the value of the bad debt. The repossessed value must first be applied to any accrued interest and fees. Any remaining value must be proportionally applied to the original selling value and retail sales tax.

**(ii)** For bad debt purposes, the value of repossessed property is its value on the recovery date. If post-recovery repairs and improvements that increase the value of the property are made after recovery and prior to resale, the cost of these repairs may be subtracted from the selling price to establish its value when recovered.

**(iii)** Only repairs and improvements that increase the value of the repossessed property qualify to reduce its selling price to establish its recovery value. Repairs and improvements that are routine maintenance do not qualify to reduce the selling price of the repossessed property to establish its recovery value. In general, repairs and improvements considered routine in nature have a useful life of less than one year. Repairs with a useful life of more than one year are typically considered an improvement that increases the value of the property for the purpose of establishing recovery value.

In addition to routine maintenance costs, a taxpayer may not offset the value of repossessed property with any costs related to locating, repossessing, storing, or reselling the property, including associated attorney fees.

**(iv)** If the sales price of the repossessed property is less than the fair market value previously reported, the taxpayer must report the difference between the selling price and the claimed fair market value as an additional bad debt deduction. Alternatively, if the property resells for more than the fair market value previously reported, the taxpayer must report it as an additional recovery. This is because the sales price establishes the correct value of the repossessed goods.

**Example 3.** Phil's Fine Cars (Phil) sells a car to Alice on credit for \$1,000. Initially, Phil reports \$1,000 in gross income under the retailing B&O tax classification, and reports and remits \$80 in retail sales tax (8% of \$1,000). When Alice makes no payments, Phil repossesses the car. The fair market value of the repossessed car at the time of repossession is \$700. Also, assume \$63 in accrued interest at the time of repossession, resulting in an outstanding balance of \$1,143 (\$1,000 selling price + \$80 retail sales tax + \$63 accrued interest). The \$700 repossessed value is first applied to the accrued interest, resulting in a selling price and retail sales tax balance of \$1,080. The remaining repossessed value of \$637 ( $\$700 - \$63 \text{ accrued interest}$ ) is applied to the balance of \$1,080, resulting in an outstanding balance of \$443 ( $\$1,080 - \$637$ ) eligible for a bad debt deduction. Phil can claim a bad debt deduction of \$32.81 against the retail sales tax ( $\$443 \times (\$80 / \$1,080)$ ), and a \$410.19 deduction against the measure of the retailing B&O tax ( $\$443 \times (\$1,000 / \$1,080)$ ).

**Example 4.** If Phil's Fine Cars later resells the car repossessed from Alice in Example 3 in this subsection, it must

collect and remit retail sales tax, and pay retailing B&O tax on the sale to a new buyer. The payment of the retail sales tax and retailing B&O tax on the sale of the repossessed car does not affect Phil's tax liability regarding the reported bad debt deduction from the original transaction. Here, Phil resells the car for its \$700 repossession value to a new buyer, Jim. Phil will collect and report \$56 of retail sales tax on the sale (\$700 × 8%), and report \$700 in gross income under the retailing B&O tax classification.

**Example 5.** Phil's Fine Cars repossessed a car from Bob. Phil's estimate of the car's value upon repossession for bad debt reporting purposes was \$1,500. Phil reports a bad debt deduction based on this \$1,500 value, the outstanding debt balance, and any payments Bob made. Later, Phil makes repairs and improvements to the car and resells it to Ron for \$2,500. In order for Phil to know if he needs to adjust his prior bad debt reporting he must determine if his original estimate of \$1,500 recovery value upon repossession was correct.

Phil made the following repair and maintenance expenditures after recovering the car from Bob, and before reselling it to Ron:

<u>Post Repossession Expense:</u>	<u>Reduction of selling price?</u>
<u>Replace engine:</u>	<u>\$350 Yes, increases value</u>
<u>Replace windshield:</u>	<u>\$70 Yes, increases value</u>
<u>Replace filter:</u>	<u>\$20 No, maintenance</u>
<u>Replace wipers:</u>	<u>\$45 No, maintenance</u>
<u>Change oil filter:</u>	<u>\$50 No, maintenance</u>
<u>Repair transmission:</u>	<u>\$200 Yes, increases value</u>
<u>Detailing/cleaning:</u>	<u>\$75 No, maintenance</u>
<u>Replace tires:</u>	<u>\$130 Yes, increases value</u>
<u>Total expenses that increased value of the car: \$750</u>	
<u>Total expenses for maintenance: \$190</u>	

Phil has repair and improvement costs of \$750 that qualify to reduce the selling price to determine the car's value when recovered before any repairs and improvements. After reducing the \$750 of qualifying expenses from the \$2,500 resale price to Ron, the value of the car at the time of repossession is \$1,750. Because the \$1,750 recovery value is greater than Phil's bad debt reporting estimate of \$1,500, Phil must adjust his bad debt reporting for the bad debt relating to the repossession from Bob. Phil must reduce his bad debt deduction previously taken by the \$250 in increased recovery value (\$1,750-\$1,500).

If Phil's qualifying repair expenses had been \$1,750, then the value of the car repossessed from Bob would only have been \$750 (\$2,500 resale price - \$1,750 repairs). The lower actual recovery value increases the amount of bad debt, which allows for a larger bad debt deduction than had been originally reported by Phil.

**(6) Assigned debt and private label credit cards.**

**(a) Assigned debt.** RCW 82.08.037 and 82.12.037 limit who can claim a bad debt deduction for retail sales or use tax. Only the original seller in the transaction that generated the

bad debt, or a certified service provider (CSP) as defined in RCW 82.32.020 used by the seller, is entitled to claim a bad debt deduction. If the original seller in the transaction that generated the bad debt has sold or assigned the debt instrument to a third party with recourse back to the seller, the original seller may claim a bad debt deduction only if the debt instrument is reassigned by the third party back to the original seller. Alternatively, if the original seller has sold or assigned the debt instrument to a third party without recourse back to the seller, the original seller may not claim a bad debt deduction. Where the seller uses a CSP to administer its retail sales tax, the CSP may claim, on behalf of the seller, the bad debt deduction allowed.

**Example 6.** Immediately after Phil's Fine Cars sells a car, it assigns the contract to Finance Company ABC without recourse back to Phil. Phil receives face value for the contract from Finance Company ABC. If the buyer fails to make payments, Finance Company ABC may not claim a bad debt deduction because it is not the original seller. Phil is also unable to claim a bad debt deduction because Finance Company ABC purchased the contract without recourse back to the seller.

**(b) Private label credit cards.** A seller is not eligible for a bad debt deduction, credit, or refund for customers failing to pay credit card invoices if the seller:

- Contracts with a third party, such as a financial institution, to provide a private label credit card program;
- The third party becomes the exclusive owner of the credit card accounts.

**Example 7.** Mountaintop Ski Equipment (Mountaintop) is a sporting equipment retailing chain store. Mountaintop contracts with ABC Financial Institution (ABC) to issue Mountaintop private label credit cards. ABC has the authority to accept or reject an applicant's credit card application. After Mountaintop transmits the credit card sales records to ABC, ABC pays Mountaintop the proceeds of the sales including the retail sales tax less any applicable service fees. Mountaintop reports and remits the retail sales tax to the department. If a customer using the Mountaintop credit card fails to pay ABC the outstanding amount on the credit card invoice, Mountaintop is not entitled to a bad debt deduction because it has no bad debt loss when a customer defaults on a debt to ABC.

**WSR 18-10-107**

**PROPOSED RULES**

**PUGET SOUND**

**CLEAN AIR AGENCY**

[Filed May 2, 2018, 10:38 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 6.01 (Components of New Source Review Program).

Hearing Location(s): On June 7, 2018, at 8:45 a.m., at the Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101.

Date of Intended Adoption: June 7, 2018.

Submit Written Comments to: Robert Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email robs@pscleanair.org, fax 206-343-7522, by June 6, 2018.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-689-4010, fax 206-343-7522, TTY 800-833-6388 or 800-833-6385 (Braille), email robs@pscleanair.org, by May 31, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This section currently adopts by reference various applicable sections of chapters 173-400 and 173-460 WAC related to new source review. Several referenced sections of these codes were updated with WSR 16-12-099, effective July 1, 2016. The changes to WAC implemented new effective dates of the federal regulations referenced in those sections and a minor change consolidating how those dates are referenced in WAC itself. The proposed amendments to Section 6.01 would update those sections of WAC adopted by reference. There are no benefits or costs associated with the proposed amendments.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Carole Cenci, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4061; Implementation and Enforcement: Jennifer Dold, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4015.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a

filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW does not appear to apply to local air agencies.

May 2, 2018  
Craig Kenworthy  
Executive Director

## **AMENDATORY SECTION**

### **SECTION 6.01 COMPONENTS OF NEW SOURCE REVIEW PROGRAM**

(a) In addition to the provisions of this regulation, the Agency adopts by reference and enforces the following provisions of the new source review program established by the Washington State Department of Ecology:

WAC 173-400-030	Definitions. (effective 12/29/12)
WAC 173-400-081	Startup and shutdown. (effective 4/01/11)
WAC 173-400-110	New source review (NSR) for sources and portable sources. (effective 12/29/12) (1)(c)(i), (1)(d) and (1)(e)
WAC 173-400-111	Processing notice of construction applications for sources, stationary sources and portable sources. (effective <del>7/01/16</del> ((12/29/12)))
WAC 173-400-112	Requirements for new sources in nonattainment areas. (effective 12/29/12)
WAC 173-400-113	Requirements for new sources in attainment or unclassifiable areas. (effective 12/29/12)
WAC 173-400-114	Requirements for replacement or substantial alteration of emission control technology at an existing stationary source. (effective 12/29/12)
WAC 173-400-117	Special protection requirements for federal Class I areas. (effective 12/29/12)
WAC 173-400-171	Public notice. (effective <del>7/01/16</del> ((12/29/12)))
WAC 173-400-200	Creditable stack height and dispersion techniques. (effective 2/10/05)
WAC 173-400-560	General order of approval. (effective 12/29/12)
WAC 173-400-700	Review of major stationary sources of air pollution. (effective 4/01/11)
WAC 173-400-710	Definitions. (effective <del>7/01/16</del> ((12/29/12)))

WAC 173-400-720 Prevention of significant deterioration (PSD). (effective 7/01/16 (~~12/29/12~~))

WAC 173-400-730 Prevention of significant deterioration application processing procedures. (effective 7/01/16 (~~12/29/12~~))

WAC 173-400-740 PSD permitting public involvement requirements. (effective 7/01/16 (~~12/29/12~~))

WAC 173-400-750 Revisions to PSD permits. (effective 12/29/12)

WAC 173-400-800 Major stationary source and major modification in a nonattainment area. (effective 4/01/11)

WAC 173-400-810 Major stationary source and major modification definitions. (effective 7/01/16 (~~12/29/12~~))

WAC 173-400-820 Determining if a new stationary source or modification to a stationary source is subject to these requirements. (effective 12/29/12)

WAC 173-400-830 Permitting requirements. (effective 7/01/16 (~~12/29/12~~))

WAC 173-400-840 Emission offset requirements. (effective 7/01/16 (~~12/29/12~~))

WAC 173-400-850 Actual emissions plantwide applicability limitation (PAL). (effective 7/01/16 (~~12/29/12~~))

WAC 173-400-860 Public involvement procedures. (effective 4/01/11)

WAC 173-460-020 Definitions. (effective 6/20/09)

WAC 173-460-030 Applicability. (effective 6/20/09)

WAC 173-460-040 New source review. (effective (2)-(3) 6/20/09)

WAC 173-460-050 Requirement to quantify emissions. (effective 6/20/09)

WAC 173-460-060(1) Control technology requirements. (effective 6/20/09)

WAC 173-460-070 Ambient impact requirement. (effective 6/20/09)

WAC 173-460-071 Voluntary limits on emissions. (effective 6/20/09)

WAC 173-460-080 First tier review. (effective 6/20/09) (2)-(4)

WAC 173-460-090 Second tier review. (effective 6/20/09)

WAC 173-460-100 Third tier review. (effective 6/20/09)

WAC 173-460-150 Table of ASIL, SQER and de minimis emission values. - excluding references to de minimis emission values (effective 6/20/09)

(b) The Washington State Department of Ecology is the permitting agency for the Prevention of Significant Deterioration (PSD) program under WAC 173-400-700 through WAC 173-400-750 (as delegated by agreement with the US Environmental Protection Agency, Region 10), and for primary aluminum smelters, kraft pulp mills, and sulfite pulp mills.

(c) The Washington State Department of Health is the permitting agency for radionuclides under chapter 246-247 WAC.

(d) The Energy Facility Site Evaluation Council (EFSEC) is the permitting agency for large natural gas and oil pipelines, electric power plants above 350 megawatts, new oil refineries or large expansions of existing facilities, and underground natural gas storage fields under chapter 463-78 WAC.

**WSR 18-10-109**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed May 2, 2018, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-13-044 on June 8, 2016.

Title of Rule and Other Identifying Information: WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished and 220-610-010 Wildlife classified as endangered species.

Hearing Location(s): On June 14-16, 2018, at 8:00 a.m., at the Natural Resources Building, 1111 Washington Street S.E., Room 172, Olympia, WA 98501.

Date of Intended Adoption: August 10-11, 2018.

Submit Written Comments to: Wildlife Program Rules Coordinator, P.O. Box 43141, Olympia, WA 98504-3200, email wildthing@dfw.wa.gov, fax 360-902-2162, https://www.surveymonkey.com/r/DW6HRK9, by May 23, 2018.

Assistance for Persons with Disabilities: Contact Tami Lininger, phone 360-902-2267, TTY 800-833-6388, email tami.lininger@dfw.wa.gov, by June 7, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will reclassify the Columbian sharp-tailed grouse from the state's threatened subcategory (WAC 220-200-100) to state endangered (WAC 220-610-010).

In addition, the proposal will reclassify the sea otter from the state endangered (WAC 220-610-010) to the state's threatened subcategory (WAC 220-200-100).

Reasons Supporting Proposal: The department has reviewed all relevant data pertaining to the population status of Columbian sharp-tailed grouse and sea otter in Washington.

The Columbian sharp-tailed grouse historically was the most abundant and important game bird in eastern Washington during the 1800s. It was found throughout the grassland and shrub-steppe areas of eastern Washington, but was probably most abundant in Palouse prairie. They are now restricted to parts of Douglas, Okanogan, and Lincoln counties, and the Colville Reservation. The 2017 statewide population estimate based on lek counts was five hundred sixty-four birds.

The Columbian sharp-tailed grouse was state-listed as threatened in 1998, and a state recovery plan was completed in 2012. Habitat quantity, quality, and fragmentation limit Columbian sharp-tailed grouse populations. Historically, the highest densities of Columbian sharp-tailed grouse were in relatively moist grassland and steppe vegetation types, with creeks that have deciduous trees and shrubs that provide berries, buds, and catkins for winter habitat. The remaining local populations of Columbian sharp-tailed grouse in Washington are small, relatively isolated from one another, and may not persist unless they increase in size. Wildfires have had a short-term and unknown impact and habitat connectivity continues to diminish. For these reasons, it is recommended that the Columbian sharp-tailed grouse be reclassified to state endangered in Washington.

Sea otters in Washington historically ranged from the Columbia River to Port Angeles. The species was exploited during the heyday of the fur trade and was extirpated in the state by 1910. Sea otters were reintroduced to Washington in 1969 and 1970. Washington's current sea otter population is restricted to a roughly one hundred thirty kilometer stretch of outer coast along the Olympic Peninsula. There is no consensus on why sea otters are not clearly expanding into available habitat. The population has shown strong growth and in 2017 exceeded the downlisting criteria outlined in the 2004 Recovery Plan of one thousand six hundred forty sea otters over a three year period.

Despite a steady increase in numbers and density, the Washington sea otter population is at risk of losing significant numbers should a catastrophic event such as a large oil spill occur off Washington's coast. Sea otters also remain at risk from disease, toxins, and effects of climate change. The sea otter has been classified as a state endangered species in Washington since 1981. Given the steady and substantial increase in numbers and evidence of genetic exchange with the British Columbia sea otter population, it is recommended that the sea otter be reclassified to state threatened in Washington.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.020, 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 600 Capitol Way North, Olympia, WA 98501, 360-902-2515; and Enforcement: Steve Bear, 600 Capitol Way North, Olympia, WA 98501, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The rule proposal does not require a cost-benefit analysis.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

May 2, 2018  
Scott Bird  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-20-030, filed 9/27/17, effective 10/28/17)

**WAC 220-200-100 Wildlife classified as protected shall not be hunted or fished.** Protected wildlife are designated into three subcategories: Threatened, sensitive, and other.

(1) Threatened species are any wildlife species native to the state of Washington that are likely to become endangered within the foreseeable future throughout a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as threatened include:

Common Name	Scientific Name
western gray squirrel	<i>Sciurus griseus</i>
<u>sea otter</u>	<i>Enhydra lutris</i>
ferruginous hawk	<i>Buteo regalis</i>
green sea turtle	<i>Chelonia mydas</i>
greater sage grouse	<i>Centrocercus urophasianus</i>
<del>((sharp-tailed grouse</del>	<del><i>Tympanuchus phasianellus</i></del>
Mazama pocket gopher	<i>Thomomys mazama</i>
American white pelican	<i>Pelecanus erythrorhynchos</i>

(2) Sensitive species are any wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as sensitive include:

Common Name	Scientific Name
Gray whale	<i>Eschrichtius robustus</i>
Common Loon	<i>Gavia immer</i>
Larch Mountain salamander	<i>Plethodon larselli</i>
Pygmy whitefish	<i>Prosopium coulteri</i>
Margined sculpin	<i>Cottus marginatus</i>
Olympic mudminnow	<i>Novumbra hubbsi</i>

(3) Other protected wildlife include:

Common Name	Scientific Name
cony or pika	<i>Ochotona princeps</i>
least chipmunk	<i>Tamias minimus</i>
yellow-pine chipmunk	<i>Tamias amoenus</i>
Townsend's chipmunk	<i>Tamias townsendii</i>
red-tailed chipmunk	<i>Tamias ruficaudus</i>
hoary marmot	<i>Marmota caligata</i>
Olympic marmot	<i>Marmota olympus</i>
Cascade golden-mantled ground squirrel	<i>Callospermophilus saturatus</i>
golden-mantled ground squirrel	<i>Callospermophilus lateralis</i>
Washington ground squirrel	<i>Urocitellus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</i>
Humboldt's flying squirrel	<i>Glaucomys oregonensis</i>
wolverine	<i>Gulo gulo</i>
painted turtle	<i>Chrysemys picta</i>
California mountain kingsnake	<i>Lampropeltis zonata</i>

All birds not classified as game birds, predatory birds or endangered species, or designated as threatened species or sensitive species; all bats, except when found in or immediately adjacent to a dwelling or other occupied building; mammals of the order *Cetacea*, including whales, porpoises, and mammals of the order *Pinnipedia* not otherwise classified as endangered species, or designated as threatened species or sensitive species. This section shall not apply to hair seals and sea lions which are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

AMENDATORY SECTION (Amending WSR 17-20-030, filed 9/27/17, effective 10/28/17)

**WAC 220-610-010 Wildlife classified as endangered species.** Endangered species include:

Common Name	Scientific Name
pygmy rabbit	<i>Brachylagus idahoensis</i>
fisher	<i>Pekania pennanti</i>
gray wolf	<i>Canis lupus</i>
grizzly bear	<i>Ursus arctos</i>
<del>((sea otter</del>	<del><i>Enhydra lutris</i></del> ))

Common Name	Scientific Name
killer whale	<i>Orcinus orca</i>
sei whale	<i>Balaenoptera borealis</i>
fin whale	<i>Balaenoptera physalus</i>
blue whale	<i>Balaenoptera musculus</i>
humpback whale	<i>Megaptera novaeangliae</i>
North Pacific right whale	<i>Eubalaena japonica</i>
sperm whale	<i>Physeter macrocephalus</i>
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</i>
woodland caribou	<i>Rangifer tarandus caribou</i>
<u>Columbian sharp-tailed grouse</u>	<u><i>Tympanuchus phasianellus columbianus</i></u>
sandhill crane	<i>Grus canadensis</i>
snowy plover	<i>Charadrius nivosus</i>
upland sandpiper	<i>Bartramia longicauda</i>
spotted owl	<i>Strix occidentalis</i>
western pond turtle	<i>Clemmys marmorata</i>
leatherback sea turtle	<i>Dermochelys coriacea</i>
mardon skipper	<i>Polites mardon</i>
Oregon silverspot butterfly	<i>Speyeria zerene hippolyta</i>
Oregon spotted frog	<i>Rana pretiosa</i>
northern leopard frog	<i>Rana pipiens</i>
Taylor's checkerspot	<i>Euphydryas editha taylori</i>
Streaked horned lark	<i>Eremophila alpestris strigata</i>
Tufted puffin	<i>Fratercula cirrhata</i>
North American lynx	<i>Lynx canadensis</i>
marbled murrelet	<i>Brachyramphus marmoratus</i>
Loggerhead sea turtle	<i>Caretta caretta</i>
Yellow-billed cuckoo	<i>Coccyzus americanus</i>

**WSR 18-10-110  
PROPOSED RULES  
DEPARTMENT OF  
RETIREMENT SYSTEMS**

[Filed May 2, 2018, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-120.

Title of Rule and Other Identifying Information: Law enforcement officers' and firefighters' (LEOFF) Plan 2 disability rules: WAC 415-104-478 Am I eligible for a LEOFF Plan 2 disability benefit?, 415-104-479 Does my LEOFF Plan 2 disability qualify as a line of duty disability?, 415-104-480 Does my disability qualify me for a LEOFF Plan 2 cata-

strophic duty disability benefit?, 415-104-481 Does my disability qualify as a nonduty LEOFF Plan 2 disability?, 415-104-482 How are the different LEOFF Plan 2 disability benefits calculated?, 415-104-483 Is my disability benefit affected by choosing a survivor option?, 415-104-484 Is my disability benefit reduced for early retirement?, 415-104-485 How do I apply for a disability benefit?, 415-104-486 When does my disability benefit end?, and 415-104-487 Can my disability retirement type change?

Hearing Location(s): On June 5, 2018, at 2:00 p.m., at the Department of Retirement Systems (DRS), 6835 Capitol Boulevard S.E., Conference Room 115, Tumwater, WA 98502.

Date of Intended Adoption: June 6, 2018.

Submit Written Comments to: Jilene Siegel, DRS, P.O. Box 48380, Olympia, WA 98504-8380, email Rules@drs.wa.gov, by June 4, 2018.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email Rules@drs.wa.gov, by June 1, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify and update rules concerning the administration of LEOFF Plan 2 nonduty, duty and catastrophic disability retirement benefits.

Reasons Supporting Proposal: LEOFF Plan 2 retirement board and plan members asked the department to revise the rules to clarify and provide additional information concerning how the disability statutes are administered.

Statutory Authority for Adoption: RCW 41.50.050 Powers, duties, and functions of director.

Statute Being Implemented: Chapter 41.26 RCW, LEOFF retirement system.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Drafting: Greg Deam, DRS, P.O. Box 48380, Olympia, WA 98504, 360-664-6072; and Implementation: Seth Miller, DRS, P.O. Box 48380, Olympia, WA 98504, 360-664-7304.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule only impacts members of the state retirement systems and does not affect small businesses.

May 2, 2018

Jilene Siegel

Rules and Contracts Manager

## NEW SECTION

**WAC 415-104-478 Am I eligible for a LEOFF Plan 2 disability benefit?** This section applies to you if you are a LEOFF Plan 2 member who becomes disabled.

**Definitions.** As used in this section:

**Disabled** - Totally incapacitated to perform the essential functions of his or her LEOFF Plan 2 eligible position.

(1) **Who is entitled to disability benefits?** Any member of LEOFF Plan 2 is entitled to disability benefits if the department determines the member has:

(a) Become disabled; and

(b) Separated from all LEOFF-eligible employment due to the disability.

(2) **Is there a time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, your eligibility for a benefit will be based on your condition at the time of separation.

(3) **What happens if I become disabled after I retire?** Your medical condition at the time of separation will determine whether you qualify for a disability retirement.

(4) **What evidence will the department use to determine whether I am entitled to benefits under this section?**

(a) To determine if you are entitled to disability benefits, the department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

(i) Information and determinations by the department of labor and industries (L&I), a self-insurer or the Social Security Administration;

(ii) Medical, vocational, and other information about your disability;

(iii) Your job description;

(iv) Your membership records, maintained by the department;

(v) Independent medical reviews made by DRS contracted vendors; and

(vi) Any other relevant evidence.

(b) The department reserves the right to consult with a contracted vendor for the purpose of providing an independent medical review of any LEOFF member who applies for disability benefits.

(5) **What would disqualify me for disability benefits?** You are not eligible for disability benefits if any of the following apply:

(a) Your application does not provide adequate proof that you are disabled;

(b) Your disability is the result of your criminal conduct committed after April 21, 1997 (RCW 41.26.061). Criminal conduct means:

(i) If a member is a defendant in a civil proceeding or has been formally charged in court with a crime, and the member is applying for or receiving a disability retirement benefit for a disability that is the result of the alleged criminal conduct, the department shall withhold payment of any disability benefits until:

(A) The case or charges, or both if both are pending, are dismissed; or

(B) The member is found not guilty in the criminal case or prevails in the civil proceeding, or both if both are pending; or

(C) The member is convicted or found to have engaged in criminal conduct in the civil proceeding.

(ii) If the case or charges, or both if both are pending, are dismissed or if a member is found not guilty or prevails in the civil proceeding, or both if both are pending, the department shall pay the member a disability benefit if he or she otherwise qualifies.

(iii) If the member is convicted or found to be liable for criminal conduct in a civil proceeding, and the member's disability is the result of the criminal conduct, the department shall not pay the member a disability benefit.

(iv) In the absence of a criminal conviction, a superior court may determine by a preponderance of the evidence whether the person participated in criminal conduct.

**(6) Who decides if I meet the requirements for benefits under this section?** The director of the department of retirement systems (DRS) or their designee will decide if you meet the requirements for benefits under this section.

**(7) What if I disagree with a decision made by the director or their designee?** If you disagree with the decision of the director of DRS or their designee, you may petition for review under chapter 415-04 WAC.

#### NEW SECTION

**WAC 415-104-479 Does my LEOFF Plan 2 disability qualify as a line of duty disability?** This section applies to you if you are a LEOFF Plan 2 member who becomes disabled in the line of duty per RCW 41.26.470.

**(1) How is "line of duty" defined?** Line of duty means any action or activity occurring in conjunction with your employment or your status as a law enforcement officer or firefighter and required or authorized by law, rule, regulations, or condition of employment or service. "Line of duty" has the same meaning as "course of employment" in worker's compensation law, under RCW 51.08.013. If you have multiple conditions, some duty-related and some not, you may still qualify for a duty-related disability if:

(a) The duty-related condition or conditions, standing alone, would render you disabled; or

(b) The duty-related incident or incidents were the proximate cause of the disabling condition.

**(2) What if I have a preexisting condition?** The presence of a preexisting condition does not by itself disqualify a member from receiving benefits for duty-related disability.

**Example:** A LEOFF Plan 2 member has asymptomatic congenital osteoarthritis, a degenerative joint disease. While on duty, the member suffered a knee injury. Absent the osteoarthritis, the knee injury may not have been disabling. However, the preexisting degenerative joint disease prevented full recovery from the injury, leaving the member unable to resume LEOFF duties. In this case, the member could qualify for a LEOFF plan 2 duty disability benefit.

**(3) When are the duty disability provisions effective?** The duty disability provisions under RCW 41.26.470 (6) and (7) are effective June 10, 2004.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

**WAC 415-104-480 Does my disability qualify me for a LEOFF Plan 2 catastrophic duty disability benefit((s))?** ~~((This section applies to you if you are a LEOFF Plan 2 member who incurs a disability in the line of duty per RCW 41.26.470 (6) and (7) and this section.~~

**(1) Who is entitled to duty disability benefits?** Any member of LEOFF Plan 2 who the department determines has:

(a) Incurred a physical or mental disability in the line of duty;

(b) Become totally incapacitated for continued employment in a LEOFF eligible position; and

(c) Separated from a LEOFF eligible position due to the disability.

**(2) How is "line of duty" defined?** Line of duty means ~~any action or activity occurring in conjunction with your employment or your status as a law enforcement officer or firefighter and required or authorized by law, rule, regulations, or condition of employment or service.~~

**(3) When are the duty disability provisions effective?** The duty disability provisions under RCW 41.26.470 (6) and (7) are effective June 10, 2004.

**(4) How do I apply for duty disability benefits?** The department must receive:

(a) A completed three-part disability retirement application on the form provided by the department.

(i) Part 1: Disability retirement application. You must complete and sign the application. If you are married, your spouse must sign consenting to the retirement payment option you choose. Your signature(s) must be notarized.

(ii) Part 2: Employer's statement and report. Your employer must complete, sign and return it directly to the department.

(iii) Part 3: Medical report. You must complete Section 1. The remainder must be completed and signed by a person licensed according to Washington state law to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, clinical psychology, podiatry, dentistry, or optometry;

(b) Additional information requested by the department; and

(c) Any other material you want the department to consider.

**(5) What evidence will the department use to determine whether I am entitled to benefits under this section?** The department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

(a) Information and determinations by the department of labor and industries (L&I) or a self-insurer;

(b) Medical, vocational, and other information about your disability;

(c) Your job description;

(d) Your membership records, maintained by the department; and

(e) Any other relevant evidence.



**(6) What would disqualify me for duty disability benefits?** You are not eligible for duty disability benefits if any of the following apply:

(a) Your application does not provide adequate proof that you are totally incapacitated for continued employment in a LEOFF-eligible position;

(b) Your application does not provide adequate proof that your disability was incurred in the line of duty;

(c) The disability occurred as a result of intentional misconduct including but not limited to:

(i) An action you took intentionally to bring about your own disability;

(ii) Gross negligence on your part; or

(iii) Your voluntary intoxication. As used in this section, "intoxication" means a disturbance of mental or physical faculties resulting from the introduction of:

(A) Alcohol into the body as evidenced by:

(I) A blood alcohol level of .20 per centum or greater; or

(H) A blood alcohol level of at least .10 per centum but less than .20 per centum unless the department receives convincing evidence that the officer or firefighter was not acting in an intoxicated manner immediately prior to the injury; or

(B) Drugs or other substances in the body.

**(7) Who decides if I meet the requirements for benefits under this section?** The LEOFF plan administrator.

**(8) May I petition a decision made by the LEOFF plan administrator?** Yes. If the LEOFF plan administrator denies your request for a disability benefit under this section, you may petition for review under chapter 415-04 WAC.

**(9) What are the duty disability retirement benefits?** As a duty disability retiree, you may choose between:

(a) A nontaxable, one-time lump sum payment equal to one hundred fifty percent of your retirement contributions; except that, any payments made to restore service credit after the five-year deadline will be paid at one hundred percent; or

(b) A monthly allowance equal to:

(i) Ten percent of your final average salary (FAS), which is nontaxable; and

(ii) Two percent of your FAS for each year of service beyond five years.

Your monthly allowance will not be adjusted for early retirement. However, if you choose a benefit option with a survivor feature as described in WAC 415-104-215, your monthly allowance will be actuarially reduced to offset the cost. See WAC 415-02-380 for more information on how your monthly allowance is affected by choosing a survivor feature.

**Example:** Tom incurs a duty disability at age 42 after twenty years of service. His final average salary is \$5,000 per month. Tom's wife is also age 42. He chooses Benefit Option Two so that, after his death, his wife will receive a monthly allowance equal to the gross monthly allowance he was receiving. For illustration purposes in this example only, we will use 0.87 as the corresponding Option

Two joint and survivor factor (actuarial factors change periodically) for zero age difference between Tom and his wife.

Tom will receive a minimum allowance of \$435 (nontaxable) plus an additional \$1,305 (taxable), for a total monthly allowance of \$1,740. The department will use the following formula to determine Tom's monthly allowance:

$$\begin{aligned} \$5,000 \times 10\% \times 0.87 &= \$435 \text{ (nontaxable); PLUS} \\ 15 \times 2\% \times \$5,000 \times 0.87 &= \$1,305 \text{ (taxable)} \\ \text{TOTAL} &= \$1,740 \end{aligned}$$

**(10) Are my duty disability benefits taxable?** The department reports disability benefits to the Internal Revenue Service as required by federal law. Based on current federal law, part of your benefit may be taxable. You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

The department does not:

(a) Guarantee that payments are exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from benefit payments to you;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

**(11) If I previously withdrew my contributions, may I apply for duty disability benefits?** If you separated from employment due to a disability and withdrew your contributions, you may apply for duty disability benefits according to the provisions of subsection (4) of this section.

**(12) If I previously withdrew my contributions and am approved for duty disability benefits, what will I receive as a benefit?** If the LEOFF plan administrator determines you are entitled to duty disability benefits, the department will amend Internal Revenue Service reporting to designate your previous withdrawal as nontaxable. In addition, you may choose either of the following:

(a) If you previously withdrew 100% of your contributions, you may choose to receive an additional lump sum payment equal to 50% of the contributions you withdrew. The payment will be nontaxable; or

(b) If you previously withdrew 100% or 150% of your contributions, you may choose to receive a monthly allowance according to subsection (9) of this section. You must repay the amount you withdrew, either in a lump sum payment or by having your monthly allowance permanently actuarially reduced to offset the amount of your previous withdrawal.

**Example:** John was injured on the job and separated from his LEOFF position in March 2002. At the time he separated, he was 43 years old, had 10 years of service, and his final average salary was \$5,000.00 per month. At that time, John chose to withdraw \$75,000, which equaled 150 percent of his retirement contributions.

John subsequently applied under the provisions of RCW 41.26.470 (6) and (7) and was deemed eligible for duty disability benefits.

The department calculated John's benefit according to the methods in subsection (9) of this section. For illustration purposes in this example only, we will use .0049904 as the corresponding annuity factor for age 43 (actuarial factors change periodically). John determined it was to his advantage to take a monthly allowance:

If John ~~repays the entire amount he withdrew in a lump sum~~, his monthly allowance will be calculated according to the formula in subsection (9)(b) of this section:

$$\begin{aligned}
 \$5,000 \times 10\% &= \$500 \text{ (nontaxable); PLUS} \\
 5 \times 2\% \times \$5,000 &= \$500 \text{ (taxable)} \\
 \text{TOTAL} &= \$1,000
 \end{aligned}$$

If John ~~repays the withdrawn amount through a permanent actuarial reduction~~, his monthly allowance will be reduced as follows:

$$\begin{aligned}
 \text{Monthly amount from} &= \$1,000; \text{ LESS} \\
 \text{above} & \\
 \$75,000 \times .0049904 &= -\$374.28 \\
 \text{Monthly allowance} &= \$625.72^+
 \end{aligned}$$

<sup>+</sup> If John chooses a benefit option with a survivor feature, as described in WAC 415-104-215, his monthly allowance will be actuarially reduced to offset the cost. See also WAC 415-02-380.

~~(13) When does a duty disability retirement benefit end?~~ The department may require comprehensive medical examinations to reevaluate your eligibility for continued disability benefits according to the provisions of RCW 41.26.470(2). Your duty disability benefit will cease if:

- (a) You return to work in a LEOFF-eligible position; or
- (b) Medical examination reveals that you are no longer totally incapacitated for employment in a LEOFF-eligible position and you are no longer entitled to workers' compensation benefits under Title 51 RCW.

~~(14) If I retire for a duty disability and die, will my survivor beneficiary receive a monthly allowance?~~ If you choose a benefit option with a survivor feature under WAC 415-104-215(2) at the time of retirement, your survivor beneficiary will receive a monthly allowance after your death.

~~(15) What happens if I return to a LEOFF-eligible position?~~ If you return to a LEOFF-eligible position, your monthly allowance will stop.

~~(16) If I return to a LEOFF-eligible position, how will my future retirement benefit be affected?~~ When you rere-tire, your monthly allowance will be calculated pursuant to RCW 41.26.500 and WAC 415-104-111.) (1) If the department determines you are disabled and you became disabled in the line of duty, you qualify for a catastrophic duty disability if:

(a) The disability or disabilities that qualified you for a LEOFF Plan 2 duty disability benefit are so severe that considering your age, education, work experience, and transferable skills, you cannot engage in any other kind of substantial gainful activity in the labor market; and

(b) Your disability or disabilities have lasted or are expected to last at least twelve months, or are expected to result in your death.

(2) A person with multiple injuries/conditions, some duty-related and some not, could qualify for a catastrophic duty disability but only if the duty injury or injuries, standing on their own, are catastrophically disabling.

**Examples:**

- Totally disabled, but not from duty injury - Not eligible for catastrophic disability benefit.

A LEOFF Plan 2 member suffers a knee injury on duty, leaving them disabled from LEOFF employment. The knee injury, standing alone, is not totally disabling. The member also suffers from amyotrophic lateral sclerosis (ALS) or Lou Gehrig's disease, a progressive neurodegenerative disease that ultimately leaves the member totally disabled. Pursuant to the ALS diagnosis the member is granted a full disability from the Social Security Administration. In this case the member would qualify for a duty disability, but not for a catastrophic disability since the fully disabling condition, ALS, is not duty related.

- Totally disabled, duty injury totally disabling - Eligible for catastrophic disability benefits.

A LEOFF Plan 2 member suffers a knee injury while fishing. The knee injury, standing alone, is neither duty related nor catastrophically disabling. The member also suffers severe burns while fighting a fire, leaving him/her fully disabled. The Social Security Administration grants the member a full disability based on his/her total condition. The member qualifies for a LEOFF plan 2 catastrophic disability benefit because the burn injuries, standing alone, render him/her totally disabled.

(3) Medical insurance premium reimbursement is an additional benefit for a member who is catastrophically disabled in the line of duty (RCW 41.26.470). However, if you choose to withdraw one hundred fifty percent of your accumulated contributions pursuant to RCW 41.26.470(6) you are not entitled to the medical insurance premium reimbursement.

(4) Definitions. As used in this section:

(a) Catastrophically disabled means the same as "totally disabled" as defined under RCW 41.26.470(9).

(b) Earnings are any income or wages received, which are reportable as wages or self-employment income to the IRS.

(c) Labor market is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

(d) Substantial gainful activity describes a level of work activity and earnings. Substantial gainful activity is work activity that is both substantial and gainful. Earnings as defined in this section includes compensated work that meets or exceeds the defined income threshold:

(i) Work activity is substantial if it involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part-time basis or if you do less, or get paid less, or have less responsibility than when you worked in your LEOFF position.

(ii) Work activity is gainful if it is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(iii) Generally, activities like taking care of yourself, household tasks, profits from rental income, hobbies, therapy, school attendance, club activities, or social programs are not substantial gainful activity.

(e) Defined income threshold means any substantial gainful activity that produces average earnings, as defined in (a) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

(f) Transferable skills are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.

#### NEW SECTION

**WAC 415-104-481 Does my disability qualify as a nonduty LEOFF Plan 2 disability?** This section applies to you if you are a LEOFF Plan 2 member who becomes disabled not in the line of duty.

**(1) Who is entitled to nonduty disability benefits?** Any member of LEOFF Plan 2 who the department determines has become totally incapacitated to perform the essential functions of his or her LEOFF Plan 2 eligible position as a result of their disability, but did not have the qualifying disability occur in the line of duty, is entitled to a nonduty disability per RCW 41.26.470(1).

**(2) What if I have a preexisting condition or conditions?** The presence of a preexisting condition does not disqualify a member from receiving benefits.

**Example:** A LEOFF Plan 2 member has asymptomatic congenital osteoarthritis, a degenerative joint disease. While off duty, the member suffered a knee injury. Absent the osteoarthritis, the knee injury may not have been disabling. However, the preexisting degenerative joint disease prevented full recovery from the injury, leaving the member unable to resume LEOFF duties. In this case, the member

could qualify for a LEOFF Plan 2 nonduty disability benefit.

**AMENDATORY SECTION** (Amending WSR 16-06-069, filed 2/25/16, effective 3/27/16)

**WAC 415-104-482 ((What is the LEOFF Plan 2 catastrophic disability allowance?)) How are the different LEOFF Plan 2 disability benefits calculated?** ((Under RCW 41.26.470, two types of disability retirement are available to members of LEOFF Plan 2 who become disabled in the line of duty: Duty disability retirement benefits as described in WAC 415-104-480 and catastrophic disability retirement benefits as described in this section. If you are not eligible for a catastrophic disability allowance under this section, you may still be eligible for duty disability benefits.

**(1) Am I eligible for a catastrophic disability allowance?** You are eligible for a catastrophic disability allowance if the department determines all of the following are true:

(a) You incurred a physical or mental disability in the line of duty, as defined in WAC 415-104-480;

(b) You separated from LEOFF-eligible employment due to your disability;

(c) Your disability is so severe that you are unable to do your previous LEOFF-eligible work, and considering your education, transferable skills, and work experience, you cannot engage in any other kind of substantial gainful activity in the labor market;

(d) Your condition has lasted or is expected to last at least twelve months, or your condition is expected to result in death; and

(e) Your disability is not the result of your criminal conduct committed after April 21, 1997. See RCW 41.26.061.

**(2) If I am receiving a retirement allowance for service, can I qualify for a catastrophic disability allowance?** You are eligible for a catastrophic disability allowance in lieu of your service retirement allowance if the department determines you meet the eligibility requirements in subsection (1) of this section.

**(3) How do I request a catastrophic disability allowance?** To request a catastrophic disability allowance, please contact the department of retirement systems. You, your physician, and your employer will be required to provide information regarding your catastrophic disability.

**(4) What information will the department use to determine whether I am entitled to an allowance under this section?** The department will consider information submitted by you, your physician, and your employer, and information otherwise available to the department, including:

(a) Medical and vocational information;

(b) Information from and determinations made by the department of labor and industries, the Social Security Administration, or an employer;

(c) Your job description at the time you separated from LEOFF Plan 2 service;

(d) Financial records;

(e) Your membership records, maintained by the department; and

(f) Any other relevant information.

(5) **Who determines my eligibility?** The LEOFF plan administrator determines your eligibility for a catastrophic disability benefit. The plan administrator will rely substantially on determinations that have been made by the Social Security Administration unless there is information available that would produce a different determination.

(6) **What are my options if my request is denied?** If your request is denied, you have the following options:

(a) You may apply for duty disability benefits under WAC 415-104-480; and/or

(b) You may petition for review under chapter 415-04 WAC.

(7) **If my request is approved, when will my monthly allowance begin to be paid?** If your request is approved, you will begin to receive a catastrophic disability allowance in the month following the approval. Your first payment will include a retroactive payment of benefits that have accrued, but not yet been paid. The date your allowance for catastrophic disability accrues is determined as follows:

(a) If you separated from LEOFF Plan 2 employment due to a catastrophic disability, your allowance will accrue from the first of the month following your separation date.

(b) If you are receiving a duty disability allowance or a service retirement allowance, and you are subsequently approved for a catastrophic disability, your allowance will accrue from:

(i) The first of the month following the month in which a specific, one-time event, verified by medical records, occurred that clearly caused your duty disability to become a catastrophic disability; or

(ii) If the department determines there is not a one-time event that caused your disability to become catastrophic, the first of the month following the month in which the department receives your request for a catastrophic disability allowance.

**Example:** John has been receiving a duty disability allowance under WAC 415-104-480 since June 1, 2005, when he separated service as a firefighter due to a back injury he incurred in the line of duty.

**Example of (b)(i) of this subsection: A one-time event.** On January 15, 2007, John accidentally twisted his back causing a catastrophic disability. Because John's catastrophic disability was clearly the result of a specific one-time event, his catastrophic disability allowance will accrue from February 1, 2007, the first of the month following the month in which the event occurred.

**Example of (b)(ii) of this subsection: No specific event.** John's back gradually worsened until his disability qualified as a catastrophic disability. On May 15, 2007, John applied for a catastrophic disability allowance. His allowance will accrue from June 1, 2007, the first of the month following the month the department received his application.

(8) **How much is a catastrophic disability allowance?** The base catastrophic disability allowance is equal to seventy percent of your final average salary (FAS):

(a) Your allowance combined with other disability benefits, such as Title 51 RCW benefits or Social Security disability benefits, may not exceed one hundred percent of your

FAS. If necessary, your catastrophic disability allowance will be reduced so that your combined allowance does not exceed one hundred percent of your FAS. Any such adjustment will be applied prospectively. Your catastrophic disability allowance will not be reduced below your accrued retirement allowance as defined in subsection (13) of this section.

(b) If you choose a benefit option with a survivor feature as described in WAC 415-104-215, the allowance calculated in (a) of this subsection will be actuarially reduced to cover the cost of providing benefits over two lifetimes.

(c) If you have been retired for at least one year by July 1st of each year, you will receive a cost-of-living adjustment each July based on the percentage change, if any, in the consumer price index.

**Example:** Michael separates from service on June 1, 2005, and is approved for a catastrophic disability allowance. Since his FAS is \$5,800, Michael's catastrophic disability allowance from the department is \$4,060 per month ( $\$5,800 \times 70\% = \$4,060$ ). Michael is also approved for a Social Security benefit in the amount of \$1,800 per month. Michael's combined benefit equals \$5,860 ( $\$4,060 + \$1,800$ ). This is \$60 over 100% of his FAS ( $\$5,860 - \$5,800$ ), so Michael's catastrophic disability benefit will be reduced by that amount; his new monthly benefit from the department is \$4,000 ( $\$4,060 - \$60$ ). In January 2006, Michael received a 4.1% COLA for his Social Security benefit. The department will recalculate his benefit as follows:

January 2006 Social Security benefit, with COLA	$\$1,800 \times 4.1\% = \$73.80 + \$1,800$	<b>=\$1,873.80</b>
Total combined benefit	$\$4,060 + \$1,873.80$	<b>=\$5,933.80</b>
Amount over 100% of FAS	$\$5,933.80 - \$5,800$	<b>=\$133.80</b>

Since Michael's combined benefit is \$133.80 over 100% of his FAS, his catastrophic disability benefit will be reduced by that amount. His new monthly benefit from the department is \$3,926.20 ( $\$4,060 - \$133.80$ ). Michael's benefit cannot be reduced more than the amount of his accrued retirement allowance. To determine his accrued retirement allowance, the department multiplies Michael's FAS, \$5,800, by his years of service credit, 30, by 2% ( $\$5,800 \times 30 \times 2\%$ ). Michael's accrued retirement allowance is \$3,480. Since his

benefit does not fall below his retirement allowance, Michael will receive \$3,926.20 from the department per month. In July 2006, Michael received a 3% COLA for his catastrophic disability benefit. The department will recalculate his benefit as follows:

July 2006 catastrophic disability benefit, with COLA	$\$5,800 \times 3\% =$ $\$174 + \$5,800 =$ $\$5,974 \times 70\%$	<b><del>=\$4,181.80</del></b>
Total combined benefits	$\$4,181.80 + \$1,873.80$	<b><del>=\$6,055.60</del></b>
Amount over 100% of FAS	$\$6,055.60 - \$5,974$	<b><del>=\$81.60</del></b>

Since Michael's combined benefit is \$81.60 over 100% of his FAS, his catastrophic disability benefit will be reduced by that amount. His new monthly benefit from the department is \$4,100.20 (\$4,181.80 - \$81.60). This is compared to his accrued retirement allowance, \$3,584.40 (\$5,974 x 30 x 2%); since his benefit does not fall below his retirement allowance, Michael will receive \$4,100.20 from the department per month.

~~(9) Is my catastrophic disability allowance taxable?~~ You should consult with your tax advisor regarding all payments you receive from the department. The department does not:

- ~~(a) Guarantee that payments are exempt from federal income tax;~~
- ~~(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;~~
- ~~(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its determination; or~~
- ~~(d) Assume any liability for your compliance with the Internal Revenue Code.~~

~~(10) If I withdrew my contributions prior to December 2, 2004, and am approved for a catastrophic disability allowance, what will I receive?~~ You may apply for a catastrophic disability allowance even if you withdrew your accumulated contributions prior to December 2, 2004. If you are approved for a catastrophic disability allowance, your monthly allowance will be calculated as follows:

- ~~(a) If you repay the entire amount you withdrew plus interest, in a lump sum payment, you will receive a monthly allowance calculated according to subsection (8) of this section.~~
- ~~(b) If you do not repay the entire amount you withdrew, your monthly allowance will be actuarially reduced to offset the amount of your previous withdrawal.~~

~~(11) Can my catastrophic disability allowance be discontinued?~~ Your catastrophic disability allowance will be discontinued if:

- ~~(a) Medical/vocational examination, or other information commonly available or provided to the department by an employer, reveals that your disability no longer prevents you from performing substantial gainful activity; or~~
- ~~(b) Your earnings exceed the threshold for substantial gainful activity.~~

The department may require or offer to provide comprehensive medical/vocational examinations and/or submission of earnings information to evaluate your eligibility for continued benefits. You are required to contact the department if your medical/vocational or financial situation changes.

~~(12) If my catastrophic disability allowance terminates, may I qualify for duty disability benefits?~~ If you are no longer eligible for a catastrophic disability allowance, but have a disability that prevents you from returning to a LEOFF eligible position, the department will determine if you qualify for duty disability benefits under WAC 415-104-480.

~~(a) The department may request additional information from you, your physician, or others upon which to base the determination.~~

~~(b) If the department determines you are eligible, you will begin receiving a duty disability allowance under WAC 415-104-480 in lieu of your catastrophic disability allowance.~~

~~(13) Definitions.~~ As used in this section:

~~(a) Accrued retirement allowance~~ means a duty disability monthly allowance under WAC 415-104-480.

~~(b) Earnings~~ are any income or wages received, which are reportable as wages or self-employment income on IRS form 1040.

~~(c) Labor market~~ is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

~~(d) Substantial gainful activity~~ means any activity that produces average earnings, as defined in (b) of this subsection, in excess of eight hundred sixty dollars a month in 2006; adjusted annually as determined by the department based on federal Social Security disability standards. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

~~(e) Transferable skills~~ are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.))

(1) Line of duty: As a line of duty disability retiree, you may choose between:

- (a) A nontaxable, one-time lump sum payment equal to one hundred fifty percent of your retirement contributions; except that, any payments made to restore service credit after the five-year deadline will be paid at one hundred percent; or
- (b) A monthly disability benefit equal to:

- (i) Ten percent of your final average salary (FAS), which is nontaxable; and

(ii) Two percent of your FAS for each year of service beyond five years.

**Calculation of monthly disability benefit:**

**Example 1:** Chris was approved for line of duty disability. The final average salary (FAS) was \$10,000. Chris had 20 years of service credit at the time of retirement. To determine the line of duty disability benefit amount:

1.  $10\% \times \text{FAS} = \text{Nontaxable amount}$   
 $.10 \times \$10,000 = \$1,000$
2.  $2\% \times \text{FAS} \times \text{Number of Service Years beyond Five Years} = \text{Taxable amount}$   
 $.02 \times \$10,000 \times 15 = \$3,000$
3.  $\text{Nontaxable amount} + \text{Taxable amount} = \text{Total benefit}$   
 $\$1,000 + \$3,000 = \$4,000$

**Example 2:** Pat was approved for line of duty disability. The final average salary (FAS) was \$10,000. Pat had 2 years of service credit at the time of retirement. To determine the line of duty disability benefit amount:

1.  $10\% \times \text{FAS} = \text{Nontaxable amount}$   
 $.10 \times \$10,000 = \$1,000$
2.  $2\% \times \text{FAS} \times \text{Number of Service Years beyond Five Years} = \text{Taxable amount}$   
 $.02 \times \$10,000 \times 0 = \$0$
3.  $\text{Nontaxable amount} + \text{Taxable amount} = \text{Total benefit}$   
 $\$1,000 + \$0 = \$1,000$

(2) **Catastrophic duty disability:** As a catastrophic duty disability retiree, you may choose between:

(a) A nontaxable, one-time lump sum payment equal to one hundred fifty percent of your retirement contributions; except that, any payments made to restore service credit after the five-year deadline will be paid at one hundred percent. Under this option you waive your right to the medical insurance premium reimbursement; or

(b) A monthly disability benefit equal to:

(i) Seventy percent of your final average salary (FAS), which is nontaxable, reduced by any temporary disability benefits provided under Title 51 RCW and federal Social Security disability benefits, if necessary to ensure that the total combined benefits do not exceed one hundred percent of the member's final average salary (FAS).

(ii) The reduced benefit cannot be less than the earned service retirement benefit.

**Calculation of monthly disability benefit:**

**Example 1:** Terry was approved for catastrophic disability. The final average salary (FAS) was \$10,000. Terry was not receiving benefits from LNI or Social Security disability insurance (SSDI). Terry had 20 years of service credit at the time of retirement. To determine the catastrophic benefit amount:

1.  $70\% \text{ of FAS} = \text{Monthly disability benefit}$   
 $.70 \times \$10,000 = \$7,000$
2.  $2\% \times \text{FAS} \times \text{Service Years} = \text{Earned benefit}$   
 $.02 \times \$10,000 \times 20 = \$4,000$

Since there is no offset and the monthly disability benefit is greater than the earned benefit, Terry's benefit will be \$7,000 a month.

**Example 2:** Pat was approved for catastrophic disability. The final average salary (FAS) was \$10,000. Pat was receiving benefits from LNI and Social Security disability insurance (SSDI) in the amounts of \$5,000 and \$2,000. Pat had 2 years of service credit at the time of retirement. To determine the catastrophic benefit amount:

1.  $70\% \text{ of FAS} = \text{Monthly disability benefit}$   
 $.70 \times \$10,000 = \$7,000$
2.  $\text{Monthly disability benefit} + \text{LNI benefits} + \text{SSDI benefit} = \text{Total of all benefits}$   
 $\$7,000 + \$5,000 + \$2,000 = \$14,000$
3.  $\text{Total of all benefits} - \text{FAS} = \text{Reduction amount}$   
 $\$14,000 - \$10,000 = \$4,000$
4.  $\text{Monthly disability benefit} - \text{Reduction Amount} = \text{Reduced monthly benefit}$   
 $\$7,000 - \$4,000 = \$3,000$
5.  $2\% \times \text{FAS} \times \text{Service Years} = \text{Earned benefit}$   
 $.02 \times \$10,000 \times 2 = \$400$

Since the reduced monthly benefit amount is greater than the earned benefit, Pat's benefit will be \$3,000 a month.

**Example 3:** Chris was approved for catastrophic disability. The final average salary (FAS) was \$10,000. Chris was receiving benefits from LNI (Title 51 RCW) and Social Security disability insurance (SSDI) in the amounts of \$5,000 and \$2,000 respectively. Chris had 20 years of service credit at the time of retirement. To determine the catastrophic benefit amount:

1. 
$$\frac{70\% \text{ of FAS}}{.70 \times \$10,000} = \frac{\text{Monthly disability benefit}}{\$7,000}$$
2. 
$$\frac{\text{Monthly disability benefit} + \text{LNI benefits} + \text{SSDI benefit}}{\$7,000 + \$5,000 + \$2,000} = \frac{\text{Total of all benefits}}{\$14,000}$$
3. 
$$\frac{\text{Total of all benefits} - \text{FAS}}{\$14,000 - \$10,000} = \frac{\text{Reduction amount (to not exceed 100\% of FAS)}}{\$4,000}$$
4. 
$$\frac{\text{Monthly disability benefit} - \text{Reduction Amount}}{\$7,000 - \$4,000} = \frac{\text{Reduced monthly benefit}}{\$3,000}$$
5. 
$$\frac{2\% \times \text{FAS} \times \text{Service Years}}{.02 \times \$10,000 \times 20} = \frac{\text{Earned benefit}}{\$4,000}$$

Chris is entitled to the greater of the catastrophic retirement calculation or the earned benefit. Since the earned benefit is greater than the reduced catastrophic benefit, Chris' benefit will be \$4,000 a month.

**(3) Nonduty disability:** As a nonduty disability retiree, you receive a benefit of two percent times your final average salary times your service credit years. This disability benefit will be actuarially reduced to reflect the difference in age at the time of disability retirement and age fifty-three.

**Calculation of monthly disability benefit:**

**Example 1 - Full actuarial reduction:**

Chris, age 47, was approved for a nonduty disability. The final average salary (FAS) was \$10,000. Chris had 20 years of service credit at the time of retirement. To determine the nonduty disability benefit amount:

$$\frac{2\% \times \text{FAS} \times \text{Service Years} \times \text{early retirement factor (2018 table)}}{.02 \times \$10,000 \times 20 \times 0.5980} = \frac{\text{Benefit amount}}{\$2,392}$$

**NEW SECTION**

**WAC 415-104-483 Is my disability benefit affected by choosing a survivor option?** If you choose a benefit option with a survivor feature at the time of retirement, your survivor beneficiary will receive an ongoing monthly disability benefit after your death. Your disability benefit will be actuarially reduced to offset the cost of providing payments over two lifetimes. The survivor options are further described in WAC 415-104-215. See WAC 415-02-380 for more information and examples on how the actuarial reduction is applied to your disability benefit.

**NEW SECTION**

**WAC 415-104-484 Is my disability benefit reduced for early retirement?** If you retire for line of duty disability

or catastrophic duty disability, your disability benefit will not be reduced for early retirement. If you retire for nonduty disability, your disability benefit will be actuarially reduced to reflect the difference in age at the time of disability retirement and age fifty-three. See WAC 415-02-320 for more information and examples on how the actuarial reduction is applied to your disability benefit.

**AMENDATORY SECTION** (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

**WAC 415-104-485 ((LEOFF nonduty disability benefits)) How do I apply for a disability benefit?** ((This section applies to you if you are a LEOFF Plan 2 member who incurs a disability not in the line of duty. If your disability or injury was incurred in the line of duty, see WAC 415-104-480.

**(1) Who is entitled to nonduty disability benefits?** Any member of LEOFF Plan 2 who the department determines has:

- (a) Incurred a physical or mental disability while not in the line of duty;
- (b) Become totally incapacitated for continued employment in a LEOFF eligible position; and
- (c) Separated from a LEOFF-eligible position due to the disability.

**(2) How is "line of duty" defined?** Line of duty means any action or activity occurring in conjunction with your employment or your status as a law enforcement officer or firefighter and required or authorized by law, rule, regulations, or condition of employment or service.

**(3) How do I apply for nonduty disability benefits?** The department must receive:

- (a) A completed three-part disability retirement application on the form provided by the department.
  - (i) Part 1: Disability retirement application. You, or a person with legal authority to apply on your behalf, must complete and sign the application. If you are married, your spouse must sign consenting to the retirement payment option you choose. Your signature(s) must be notarized.
  - (ii) Part 2: Employer's statement and report. Your employer must complete, sign and return it directly to the department.
  - (iii) Part 3: Medical report. You must complete Section 1. The remainder must be completed and signed by a person licensed according to Washington state law to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, clinical psychology, podiatry, dentistry, or optometry;
- (b) Additional information requested by the department; and
- (c) Any other material you want the department to consider.

**(4) Is there a time limit for filing an application for nonduty disability benefits?** No. There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

**(5) What evidence will the department use to determine whether I am entitled to benefits under this section?**

The department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

(a) Information and determinations by the department of labor and industries (L&I) or a self-insurer;

(b) Medical, vocational, and other information about your disability;

(c) Your job description;

(d) Your membership records, maintained by the department; and

(e) Any other relevant evidence.

**(6) What would disqualify me for nonduty disability benefits?** You are not eligible for nonduty disability benefits if any of the following apply:

(a) Your application does not provide adequate proof that you are totally incapacitated for continued employment in a LEOFF-eligible position;

(b) Your disability is the result of your criminal conduct committed after April 21, 1997. See RCW 41.26.061.

**(7) Who decides if I meet the requirements for benefits under this section?** The LEOFF plan administrator.

**(8) May I petition a decision made by the LEOFF plan administrator?** Yes. If the LEOFF plan administrator denies your request for a disability benefit under this section, you may petition for review under chapter 415-04 WAC.

**(9) What are the nonduty disability retirement benefits?** As a nonduty disability retiree, your retirement benefit is a monthly allowance equal to:

(a) Two percent times your final average salary times your service credit years. This allowance will be actuarially reduced to reflect the difference in age at the time of disability retirement and age 53. If you qualify for alternative early retirement per RCW 41.26.430(3), your reduction will be three percent per year before age 53.

(b) If you choose a benefit option with a survivor feature as described in WAC 415-104-215, your monthly allowance will be actuarially reduced to offset the cost. See WAC 415-104-380 for more information on how your monthly allowance is affected by choosing a survivor feature.

**Example:** Tom incurs a nonduty disability at age 42 after twenty years of service. His final average salary (FAS) is \$5,000 per month. Tom's wife is also age 42. He chooses Benefit Option Two so that, after his death, his wife will receive a monthly allowance equal to the gross monthly allowance he was receiving. For illustration purposes in this example only, we will use 0.39 as the corresponding factor for retiring 11 years early, and 0.87 as the Option Two factor (actuarial factors change periodically). As a result, Tom's

monthly allowance will be \$678.60.

The department will use the following formula to determine Tom's monthly allowance:  $20$  (years of service)  $\times$   $2\%$   $\times$   $\$5,000$  (FAS)  $\times$   $0.39$  (early retirement factor)  $\times$   $0.87$  (Option Two factor) =  $\$678.60$ .

**(10) Are my nonduty disability benefits taxable?** The department reports disability benefits to the Internal Revenue Service as required by federal law. Based on current federal law, your benefit may be taxable. You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department.

The department does not:

(a) Guarantee that payments are exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from benefit payments to you;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

**(11) If I previously retired for service under the alternative early retirement provisions of RCW 41.26.430(3), but I qualified for a disability retirement, can I apply for duty or nonduty disability benefits?** Yes. If you retired under the alternative early retirement provisions of RCW 41.26.430(3) on or before January 1, 2001, you can apply to retire under the disability provisions of RCW 41.26.470. Your benefit will be reduced by three percent per year before age 53 instead of actuarially reduced by the early retirement factors in WAC 415-02-320.

**(12) If I previously retired for disability but was otherwise qualified for a service retirement under the alternative early retirement provisions of RCW 41.26.430(3), can I have my benefit recalculated to reflect a three percent reduction instead of being actuarially reduced by the early retirement reduction factors in WAC 415-102-320?** Yes. If you retired on or after January 1, 2001, and met the requirements of RCW 41.26.430(3), you can have your disability benefit recalculated under those provisions.

**(13) When does a nonduty disability retirement benefit end?** The department may require comprehensive medical examinations to reevaluate your eligibility for continued disability benefits according to the provisions of RCW 41.26-470(2). Your nonduty disability benefit will cease if:

(a) You return to work in a LEOFF-eligible position; or

(b) Medical examination reveals that you are no longer totally incapacitated for employment in a LEOFF-eligible position and you are no longer entitled to workers' compensation benefits under Title 51 RCW.

**(14) If I retire for a nonduty disability and die, will my survivor beneficiary receive a monthly allowance?** If you choose a benefit option with a survivor feature under WAC 415-104-215(2) at the time of retirement, your survivor



beneficiary will receive a monthly allowance after your death.

~~(15) What happens if I return to a LEOFF-eligible position? If you return to a LEOFF-eligible position, your monthly allowance will stop.~~

~~(16) If I return to a LEOFF-eligible position, how will my future retirement benefit be affected? When you re-retire, your monthly allowance will be calculated pursuant to RCW 41.26.500 and WAC 415-104-111.) (1) The department must receive:~~

~~(a) A completed DRS disability retirement application;~~

~~(b) Additional information required by the department; and~~

~~(c) Any other material you want the department to consider.~~

~~(2) The process for determining eligibility for a disability benefit can be lengthy and may require additional documentation to complete.~~

#### NEW SECTION

**WAC 415-104-486 When does my disability benefit end?** The department may require comprehensive medical or psychological examinations to reevaluate your continued eligibility for disability benefits. For catastrophic benefits the department may also require or offer to provide comprehensive vocational examinations and/or submission of earnings information to evaluate your continued eligibility. You are required to contact the department if your medical/vocational or financial situation changes.

(1) Your duty or nonduty disability benefit will cease if:

(a) You return to work in a LEOFF-eligible position; or

(b) Medical examination reveals that you are no longer totally incapacitated for employment in a LEOFF-eligible position and you are no longer entitled to workers' compensation benefits under Title 51 RCW.

(2) Your catastrophic disability benefit will cease if:

(a) You return to work in a LEOFF-eligible position;

(b) Medical/vocational examination, or other information commonly available or provided to the department by an employer, reveals that your disability no longer prevents you from performing substantial gainful activity; or

(c) Your earnings exceed the threshold for substantial gainful activity.

#### NEW SECTION

**WAC 415-104-487 Can my disability retirement type change?** Your disability retirement type may change depending upon the circumstances.

If your original disabling condition or conditions worsen, improve, or recover, the department may adjust your benefit.

(1) Worsening - If the condition or conditions that caused your duty disability worsen, your retirement may be changed to a catastrophic disability. You must submit an application and provide sufficient medical evidence to support a claim that your condition or conditions qualify you for a catastrophic disability. The worsening must be caused by or directly related to the original injury or injuries or illness and not due to the natural aging process or a succeeding cause.

**Example:** A member retires on a duty-related disability retirement due to a knee injury. The member has surgery related to the knee injury after retirement and suffers side effects from the surgery that prevent the member from performing any substantial gainful employment. The member is eligible to have their benefit adjusted because the aggravation is directly related to the original injury.

**Example:** A member retires on a duty-related disability retirement due to a knee injury. The member reinjures the knee in a skiing accident and is rendered unable to perform any substantial gainful employment. The member is not eligible to have their benefit adjusted because the aggravation is the result of a succeeding cause and not the original injury.

**Example:** A member retires on a duty-related disability retirement due to a knee injury. The condition gradually worsens over time until the member is no longer capable of substantial gainful employment. The member is not eligible to have their benefit adjusted because the aggravation is due to aging.

(2) Improvement - If your condition or conditions improve such that you are capable of substantial gainful employment, the department will adjust your catastrophic disability benefit to a duty disability benefit.

(3) Recovery - If your condition or conditions improve such that you are able to return to work in a LEOFF-eligible position, the department will terminate your disability retirement or convert you to a normal retirement benefit if you are eligible.

#### **WSR 18-10-111**

#### **PROPOSED RULES**

#### **LIQUOR AND CANNABIS**

#### **BOARD**

[Filed May 2, 2018, 11:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-184.

Title of Rule and Other Identifying Information: WAC 314-11-015 What are my responsibilities as a liquor licensee? and 314-03-400 Curbside service.

Hearing Location(s): On June 13, 2018, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: June 27, 2018.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by June 13, 2018.

Assistance for Persons with Disabilities: Contact Karen McCall, phone 360-664-1631, fax 360-664-9689, email rules@lcb.wa.gov, by June 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The revised rule will allow curbside service for liquor licensed grocery stores. The new rule will ensure that retailers and customers have parameters in place for this service.

Reasons Supporting Proposal: The proposed rules allow curbside service for liquor licensed grocery stores that utilize

online ordering and pickup service. The rules outline requirements for this service.

Statutory Authority for Adoption: RCW 66.08.030.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs or reporting requirements to licensees.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are no costs or reporting requirements to licensees.

May 2, 2018  
Jane Rushford  
Chair

#### NEW SECTION

**WAC 314-03-400 Curbside service.** (1) Liquor licensed grocery stores that may or may not hold a spirits retailer license may provide curbside service to customers who order groceries online and pick them up in designated pick up areas outside of the grocery store. Drive through service is prohibited.

(2) Curbside pickup of groceries that include spirits, beer, and wine are allowed under the following conditions:

- (a) Store employees must verify ID at pickup;
- (b) If ID cannot be verified, or if the driver appears intoxicated, all alcohol will be removed from the order and the customer will not be charged for any removed products.

AMENDATORY SECTION (Amending WSR 14-02-002, filed 12/18/13, effective 1/18/14)

**WAC 314-11-015 What are my responsibilities as a liquor licensee?** (1)(a) Liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board (Title 66 RCW and Title 314 WAC). Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee.

(b) The penalties for violations of liquor laws or rules are in: WAC 314-29-015 through 314-29-035, as now or hereafter amended, for licensees; and WAC 314-17-105 and 314-17-110, as now or hereafter amended, for employees who hold mandatory alcohol server training permits. These rules also outline aggravating and mitigating circumstances that may affect what penalty is applied if a licensee or employee violates a liquor law or rule.

(2) Licensees and their employees also have the responsibility to conduct the licensed premises in compliance with the following laws, as they now exist or may later be amended:

- (■) Titles 9 and 9A RCW, the criminal code laws;
- (■) Title 69 RCW, which outlines the laws regarding controlled substances; and
- (■) Titles 70.155, 82.24 RCW, and RCW 26.28.080 which outline laws regarding tobacco.

(3) Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. Except as otherwise provided by law, licensees or employees may not:

- (a) Be disorderly or apparently intoxicated on the licensed premises;
- (b) Permit any disorderly person to remain on the licensed premises;
- (c) Engage in or allow behavior that provokes conduct which presents a threat to public safety;
- (d) Consume liquor of any kind while working on the licensed premises; except that:
  - (i) Entertainers per WAC 314-02-010 may drink while performing under the following conditions:
    - (A) Alcohol service must be monitored by MAST servers;
    - (B) Drinks must be served in unlabeled containers;
    - (C) Entertainers may not advertise any alcohol brands or products;
    - (D) Entertainers may not promote drink specials; and
    - (E) If any member of the entertainment group is under twenty-one years of age, alcohol may not be consumed by any member of the group while performing.
  - (ii) Licensed beer manufacturers and their employees may sample beer of their own manufacture for manufacturing, evaluating or pricing product in areas where the public is not served, so long as the licensee or employee does not become apparently intoxicated;
  - (iii) Licensed wine manufacturers and their employees may:
    - (A) Sample wine for manufacturing, evaluating, or pricing product, so long as the licensee or employee does not become apparently intoxicated; and the licensee or employee who is sampling for these purposes is not also engaged in serving alcohol to the public; and
    - (B) Sample wine of their own manufacture for quality control or consumer education purposes, so long as the licensee or employee does not become apparently intoxicated.
  - (e) Engage in, or permit any employee or other person to engage in, conduct on the licensed premises which is prohibited by any portion of Titles 9, 9A, or 69 RCW;
  - (f) Engage in or permit any employee or other person to engage in the consumption of any type of marijuana, usable marijuana, or marijuana-infused products in a liquor licensed business, including outdoor service areas or any part of the property owned or controlled by the licensee;
  - (g) Permit any person consuming, or who has consumed within the licensed premises, any type of marijuana, usable

marijuana, or marijuana-infused products to remain on any part of the licensed premises; or

(h) Sell or serve liquor by means of "drive-in(~~" or by "curb service~~))."

(4) Licensees have the responsibility to control the interaction between the licensee or employee and their patrons. At a minimum, licensees or employees may not:

(a) Solicit any patron to purchase any beverage for the licensee or employee, or allow a person to remain on the premises for such purpose;

(b) Spend time or dance with, or permit any person to spend time or dance with, any patron for direct or indirect compensation by a patron.

~~((e))~~ See WAC 314-11-050 for further guidelines on prohibited conduct.